

PUBLIC LANDS, BUILDINGS, AND FUNDS

CHAPTER 72
PUBLIC LANDS, BUILDINGS, AND FUNDS

Article.

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Cross References

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- Acceptance of money or property for sectarian purposes prohibited, see Article VII, section 11, Constitution of Nebraska.
- Board of Educational Lands and Funds, created, see Article VII, section 6, Constitution of Nebraska.
- Donation of public lands prohibited, see Article III, section 21, Constitution of Nebraska.
- Mineral or other natural resources in state lands:
 - Alienation prohibited, see Article III, section 20, Constitution of Nebraska.
 - Leasing or development permitted, see Article III, section 20, Constitution of Nebraska.
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- School districts, powers, see sections 79-1095 and 79-1096.
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ARTICLE 1

LANDS OWNED BY THE STATE

Section

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- 72-102. Public land; confirmed to the state; where recorded.
- 72-103. Public land; confirmation; record; fee.
- 72-104. Public land; record of confirmation; receipt as evidence.
- 72-105. Shelterbelts; cooperation with federal government.
- 72-106. Shelterbelts; agreements; contents; recording.
- 72-107. Shelterbelts; no expenditures authorized.
- 72-108. Conveyances of real estate; custody after recording; exception.
- 72-109. Repealed. Laws 1988, LB 813, § 1.

72-101 Sale or lease; how validated.

In cases in which contracts for the sale or lease of lands owned by the state have been duly signed, executed and delivered to the purchaser or purchasers or lessees named in such contracts, by the proper state officers, the omission on the part of the proper officers to have first offered such lands at public sale shall not invalidate the private sales or leasing of such lands; but the purchaser or purchasers or lessees in such contracts mentioned, or their assignees, upon performance by them of the covenants and conditions on their part, by the terms of such contracts to be done, kept and performed, shall be entitled to a deed or contract of sale from the state for such lands; and the proper officers of the state in such cases are authorized and directed to make, execute and deliver to such purchaser or purchasers or lessees, or their assignees, deeds or contracts of sale from the state, which deeds, when properly executed and delivered, shall convey all right, title and interest of the state in and to the lands described therein.

Source: Laws 1887, c. 54, § 1, p. 524; R.S.1913, § 5838; C.S.1922, § 5174; C.S.1929, § 72-101; R.S.1943, § 72-101.

72-102 Public land; confirmed to the state; where recorded.

Whenever any communication shall be received by the Governor, or by any of the departments of the state government, from the Secretary of the Interior, when or whereby any lands or selection thereof shall be confirmed or certified to this state under or by virtue of any grant or Act of Congress, it shall be the duty of the Governor to cause a copy to be prepared, certified under the State

Seal, and recorded in each of the counties of this state in which any of the lands in such communication are situated.

Source: Laws 1872, § 2, p. 7; R.S.1913, § 5839; C.S.1922, § 5175; C.S. 1929, § 72-102; R.S.1943, § 72-102.

72-103 Public land; confirmation; record; fee.

It shall be the duty of the several county clerks to whom any such copy shall be presented to record it in the books in which land patents are or may be recorded, and in the order in which such copy may be received. The clerks shall be entitled to the same fees for recording such copies as are allowed by law for recording deeds, which fees shall be paid them out of the General Fund upon the warrant of the Director of Administrative Services.

Source: Laws 1872, § 3, p. 7; R.S.1913, § 5840; C.S.1922, § 5176; C.S. 1929, § 72-103; R.S.1943, § 72-103.

72-104 Public land; record of confirmation; receipt as evidence.

Each such copy, the record thereof, or a transcript of such record, certified under the hand and seal of the county clerk in whose office the same shall be recorded, shall be received in all courts and places whatever as evidence of each and every fact and thing therein stated, as well as of the absolute title of the United States in and to the lands therein described at the date of such communication.

Source: Laws 1872, § 4, p. 8; R.S.1913, § 5841; C.S.1922, § 5177; C.S. 1929, § 72-104; R.S.1943, § 72-104.

72-105 Shelterbelts; cooperation with federal government.

The Board of Educational Lands and Funds may enter into cooperative agreements with the officers and agents of the United States of America for the improvement by the United States of state educational and other lands, not under the control of the Board of Educational Lands and Funds, by the establishment and maintenance thereon of shelterbelts composed of trees, other plants, and necessary protective structures and works.

Source: Laws 1935, c. 144, § 1, p. 538; C.S.Supp.,1941, § 72-108; R.S. 1943, § 72-105.

72-106 Shelterbelts; agreements; contents; recording.

Every such agreement shall describe particularly the land to be covered by the shelterbelt, and shall be recorded in the county where such land is situated; and, thereafter, all leases, sales, and other disposition of such land shall be subject to such agreement.

Source: Laws 1935, c. 144, § 2, p. 538; C.S.Supp.,1941, § 72-109; R.S. 1943, § 72-106.

72-107 Shelterbelts; no expenditures authorized.

Sections 72-105 to 72-107 shall not be construed to authorize the Board of Educational Lands and Funds to spend any funds which may be under its jurisdiction, nor to incur indebtedness, under the above-mentioned agreements.

Source: Laws 1935, c. 144, § 3, p. 538; C.S.Supp.,1941, § 72-110; R.S. 1943, § 72-107.

72-108 Conveyances of real estate; custody after recording; exception.

All deeds or other instruments conveying any interest in lands to the State of Nebraska, or to any board, department, or commission thereof, shall be carefully deposited in the office of the Board of Educational Lands and Funds for safekeeping after they have been duly recorded in the office of the register of deeds in the county where the real estate is located; *Provided*, this section shall not apply to deeds or other instruments conveying any interest in lands to the Department of Roads or the Game and Parks Commission.

Source: Laws 1957, c. 301, § 1, p. 1105; Laws 1965, c. 433, § 1, p. 1381.

Cross References

Records of state lands, see section 84-401.

72-109 Repealed. Laws 1988, LB 813, § 1.**ARTICLE 2****SCHOOL LANDS AND FUNDS****Cross References****Constitutional provisions:**

Board of Educational Lands and Funds, see Article VII, section 6, Constitution of Nebraska.

Funds for common school purposes:

Distribution, see Article VII, section 9, Constitution of Nebraska.

Enumeration of funds, see Article VII, section 7, Constitution of Nebraska.

Fines, penalties, and license money, see Article VII, section 5, Constitution of Nebraska.

Trust funds, state educational funds are, see Article VII, section 8, Constitution of Nebraska.

Apportionment of school funds, see Chapter 79, article 10.

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Eminent domain:

Pipelines, easements across public lands, see section 57-1103.

School districts, power to exercise right, see sections 79-1095 and 79-1096.

Fines, credited to school fund, see section 29-2708.

Liquor license fees, credited to school fund, see section 53-138.01.

Mortgages held for permanent school fund, sale authorized, see section 84-616.

Motor vehicle fuels, unlawful transportation of, proceeds of sale of confiscated vehicle and fuel credited to school fund, see sections 66-528 to 66-530.

School district funds:

Deposit of, see sections 77-2350 to 77-2352.

Investment of, see section 79-1043.

Severance tax, school lands, see section 57-705.

State colleges, funds of, see Chapter 85, article 3.

Unclaimed personal property of decedent, vests in county school fund, see section 23-1815.

University of Nebraska, funds of, see Chapter 85, article 1.

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72-201 Board of Educational Lands and Funds; members; appointment; terms; compensation; duties; qualifications; organization; chairperson; meetings; secretary.

(1) The Board of Educational Lands and Funds shall consist of five members to be appointed by the Governor with the consent of a majority of the members elected to the Legislature. One member shall be appointed from each of the congressional districts as the districts were constituted on January 1, 1961, and a fifth member shall be appointed from the state at large. One member of the board shall be competent in the field of investments. The initial members shall be appointed to take office on October 1, 1955, and shall hold office for the following periods of time: The member from the first congressional district for one year; the member from the second congressional district for two years; the member from the third congressional district for three years; the member from the fourth congressional district for four years; and the member from the state at large for five years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the board for a term of five years, except members appointed to fill vacancies whose tenures shall be the unexpired terms for which they are appointed. If the Legislature is not in session when such members, or some of them, are appointed by the Governor, such members shall take office and act as recess appointees until the Legislature next thereafter

convenes. The compensation of the members shall be forty dollars per day for each day's time actually engaged in the performance of the duties of their office. Each member shall also be paid his or her necessary traveling expenses incurred while upon business of the board as provided in sections 81-1174 to 81-1177. The board shall cause all school, university, agricultural college, and state college lands, owned by or the title to which may hereafter vest in the state, to be registered, leased, and sold, as hereinafter provided, and shall have the general management and control of such lands, and make necessary rules not provided by law. The funds arising from these lands shall be disposed of in the manner provided by the Constitution of Nebraska, sections 72-201 to 72-251, and other laws of Nebraska not inconsistent herewith.

(2) No person shall be eligible to membership on the board who is actively engaged in the teaching profession, who holds or has any financial interest in a school land lease, who is a holder of or a candidate for any state office or a member of any state board or commission, or who has not resided in this state for at least three years.

(3) The board shall elect one of its members as chairperson of the Board of Educational Lands and Funds. In the absence of the chairperson, any member of the board may, upon motion duly carried, act in his or her behalf as such chairperson. It shall keep a record of all proceedings and orders made by it. No order shall be made except upon the concurrence of at least three members of the board. It shall make all orders pertaining to the handling of all lands and funds set apart for educational purposes.

(4) The board shall maintain an office in Lincoln and shall meet in its office not less than once each month.

(5) The board may appoint a secretary for the board. The compensation of the secretary shall be payable monthly, as fixed by the board.

Source: Laws 1899, c. 69, § 1, p. 300; R.S.1913, § 5845; C.S.1922, § 5181; C.S.1929, § 72-201; Laws 1935, c. 163, § 1, p. 594; Laws 1937, c. 162, § 1, p. 628; C.S.Supp.,1941, § 72-201; R.S.1943, § 72-201; Laws 1945, c. 175, § 1, p. 559; Laws 1951, c. 338, § 3, p. 117; Laws 1953, c. 252, § 1, p. 857; Laws 1955, c. 276, § 1, p. 874; Laws 1955, c. 277, § 1, p. 877; Laws 1961, c. 282, § 5, p. 822; Laws 1965, c. 434, § 1, p. 1383; Laws 1969, c. 589, § 1, p. 2438; Laws 1981, LB 204, § 141; Laws 1999, LB 779, § 12.

Cross References

Constitutional provisions:

Board of Educational Lands and Funds, duties, membership, see Article VII, section 6, Constitution of Nebraska.

Fees, see sections 25-1280 and 33-104.

Other provisions relating to the board, see Chapter 84, article 4.

State-owned geothermal resources, authority to lease, see section 66-1104.

Amendments of section 1, Article IV of the Constitution did not expressly or by implication repeal existing statutes imposing duties and obligations on the Commissioner of Public Lands and Buildings. *Swanson v. State*, 132 Neb. 82, 271 N.W. 264 (1937).

Statute fixes the times at which board should meet and transact their business. *State v. Bass*, 131 Neb. 592, 269 N.W. 68 (1936).

The provision of this section as to rule making refers only to regulation of the management and control of school lands, and

does not confer power upon the Board of Commissioners to convey such lands or any rights therein in excess of that provided by statute. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918).

The Board of Educational Lands and Funds acts by a majority of its members who have equal authority, and, hence, employment of an attorney to represent the board must be by the board itself and not by one of its members. *Follmer v. State*, 94 Neb. 217, 142 N.W. 908 (1913), *Am. Ann. Cas.* 1914D 151 (1913).

72-201.01 Plan for sale of educational lands; plan for investment of funds; state investment officer; duties.

(1) The Board of Educational Lands and Funds shall prepare a plan for the sale of educational lands over which the board has general management and control on July 19, 1996. The plan shall be submitted to the Education Committee of the Legislature on or before December 1, 1996. The plan shall provide for the sale of enough of the total of the educational lands by January 1, 2008, to result in one-fourth of the value of the school trust permanent portfolio being invested by the board in real property located within the State of Nebraska and the remaining three-fourths of the value of the school trust permanent portfolio being invested by the state investment officer. The plan shall be implemented beginning on July 1, 1997. In no case shall the plan or any part of it be executed if such execution violates the fiduciary duties of the board.

(2) Any sale under this section shall not include mineral rights.

(3) The state investment officer shall prepare a plan for investment of the funds derived from the sale of educational lands under the board's plan developed under this section. The state investment officer's plan shall be submitted to the Education Committee of the Legislature on or before December 1, 1996. The plan shall include estimated rates of return for the invested funds.

(4) For purposes of this section, value of the school trust permanent portfolio means the total fair market value of the educational lands and of all stocks, bonds, and other assets comprising the permanent school fund.

Source: Laws 1996, LB 1205, § 1.

72-201.02 Repealed. Laws 1959, c. 266, § 1.**72-201.03 Board of Educational Lands and Funds; branch office; establish.**

The Board of Educational Lands and Funds shall have authority to establish and maintain a branch office in the state as the board shall designate.

Source: Laws 1961, c. 348, § 1, p. 1107.

72-202 School funds; investments.

The Board of Educational Lands and Funds shall notify the state investment officer of the funds derived from the sale of school lands. Any such funds and the interest therefrom shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The state investment officer shall manage the funds as follows: (1) When necessary to pay a premium for bonds for such funds, the amount of the premium shall be amortized over the term of the bonds from the interest received on such bonds; and (2) when bonds for such funds are purchased at a discount, the amount of the discount shall be used to purchase additional bonds.

Source: Laws 1899, c. 69, § 2, p. 301; Laws 1909, c. 129, § 1, p. 473; R.S.1913, § 5846; Laws 1917, c. 113, § 1, p. 285; C.S.1922, § 5182; C.S.1929, § 72-202; Laws 1931, c. 119, § 1, p. 349; Laws 1933, c. 141, § 1, p. 551; Laws 1937, c. 159, § 1, p. 622; C.S.Supp.,1941, § 72-202; R.S.1943, § 72-202; Laws 1951, c. 235, § 1, p. 840; Laws 1959, c. 263, § 11, p. 943; Laws 1969, c. 584, § 76, p. 2392; Laws 1971, LB 52, § 1; Laws 1983, LB 238, § 1; Laws 1995, LB 7, § 83; Laws 1999, LB 779, § 13.

Cross References

For other investment provisions, see sections 77-2204 and 77-2205.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

Permanent Endowment Fund, see section 85-123.

State colleges, endowment fund, see section 85-317.

72-202.01 Repealed. Laws 1969, c. 584, § 134.**72-203 School lands; abstracts and records; where kept.**

The Board of Educational Lands and Funds shall keep in its office a full and complete abstract of all educational lands of the State of Nebraska, and such other records as are necessary to show the condition of each tract of land from the time title was acquired by the state.

Source: Laws 1899, c. 69, § 3, p. 301; R.S.1913, § 5847; C.S.1922, § 5183; C.S.1929, § 72-203; Laws 1935, c. 163, § 2, p. 594; C.S.Supp.,1941, § 72-203; R.S.1943, § 72-203.

72-204 School lands; classification required; report.

The Board of Educational Lands and Funds shall cause school land to be classified for rental purposes (1) at least once each five years, (2) each time that the land is leased or that an assignment of a lease is made, and (3) when the board deems it to be in the best interest of the state. The leasing of the land shall be regulated by sections 72-232 to 72-239. When a lease is offered for sale, the new rental shall be made public. When the board has ordered the reclassification of any of the school lands in any county, it shall prescribe the method and promulgate rules governing the classification of educational lands. It shall have a classification of all the educational lands in the county prepared by a competent person, who shall make a detailed field examination of each forty-acre tract of educational lands for the purpose of obtaining information as to the type and rating of the soil, its adaptability, the topographical character of the land, and the location and number of acres of each type. His or her report of such field examination shall be prepared in the form of a detailed map with complete explanations and shall be filed with the board. The board may employ private appraisal firms to aid it in determining the value of educational lands.

Source: Laws 1899, c. 69, § 4, p. 301; R.S.1913, § 5848; Laws 1921, c. 80, § 1, p. 289; C.S.1922, § 5184; C.S.1929, § 72-204; Laws 1933, c. 142, § 1, p. 553; Laws 1935, c. 163, § 3, p. 594; C.S.Supp.,1941, § 72-204; R.S.1943, § 72-204; Laws 1953, c. 253, § 1, p. 859; Laws 1999, LB 779, § 14.

Administrative determination of value of school lands is for the purpose of securing a basis for fixing the annual rent. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

This section must be construed to require the state's rights and interest in the land to be appraised, which does not include

improvements by settlers upon indemnity school lands which by the act of 1875 belonged to such settlers. *State v. McCright*, 76 Neb. 732, 108 N.W. 138 (1906), rehearing denied 76 Neb. 738, 112 N.W. 315 (1907).

72-205 School lands; changes in valuation; rental schedule; factors.

All school land shall be subject to lease at fair market rental as determined by the Board of Educational Lands and Funds. When the board deems it expedient to raise or lower the rental and the appraised rental valuation of school lands, the board shall adopt rental schedules according to classification and schedules of valuations for the counties involved. In arriving at such rental schedules, the board shall consider the rental of other lands similarly situated and any other

relevant factors bearing upon the rental of such school lands. The fair market rental as determined by the board shall then be capitalized at an annual rate of four percent to compute the appraised rental valuation.

Source: Laws 1921, c. 80, § 1, p. 289; C.S.1922, § 5184; C.S.1929, § 72-204; Laws 1933, c. 142, § 1, p. 553; Laws 1935, c. 163, § 3, p. 594; C.S.Supp.,1941, § 72-204; R.S.1943, § 72-205; Laws 1947, c. 235, § 1, p. 743; Laws 1949, c. 212, § 1, p. 602; Laws 1999, LB 779, § 15.

Administrative determination of value for rent purposes does not fix value which state must receive for land taken under eminent domain proceedings. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

72-205.01 Rental schedules; semiannual rental; file in office of county treasurer; notice.

After the adoption of new rental schedules according to classification and schedules of valuations, as provided by section 72-205, such schedules together with a tabulation of the valuation and the amount of semiannual rental of each lease shall be filed in the office of the county treasurer of such county not less than ninety days prior to the effective date of the new rentals. Notice of such filing shall be given by one publication in a newspaper of general circulation published within the county or, if more than one newspaper of general circulation is published in the county, then in two of such newspapers. If no newspaper is published in the county, it shall be so published in a newspaper of general circulation therein. The board shall further advise each lessee by mailing to his or her last address of record a letter or postal card notifying him or her of the amount of his or her semiannual rental.

Source: Laws 1949, c. 212, § 2, p. 602; Laws 1999, LB 779, § 16.

72-205.02 Rental schedules; when effective; petition; hearing.

Such new rental schedules according to classification and schedules of valuations shall become effective upon the first semiannual rental due date, which is ninety days or more from the date of the filing of the schedules in the office of the county treasurer, unless within forty-five days from the date of the publication of notice a petition signed (1) by at least twenty-five percent of the lessees in counties having less than one hundred leaseholders or (2) twenty-five of the lessees in counties having one hundred or more leaseholders within the county, requesting a hearing is filed in the office of the Board of Educational Lands and Funds.

Source: Laws 1949, c. 212, § 3, p. 603; Laws 1999, LB 779, § 17.

72-205.03 Rental schedule; objections; petition; hearing; notice; examiner; evidence.

Upon receipt of a petition bearing the requisite number of signatures as required by section 72-205.02, the Board of Educational Lands and Funds shall appoint an examiner who shall hold a meeting in the county seat of the county where such school lands are located to take testimony and to receive evidence as to the rental of all school lands, according to classification, in such county. Such evidence shall cover the rental of other lands similarly situated and any other relevant factors bearing upon the rental of such school lands. Notice of the time and place of such hearing shall be given by publication in a legal newspaper, published in the county where such school lands are situated, once

each week for two consecutive weeks beginning at least twenty days prior to the date of the public hearing. In case no legal newspaper is published in the county, then the notice shall be published in a legal newspaper of general circulation in the county. The examiner conducting such hearing shall have the power to administer oaths.

Source: Laws 1949, c. 212, § 4, p. 603; Laws 1999, LB 779, § 18.

72-205.04 Rental schedule; hearing; examiner; record; board; powers.

A complete record shall be made of all testimony taken and evidence received at such hearing, which record shall be filed in the office of the Board of Educational Lands and Funds. The examiner conducting such hearing shall make, in writing, complete findings and recommendations to the board as to the value of school lands according to classification. If the board determines that a change in the rental is justified it may either raise or lower its rental schedules according to classifications and schedules of valuations previously adopted based upon the evidence produced at such hearing as shown by the record, the effective date to be the time originally fixed.

Source: Laws 1949, c. 212, § 5, p. 604; Laws 1999, LB 779, § 19.

72-206 Repealed. Laws 1967, c. 11, § 12.

72-207 Repealed. Laws 1965, c. 435, § 5.

72-208 School lands; sale; deed; recording; received in evidence.

When the Board of Educational Lands and Funds becomes satisfied that full payment has been made on any tract of land sold by the state, the Governor shall issue a deed to the purchaser or his assigns, and all deeds issued by him shall be countersigned by the Secretary of State and under the Great Seal of the state, and shall be attested by the secretary of the board and a record kept in his office. All deeds so issued shall be subject to record, and shall be received in evidence without acknowledgment, the same as deeds that have been acknowledged.

Source: Laws 1899, c. 69, § 7, p. 303; R.S.1913, § 5851; C.S.1922, § 5187; C.S.1929, § 72-207; Laws 1935, c. 163, § 6, p. 597; C.S.Supp.,1941, § 72-207; R.S.1943, § 72-208; Laws 1965, c. 435, § 1, p. 1385.

72-209 Repealed. Laws 1999, LB 779, § 51.

72-210 Repealed. Laws 1999, LB 779, § 51.

72-211 Repealed. Laws 1999, LB 779, § 51.

72-212 School lands; sale; public auction required.

No lands now owned or hereafter acquired by the state for educational purposes shall be sold except at public auction.

Source: Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345;

Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S. 1943, § 72-212.

Under former statute, state board had no authority to dispose of mineral rights in school lands. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

permitted by the Legislature. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918).

The power of the Board of Commissioners to lease, sell, or dispose of school lands exists only insofar as it is directed or

72-213 School lands; eminent domain proceedings.

Educational lands belonging to the state may be acquired through the exercise of eminent domain proceedings for the special purposes mentioned in sections 72-214 to 72-226.

Source: Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-213.

Taking of educational land by eminent domain for county fair purposes is authorized. *State v. Cheyenne County*, 157 Neb. 533, 60 N.W.2d 593 (1953).

School lands cannot be taken from state by judicial process unless full value is paid to the state. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

72-214 School lands; acquisition by school district.

Any school district, in which there may be any educational lands, may acquire for school purposes any portion thereof, not exceeding forty acres.

Source: Laws 1899, c. 69, § 11, p. 304; Laws 1905, c. 144, § 1, p. 582; Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-214.

72-215 School lands; acquisition by city or village; when authorized; limitations.

Any city or village may acquire such educational lands not exceeding forty acres for solid waste disposal areas, sewage disposal purposes, necessary right-of-way for electric transmission lines, or for any other purpose, except park and recreational purposes, for which a city or village may condemn private lands.

Source: Laws 1929, c.188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-215; Laws 1963, c. 415, § 1, p. 1337; Laws 1969, c. 590, § 1, p. 2441; Laws 1983, LB 29, § 1.

72-216 School lands; acquisition for airfields and monitor stations.

The United States of America, or any county, city or village of the State of Nebraska may acquire such educational lands necessary for public use for the development of radio monitor stations, aviation fields, and fields for aerial traffic.

Source: Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-216.

72-217 School land within defense project; purchase by United States.

The United States of America may purchase any educational lands located within the boundaries of any defense project.

Source: Laws 1943, c. 160, § 1, p. 573; R.S.1943, § 72-217.

Legislature provided for a public offering, preceded by public notice, of all educational lands subject to lease. State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

72-218 School lands; acquisition by United States for water conservation.

The United States of America may acquire such educational lands, or portions thereof, in subdivisions of not less than forty acres, located within the boundaries of the projects now authorized by the United States of America pursuant to Public Law 848, 76th Congress, entitled An Act Authorizing the Construction of Water Conservation and Utilization Projects in the Great Plains and Arid and Semiarid Areas of the United States, approved August 11, 1939, and all acts supplementary thereto, amendatory thereof, or appropriating funds for the purposes thereof.

Source: Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 71-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-218.

72-219 School lands; acquisition by county for public purposes.

The county board of any county, in which there are such educational lands, may acquire for public purposes any portion thereof, not exceeding forty acres.

Source: Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 254; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-219.

County may acquire educational land for county fair grounds. State v. Cheyenne County, 157 Neb. 533, 60 N.W.2d 593 (1953).

72-220 School lands; acquisition for cemetery purposes.

Any city, village, cemetery association or corporation for the control of cemeteries, may acquire, for cemetery and burial purposes, any of the educational land, not exceeding in the aggregate forty acres, and may purchase additional adjoining tracts not exceeding ten acres each, if and when it becomes necessary to enlarge such cemetery.

Source: Laws 1899, c. 69, § 11, p. 304; Laws 1905, c. 144, § 1, p. 582; Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-220.

72-221 School lands; acquisition for public highway.

The Department of Roads of the State of Nebraska and the county board of any county may acquire land necessary to establish a public highway over or across any educational lands.

Source: Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-221.

72-221.01 Established public roads; dedicated to county or Department of Roads; value; payment.

All established public roads that have been established for a period of ten years or more on the section line along any side or part of the side of a section owned by the Board of Educational Lands and Funds, and on any part of a section that has an established meandering road not on the section line and under the jurisdiction of the Board of Educational Lands and Funds, shall be dedicated to the county for public use in the case of county roads, or to the State of Nebraska, Department of Roads, for public use. The public road right-of-way so dedicated shall be no less than thirty-three feet from the section line, nor less than sixty-six feet through that part of the section where the established road meanders through the described section. Upon receipt of payment from any county or the Department of Roads of the fair and reasonable market value of the right-of-way at the date the road was established, the Board of Educational Lands and Funds shall convey to the county or the Department of Roads title to such road right-of-way. The instruments of conveyance shall be recorded in the office of the register of deeds.

Source: Laws 1973, LB 36, § 1.

72-222 School lands; acquisition by public districts; purposes.

Any irrigation district, rural water district, public power district or public power and irrigation district, or natural resources district may acquire from the state any educational land, portion thereof, or interest therein for the purpose for which such districts are authorized by law to condemn private lands in this state. In addition, a natural resources district may acquire an easement or right-of-way for the purpose of constructing, replacing, operating, and maintaining structures which are a part of the program of work of the district.

Source: Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp.,1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S.1943, § 72-222; Laws 1963, Spec. Sess., c. 17, § 1, p. 148; Laws 1965, c. 436, § 1, p. 1388; Laws 1971, LB 513, § 1; Laws 1977, LB 510, § 7.

72-222.01 School lands; acquisition by certain companies; purposes.

Any manufacturing company, pipeline company, or telephone or telegraph company, incorporated or qualified to do business in this state, may acquire an easement or right-of-way for the purpose of constructing, replacing, and main-

taining pipelines, power pumps, telephone and telegraph lines and appurtenances thereto, under and across any of the school lands, the title of which is vested in the State of Nebraska, as trustee for the common schools.

Source: Laws 1953, c. 258, § 1, p. 867; Laws 1957, c. 302, § 1, p. 1106; Laws 1967, c. 466, § 2, p. 1445.

72-222.02 School lands; easement; acquisition by public districts; procedure.

Any public body enumerated in section 72-222 may acquire an easement from the state on any educational land when such easement is for the purpose for which such public body is authorized by law to condemn private lands in this state. It shall not be necessary for the acquiring public body to follow the procedure established in section 72-224.03 to obtain such easement. The public body may obtain such easement by the filing of an application with the Board of Educational Lands and Funds. Such application shall describe the nature and purpose of the easement, shall contain a legal description of the easement, and shall name the public body seeking the easement. Upon receiving the application for easement the Board of Educational Lands and Funds shall either (1) deny the application or (2) grant the easement and place a value on the easement to be paid by the applicant. When placing a value on the easement the Board of Educational Lands and Funds shall take into consideration the board's responsibility to manage the educational lands in a manner consistent with that of a trustee acting in a fiduciary capacity. The public body applying for the easement shall then either (a) accept the Board of Educational Lands and Funds' value or (b) proceed according to section 72-224.03. Upon the granting of such easement, it shall be the duty of the secretary of the Board of Educational Lands and Funds to transmit a certified copy of the easement to the grantee for filing in the office of the register of deeds in the county or counties where the easement is located.

Source: Laws 1981, LB 121, § 2; Laws 1999, LB 779, § 20.

72-223 School lands; condemnation; mineral rights reserved; lands acquired by Game and Parks Commission; disposition of mineral income.

The condemnation proceedings provided in sections 72-213 to 72-222 shall not operate to deprive the State of Nebraska of any mineral rights in the lands taken for the special purposes authorized by said sections, and, except as to land acquired by the United States of America, when any such land shall cease to be used for the special purpose for which it was acquired, it shall revert to the State of Nebraska as educational land. On lands acquired in this manner by the Game and Parks Commission all mineral income shall accrue to the appropriate state school funds; *Provided*, that all mineral extraction and exploration shall be conducted in a manner to be approved by both the Board of Educational Lands and Funds and the Game and Parks Commission.

Source: Laws 1941, c. 145, § 1, p. 576; C.S.Supp., 1941, § 72-211; Laws 1943, c. 160, § 1, p. 574; R.S. 1943, § 72-223; Laws 1965, c. 433, § 2, p. 1381.

Possibility of reverter to state was so remote as not to have any value in eminent domain proceedings. *State v. Cheyenne County*, 157 Neb. 533, 60 N.W.2d 593 (1953).

A condemner cannot acquire any mineral rights in land taken under eminent domain, and the value of such rights is to be

excluded in determining compensation to be paid. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

Where the state had given a contract to sell school land by which it agreed to give a deed in fee simple, the fact that after such contract was made the Constitution was amended making it illegal to deed away mineral rights on school lands would not

prevent the state from conveying the land under terms of the original contract when payment in full was made. *Reavis v. State*, 140 Neb. 442, 300 N.W. 344 (1941).

Mineral rights in state school lands cannot be conveyed in the absence of legislative sanction for such disposition. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

72-224 Condemnation proceedings; procedure.

All condemnations of educational lands shall be exercised in the manner set forth in section 72-224.03; *Provided*, condemnation proceedings may be brought by the United States of America in the district court of the United States of America.

Source: Laws 1943, c. 160, § 2, p. 574; R.S.1943, § 72-224; Laws 1949, c. 213, § 1(1), p. 608; Laws 1951, c. 101, § 110, p. 499; Laws 1967, c. 466, § 3, p. 1445.

72-224.01 Repealed. Laws 1967, c. 466, § 12.

72-224.02 Condemnation proceedings; lease; valuation; adjustment; payment.

If the school land to be taken is held under lease, the fair and reasonable value of the interest of the state as trustee for the public schools in said land so taken shall be ascertained as is provided in section 72-224.03; *Provided*, if the condemner desiring to acquire such land from the board is unable to adjust the value of the improvements and any damage thereto, and the damage otherwise arising to the holder of the lease by the condemnation of his interest in the lease, if any, with the holder of the lease, the proceedings to ascertain such damage, if any, and to acquire the interest of the holder of the lease shall be had as is provided in section 72-224.03. The value of the improvements taken, the damage thereto, and any other damage to the holder of the lease, as above provided, shall be paid to the owner of the lease.

Source: Laws 1949, c. 213, § 1(3), p. 608; Laws 1951, c. 237, § 1, p. 843; Laws 1963, Spec. Sess., c. 17, § 2, p. 148; Laws 1967, c. 466, § 4, p. 1446.

72-224.03 Condemnation proceedings; procedure; board; membership; appeal; award; filing; effect.

Except as otherwise provided in section 72-222.02, any public body that has or hereafter shall be granted by the Legislature the authority to acquire educational lands for public use shall be required to condemn the interest of the state, as trustee for the public schools, in educational lands in the following manner:

(1) The proceedings shall be had before a board consisting of (a) the superintendent of a school district offering instruction in grades kindergarten through twelve, (b) a certified public accountant, and (c) a credentialed real property appraiser, all appointed by the Governor for a term of six years, except that of the initial appointees one shall serve for a term of two years, one for a term of four years, and one for a term of six years as designated by the Governor. The members of the board shall each receive fifty dollars for each day actually engaged in the performance of official duties and shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177 to be paid by the Board of Educational Lands and Funds;

(2) The condemnation proceedings shall be commenced by the filing of a plat and complete description of the lands to be acquired together with an applica-

tion for that purpose with the secretary of the Board of Educational Lands and Funds. Notice of the pendency of such application and the date of hearing shall be given by serving a copy of the application, together with notice of the date of hearing, upon the Governor and the Attorney General. The date of hearing shall be not less than ten days from the date of the filing of the application;

(3) The condemner and the Board of Educational Lands and Funds may present evidence before the board of appraisers. The board shall have the power to administer oaths and subpoena witnesses at the request of either party or on its own motion;

(4) After hearing the evidence, the board of appraisers shall make the award and file same in the office of the Board of Educational Lands and Funds. Such award may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act; and

(5) Upon payment of the amount of the award by the condemner, it shall be the duty of the secretary of the Board of Educational Lands and Funds to transmit a certified copy of the award to the condemner for filing in the office of the register of deeds in the county or counties where the land is located. The filing of such certified copy of the award shall have the force and effect of a deed of conveyance of the real estate and shall constitute a transfer of the title thereto.

Source: Laws 1949, c. 213, § 1(3), p. 608; Laws 1951, c. 237, § 1, p. 843; Laws 1963, Spec. Sess., c. 17, § 3, p. 149; Laws 1967, c. 466, § 5, p. 1446; Laws 1969, c. 514, § 7, p. 2106; Laws 1979, LB 381, § 1; Laws 1981, LB 121, § 1; Laws 1981, LB 204, § 142; Laws 1988, LB 352, § 146; Laws 1990, LB 1153, § 56; Laws 1991, LB 203, § 3; Laws 1994, LB 1107, § 3; Laws 2006, LB 778, § 6.

Cross References

Administrative Procedure Act, see section 84-920.

72-224.04 Repealed. Laws 1967, c. 466, § 12.

72-225 Condemnation proceedings; land under lease contract; interest of owner; value assessed.

If the land to be taken is held under lease contract, the board of appraisers also shall make a finding as to the interest of the owner in such lease contract, if any, and such value shall be separately assessed.

Source: Laws 1899, c. 69, § 11, p. 304; Laws 1905, c. 144, § 1, p. 582; Laws 1907, c. 134, § 1, p. 437; Laws 1913, c. 40, § 1, p. 135; R.S.1913, § 5855; Laws 1915, c. 103, § 1, p. 247; Laws 1921, c. 80, § 2, p. 290; C.S.1922, § 5191; Laws 1923, c. 61, § 1, p. 185; Laws 1925, c. 135, § 1, p. 354; Laws 1929, c. 188, § 1, p. 652; C.S.1929, § 72-211; Laws 1931, c. 118, § 1, p. 345; Laws 1935, c. 164, § 1, p. 611; Laws 1941, c. 145, § 1, p. 576; C.S.Supp., 1941, § 72-211; Laws 1943, c. 160, § 2, p. 574; R.S.1943, § 72-225; Laws 1967, c. 466, § 6, p. 1447.

Value of interests of state and lessee are required to be separately assessed, and the sum of the value of the separate interests may be more than the value of the land as an unencumbered whole. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

72-226 Condemnation proceedings; damage to state-owned land; assessment.

Any damage to the land of the state, in addition to the value of the land purchased, shall be assessed and included in the amount to be paid the state.

Source: Laws 1943, c. 160, § 2, p. 574; R.S.1943, § 72-226.

72-227 State-owned land occupied by school, church, or cemetery; sale; procedure.

If there is a schoolhouse, cemetery or church building located upon school land or land of the state which has been or may be sold to any individual, corporation or parties, such school district, church or association, with the written consent of the purchaser or occupant, may purchase land for the purposes specified, and obtain a deed from the state, at the price the purchaser, assignee or occupant is to pay. The sum so paid for the tract obtained for such special purpose shall be deducted from the price the original purchaser was to pay.

Source: Laws 1885, c. 84, § 3, p. 334; R.S.1913, § 5856; C.S.1922, § 5192; C.S.1929, § 72-212; R.S.1943, § 72-227.

72-228 State-owned land occupied by school, church, or cemetery; sale; terms.

Sales of land made for the special purpose mentioned in section 72-227 shall be for cash, and if there be buildings on such land belonging to the state, such buildings are to be appraised and sold separately.

Source: Laws 1885, c. 84, § 4, p. 334; R.S.1913, § 5857; C.S.1922, § 5193; C.S.1929, § 72-213; R.S.1943, § 72-228.

72-229 School lands; sale; county clerk; entry upon tax list.

Upon the sale of school lands, the Board of Educational Lands and Funds is directed to state the actual purchase price in the deed so that the amount actually paid will be known when the deed is recorded even though the recording is exempt from the documentary stamp tax. The county clerks of the respective counties are directed to enter such lands upon the tax list of the county upon the recording of such a deed.

Source: Laws 1899, c. 69, § 12, p. 305; R.S.1913, § 5858; C.S.1922, § 5194; C.S.1929, § 72-214; Laws 1935, c. 163, § 9, p. 602; C.S.Supp.,1941, § 72-214; R.S.1943, § 72-229; Laws 1999, LB 779, § 21.

72-230 School and saline lands; sale; when subject to taxation.

Educational or saline lands sold under the provisions of any law of this state, or such as have been sold, shall not be taxable until the right to a deed shall have become absolute, but the value of the interest of such purchaser shall be taxable, which interest shall be determined by the value of the land and improvements, less the amount due the state; *Provided*, when such land shall be situated within the limits of any city or village and shall have been subdivided into lots, then it shall be subject to all special assessments for sidewalk, grading, paving, guttering, curbing, sewerage, and all other municipal improvements, in the same manner as other lots and lands in such city or village, except that a sale of such school lots to collect such assessment or assessments shall only pass the interest or title of the purchaser from the state, his heirs or assigns, and his or their right to a conveyance of the same, upon the payment of any residue of the purchase price or interest.

Source: Laws 1899, c. 69, § 13, p. 305; Laws 1907, c. 135, § 1, p. 441; R.S.1913, § 5859; C.S.1922, § 5195; C.S.1929, § 72-215; R.S. 1943, § 72-230.

School lands that have been sold by the state under contract are properly included in a drainage district, and are assessable for benefits derived therein. *Morehouse v. Elkhorn River Drainage District*, 90 Neb. 406, 133 N.W. 446 (1911).

72-231 School lands; illegal tax; refund.

Money received by the county treasurers of the several counties within the State of Nebraska on account of taxes wrongfully levied on educational lands of the state held under lease shall be, by the respective county treasurers, repaid without interest to persons who paid the same, or their representatives, upon orders in that behalf made by the county board of the respective counties; but no order shall be made for such repayment except upon the production of the county treasurer's receipt for taxes so paid. The county board of any county where school lands have been wrongfully taxed, and the taxes have not yet been paid, shall order the county treasurer to cancel the same.

Source: Laws 1899, c. 69, § 14, p. 306; R.S.1913, § 5860; C.S.1922, § 5196; C.S.1929, § 72-216; R.S.1943, § 72-231; Laws 1999, LB 779, § 22.

72-232 School lands; rules and regulations; limitation; soil conservation program.

The Board of Educational Lands and Funds shall have authority to adopt such rules and regulations as it shall deem necessary in the leasing of school lands and to prescribe such terms and conditions of the lease, not inconsistent with sections 72-205, 72-232 to 72-235, 72-240.02 to 72-240.05, and 72-242, as it shall deem necessary to protect the interests of the state. The board shall adopt and enforce a soil conservation program. Failure of the lessee to utilize the land for the purpose for which the land was leased or to observe and carry out soil conservation requirements as provided in the rules and regulations of the board shall be cause for cancellation of the lease. No individual, partnership, limited liability company, or corporation shall be entitled to hold under lease a total of more than six hundred forty acres of state educational lands, whether acquired by direct lease or by assignment. Such limitation shall not apply when the land to be leased is bounded entirely on one side thereof by lands owned or operated by such applicant or assignee.

Source: Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(1), p. 570; R.S.1943, § 72-232; Laws 1947, c. 235, § 3, p. 744; Laws 1961, c. 349, § 1, p. 1108; Laws 1965, c. 438, § 1, p. 1391; Laws 1974, LB 894, § 1; Laws 1993, LB 121, § 457; Laws 1999, LB 779, § 23.

Under former law, leasing of more than six hundred forty acres of school land to one person is prohibited unless such person owns or operates land on two sides of school land to be leased. *Kidder v. Wright*, 177 Neb. 222, 128 N.W.2d 683 (1964).

With specified exceptions, no person is permitted to hold under lease more than six hundred forty acres of school land. *State v. Kidder*, 173 Neb. 130, 112 N.W.2d 759 (1962).

Under former law, all unsold school lands were subject to lease at an annual rental of six percent of the appraised value.

State v. Platte Valley P. P. & I. Dist., 147 Neb. 289, 23 N.W.2d 300 (1946).

Where a contract for lease of a tract of school lands has been created through application to the county treasurer, and by mistake a later application by another for the same tract is accepted, a writ of mandamus to compel execution of a lease cannot be issued to the second claimant though he has complied with all conditions precedent. *State ex rel. O'Brien v. Board of Commissioners of Educational Lands and Funds*, 116 Neb. 261, 216 N.W. 818 (1927).

72-232.01 Repealed. Laws 1999, LB 779, § 51.

72-232.02 School lands; administration costs; payment; cash fund.

The Board of Educational Lands and Funds shall pay the costs of administering the unsold school lands out of receipts from school land income. A cash fund is hereby authorized and the State Treasurer shall, out of the receipts for school land income, deposit in such cash fund that amount appropriated by the Legislature for each fiscal year on the first day of each fiscal year.

Source: Laws 1967, c. 459, § 1, p. 1429; Laws 1978, LB 460, § 1.

72-232.03 School lands; irrigable; administration costs.

The cost of administering unsold school lands shall include:

- (1) The cost of developing irrigable school lands, located within the boundaries of an irrigation district, so that such lands may benefit from irrigation;
- (2) The cost of accrued tolls and assessments on irrigable school lands located within the boundaries of an irrigation district; and
- (3) The cost of current tolls and assessments on irrigable school lands located within the boundaries of an irrigation district.

Source: Laws 1971, LB 581, § 1.

72-232.04 School lands; irrigable; development.

The Board of Educational Lands and Funds is authorized to and shall take all necessary action for the development of irrigable school lands located within the boundaries of an irrigation district, so that such lands may benefit from irrigation. The cost of such development shall be paid by the board from funds available to the board for the administration of unsold school lands, and such costs shall be included in the costs certified to the State Treasurer pursuant to section 72-232.02.

Source: Laws 1971, LB 581, § 2.

72-232.05 Repealed. Laws 1991, LB 13, § 1.**72-232.06 School lands; irrigable; lease; cost of tolls and assessments; collection.**

When any irrigable school lands located within the boundaries of an irrigation district are leased, the Board of Educational Lands and Funds shall collect with the regular rental an amount sufficient to pay the cost of current tolls and assessments of the irrigation district on such land, and shall pay such tolls and assessments to the district each year. The amount so collected and paid by the board shall be a part of the cost of administering the school lands and shall be included in the costs certified to the State Treasurer pursuant to section 72-232.02.

Source: Laws 1971, LB 581, § 4.

72-232.07 School lands; administration costs; expenditures; Land Improvement Fund; created; purpose; investment.

The cost of administering unsold school lands shall include expenditures necessary for developing such school lands to their most productive use. All expenditures shall be directed by the board in exercising its responsibility as a trustee over the school land trust and shall not exceed twenty percent of all rental and bonus payments of the previous year, which amount shall be appropriated for each year to the board for payment of development and

improvement costs completed and approved by the board upon contracts let for this purpose. All rental and bonus payment deductions as authorized by this section shall be remitted to the State Treasurer for credit to the Land Improvement Fund, which fund is hereby created, to be expended upon proper warrants in accordance with law. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1974, LB 894, § 4; Laws 1986, LB 258, § 14; Laws 1995, LB 7, § 84.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-233 School lands; application for lease; manner of leasing; bidding; conditions of lease.

Applications to lease any school lands shall be made to the Board of Educational Lands and Funds. Each such application shall contain an affidavit that the applicant desires to lease and operate such land for the applicant's own use and benefit and that the applicant will not sublease or otherwise dispose of the same without the written approval of the board and will commit no waste or damage on the land nor permit others to do so. The Board of Educational Lands and Funds may, at least once in each year, designate a day and hour for offering, in a public manner at the office of the county treasurer in the respective counties, lease contracts on all the educational lands in each respective county which may be subject to lease at the time of such offering. The offering shall be announced in a public manner by publishing a notice thereof three weeks preceding the auction in one or more of the legal newspapers published or of general circulation in the county in which the unleased land is located. If the board is unable to have a representative attend the offering, the county treasurer may, upon the direction of the board, act for it. Adjournments may be taken from day to day until all of the lands have been offered. No lease shall be sublet or assigned without the written approval of the board.

Source: Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(2), p. 571; R.S.1943, § 72-233; Laws 1947, c. 235, § 4, p. 745; Laws 1963, c. 416, § 1, p. 1337; Laws 1967, c. 466, § 7, p. 1447; Laws 1993, LB 121, § 458; Laws 1999, LB 779, § 24.

Board authorized to readvertise sale of lease where upset bid received after public auction, but before board acceptance of highest bid. *Anderson v. Board of Educational Lands & Funds*, 198 Neb. 793, 256 N.W.2d 318 (1977).

A lease cannot be sublet or assigned without the consent of the Board of Educational Lands and Funds. *State v. Kidder*, 173 Neb. 130, 112 N.W.2d 759 (1962).

Cited in summarizing history of litigation over renewal of school land leases. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 159 Neb. 79, 65 N.W.2d 392 (1954).

Board of Educational Lands and Funds is vested with discretionary power in approving school land lease. *State ex rel. Raitt v. Peterson*, 156 Neb. 678, 57 N.W.2d 280 (1953).

Notice of sale at public auction is required. *State v. Cooley*, 156 Neb. 330, 56 N.W.2d 129 (1952); *State v. Gardner*, 156 Neb. 326, 56 N.W.2d 135 (1952).

Under former law, third party got lease if he offered greater amount at auction. *Propst v. Board of Educational Lands & Funds*, 156 Neb. 226, 55 N.W.2d 653 (1952).

Beneficiaries of trust can be protected by placing leases up at public auction. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 154 Neb. 244, 47 N.W.2d 520 (1951).

Leases are required to be made after public offering and competitive bidding. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

The auction of state school land leases, pursuant to this section, may not be conducted by the county clerk, but must be conducted by the commissioner of public lands and buildings, or, under his direction, by his deputy, or the treasurer of the county in which such lands are located. *Stock Yards Nat. Bank v. Wyman*, 130 Neb. 113, 264 N.W. 157 (1936).

72-233.01 School lands; lease; bidder; deposit before sale; return of deposit, when; forfeiture, when.

In order for any person to be eligible to bid on a school land lease, he must file a bank draft, certified check or cash for each lease with the county treasurer of the county in which the land is located prior to the sale, payable to the Board of Educational Lands and Funds, equivalent to rent of the first year of the lease on each parcel or tract on which he contemplates bidding. Any bidder who is unsuccessful in the bidding shall have his deposit returned to him immediately after the acceptance of the bid by the Board of Educational Lands and Funds. The deposit of the acceptable bidder shall be applied either on the bonus bid or the rent for the first year. If the accepted bidder fails to pay either the bonus bid or rent for the first year of the lease, he shall forfeit the amount of the deposit and the Board of Educational Lands and Funds shall resubmit the land for bids and a new lease.

Source: Laws 1961, c. 350, § 1, p. 1104; Laws 1963, c. 416, § 2, p. 1339; Laws 1965, c. 437, § 1, p. 1390; Laws 1967, c. 466, § 8, p. 1448.

72-234 School lands; lease; terms; period of lease.

The board shall, if the foregoing proceedings appear to be regular, issue to the applicant a lease on the land. Each lease shall contain a covenant or provision (1) that the Board of Educational Lands and Funds may, whenever such board deems it to be for the best interest of the state, adjust the rental of such lands; (2) that the lessee will not sublease or otherwise dispose of such lands without the written consent of the board and will commit no waste or damage on the land nor permit others to do so; (3) that the lessee will observe and carry out soil conservation requirements according to the rules and regulations of the board; (4) that the lessee will pay for the use of such lands the fair market rental as determined by the board; (5) that, upon a failure to pay any rental for a period of six months from the time the payment becomes due or upon failure to perform any of the covenants of the lease, the lease may be forfeited and fully set aside, as provided for in sections 72-235 to 72-239; (6) that the lessee will promptly pay the rental semiannually in advance; (7) that in the event the lessee shall fail to pay rental in advance by the due date, interest shall be assessed at an annual interest rate of nine percent until such time as the rent is paid; and (8) that the premises will be surrendered at the expiration of the lease, unless renewed, or upon violation of any of the terms of the lease. Leases shall be for periods of five to twelve years less the period intervening between the date of the execution of the lease and December 31 of the previous year. The board may offer a lease for a period of less than five years if a lease failed to generate interest at an auction and if the board agrees that reducing the minimum lease term will attract a bid or bids for such a lease. When two or more contiguous tracts are under separate lease with different expiration dates, the board may, if it is deemed to be in the best interest of the state, offer leases for less than twelve years on tracts having the earlier lease expiration date, to coincide with the last expiring lease, in order that all contiguous lands eventually may be offered under one lease.

Source: Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(2), p. 572;

R.S.1943, § 72-234; Laws 1947, c. 235, § 5, p. 746; Laws 1949, c. 212, § 6, p. 604; Laws 1965, c. 438, § 2, p. 1392; Laws 1967, c. 466, § 9, p. 1449; Laws 1974, LB 894, § 2; Laws 1999, LB 779, § 25.

Board authorized to readvertise sale of lease where upset bid received after public auction, but before board acceptance of highest bid. *Anderson v. Board of Educational Lands & Funds*, 198 Neb. 793, 256 N.W.2d 318 (1977).

Improvements should be appraised as of the date of execution of lease. *Jessen v. Blackard*, 159 Neb. 103, 65 N.W.2d 345 (1954).

Cited in summarizing history of litigation over renewal of school land leases. *State ex rel. Ebke v. Board of Educational Lands & Funds*, 159 Neb. 79, 65 N.W.2d 392 (1954).

Highest bidder at public sale is not entitled to lease until it has been approved by board. *State ex rel. Raitt v. Peterson*, 156 Neb. 678, 57 N.W.2d 280 (1953).

New leases run for period of twelve years. *State v. Cooley*, 156 Neb. 330, 56 N.W.2d 129 (1952); *State v. Gardner*, 156 Neb. 326, 56 N.W.2d 135 (1952).

School land lease is personal property. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

72-234.01 School lands; lease; nonresidents, when permitted; persons excepted.

No lease shall be made to any person who is a nonresident of the State of Nebraska, unless such nonresident owns lands in Nebraska adjoining such school land, nor to any person who will not operate the land for his own use and benefit.

Source: Laws 1949, c. 212, § 7, p. 605; Laws 1951, c. 238, § 1, p. 845; Laws 1961, c. 351, § 1, p. 1110.

72-234.02 School lands; lease; assignments; requirements.

No lease shall be assigned nor the assignment thereof approved by the Board of Educational Lands and Funds unless (1) the person to whom the lease is assigned is a resident of the State of Nebraska or, if a nonresident of the State of Nebraska, owns land adjoining the school land set forth in the lease to be assigned and (2) such assignee will operate the land for his own use and benefit.

Source: Laws 1949, c. 212, § 8, p. 605; Laws 1953, c. 254, § 1, p. 861.

Bonus was paid to get board to approve assignment. *State v. Gardner*, 156 Neb. 326, 56 N.W.2d 135 (1952).

Propst v. Board of Educational Lands & Funds, 103 F.Supp. 457 (D. Neb. 1951).

In class action on behalf of all renewal leaseholders, this section could not be invoked where applicable only to some.

72-234.03 Repealed. Laws 1959, c. 264, § 1.

72-234.04 Repealed. Laws 1959, c. 264, § 1.

72-235 School lands; lease; default; notice; forfeiture.

If any lessee of educational lands fails to perform any of the covenants of the lease or is in default of semiannual rental due the state for a period of six months, the Board of Educational Lands and Funds may forfeit the lease of such person. If the lessee is in default in the payment of rental, the board may cause notice to be given such delinquent lessee in accordance with section 72-236 that, if such delinquency is not paid within thirty days from the date of service of such notice by either registered or certified mail or the date of the first publication of such notice, his or her lease will be declared forfeited. If the amounts due are not paid within such time, the board may declare the lease forfeited and the land described therein shall revert to the state. Before a forfeiture of a lease shall be declared for a failure to perform the covenants of the lease other than the payment of rentals, the board shall give notice of such

proposed forfeiture to such lessee, or to his or her personal representative or next of kin if he or she is dead, by either registered or certified mail, setting forth a time such a lessee, or his or her personal representative or next of kin, may show cause and have a hearing as to whether or not such lease shall be forfeited. The order of forfeiture shall be entered upon the records of the board. The board is required to serve such notice of delinquency and proceed with the forfeiture, as stated in such notice, at least once in each year. The provisions of this section and sections 72-236 to 72-239 shall apply to all lands heretofore or hereinafter leased as educational lands of this state.

Source: Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-235; Laws 1947, c. 235, § 6, p. 747; Laws 1957, c. 242, § 54, p. 863; Laws 1961, c. 351, § 2, p. 1110; Laws 1999, LB 779, § 26.

Right of redemption from forfeiture of contract of sale was governed by law in effect at time of sale. *Stoller v. State*, 171 Neb. 93, 105 N.W.2d 852 (1960).

Where bank was assigned lease as security and did not have actual possession of lands, it was not liable to state for delinquent rentals. *State ex rel. Johnson v. Commercial State Bank*, 142 Neb. 752, 7 N.W.2d 654 (1943).

To declare a forfeiture for failure to pay interest on a contract for the sale of school land is mandatory, and, when no such forfeiture is declared, the contract remains in full force and effect. *Mulhall v. State*, 140 Neb. 341, 299 N.W. 481 (1941).

The present provision of this section for service of notice of cancellation of a contract of sale of state school lands because of delinquency of interest payments may be made applicable to contracts issued prior to enactment of the amendment; and, if after notice is given and forfeiture is declared, the purchaser fails to redeem, all rights in such contract shall be lost. *Spahr v. Godfrey*, 130 Neb. 539, 264 N.W. 560 (1936).

Under former law, the requirement of this section that notice of default be served upon the lessee before a forfeiture can be declared is not met by mailing such notice in a registered letter to a deceased lessee, and until sufficient notice is given, a valid lease to another cannot be made. *State ex rel. Green v. Cowles*, 90 Neb. 839, 134 N.W. 959 (1912).

72-235.01 School lands; forfeited leases; improvements, how treated.

All right, title, and interest in any and all improvements to a lease forfeited for failure to pay rental pursuant to section 72-235 also shall be forfeited to the Board of Educational Lands and Funds until the rental has been paid in full. The board shall have the authority to offer forfeited leases for sale without regard to any improvements and growing crops thereon.

Source: Laws 1969, c. 591, § 2, p. 2443; Laws 1999, LB 779, § 27.

72-236 School lands; lease; notice of delinquency; how given.

The notice required by section 72-235 shall be given by either registered or certified letter or by publication for three weeks in a newspaper published or of general circulation in the county where the land is located. In serving the notice of delinquency the Board of Educational Lands and Funds shall recognize as the lessee the person or persons whose name appears last of record in the office of the board.

Source: Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-236; Laws 1957, c. 242, § 55, p. 864; Laws 1999, LB 779, § 28.

72-237 School lands; lease; forfeiture; redemption; when allowed.

The owner of any lease forfeited as provided in section 72-235 may redeem by paying all delinquencies, fees, and costs of forfeiture at any time before the

Board of Educational Lands and Funds completes the advertising of such land for lease at public auction.

Source: Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-237; Laws 1999, LB 779, § 29.

Holder of a lease of state school lands which has been declared forfeited for nonpayment of rentals may redeem from such forfeiture by paying all delinquencies, fees and costs of forfeiture at any time before such land is advertised to be leased at public auction. *Stock Yards Nat. Bank v. Wyman*, 130 Neb. 113, 264 N.W. 157 (1936).

An assignee of a lease of school lands, executed pursuant to Chapter 74, Laws 1883, who was delinquent in rental payments, was entitled to redeem from a forfeiture incurred by such delinquency at any time before such lands were released. *Hile v. Troupe*, 77 Neb. 199, 109 N.W. 218 (1906), affirmed on rehearing 84 Neb. 266, 121 N.W. 109 (1909).

72-238 School lands; lease; forfeiture; movable improvements; sale; proceeds; disposition.

Movable improvements on lands reverting to the state through forfeiture shall be sold under the direction of the Board of Educational Lands and Funds at public auction, and the proceeds received therefrom shall inure to the holder of the forfeited lease, after payment has been made to the state for delinquent interest or rental, expenses incurred in holding such auctions, and irrigation taxes due the irrigation district in which the land is situated.

Source: Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-238; Laws 1999, LB 779, § 30.

This section indicates that movable improvements are the property of the lessee. *Blomquist v. Board of Educational Lands & Funds*, 170 Neb. 741, 104 N.W.2d 264 (1960).

Legislature clearly intended that lessee should be encouraged to improve lands by good husbandry by providing for reim-

bursement for improvements and reducing land to cultivation. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

72-239 School lands; lease; default; extensions; when granted; conditions; lien.

The Board of Educational Lands and Funds may extend the time of payment of delinquent interest or rental when it deems it to be in the best interest of the state, and it has full assurance that such delinquent interest or rental will be paid. Such extensions shall be granted, upon proper application to the board, and then only to the record owner of the lease who actually uses or occupies educational lands, for periods of one year, and shall bear interest the same as other delinquent rentals, and shall be upon condition the lease is assigned to the state as part assurance of payment. In the event the movable improvements on the land do not constitute sufficient security to justify an extension of time, the lessee may give a lien to the state on the growing crops thereon, if any.

Source: Laws 1935, c. 163, § 12, p. 605; C.S.Supp.,1941, § 72-219; R.S.1943, § 72-239; Laws 1999, LB 779, § 31.

School lands are subject to an annual rental of six percent of the appraised value. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

Under prior law at the expiration of a lease on school lands executed prior to July 9, 1897, the only advantage afforded such

lessee is the right to obtain a renewal free from competition and at the previous rental rate. *Stanser v. Cather*, 85 Neb. 305, 123 N.W. 316 (1909), rehearing denied 85 Neb. 313, 124 N.W. 102 (1909).

72-240 Repealed. Laws 1953, c. 255, § 3.

72-240.01 Repealed. Laws 1972, LB 1410, § 3.**72-240.02 School lands; new leases; board; powers.**

If no such application for a new lease is received or if the applicant fails to meet the requirements for a new lease, the Board of Educational Lands and Funds may, at any time within three months after the expiration of the lease, enter into a lease with any other person it deems willing and able to meet the standards prescribed by the board in its rules and regulations at the rental rate for land of such classification.

Source: Laws 1947, c. 235, § 7(3), p. 749; Laws 1949, c. 212, § 10, p. 606; Laws 1999, LB 779, § 32.

If no application is made by lessee, board may enter into a lease with any person willing and able to meet statutory requirements. State ex rel. Ebke v. Board of Educational Lands & Funds, 154 Neb. 244, 47 N.W.2d 520 (1951).

72-240.03 School lands; leases; reclassification when; rental.

When the Board of Educational Lands and Funds deems it expedient, due to breaking or retirement of the land, erosion, resodding, or other causes, to reclassify the school land in any county, and at least once in every five-year period, it shall cause reclassification to be made of the land under lease. When this has been accomplished the new rental for each lease shall be computed by applying the new classification of the land to the rental schedules according to classification then in effect and which have been duly adopted by the Board of Educational Lands and Funds for the counties involved. Rental shall be paid by the lessee upon the basis of the new classification. Not more often than once in every two years the lessee may request the board to make a reclassification of the land he or she has under lease and it shall be the duty of the board, within six months after receipt of such request, to cause the classification to be reviewed.

Source: Laws 1947, c. 235, § 7(4), p. 749; Laws 1949, c. 212, § 11, p. 606; Laws 1999, LB 779, § 33.

72-240.04 School lands; leases; expiration.

All leases hereafter entered into by the board shall be made by the board to expire on December 31 of a given year.

Source: Laws 1947, c. 235, § 7(5), p. 749.

72-240.05 School lands; leases; rental; complaints.

The Board of Educational Lands and Funds shall sit twice each year to hear complaints from lessees as to the rental of their leases and may take such action as it may find to be right and proper in regard thereto.

Source: Laws 1947, c. 235, § 7(6), p. 749; Laws 1949, c. 212, § 12, p. 607; Laws 1999, LB 779, § 34.

72-240.06 Repealed. Laws 1967, c. 467, § 17.**72-240.07 School lands; leases; permitted improvements; approval; exception; nonpermitted improvements; removal; requirements.**

Before any buildings, wells, irrigation improvements, dams, or drainage ditches are placed upon school lands by a lessee, written approval must be obtained from the Board of Educational Lands and Funds, except necessary

improvements for the temporary handling and sheltering of livestock, and such improvements where approval is secured shall be called permitted improvements and belong to the lessee and the lessee has the right to be paid a sum of money equal to the value which the improvements add to the value of the land by the buyer of the land or the new lessee in accordance with procedures as given in sections 72-240.10 to 72-240.23 and 72-258. The value to the land of each permitted improvement shall not exceed its replacement cost less depreciation. Any such improvements placed upon school lands before September 14, 1953, and any improvements which were bought by new lessees during an involvement by the state in the transferring of leases after September 14, 1953, shall be considered as authorized or permitted improvements whether or not approval has been secured from the board and shall belong to the lessee unless there has been a provision in the lease to the contrary or unless there has been some written agreement between the lessee and the board to the contrary. Any improvements placed upon school lands after September 14, 1953, where written approval for such improvements was not obtained from the board and where there was no involvement by the state in the transferring of leases or other written agreement with such lessees to the contrary, shall be called nonpermitted improvements and considered as owned by the lessee, whether or not the nonpermitted improvements are attached to the land, unless there has been a provision in the lease to the contrary, and, the lessee shall have the right either (1) to remove such improvements from the land any time during the term of the lease or within six months after the land is sold or leased to a new lessee, and when the nonpermitted improvements are removed the old lessee shall clean up the debris caused thereby or bury it at least three feet below the surface of the land and any basements or holes caused by the nonpermitted improvements shall be filled such that cultivated crops can be grown on the land or (2) to sell the nonpermitted improvements to the buyer of the land or the new lessee at prices agreed upon by the old lessee and the buyer or new lessee. If the parties cannot agree upon the prices of the nonpermitted improvements, or if the improvements are not removed from the land within six months after the land is sold or leased to a new lessee other than the old lessee, the improvements shall become the property of the state. The board shall notify the old lessee by certified letter of the name and address of the purchaser of the land or the new lessee within ten days after the land has been sold or leased to a party other than the old lessee. The board shall, at the same time, notify the old lessee how much money the old lessee shall have to place in escrow with the county treasurer of the county in which the land is located for each nonpermitted improvement if the old lessee takes the option to remove any or all nonpermitted improvements to guarantee removal of debris and to do other things required by the board so as not to damage the land. The old lessee shall within thirty days after receipt of such certified letter notify the board which improvements he or she intends to remove from the land and which shall be left on the land and show proof of deposit of escrow money. If the debris is not removed and if other things required by the board are not done within the six-month period after the land is sold or leased, the old lessee shall forfeit the money placed in escrow to the state, and the board shall hire a contractor to do the things required of the old lessee in order that there not be damage to the land. Any money left in the escrow fund after being depleted by making payment to the contractor for the work done shall be remitted to the old lessee. The board shall have authority to sell any improvement left on the land.

Source: Laws 1953, c. 255, § 2, p. 863; Laws 1971, LB 413, § 1; Laws 1999, LB 779, § 35.

Where no permission by Board of Educational Lands and Funds was required before improvements were placed on lands by laws in effect at time lease was executed, tenant had compensable interest in grain bin erected on a permanent-type concrete foundation. *State v. Haberman*, 191 Neb. 127, 214 N.W.2d 266 (1974).

Lessee gains no interest in improvement constructed in 1954 for failure to comply with conditions precedent of this section. *State v. Bardsley*, 185 Neb. 629, 177 N.W.2d 599 (1970).

After 1953, tenant was required to obtain permission for placing of specified improvements on school land. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

72-240.08 School lands; control of noxious weeds; cost.

The Board of Educational Lands and Funds shall be responsible and make necessary expenditures for the control of noxious weeds on all school lands of the state. Any expenditure made by such board for the control of noxious weeds shall be considered a cost of administering unsold school lands.

Source: Laws 1965, c. 428, § 1, p. 1367; Laws 1978, LB 460, § 2.

72-240.09 School lands; control of noxious weeds; contract authorized.

The Board of Educational Lands and Funds shall have the power to contract with supervisors of weed eradication districts of this state or any private or commercial weed control service for the purpose of controlling noxious weeds on school lands.

Source: Laws 1965, c. 427, § 1, p. 1366; Laws 1978, LB 460, § 3.

72-240.10 School lands; leases; permitted improvements and growing crops of lessee; determine value; inspection; notice.

The Board of Educational Lands and Funds shall have the authority and duty, as specified in sections 72-240.10 to 72-240.23 and 72-258, to determine the value to the land of permitted improvements and growing crops, owned by the lessee of record, on educational lands of the State of Nebraska prior to the sale or lease of such lands. The value to the land of permitted improvements shall not exceed their replacement cost less depreciation. In making such determinations, the board shall notify the lessee that it intends to inspect the premises and shall attempt to so inspect at the convenience of the lessee.

Source: Laws 1967, c. 467, § 1, p. 1452; Laws 1971, LB 413, § 2; Laws 1999, LB 779, § 36.

72-240.11 Improvements and growing crops of lessee; list; acknowledgment in writing; dispute; proceedings.

The board shall determine what improvements and growing crops are on the land and develop a specific listing and detailed description of permitted and nonpermitted improvements owned by the lessee and by the State of Nebraska. Only those permitted improvements owned by the lessee shall be considered in determining the value of the lessee's interest therein. The listing of permitted improvements and growing crops shall be acknowledged and agreed upon in writing by both parties. In the event of a dispute regarding ownership of any improvements, either the board or the lessee may file an action in district court for a declaratory judgment.

Source: Laws 1967, c. 467, § 2, p. 1452; Laws 1971, LB 413, § 3.

Ownership of improvements on school lands determined pursuant hereto. *State v. Rosenberger*, 187 Neb. 726, 193 N.W.2d 769 (1972).

72-240.12 Permitted improvements and growing crops of lessee; appraisal; agreement as to value.

The board shall make an appraisal of the lessee's permitted improvements and growing crops and attempt to arrive at an agreement with the lessee as to the value of the permitted improvements owned by such lessee.

Source: Laws 1967, c. 467, § 3, p. 1452; Laws 1971, LB 413, § 4.

72-240.13 Permitted improvements and growing crops of lessee; value; failure to agree; petition; elect to remove and harvest; notice.

If the value to the land of any permitted improvements or growing crops cannot be agreed upon, either the board or the lessee may file a petition in the county court of the county wherein the land is situated to have the value to the land of the permitted improvements and growing crops determined. Prior to the filing of such petition the lessee shall have the right, by filing written notice with the board, to elect to remove prior to the expiration of the lease any permitted structural improvements, owned by him, which can be removed without damage to the land or other permitted improvements located on the land. The lessee shall also have the right, by filing written notice with the board, to elect to harvest any fall-seeded growing grain crops in lieu of compensation for the same.

Source: Laws 1967, c. 467, § 4, p. 1453; Laws 1971, LB 413, § 5.

72-240.14 Permitted improvements and growing crops of lessee; petition; appraisers; appointment by court; meeting; notices.

(1) Upon the filing of a petition under section 72-240.13, the county judge or clerk magistrate, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not holders of leases of school lands, to serve as appraisers. The county judge or clerk magistrate shall direct the sheriff to summon the appraisers so selected to convene in the office of the county judge at a time specified in the summons for the purpose of qualifying as appraisers and thereafter proceed to appraise the value of the permitted improvements to the land and growing crops owned by the lessee at the time of termination of the occupying tenant's lease.

(2) Notice of the appointment of the appraisers and of the time and place of the meeting of the board of appraisers to have the value of the permitted improvements to the land and growing crops assessed shall be served upon both the board and the lessee by registered or certified mail at their last-known mailing addresses at least ten days prior to the meeting of the board of appraisers.

Source: Laws 1967, c. 467, § 5, p. 1453; Laws 1971, LB 413, § 6; Laws 1987, LB 601, § 2.

72-240.15 Permitted improvements and growing crops of lessee; appraisers; qualified; oath.

The appraisers shall be qualified by the county judge and an oath administered in the same manner as required by sections 76-707 and 76-708.

Source: Laws 1967, c. 467, § 6, p. 1453.

72-240.16 Permitted improvements and growing crops of lessee; appraisers; inspection; hear interested parties.

The appraisers shall carefully inspect and view the permitted improvements and growing crops to be valued and shall hear any party interested therein in reference to the value of the permitted improvements to the land and growing crops.

Source: Laws 1967, c. 467, § 7, p. 1453; Laws 1971, LB 413, § 7.

72-240.17 Permitted improvements and growing crops of lessee; appraisers; assess value; report; file with county judge.

After the inspection, view and hearing provided for in section 72-240.16 the appraisers shall assess the value to the land of the permitted improvements and growing crops as of the date of expiration of the lease on the land and shall make and file a report of such value in writing with the county judge and shall include in such report a list of the value to the land for each permitted improvement individually. Such report shall be filed with the county judge within ten days from the date of the hearing held by the appraisers.

Source: Laws 1967, c. 467, § 8, p. 1454; Laws 1971, LB 413, § 8.

72-240.18 Permitted improvements and growing crops of lessee; appraisers; determination of value; factors.

(1) The appraisers shall consider in determining the value of the permitted improvements the cost of the permitted improvement less any depreciation, obsolescence and any want of benefit to the land.

(2) In the case of growing crops the appraisers shall assess the value of the crop as of the date of expiration of the lease. The appraisers shall consider in the case of fall-seeded grain crops the cost of seed-bed preparation, fertilization, seed and seeding.

(3) In the case of perennial crops such as alfalfa the appraisers shall consider the costs of establishing such crop, its condition as of the expiration of the lease and normal expected remaining life.

Source: Laws 1967, c. 467, § 9, p. 1454; Laws 1971, LB 413, § 9.

In determining value of permitted improvements made by lessee of school lands, the value of the land means that amount of money that the improvement enhances, contributes, increases, or adds to the value of the land. *Pettijohn v. State Board of Educational Lands and Funds*, 204 Neb. 271, 281 N.W.2d 901 (1979).

Lessee's value in a growing crop is more than the cost of seed, preparation, and planting. *Friche v. State*, 199 Neb. 504, 260 N.W.2d 188 (1977).

In the absence of agreement, a tenant on school lands has a compensable interest in the crops growing thereon on the date of termination of his lease. *State v. Bush*, 188 Neb. 824, 199 N.W.2d 704 (1972).

72-240.19 Permitted improvements and growing crops of lessee; appraisers; valuation; appeal.

(1) Appeals from the valuation set by the board of appraisers may be made by either party in the same manner as appeals from the award of a board of appraisers in condemnation proceedings as governed by sections 76-715 to 76-721. Those provisions shall apply as if the board is the condemner and the lessee is the condemnee.

(2) No bond shall be required of the board to cover the value to the land of the permitted improvements and growing crops found by the appraisers during the appeal.

Source: Laws 1967, c. 467, § 10, p. 1454; Laws 1971, LB 413, § 10.

Trial court is without authority to fix appraiser's fees and attorney's fees to be taxed against the Board of Educational Lands and Funds. *Pettijohn v. State Board of Educational Lands and Funds*, 204 Neb. 271, 281 N.W.2d 901 (1979).

72-240.20 Permitted improvements and growing crops of lessee; appraisers; fee.

The appraisers shall receive a reasonable fee, not to exceed fifty dollars each, for their services, to be fixed by the county judge, and the same shall be taxed to the lessee.

Source: Laws 1967, c. 467, § 11, p. 1454; Laws 1969, c. 589, § 2, p. 2440.

72-240.21 Permitted improvements and growing crops of lessee; value; announcement; sale price in addition; deposit; lien.

(1) When the land is put up for sale, the minimum sale price shall be determined as in section 72-258.

(2) At the time of sale or lease, but prior to the commencement of bidding, a representative of the board shall announce to all present the value to the land of the permitted improvements and growing crops for which the purchaser of the land or lease must pay the lessee as determined under sections 72-240.10 to 72-240.23 and 72-258 or by agreement and shall clearly state that the payment for these permitted improvements and growing crops shall be in addition to the price paid for the land or the lease.

(3) In making the publications required by section 72-233 or 72-258, the board shall include in those publications the determined value to the land of the permitted improvements and growing crops owned by the lessee of the land and shall clearly indicate that this amount is to be paid in addition to the price paid for the land or the lease.

(4) When the land is sold, the purchaser shall be instructed by the board that he or she must, within thirty days of the date of the sale, deposit the amount of value of the permitted improvements with the county treasurer of the county wherein the land is situated with instructions to the treasurer that the money be paid to the lessee upon notification of issuance of the deed or lease. The state shall have a lien upon the funds so paid to the amount of any unpaid rent and interest on such lands due and owing to the state from the former lessee.

Source: Laws 1967, c. 467, § 12, p. 1455; Laws 1969, c. 591, § 1, p. 2442; Laws 1971, LB 413, § 11; Laws 1999, LB 779, § 37.

72-240.22 Permitted improvements and growing crops of lessee; separate improvements; disagreement on value; appraisal.

The permitted improvements and growing crops covered by sections 72-240.10 to 72-240.23 and 72-258 shall be deemed to be separate permitted improvements and if the board and the lessee agree as to the value of some permitted improvements but disagree as to the value of others, only those on which they do not agree need be appraised under the appraisal provisions of sections 72-240.10 to 72-240.23 and 72-258.

Source: Laws 1967, c. 467, § 13, p. 1455; Laws 1971, LB 413, § 12; Laws 1999, LB 779, § 38.

72-240.23 Permitted improvements and growing crops of lessee; lease of land; value of improvements and crops; new lessee; payment.

If land is not sold under the provisions of sections 72-240.10 to 72-240.23, 72-257, and 72-258 and is leased according to section 72-258.01, the new lessee shall pay to the old lessee the value of his or her permitted improvements as determined for sale purposes.

Source: Laws 1967, c. 467, § 14, p. 1455; Laws 1971, LB 413, § 13; Laws 1999, LB 779, § 39.

72-240.24 Repealed. Laws 1999, LB 779, § 51.**72-240.25 School lands; lessee; relinquish interest; notice.**

Any lessee of educational lands may, subject to the approval of the board, relinquish his interest in such lease as of the following December 31 by notice to the Board of Educational Lands and Funds on or before November 30 of that year. The notice must be in writing signed and acknowledged by the lessee, and delivered to the office of the board.

Source: Laws 1974, LB 894, § 5.

72-240.26 Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.

The Board of Educational Lands and Funds and the Nebraska Investment Council shall jointly report annually to the Clerk of the Legislature, and such report shall contain anticipated future actions by the board as well as actions already taken. The board's portion of the report shall include (1) with reference to each tract of land sold pursuant to section 72-201.01: (a) The legal description; (b) the unique characteristics of the land being sold; (c) the appraised value; (d) the sale price; (e) the amount of funds received in the calendar year covered by the report from the sale; (f) the disposition of the funds; (g) the total number of acres of any unsold educational lands remaining under the general management and control of the board by county; (h) the total appraised value of unsold land; and (i) the percentage of the investment portfolio remaining in real estate, including all nonagricultural real estate and (2) the corresponding information for any land that has been acquired or traded. The council's portion of the report shall include a cost-benefit analysis which considers the land being sold versus the anticipated investment potential of proceeds resulting from the sale. The cost-benefit analysis model used shall be consistent with the standards of the investment industry at the time of the proposed sale. Each member of the Legislature shall receive a copy of such report by making a request for it to the chairperson of the board.

Source: Laws 1974, LB 894, § 6; Laws 1979, LB 322, § 31; Laws 1996, LB 1205, § 2; Laws 2000, LB 1010, § 2.

72-241 School lands; leases; assignments; validity; recording.

An assignment of a school land lease shall not be valid until recorded in the office of the Board of Educational Lands and Funds and shall not be eligible to such record if there are any payments of interest or rental due at the time the assignment is offered for record.

Source: Laws 1899, c. 69, § 18, p. 310; R.S.1913, § 5864; C.S.1922, § 5200; Laws 1923, c. 60, § 1, p. 183; C.S.1929, § 72-220; Laws 1935, c. 163, § 13, p. 606; C.S.Supp.,1941, § 72-220; R.S.1943, § 72-241; Laws 1999, LB 779, § 40.

Assignment of school land lease is not valid until recorded in the office of the Board of Educational Lands and Funds. *Kidder v. Wright*, 177 Neb. 222, 128 N.W.2d 683 (1964).

Assignments of school land leases are permitted, but to be effective against the state must be recorded. *State ex rel. John-*

son v. Commercial State Bank, 142 Neb. 752, 7 N.W.2d 654 (1943).

72-242 School lands; publication of notice; fees.

The publisher of any advertisement in connection with the forfeiture, leasing or sale of any educational lands shall be allowed the fees fixed by law for publishing legal notices, or standard commercial rates when the board elects to use commercial advertising.

Source: Laws 1899, c. 69, § 19, p. 310; R.S.1913, § 5865; Laws 1921, c. 80, § 3, p. 293; C.S.1922, § 5201; Laws 1927, c. 190, § 1, p. 545; C.S.1929, § 72-221; Laws 1933, c. 96, § 12, p. 391; Laws 1941, c. 180, § 3, p. 701; C.S.Supp.,1941, § 72-221; R.S.1943, § 72-242; Laws 1947, c. 235, § 8, p. 750; Laws 1974, LB 894, § 3.

72-243 Repealed. Laws 1967, c. 466, § 12.

72-244 School lands; adjoining cities or villages; subdivisions; leasing; amount; procedure.

Any portion of the lands of this state governed by sections 72-201 to 72-251, adjoining the site of any city or town, may be subdivided into lots and leased as herein provided. The Board of Educational Lands and Funds, being satisfied that by a division of any such tract into lots, the lease of the same can be made for a greater amount than if leased in tracts of forty acres, as herein provided, shall have the authority to employ the necessary surveyors, and cause such tracts to be subdivided into lots and tracts of such size as they may determine, and a plat of the same shall be made and filed for record in the office of the county clerk. Such lots shall be appraised by the appraisers to be appointed by the board, none of whom shall be occupants of the land to be leased. Tracts of land so subdivided and appraised shall be leased according to the provisions of said sections. The board shall give thirty days' notice of such letting, and publish the same in a newspaper of general circulation published in the county in which said lots are situated. Each notice shall contain a list of the lots to be leased, and the appraised value of each. The leasing of such lots shall take place, on the day appointed, under the direction of the board, and shall be leased to the highest bidder, but in no case for less than six percent of the appraised value. Lots remaining unleased shall be again offered for lease at public auction at such time as the board shall direct, and the board may adjourn the leasing from day to day until all the lots are offered.

Source: Laws 1899, c. 69, § 20, p. 311; R.S.1913, § 5866; C.S.1922, § 5202; C.S.1929, § 72-222; Laws 1935, c. 163, § 15, p. 608; C.S.Supp.,1941, § 72-222; R.S.1943, § 72-244.

72-245 School lands; waste or trespass; penalty.

If any person shall commit waste or trespass, or other injury or damage, or destroy any of the trees upon any of the educational lands of this state referred

to in sections 72-201 to 72-251, except as herein authorized, he shall be guilty of a Class II misdemeanor.

Source: Laws 1899, c. 69, § 21, p. 312; Laws 1909, c. 133, § 2, p. 482; R.S.1913, § 5867; C.S.1922, § 5203; C.S.1929, § 72-223; Laws 1935, c. 163, § 16, p. 609; C.S.Supp.,1941, § 72-223; R.S.1943, § 72-245; Laws 1977, LB 39, § 178.

72-246 School lands; leases; covenant required.

All leases executed after May 3, 1935, with respect to educational lands shall contain a covenant to the effect that no prairie lands shall be broken without written permission authorized by the Board of Educational Lands and Funds.

Source: Laws 1935, c. 163, § 16, p. 609; C.S.Supp.,1941, § 72-223; R.S.1943, § 72-246; Laws 1999, LB 779, § 41.

72-247 School lands; waste or trespass; violations; submission to grand jury.

A judge of the district court shall refer charges made under section 72-245 to the grand jury at each term for investigation, and it shall make presentment of all violations thereof.

Source: Laws 1899, c. 69, § 24, p. 312; R.S.1913, § 5868; C.S.1922, § 5204; C.S.1929, § 72-224; R.S.1943, § 72-247.

72-248 School lands; timber; sale; public auction.

The Board of Educational Lands and Funds may sell timber on educational lands whenever the board deems it for the best interest of school funds. Said timber shall be sold at public auction in accordance with rules and regulations adopted by the board.

Source: Laws 1899, c. 69, § 22, p. 312; R.S.1913, § 5869; C.S.1922, § 5205; C.S.1929, § 72-225; R.S.1943, § 72-248; Laws 1949, c. 214, § 1, p. 611.

72-249 Federal funds; receipt; deposit; how allocated.

The Governor of the state is empowered and directed to receive from the United States all money that may be due or may become due to the state, and it shall be his or her duty to deposit the same without delay in the treasury of the state, taking the State Treasurer's receipts therefor. All money received from the United States, for the particular benefit of any institution, department, or activity under the jurisdiction of the Department of Health and Human Services or the Department of Correctional Services, shall be paid to the particular institution, department, or activity for the benefit of which it was received, as directed by the proper department, and by such institution, department, or activity deposited with the State Treasurer not later than the first day of the month following that in which received.

Source: Laws 1899, c. 69, § 31, p. 314; R.S.1913, § 5871; Laws 1919, c. 119, § 1, p. 284; C.S.1922, § 5206; C.S.1929, § 72-226; R.S.1943, § 72-249; Laws 1963, c. 418, § 1, p. 1342; Laws 1973, LB 563, § 9; Laws 1996, LB 1044, § 787; Laws 2007, LB296, § 696.

Cross References

Purpose of section, see section 83-901.

72-250 Permanent school fund; sale of public lands; credit to state.

All money that may be received from the United States on account of the five percent fund on cash sale shall be placed to the credit of the permanent school fund of the state.

Source: Laws 1899, c. 69, § 30, p. 313; R.S.1913, § 5872; C.S.1922, § 5207; C.S.1929, § 72-227; R.S.1943, § 72-250.

72-251 Permanent school fund; collections on judgments; payable to fund.

All money arising from collections on judgments in favor of the state, shall be transferred and paid into the permanent school fund and become a part thereof.

Source: Laws 1899, c. 69, § 36, p. 315; R.S.1913, § 5873; C.S.1922, § 5208; C.S.1929, § 72-228; R.S.1943, § 72-251.

72-252 Repealed. Laws 1969, c. 584, § 134.**72-253 School lands; exchange for federal or other lands; board; powers and duties.**

(1) The Board of Educational Lands and Funds is authorized and empowered to enter into agreements with the officers and agents of the United States Government for the exchange of any state educational lands lying within any federal forest or game reserve within this state for other lands of equal areas and value belonging to the United States. The board is authorized to convey any such lands to the United States by deed as provided in section 72-208, upon the execution by the United States Government of a patent to the State of Nebraska for the United States lands so exchanged.

(2) The Board of Educational Lands and Funds is authorized, upon the written approval of the Governor, to enter into agreements with individuals for the exchange of any state educational lands for other lands of equal areas or value. Before such an exchange shall be made, it shall be shown that the Board of Educational Lands and Funds will likely be benefited by the exchange.

Source: Laws 1917, c. 212, § 1, p. 519; C.S.1922, § 5211; C.S.1929, § 72-231; Laws 1931, c. 120, § 1, p. 350; C.S.Supp.,1941, § 72-231; R.S.1943, § 72-253; Laws 1976, LB 626, § 1; Laws 1999, LB 779, § 42.

State recognizes that it cannot expect United States to bear burden created by outstanding leaseholds. State of Nebraska v. United States, 164 F.2d 866 (8th Cir. 1947).

72-254 School and federal lands; exchange; lease; renewal; removal of improvements.

Any lands so received and patented from the United States shall be held as a part of the educational lands of this state, and shall be subject to all existing laws pertaining to such lands; *Provided*, that such lands, so received in exchange, shall only be subject to lease for terms not exceeding twelve years, with the privilege of renewing for a like term in the option of the board. Such leases may also include the right to the lessee of removing all improvements he may have erected on the land.

Source: Laws 1917, c. 212, § 2, p. 519; C.S.1922, § 5212; Laws 1925, c. 134, § 1, p. 353; C.S.1929, § 72-232; R.S.1943, § 72-254; Laws 1963, c. 418, § 2, p. 1343.

Right of lessee to remove all improvements he may have erected is recognized. *State v. Platte Valley P. P. & I. Dist.*, 147 Neb. 289, 23 N.W.2d 300 (1946).

72-255 School and federal lands; exchange; lessee's interest; release; condemnation; procedure.

The Board of Educational Lands and Funds is further authorized to secure from the holders of any leases of any educational lands lying in any federal forest reserve, surrenders, relinquishments, or cancellation of such leases. If the board and the holder of any such leases cannot agree upon the terms for such surrender, relinquishment, or cancellation, the board may take over the interest of such holder by the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1917, c. 212, § 3, p. 520; C.S.1922, § 5213; C.S.1929, § 72-233; R.S.1943, § 72-255; Laws 1951, c. 101, § 111, p. 499; Laws 1999, LB 779, § 43.

State may condemn leasehold for forest reserve. *State of Nebraska v. United States*, 164 F.2d 866 (8th Cir. 1947).

72-256 School and federal lands; exchange; minimum appraised value.

The appraised value of any state lands exchanged under sections 72-253 to 72-255 shall not be less than seven dollars per acre, and the appraised value of the United States land received therefor shall correspond to this requirement.

Source: Laws 1917, c. 212, § 4, p. 520; C.S.1922, § 5214; C.S.1929, § 72-234; R.S.1943, § 72-256.

72-257 School lands; expiration of lease; sale; mineral rights; appraisal; limitation on price; contiguous tracts; how treated.

All lands, now owned or hereafter acquired by the state for educational purposes, may be sold at the expiration of the present leases. The Board of Educational Lands and Funds shall retain all mineral rights in the land sold. Prior to such sale, the land may be appraised for purposes of sale in the same manner as privately owned land by a certified general real property appraiser appointed by the board and thereafter shall be sold at public sale at not less than the appraised value. When two or more contiguous tracts are under separate leases with different expiration dates, the board may, if it is deemed to be in the best interest of the state, defer the sale of any tract having an earlier lease expiration date and may offer the tract for lease for less than twelve years to coincide with the expiring lease of the contiguous tract, in order that the contiguous lands may eventually be offered for sale on the same date.

Source: Laws 1921, c. 81, § 1, p. 294; C.S.1922, § 5215; C.S.1929, § 72-235; Laws 1935, c. 163, § 17, p. 609; C.S.Supp.,1941, § 72-235; Laws 1943, c. 161, § 1, p. 575; R.S.1943, § 72-257; Laws 1949, c. 214, § 2, p. 611; Laws 1951, c. 239, § 1, p. 846; Laws 1961, c. 352, § 1, p. 1112; Laws 1963, c. 419, § 1, p. 1345; Laws 1965, c. 435, § 2, p. 1386; Laws 1967, c. 466, § 10, p. 1450; Laws 1973, LB 145, § 1; Laws 2000, LB 1010, § 3; Laws 2006, LB 778, § 7.

Section held constitutional. State ex rel. Belker v. Board of Educational Lands & Funds, 184 Neb. 621, 171 N.W.2d 156 (1969).

In the event of sale of school land to third person, tenant has a right to compensation for improvements. Banks v. State, 181 Neb. 106, 147 N.W.2d 132 (1966).

72-257.01 School lands; priorities for sale; request to sell.

The Board of Educational Lands and Funds shall review and set priorities for the sale of lands covered by leases expiring each year, giving the highest priority to those lands which it determines, considering all relevant factors, can be sold to the best advantage. Any leaseholder or other interested party may request that the land covered by any expiring lease be offered for sale, and the board shall give consideration to such request in deciding whether to offer such land for sale.

Source: Laws 1973, LB 145, § 2.

72-258 School lands; sale; notice; terms; partition; settlement; forfeiture of deposit; when.

Educational land shall be offered for sale at public auction by a representative of the Board of Educational Lands and Funds and sold at not less than the appraised value to the highest bidder. Notice of such sale and the time and place where the same will be held shall be given by publication three consecutive weeks in some legal newspaper published in the county where the tracts of land or the lots are located or, in case no legal newspaper is published in the county, then in some legal newspaper of general circulation therein. The proof of such publication shall be made by the affidavit of the publisher or principal clerk of such newspaper or by some other person knowing about the same and shall be filed in the office of the board. When the land consists of an undivided interest in realty, an action to partition may be maintained in the same manner as provided by law for the partition of real property among several joint owners. All notices of sale shall be posted in the office of the board. The board may arrange for such commercial advertising of land sales as it deems in the best interest of the state.

Any person or entity requesting that a tract of land be sold at public auction shall file an agreement with the board to pay the appraised value or a higher value as a minimum opening bid for the land. Within sixty days after receipt by the board of the request, the board shall determine whether or not to offer the tract of land for sale at public auction with a minimum opening bid equal to that amount stated in the accepted agreement for the minimum opening bid and shall notify the person or entity requesting the auction of the board's determination prior to advertising the tract of land for sale. If the board determines to offer the tract of land for sale at public auction, the auction shall be held within one hundred twenty days after the board accepts the agreement for a minimum opening bid. If the board determines not to offer the tract of land for sale, the offering price and legal description of the tract of land shall be included in the annual report to the Legislature.

The sale shall be subject to confirmation by the board that the requirements of this section have been met. Settlement shall be made by paying cash of not less than twenty percent of the purchase price at the time of sale, and the balance shall be payable in cash within ninety days after the date of sale. If the person submitting the high bid for the land fails to pay the balance of the purchase price and complete the sale within ninety days, his or her rights under

the sale, including the twenty percent downpayment, shall be forfeited by the board and a new sale shall be authorized.

Source: Laws 1921, c. 81, § 2, p. 295; C.S.1922, § 5216; C.S.1929, § 72-236; Laws 1935, c. 163, § 18, p. 610; C.S.Supp.,1941, § 72-236; Laws 1943, c. 161, § 2, p. 576; R.S.1943, § 72-258; Laws 1965, c. 435, § 3, p. 1386; Laws 1967, c. 467, § 16, p. 1456; Laws 1967, c. 466, § 11, p. 1450; Laws 1969, c. 589, § 3, p. 2440; Laws 1971, LB 23, § 2; Laws 1996, LB 1205, § 3; Laws 2000, LB 1010, § 4.

New sale can only be held by the board in the event that the highest bidder fails to pay the balance of the purchase in ninety days. *Bessey v. Board of Educational Lands & Funds*, 185 Neb. 801, 178 N.W.2d 794 (1970).

Under former law, all of section constitutional except provisions relating to sale by county treasurer. *State ex rel. Belker v.*

Board of Educational Lands & Funds, 184 Neb. 621, 171 N.W.2d 156 (1969).

Sale of school land leases made no reference to improvements. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

72-258.01 School lands; unsold; lease; duration.

If such land should not be sold according to the provisions of sections 72-208, 72-257, 72-257.01, and 72-258, then it shall be offered for lease as the Board of Educational Lands and Funds shall provide for a period of not less than three years nor more than eight years as the board, in its discretion, shall determine. No such leased land shall be subsequently offered for sale until the expiration of such lease.

Source: Laws 1965, c. 435, § 4, p. 1387; Laws 1973, LB 145, § 3.

Section held constitutional. *State ex rel. Belker v. Board of Educational Lands & Funds*, 184 Neb. 621, 171 N.W.2d 156 (1969).

Where school land is not sold, it can be offered for lease for a six-year period. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

72-258.02 National System of Interstate and Defense Highways; construction on school lands; sale; procedure.

Whenever a portion of the National System of Interstate and Defense Highways is constructed on school land and an interchange is constructed on such school land, the Board of Educational Lands and Funds shall offer such land for sale at public auction in such tracts as the board shall determine and sell it at not less than its appraised value. The sale shall be made subject to the rights of leaseholders, if any, and the leaseholder shall be paid for improvements and the value of the leasehold for agricultural purposes. The sale shall be made in accordance with the provisions of section 72-258.

Source: Laws 1969, c. 586, § 1, p. 2435; Laws 2000, LB 1010, § 5.

72-258.03 School lands; sale; appraised value.

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 such that the real property's assessed value for the current year is adjusted to one hundred percent of actual value, 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.

Source: Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2; Laws 2009, LB166, § 3.

72-259 School lands; sale; proceeds; disposition.

(1) The Board of Educational Lands and Funds shall deposit the proceeds of the sales of educational lands with the State Treasurer for the benefit of the various funds as provided in this section.

(2) The proceeds of the sales of common school and saline educational lands shall be deposited with the State Treasurer for the benefit of the permanent school fund of the state.

(3) The proceeds of the sales of university educational trust lands shall be deposited with the State Treasurer for the benefit of the Permanent Endowment Fund referred to in section 85-123.

(4) The proceeds of the sales of state college educational trust lands shall be deposited with the State Treasurer for the benefit of the endowment fund referred to in section 85-317.

Source: Laws 1921, c. 81, § 3, p. 295; C.S.1922, § 5217; C.S.1929, § 72-237; R.S.1943, § 72-259; Laws 1996, LB 1205, § 4.

Cross References

Permanent school fund, see Article VII, sections 5 and 9, Constitution of Nebraska.

72-259.01 School lands; adjacent to city of the first or second class; plat; request for annexation; filing.

When any educational lands abutting on and adjacent to any city of the first or second class that are needed for the expansion of such city have been subdivided into lots for the purpose of sale, as provided by section 72-257, the Board of Educational Lands and Funds may cause a plat of such subdivision to be filed in the office of the clerk of the city together with a resolution of the board requesting annexation of the tract to the city.

Source: Laws 1953, c. 259, § 1, p. 868.

72-259.02 School lands; adjacent to city of the first or second class; plat; contents; certification.

Such plat shall accurately describe all subdivisions of such tract or parcel of land, numbering the same by progressive numbers and giving the dimensions in length and breadth thereof, and the breadth and courses of all streets and alleys established therein, and shall be certified to by the State Surveyor.

Source: Laws 1953, c. 259, § 2, p. 868.

72-259.03 School lands; adjacent to city of the first or second class; annexation; vote.

The city council shall, at the next regular meeting thereof after the filing of such plat, as required by section 72-259.01, and request for annexation, vote upon the question of such annexation. The vote thereon shall be spread upon the records of such city.

Source: Laws 1953, c. 259, § 3, p. 868.

72-259.04 School lands; adjacent to city of the first or second class; annexation; ordinance; contents.

If a majority of all members of the council vote for such annexation, an ordinance shall be prepared and passed by the council declaring the annexation of such territory to the corporate limits of the city and extending the limits

thereof accordingly. Such ordinance shall designate the name of the addition and the names of the streets therein.

Source: Laws 1953, c. 259, § 4, p. 869.

72-259.05 School lands; adjacent to city of the first or second class; annexation; filings required.

There shall be filed forthwith, in the office of the register of deeds of the proper county, (1) a plat of such territory certified by the State Surveyor, (2) a certified copy of the resolution of the Board of Educational Lands and Funds approving the same and requesting the annexation, and (3) a copy of the ordinance declaring such annexation, certified under the seal of the city. Thereupon, such annexation of such adjacent territory shall be deemed complete, and the territory included and described in the plat shall be deemed and held to be a part of the city.

Source: Laws 1953, c. 259, § 5, p. 869.

72-259.06 School lands; adjacent to city of the first or second class; dedication of streets and alleys.

The filing of such plat and proceedings in the office of the register of deeds shall constitute a dedication of the streets and alleys contained therein so long as the same shall be used for such public purposes.

Source: Laws 1953, c. 259, § 6, p. 869.

72-259.07 School lands; adjacent to city of the first or second class; sale; taxes; when.

The lands included in the territory so annexed shall not be subject to any taxes or special assessments so long as the same remain the property of the state, but upon sale and delivery of a deed by the state to the purchaser the lands so conveyed shall forthwith be placed upon the tax list and shall be included in the next annual assessment.

Source: Laws 1953, c. 259, § 7, p. 869.

72-259.08 School lands; subdivide; plat; filing; dedication of streets and alleys.

Whenever the Board of Educational Lands and Funds determines, considering all relevant factors, that it would be in the best interests of the educational trust to do so, it may subdivide and plat any tract prior to offering it for sale. Such plats shall be prepared as prescribed in section 72-259.02 and shall be filed in the office of the register of deeds and such filing shall constitute a dedication of the streets and alleys shown therein so long as the same are used for such purposes.

Source: Laws 1973, LB 145, § 4.

72-260 Repealed. Laws 1967, c. 466, § 12.

72-261 School lands; acquisition by Game and Parks Commission; procedure; approval by Governor.

The Game and Parks Commission is authorized to acquire title by condemnation to not more than one section or six hundred forty acres of educational

lands in any calendar year for parks, recreation areas, or wildlife management areas, or any combination of these uses. The commission shall employ the procedure set forth in sections 72-213 to 72-224 to acquire such title, except that the determination of the value of the lands to be acquired shall be in the manner provided by section 72-224.03 and the value of any leasehold interests to be acquired shall be determined as provided by section 72-224.02. The Governor shall approve all such acquisitions as provided in section 37-303.

Source: Laws 1935, c. 81, § 1, p. 270; C.S.Supp.,1941, § 72-243; R.S. 1943, § 72-261; Laws 1963, c. 420, § 1, p. 1346; Laws 1965, c. 433, § 3, p. 1382; Laws 1998, LB 922, § 407.

72-262 Resurvey of school lands; Grant and Hooker Counties; acceptance.

The State of Nebraska hereby adopts the Dixon and Alt survey of the school lands included in the survey made in accordance with the special Act of Congress entitled, An act providing for the resurvey of Grant and Hooker Counties in the State of Nebraska, approved August 9, 1894, as the true and correct survey of the school lands belonging to the State of Nebraska included in that survey, and hereby adopts the lines, corners and monuments made under the above special Act of Congress for Grant and Hooker Counties, Nebraska, as the true, correct and legal boundary lines of the school lands included in that survey.

Source: Laws 1915, c. 230, § 1, p. 534; C.S.1922, § 5210; C.S.1929, § 72-230; R.S.1943, § 72-262.

72-263 Resurvey of school lands; Morrill County; acceptance.

The resurvey made by the United States Government of school sections sixteen and thirty-six, in townships twenty-one, twenty-two and twenty-three north, of range forty-seven, west of the sixth principal meridian, in Morrill County, Nebraska, and known as tracts numbers sixty-three and sixty-four in township twenty-one; tracts numbers sixty-five and sixty-six in township twenty-two, and tracts numbers seventy-eight and seventy-nine in township twenty-three, which surveys have been approved by the Commissioner of the General Land Office, are accepted and adopted as the true and correct lines, corners, monuments and boundaries of such school sections.

Source: Laws 1929, c. 184, § 1, p. 647; C.S.1929, § 72-240; R.S.1943, § 72-263.

72-264 Repealed. Laws 1957, c. 304, § 1.

72-265 Repealed. Laws 1957, c. 304, § 1.

72-266 Board of Educational Lands and Funds; authority to sell personal property.

The state Board of Educational Lands and Funds may sell, at either public or private sale, and convert into money, articles of personal property acquired by the common school fund through bequest, gift, escheat or forfeiture to the State of Nebraska.

Source: Laws 1943, c. 155, § 1, p. 565; R.S.1943, § 72-266.

72-267 School lands; Cherry County; designation; subdivision; improvements; sale.

The northeast quarter of the southeast quarter of section 31, township 34, north, range 27, west of the sixth principal meridian; section 32 and lots 1 and 2, and the west half of the southeast quarter of section 33, and the west half of section 33, township 34, north, range 27, west of the sixth principal meridian; all in Cherry County, Nebraska, title to which is vested in the State of Nebraska, shall be leased by the Board of Educational Lands and Funds in the same manner as is provided for the leasing of the common school lands of the state; *Provided*, that the northeast quarter of the southeast quarter of section 31, township 34, north, range 27, west of the sixth principal meridian, Cherry County, Nebraska, together with all improvements thereon, may be sold by the board at public auction, as provided by section 72-258, and may be subdivided for the purpose of sale in such manner as the board may determine.

Source: Laws 1953, c. 257, § 1, p. 866.

72-268 School lands; Cherry County; funds; deposit; transfer.

The Board of Educational Lands and Funds shall place all money received for rental of the land, described in section 72-267, in the temporary school fund and all money received from the sale of the land, authorized to be sold by section 72-267, in the permanent school fund. All money now in the hands of the State Treasurer, received heretofore for the rental of such lands, shall be transferred to the temporary school fund.

Source: Laws 1953, c. 257, § 2, p. 866.

72-269 School lands; Dawes County; transfer to Game and Parks Commission.

The Board of Educational Lands and Funds is authorized and directed to sell section thirty-six, township thirty-two north, range forty-nine, west of the sixth principal meridian, Dawes County, Nebraska, reserving mineral, oil, and gas rights, to the Game and Parks Commission on payment of forty thousand dollars. All mineral extraction and exploration on such land shall be conducted in a manner approved by both the Board of Educational Lands and Funds and the Game and Parks Commission.

Source: Laws 1967, c. 463, § 1, p. 1434.

72-270 Repealed. Laws 1991, LB 13, § 1.**ARTICLE 3****DEVELOPMENT OF MINERAL LANDS****Cross References**

Coal and iron, state and county aid to development, see Chapter 57, article 1.

Conservation and Survey Division of the University of Nebraska, duties of, see section 85-163.

Federal Mineral Leasing Act funds, see section 79-1062.

Geothermal resources, authority to lease, see section 66-1104.

Section

72-301. State lands, lakes, and rivers; mineral rights; reserved to state; exception.

72-302. Mineral rights; who may acquire.

72-303. Mineral rights; lease; limitations; term.

72-304. Mineral rights; development operations; reports; when.

Section

- 72-305. Mineral rights; lease; forfeiture; grounds.
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 72-307. Mineral rights; lease; renewal; when authorized; terms.
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 72-309. Mineral rights; lease; bids; award; how made.
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 72-311. Mineral rights; lease; assignment; unauthorized transfers.
 72-312. Alkali, potash, or saline lakes partly on state land; joint operation; failure to agree; effect.
 72-313. Violations; penalty.
 72-314. Rules; power of Board of Educational Lands and Funds.

72-301 State lands, lakes, and rivers; mineral rights; reserved to state; exception.

All common school, university, normal, saline or other public lands, lakes, lake beds, river beds and channels, belonging to the state or under its control, and all lands which may hereafter be so owned, and all of such lands which have heretofore been sold or conveyed by the state or by its authority, in the conveyance of which there has been reserved mineral or other valuable substances therein, are reserved to the state, as well as lands that may hereafter be sold, and lands hereafter acquired by the state and, except as to oil and gas which are controlled by the provisions of sections 72-901 to 72-911, shall be included within the provisions of sections 72-301 to 72-314, and shall be open to the prospecting for and development of minerals, potash and other valuable substances upon conditions provided in sections 72-301 to 72-314.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 1, p. 43; C.S.1922, § 5219; C.S.1929, § 72-301; Laws 1943, c. 164, § 13, p. 583; R.S.1943, § 72-301.

Reservation of oil rights did not apply to contracts of sale entered into prior to enactment of this act. *Pfeifer v. Ableiding-er*, 166 Neb. 464, 89 N.W.2d 568 (1958).

and the fourteenth amendment to the federal Constitution. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

This article is constitutional as against contentions that it violates sections 11, 13, and 15 of Article III of the Constitution

72-302 Mineral rights; who may acquire.

Any person or association of persons, corporate or otherwise, desiring to obtain the right to prospect for and develop the minerals or valuable substances upon or in any of the public lands or waters of the state, except oil and gas, may do so under the provisions of sections 72-301 to 72-314. It shall be unlawful to prospect upon or in any of such public lands or waters without a lease or for anyone to interfere with the functions and duties of the state surveys having in charge the investigations of the natural resources of the state. The Conservation and Survey Division of the University of Nebraska at the request of the Board of Educational Lands and Funds shall make investigations and reports concerning state lands.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 2, p. 43; C.S.1922, § 5220; C.S.1929, § 72-302; Laws 1943, c. 164, § 14, p. 584; R.S.1943, § 72-302; Laws 1969, c. 592, § 1, p. 2444; Laws 1974, LB 811, § 17; Laws 1999, LB 779, § 44.

72-303 Mineral rights; lease; limitations; term.

Any qualified person or association desiring a prospector's right shall make application, giving the designation of the land by legal description, to the Board of Educational Lands and Funds, with the proper fees, and the board shall issue a lease therefor. If the applicant is an individual, the application shall include the applicant's social security number. The board may exercise discretionary power, and be guided by best public policy in granting leases, and may adopt rules, regulations, or resolutions necessary to expedite production, and to best preserve the interests and integrity of the state, and to prevent control by monopolies and alien enemies. No person shall be permitted to enter for such mineral purposes more than one section of land, and no development company or association shall be permitted to acquire in the aggregate more than ten thousand acres of state land by assignment or otherwise. Leases shall be for a term of not to exceed three years, subject to renewal as provided in section 72-307.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 3, p. 44; C.S.1922, § 5221; C.S.1929, § 72-303; R.S.1943, § 72-303; Laws 1997, LB 752, § 200; Laws 1999, LB 779, § 45.

72-304 Mineral rights; development operations; reports; when.

The owner of the lease shall be required, in the case of potash, salines, silica, volcanic ash, sand, gravel, clay, fuller's earth, and tripoli, to report within thirty days after the issuance of such lease, and to begin construction of necessary works or the installation of necessary machinery, for the physical development of the area, within ninety days after the issuance of a lease. In the case of minerals, substances not above enumerated, and coal, the lessee shall report within six months after issuance of the lease, and begin development operations within one year from the date of the lease. The lessee shall make reports to the Board of Educational Lands and Funds showing the progress of the work on or before December 1 of each year.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 4, p. 44; C.S.1922, § 5222; C.S.1929, § 72-304; Laws 1943, c. 164, § 15, p. 584; R.S.1943, § 72-304; Laws 1999, LB 779, § 46.

72-305 Mineral rights; lease; forfeiture; grounds.

Failure to progress with due diligence, or failure to make reports regularly as provided, or special reports when requested, or the filing of a statement which is untrue as to material facts, will subject the lease to forfeiture, and the termination of the rights of the lessee upon an order of the Board of Educational Lands and Funds.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 5, p. 45; C.S.1922, § 5223; C.S.1929, § 72-305; R.S.1943, § 72-305; Laws 1999, LB 779, § 47.

72-306 Minerals; discovery; report required; delay in development; powers of board.

Upon the discovery of potash or other minerals or substances in commercial quantities, the lessee shall report the same to the Board of Educational Lands and Funds within thirty days, together with a statement showing how soon facilities necessary for production and marketing may be completed. If the board deems there is an unnecessary delay between the time of discovery and

the time of production, a showing may be required as to the cause of the delay and, if it be found to be out of proportion to a reasonable length of time, the board may demand more rapid development or the surrender or cancellation of the lease.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 6, p. 45; C.S.1922, § 5224; C.S.1929, § 72-306; Laws 1943, c. 164, § 16, p. 584; R.S.1943, § 72-306.

72-307 Mineral rights; lease; renewal; when authorized; terms.

The lessee may have a right to the renewal of the lease upon the same terms as provided in section 72-303, so long as such minerals or other valuable substances are produced in paying quantities; *Provided*, such leases shall in no instance contain any provision abridging the rights of future legislatures to make such laws as may in their judgment be necessary to conserve the interests of the state. If the lessee shall have made extensive tests, or a showing satisfactory to the Board of Educational Lands and Funds that he has proceeded in good faith, even though no successful production has resulted, the board may, upon such showing, grant an extension or renewal for further prospecting.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 7, p. 45; C.S.1922, § 5225; C.S.1929, § 72-307; R.S.1943, § 72-307.

That no provision is made in this section for ascertaining the amount of damages to growing crops does not injure the agricultural lessee's right to compensation for any such damage. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

72-308 Mineral rights; lease; terms; rights and duties of lessee.

A mineral prospector's lease shall be issued to the highest and best bidder. The lease issued shall provide that the royalty shall be not less than five percent, in addition to the rent to be determined by the Board of Educational Lands and Funds after examination and report by the Conservation and Survey Division of the University of Nebraska and before leasing. Such minerals or substances shall be set apart in pipelines, tanks, or other receptacles, suitable for receiving the same, to the credit and benefit of the state or, at the option of the state and by the approval of the board, the lessee shall pay the board each thirty days the gross market value thereof in cash. The state shall reserve the right to fully use and enjoy, for tillage or other agricultural use, the area leased for minerals, except such parts thereof as may be necessary for mining and development purposes, and a right-of-way over and across the premises to the place of mining or operating, and for pipelines. The lessee shall pay for all damages to growing crops, caused by such operations, and for the use of the land necessarily occupied. The lessee shall have the privilege of using sufficient water from the premises leased to run necessary boilers and engines incident to and used in the operations of the drills, mines, or development of products covered by the lease, and the right to remove the machinery, fixtures, and buildings placed on the premises by the lessee or those acting under the lessee. The state, or its authorized agent, may pay for and retain any structures or improvements sought to be removed by the lessee upon the abandonment, expiration, or cancellation of the lease.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 8, p. 45; C.S.1922, § 5226; C.S.1929, § 72-308; Laws 1943, c. 164, § 17, p. 585; R.S.1943, § 72-308; Laws 1969, c. 592, § 2, p. 2444; Laws 1999, LB 779, § 48.

72-309 Mineral rights; lease; bids; award; how made.

Where two or more applications are received for the same land, the rights thereon may be awarded to the legally qualified applicant making the highest and best bid, to be determined by taking into consideration both the bonus and royalty, the award being made after proper legal notice in such manner as the Board of Educational Lands and Funds shall determine best calculated to protect public interests.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 9, p. 46; C.S.1922, § 5227; C.S.1929, § 72-309; R.S.1943, § 72-309.

It is the duty of the board in considering bids for leases to state under the respective offers. *Briggs v. Neville*, 103 Neb. 1, 170 N.W. 188 (1918).

72-310 Mineral rights; lease; entry by state; when authorized.

The right of the state, or its authorized agents, to enter upon its own lands, and to remove therefrom any substances necessary for road construction, or in structures of public buildings, or other public or general purposes, shall not be denied or abridged by any lease granted hereunder.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 10, p. 46; C.S.1922, § 5228; C.S.1929, § 72-310; R.S.1943, § 72-310.

72-311 Mineral rights; lease; assignment; unauthorized transfers.

No assignment shall be valid unless it has the approval of the Board of Educational Lands and Funds and has been recorded in the office of the board, and, if the grantee is otherwise legally disqualified, approval by the board, or recording, will not make such assignment valid. Any association, corporate or otherwise, operating on state lands, transferring its interests or capital stock, or more than ten percent thereof, to any association or corporation which is legally disqualified for holding, or which has its full quota of state leases, will render the leases it holds void upon an order of the state board or act of the Legislature. The purpose of sections 72-301 to 72-314 is to prevent for all times, directly and indirectly, the monopolization of natural resources of the State of Nebraska.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 11, p. 47; C.S.1922, § 5229; C.S.1929, § 72-311; R.S.1943, § 72-311.

72-312 Alkali, potash, or saline lakes partly on state land; joint operation; failure to agree; effect.

Alkali, potash, or saline lakes, ponds, or marshes, located partly upon state lands and partly upon private lands, shall be measured, tested, and analyzed by the Conservation and Survey Division of the University of Nebraska which shall report to the Board of Educational Lands and Funds, and the proportion of the area and content belonging to each owner shall be determined from such report. If the state lessees and private owners or lessees are unable to agree for joint operation of such area, no alkali, potash, or salines in solution shall be removed from such ponds, lakes, or marshes until after thirty days' notice by certified or registered mail to all parties concerned. Any or all parties may then operate by rendering monthly an accounting to the board and by paying to the county treasurer in the county in which the land is located, for the state educational funds, the royalty due the state, as determined by the board. The state shall, at all times, be permitted to examine the books and methods of

bookkeeping with relation to the accounts in which the state is interested and to furnish, if deemed necessary by the board, assistants to make analyses or for checking the quality and quantity of minerals or substances removed.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 12, p. 47; C.S.1922, § 5230; C.S.1929, § 72-312; R.S.1943, § 72-312; Laws 1969, c. 592, § 3, p. 2445; Laws 1987, LB 93, § 18.

72-313 Violations; penalty.

Any person operating pumps, or providing channels, or altering natural conditions in any way, by which the waters and valuable substances upon or in public lands and waters of the state are taken, drained or removed, without first securing approval of the Board of Educational Lands and Funds, shall be deemed guilty of a Class II misdemeanor and subject to an additional fine equal to the value of the product taken.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 14, p. 48; C.S.1922, § 5232; C.S.1929, § 72-313; R.S.1943, § 72-313; Laws 1977, LB 39, § 179.

72-314 Rules; power of Board of Educational Lands and Funds.

Rules may be adopted by the Board of Educational Lands and Funds found necessary for carrying out the purposes and provisions of sections 72-301 to 72-314, and such rules, where not in conflict with said sections, shall have the same force and effect.

Source: Laws 1918, Thirty-sixth Spec. Sess., c. 7, § 15, p. 48; C.S.1922, § 5233; C.S.1929, § 72-314; R.S.1943, § 72-314.

ARTICLE 4

PRESERVATION OF FORT PROPERTY

Section

- 72-401. Repealed. Laws 1959, c. 436, § 16.
- 72-402. Repealed. Laws 1959, c. 436, § 16.
- 72-403. Repealed. Laws 1959, c. 436, § 16.
- 72-404. Repealed. Laws 1959, c. 436, § 16.
- 72-405. Repealed. Laws 1959, c. 436, § 16.
- 72-406. Repealed. Laws 1959, c. 436, § 16.
- 72-407. Federal forts; preservation, restoration and development board; membership.
- 72-408. Preservation, restoration and development board; trustees; term; qualifications.
- 72-409. Board; minute book; vacancies; how filled.
- 72-410. Board; office; records; organization; officers; meetings.
- 72-411. Board; trustees; oath.
- 72-412. Boards; powers and duties.
- 72-413. Forts; federal aid; acceptance.
- 72-414. Board; employees; compensation.
- 72-415. Board; secretary; duties.
- 72-416. Board; treasurer; bond.
- 72-417. Board; records; audits.
- 72-418. Board; legal counsel.
- 72-419. Board; expenses; payment.
- 72-420. Board; bond; fund; created; disbursements; how made.
- 72-421. Repealed. Laws 1991, LB 13, § 1.
- 72-422. Repealed. Laws 1991, LB 13, § 1.
- 72-423. Repealed. Laws 1982, LB 592, § 2.
- 72-424. Repealed. Laws 1982, LB 592, § 2.
- 72-425. Repealed. Laws 1982, LB 592, § 2.

72-401 Repealed. Laws 1959, c. 436, § 16.

72-402 Repealed. Laws 1959, c. 436, § 16.

72-403 Repealed. Laws 1959, c. 436, § 16.

72-404 Repealed. Laws 1959, c. 436, § 16.

72-405 Repealed. Laws 1959, c. 436, § 16.

72-406 Repealed. Laws 1959, c. 436, § 16.

72-407 Federal forts; preservation, restoration and development board; membership.

Upon filing, with the Governor, a petition signed by one hundred qualified electors of any county wherein is situated in whole or in part an abandoned federal fort suitable for preservation as a historical site for memorial and state park purposes, praying for the creation and establishment of Fort Preservation, Restoration and Development Board, hereinafter called board, the Governor shall, within thirty days after receiving such petition, select two residents of the county wherein the fort site, or a major portion of the fort site, is located, and one resident of an adjoining county, who shall act as trustees on the board. The Governor shall notify in writing forthwith the first trustees selected by him to serve on the board, by communication addressed through the mail to each of them. The Governor shall forward a copy of his letters of appointment to the county treasurer of the county in which the fort or a major portion of the fort site is located, who acts as treasurer ex officio of the board as provided in section 72-416.

Source: Laws 1941, c. 148, § 1, p. 583; C.S.Supp.,1941, § 72-411; R.S. 1943, § 72-407; Laws 1959, c. 331, § 1, p. 1204.

72-408 Preservation, restoration and development board; trustees; term; qualifications.

The term of office of the trustees on the board shall be for a period of three years, except the first trustees on the board, who shall be appointed by the Governor as follows: One trustee for one year, one trustee for two years, and one trustee for three years. Each of the trustees first or thereafter appointed shall be a person who is interested in the preservation, restoration and development of the fort property as a memorial to Nebraska pioneers, and as a reservation to preserve the ideals of Nebraska's early settlers as a state park, or other appropriate historical memorial site. When the respective terms of office of the first trustees appointed to the board shall expire, their successors shall be selected by the county board of the county wherein the fort site or a major portion of the fort site is located; and the trustees appointed to the board shall each hold office until his successor is appointed and qualified.

Source: Laws 1941, c. 148, § 1, p. 583; C.S.Supp.,1941, § 72-411; R.S. 1943, § 72-408.

72-409 Board; minute book; vacancies; how filled.

The board shall keep a minute book of its proceedings, which shall be open at all reasonable times to public inspection. Vacancies appearing on the board

shall be filled by the county board in like manner as regular appointments to the board are made.

Source: Laws 1941, c. 148, § 1, p. 583; C.S.Supp.,1941, § 72-411; R.S. 1943, § 72-409.

72-410 Board; office; records; organization; officers; meetings.

The board shall maintain its office or principal place of business in the office of the county clerk of the county where its treasurer has his or her office and shall hold its meetings, which shall be open to the public, in the district courtroom of such county. The minute book of the board and all other papers, records, or correspondence shall be kept on file and preserved by its secretary in the office of the county clerk. The first board shall organize within ten days after the date of its written notice of appointment by the Governor. The county treasurer shall, upon receipt of his or her copy of the letters of appointment from the Governor, issue a call for the initial meeting of the trustees for a day and hour certain, shall call the meeting to order, shall act as temporary chairperson, shall examine and verify the credentials of the Governor's appointees to the board with his or her copy thereof, and shall deliver all documents of credentials to the secretary of the board when he or she is later chosen. The appointees shall select from their own number a chairperson and a secretary, whose terms of office shall be for a period of one year. Each year thereafter the board shall hold its annual meeting and shall meet and organize for the ensuing year at the place designated in this section for holding its regular meetings on the day and hour prescribed by the bylaws. Notice of the time and place of holding the annual meeting of the board shall be given by the secretary by publication one time in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county not less than ten days before the day when the annual meeting is held. The chairperson and secretary shall hold office until their successors are selected and qualified.

Source: Laws 1941, c. 148, § 2, p. 584; C.S.Supp.,1941, § 72-412; R.S. 1943, § 72-410; Laws 1986, LB 960, § 38.

72-411 Board; trustees; oath.

All trustees comprising the board shall take an oath in writing in such form as the county attorney of the county shall provide and approve, faithfully to execute the duties and trusts committed to their care and management, and to dispose of the funds and income and corpus of such trusts in conformity with sections 72-407 to 72-420 and the wishes expressed in the instruments creating the trust estates.

Source: Laws 1941, c. 148, § 2, p. 584; C.S.Supp.,1941, § 72-412; R.S. 1943, § 72-411.

72-412 Boards; powers and duties.

The boards created and governed by sections 72-407 to 72-420 shall be bodies corporate and politic, and may sue and be sued, may contract or be contracted with; may acquire, hold, mortgage, and convey property, real or personal, directly or indirectly, for the purpose of acquiring abandoned federal fort sites and preserving, restoring, or developing the same in keeping with the intent and purpose of the sections above specified; may take private property for

public use in acquiring such fort sites; may exercise the power of eminent domain so granted in the manner set forth in sections 76-704 to 76-724; may exercise all ancillary powers to carry into force and effect all powers granted in general terms; may adopt bylaws not inconsistent with the sections above specified to assist them in carrying out their functions and duties specifically granted herein; may receive and safeguard donations, gifts in cash or its equivalent, and donations in trust subservient to the uses stipulated by donors; may cooperate with and enter into contracts with the United States of America or any of its bureaus, divisions, or agencies, for the acquisition, restoration, development, and maintenance of abandoned fort sites, for the repair of existing buildings, and for the construction of buildings and other improvements thereon; may issue membership or foundation certificates, and receive the proceeds thereof under such terms and conditions as provided in the bylaws; and may issue revenue bonds for the purpose of effectuating the intent of the sections above specified in such method or manner as the bylaws shall provide.

Source: Laws 1941, c. 148, § 3, p. 585; C.S.Supp.,1941, § 72-413; R.S. 1943, § 72-412; Laws 1951, c. 101, § 112, p. 500.

72-413 Forts; federal aid; acceptance.

Full and complete acceptance and assent is made and given by the State of Nebraska to all and every one of the terms and conditions set forth in the Acts of Congress which offer aid to the state for the agencies of the state government, including boards created by section 72-407, by way of grants in aid of construction of public buildings for the preserving, restoring and developing of abandoned federal fort sites.

Source: Laws 1941, c. 148, § 4, p. 585; C.S.Supp.,1941, § 72-414; R.S. 1943, § 72-413.

72-414 Board; employees; compensation.

The board of trustees shall have power to pass bylaws for the regulation of its business and affairs, and in such bylaws shall provide for the appointment or employment of such agents, servants and employees, subject to the order of the board, as it may find necessary or expedient in the conduct of its affairs and business, and shall fix the compensation and term or terms of service of the agents, servants and employees so appointed.

Source: Laws 1941, c. 148, § 5, p. 585; C.S.Supp.,1941, § 72-415; R.S. 1943, § 72-414.

72-415 Board; secretary; duties.

The secretary of the board shall keep the minutes of the board and shall perform such other services as may be required by him of the board, and may receive such compensation as may be fixed by the board from time to time.

Source: Laws 1941, c. 148, § 6, p. 586; C.S.Supp.,1941, § 72-416; R.S. 1943, § 72-415.

72-416 Board; treasurer; bond.

The treasurer of the county in which the board has its principal place of business and operates, shall act as treasurer of the board ex officio, and he shall

receive such compensation for such services as may be fixed from time to time by the board. He shall be liable on his official bond for the safekeeping of board funds, and his bond shall be increased or diminished from time to time as the condition, amount and safety of the funds of the board in his hands may require.

Source: Laws 1941, c. 148, § 7, p. 586; C.S.Supp.,1941, § 72-417; R.S. 1943, § 72-416.

72-417 Board; records; audits.

The board shall keep full and complete minutes of all transactions occurring at its meetings, such minutes to be kept in a well-bound book, which shall be open to the inspection of the public at all reasonable times, and the board shall also keep a well-bound book or books in which shall be recorded all instruments, documents, resolutions, bylaws, or other writings under which title to money or property is given, granted, taken, or held for the use of the board, and the same shall be a public record. The board shall also keep books of account that show all receipts and disbursements and the true condition of the funds and trusts committed to its charge. Such books of account shall be audited by the person conducting the audit pursuant to section 23-1608 and by the county clerk whenever, and as often as, an audit is made of all accounts of the county. An audit of the board's books of account may be ordered by the county board at any time it deems that such an audit is advisable.

Source: Laws 1941, c. 148, § 8, p. 586; C.S.Supp.,1941, § 72-418; R.S. 1943, § 72-417; Laws 2000, LB 692, § 10.

72-418 Board; legal counsel.

The county attorney of the county in which the board operates shall act as legal advisor for the board without extra compensation; *Provided*, the board may employ from time to time for special pieces of legal work additional counsel, whenever it deems such employment necessary for the administration of its affairs and business.

Source: Laws 1941, c. 148, § 9, p. 586; C.S.Supp.,1941, § 72-419; R.S. 1943, § 72-418.

72-419 Board; expenses; payment.

The trustees composing the board shall serve without compensation but may appropriate and disburse sufficient of the funds in their control by filing a request for such trust funds, to be ordered, sworn to, and allowed by the trustees as other requests for payment from such county, to pay the expenses of administering their trusts.

Source: Laws 1941, c. 148, § 10, p. 587; C.S.Supp.,1941, § 72-420; R.S.1943, § 72-419; Laws 1988, LB 864, § 9.

72-420 Board; bond; fund; created; disbursements; how made.

The trustees composing the board shall each give a surety bond in the sum of one thousand dollars running to the county as obligee, conditioned upon the faithful performance of their duties and responsibilities as provided in sections 72-407 to 72-420 and under the bylaws adopted pursuant to such sections. The bond, when approved by the county attorney of the county as to form and

substance, shall be filed and kept current in the office of the county clerk. All donations, gifts, or other money that comes into the hands of the board under the terms of such sections shall be forthwith delivered to the county treasurer who shall deposit, safeguard, and disburse the same from a fund of the county to be known as the Fort Fund. The county treasurer shall make disbursements from such fund only upon receipt of a proper warrant or voucher signed by the chairperson and attested by the secretary of the board. The board shall issue no voucher for the payment of any money from such fund unless there is presented to it a request for payment or reimbursement duly verified by the oath of the requester and unless the request so verified is approved by the affirmative action of two-thirds of the members-elect of the board at a regular meeting.

Source: Laws 1941, c. 148, § 11, p. 587; C.S.Supp.,1941, § 72-421; R.S.1943, § 72-420; Laws 1988, LB 864, § 10.

72-421 Repealed. Laws 1991, LB 13, § 1.

72-422 Repealed. Laws 1991, LB 13, § 1.

72-423 Repealed. Laws 1982, LB 592, § 2.

72-424 Repealed. Laws 1982, LB 592, § 2.

72-425 Repealed. Laws 1982, LB 592, § 2.

**ARTICLE 5
SALINE LANDS**

Section	
72-501.	Saline lands; lease.
72-502.	Rental; accrues to temporary school fund.
72-502.01.	Rentals; previous use validated.
72-503.	Lease; default; forfeiture; effect.
72-504.	Lease; terms; appraisal; when.

72-501 Saline lands; lease.

All the saline lands of which the title is vested in the state shall be leased by the Board of Educational Lands and Funds.

Source: Laws 1889, c. 94, § 1, p. 580; R.S.1913, § 5876; C.S.1922, § 5238; C.S.1929, § 72-501; R.S.1943, § 72-501.

72-502 Rental; accrues to temporary school fund.

The Board of Educational Lands and Funds shall place all money received for rental of saline lands in the temporary school fund of the state, subject to the law governing such temporary school fund.

Source: Laws 1889, c. 94, § 6, p. 582; Laws 1893, c. 22, § 2, p. 159; R.S.1913, § 5877; C.S.1922, § 5239; C.S.1929, § 72-502; Laws 1943, c. 156, § 1, p. 566; R.S.1943, § 72-502.

72-502.01 Rentals; previous use validated.

The use heretofore made by the Board of Educational Lands and Funds of rentals received from saline lands, by placing them in the temporary instead of the permanent school fund, is validated and approved.

Source: Laws 1943, c. 156, § 2, p. 566; R.S.1943, § 72-502.01.

72-503 Lease; default; forfeiture; effect.

If the lessee defaults in the payment of his interest or rental for more than one year, the Board of Educational Lands and Funds may cause notice to be given and a forfeiture declared as provided by law regulating the leasing of school lands, and when so forfeited the land shall be again offered for lease after having been advertised as provided by law.

Source: Laws 1889, c. 94, § 7, p. 582; R.S.1913, § 5878; C.S.1922, § 5240; C.S.1929, § 72-503; R.S.1943, § 72-503.

72-504 Lease; terms; appraisal; when.

(1) All leases shall be made at a rental of six percent on the appraised value, payable annually in advance. The lessee shall pay the appraised value of the improvements on such land, which amount shall be immediately paid to the owner or owners of the improvements. Applications for the lease of any such lands not leased at public offering may be made at any time to the Board of Educational Lands and Funds; *Provided*, if there are two or more persons wishing to lease the same land, the board shall auction off and lease the land to the person who, in addition to the six percent rental, will pay the highest cash bonus for the lease.

(2) Each lease, referred to in subsection (1) of this section, shall contain a covenant or contract that the land contained in such lease may be appraised every five years. At the expiration of twelve years, the lessee shall deliver up the said land to the state; *Provided*, any lessee of saline lands may apply in writing to the chairman of the county board to have the lands embraced in such lease, or any part thereof, appraised for the purpose of sale, and when so appraised, the saline lands embraced in such application shall become subject to all the provisions governing the sale of educational lands belonging to the state, except as provided in sections 72-501 to 72-504.

Source: Laws 1889, c. 94, § 5, p. 581; Laws 1893, c. 22, § 1, p. 158; R.S.1913, § 5879; C.S.1922, § 5241; C.S.1929, § 72-504; R.S. 1943, § 72-504; Laws 1957, c. 305, § 1, p. 1110.

ARTICLE 6**JURISDICTION CEDED TO THE UNITED STATES**

Section

72-601. Repealed. Laws 1969, c. 593, § 1.

72-602. Repealed. Laws 1969, c. 593, § 1.

72-603. Repealed. Laws 1969, c. 593, § 1.

72-604. Repealed. Laws 1969, c. 593, § 1.

72-605. Repealed. Laws 1969, c. 593, § 1.

72-606. Repealed. Laws 1969, c. 593, § 1.

72-607. National monuments; concurrent jurisdiction with United States; when effective.

72-601 Repealed. Laws 1969, c. 593, § 1.

72-602 Repealed. Laws 1969, c. 593, § 1.

72-603 Repealed. Laws 1969, c. 593, § 1.

72-604 Repealed. Laws 1969, c. 593, § 1.

72-605 Repealed. Laws 1969, c. 593, § 1.

72-606 Repealed. Laws 1969, c. 593, § 1.

72-607 National monuments; concurrent jurisdiction with United States; when effective.

(1) Concurrent jurisdiction over crimes and offenses under the laws of the state shall be ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

- (a) The Scottsbluff National Monument;
- (b) The Agate Fossil Beds National Monument; and
- (c) The Homestead National Monument.

(2) The concurrent jurisdiction ceded by subsection (1) of this section shall be vested upon acceptance by the United States by and through its appropriate officials and shall continue as long as the lands within the designated areas are dedicated to park purposes.

(3) The Governor is hereby authorized and empowered to execute all proper conveyances necessary to grant the cession provided in this section upon request of the United States by its appropriate officials.

(4) The State of Nebraska shall retain concurrent criminal jurisdiction with the United States over all lands affected by this section.

Source: Laws 1985, LB 223, § 1; Laws 1987, LB 233, § 1.

ARTICLE 7

STATE CAPITAL AND CAPITOL BUILDING

Cross References

Constitutional provisions:

- Governmental continuity in emergencies, see Article III, section 29, Constitution of Nebraska.
- Removal or relocation of capital, see Article XV, section 12, Constitution of Nebraska.
- Capitol Commission, Nebraska**, created, see section 81-1108.32.
- Capitol Commission, Nebraska, Office of the**, established, see section 72-2204.
- Deferred Building Renewal Act**, see section 81-190.
- State banner**, where displayed, see sections 50-116 and 90-102.
- State Capitol Environs Act, Nebraska**, see section 90-301.

Section

- 72-701. State capital; location.
- 72-701.01. Act, how cited.
- 72-701.02. Attack, defined.
- 72-701.03. Emergency seat of state government; temporary location; designation.
- 72-701.04. Emergency seat of government; temporary location; validity of official acts.
- 72-701.05. Emergency seat of state government; designation, when; plans and preparations; Governor; adopt; purchase of real estate prohibited; exception.
- 72-701.06. Sections, how construed; precedence over other laws.
- 72-701.07. Repealed. Laws 1963, c. 340, § 1.
- 72-701.08. Transferred to section 81-1108.22.
- 72-702. Repealed. Laws 1973, LB 149, § 5.
- 72-703. Department of Correctional Services adult correctional facility; location.
- 72-704. Repealed. Laws 1955, c. 278, § 6.
- 72-705. Repealed. Laws 1955, c. 278, § 6.
- 72-706. Transferred to section 81-1108.17.
- 72-706.01. Transferred to section 81-1108.18.
- 72-707. Transferred to section 81-1118.02.
- 72-708. Transferred to section 81-1108.19.
- 72-709. Transferred to section 81-1108.20.
- 72-709.01. Repealed. Laws 1974, LB 1048, § 45.

Section

- 72-709.02. Transferred to section 81-1108.23.
- 72-709.03. Repealed. Laws 1959, c. 266, § 1.
- 72-710. Transferred to section 81-1108.26.
- 72-710.01. Transferred to section 81-1108.27.
- 72-710.02. Transferred to section 81-1108.28.
- 72-710.03. Transferred to section 81-1108.29.
- 72-711. Transferred to section 81-1108.30.
- 72-712. Transferred to section 81-1108.31.
- 72-713. Repealed. Laws 1951, c. 241, § 5.
- 72-714. Repealed. Laws 1951, c. 241, § 5.
- 72-715. Repealed. Laws 1951, c. 241, § 5.
- 72-716. Transferred to section 81-1108.32.
- 72-716.01. Transferred to section 81-1108.33.
- 72-716.02. Transferred to section 81-1108.34.
- 72-716.03. Transferred to section 81-1108.35.
- 72-716.04. Transferred to section 81-1108.37.
- 72-717. Repealed. Laws 1974, LB 1048, § 45.
- 72-718. Transferred to section 81-1108.38.
- 72-718.01. Repealed. Laws 1971, LB 1031, § 2.
- 72-718.02. Repealed. Laws 1971, LB 1031, § 2.
- 72-718.03. Repealed. Laws 1993, LB 311, § 7.
- 72-718.04. Repealed. Laws 1984, LB 933, § 20.
- 72-718.05. Repealed. Laws 1993, LB 311, § 7.
- 72-718.06. Repealed. Laws 1972, LB 1436, § 1.
- 72-718.07. Transferred to section 81-1108.40.
- 72-719. Repealed. Laws 1982, LB 592, § 2.
- 72-720. Repealed. Laws 2000, LB 1135, § 34.
- 72-721. Repealed. Laws 2000, LB 1135, § 34.
- 72-722. Repealed. Laws 2000, LB 1135, § 34.
- 72-723. State Capitol; monuments and memorials; permanent fixtures; removal with consent of Legislature.
- 72-724. Nebraska Hall of Fame Commission; created; members; appointment; administration.
- 72-725. Nebraska Hall of Fame; location.
- 72-726. Nebraska Hall of Fame; purpose.
- 72-727. Rules and regulations.
- 72-728. Persons named to Nebraska Hall of Fame; limitations; Nebraskans awarded Medal of Honor; plaque.
- 72-729. Nebraska Hall of Fame Commission; powers.
- 72-729.01. Hall of Fame Trust Fund; created; use.
- 72-730. State Capitol Restoration Fund; created; investment.
- 72-731. Repealed. Laws 1981, LB 497, § 1.

72-701 State capital; location.

The city of Lincoln is declared to be the permanent seat of government of the State of Nebraska, at which all the public offices of the state shall be kept and at which all the sessions of the Legislature shall be held.

Source: Laws 1867, § 3, p. 53; R.S.1913, § 5885; C.S.1922, § 5248; C.S.1929, § 72-701; R.S.1943, § 72-701.

72-701.01 Act, how cited.

Sections 72-701.01 to 72-701.06 shall be known and may be cited as the Nebraska Emergency Seat of State Government Act.

Source: Laws 1959, c. 332, § 1, p. 1207.

72-701.02 Attack, defined.

As used in sections 72-701.01 to 72-701.06, the term attack means any action or series of actions by an enemy of the United States, causing, or which may cause substantial injury or damage to civilian persons or property in the United States in any manner, whether by sabotage, or by the use of bombs, missiles or shellfire, or by atomic, radiological, chemical, bacteriological or biological means, or by other weapons or processes.

Source: Laws 1959, c. 332, § 2, p. 1207.

72-701.03 Emergency seat of state government; temporary location; designation.

Whenever, due to an emergency resulting from the effects of an enemy attack or the imminent threat thereof, it becomes imprudent, inexpedient or impossible to conduct the affairs of the state government at the permanent seat of state government in the city of Lincoln, the Governor, by proclamation and as often as the exigencies of the situation may require, shall designate a temporary location or locations for an emergency seat of state government at such place or places, within or without this state, as he may deem proper and advisable under the circumstances, and he forthwith shall take such action and shall issue such orders and directives as may be necessary for the prompt and orderly transition of the affairs of the state government to such temporary location or locations. Such temporary location or locations shall be and remain the emergency seat of state government until another temporary location or locations shall be designated in the same manner, or until the Governor, by proclamation, or the Legislature, by resolution approved by the Governor, shall declare the emergency to be ended, at which time the seat of state government shall be returned to its permanent location in Lincoln, or shall be removed to such other city in this state as shall be designated the new permanent seat of state government, in accordance with the Constitution of Nebraska and general laws of this state.

Source: Laws 1959, c. 332, § 3, p. 1207.

72-701.04 Emergency seat of government; temporary location; validity of official acts.

During such time as such temporary location or locations shall remain the emergency seat of state government, all official acts done or performed thereat by or on the part of any officer, office, department, division, commission, court or board, or any other agency or authority of this state, including the Legislature, whether in regular, extraordinary, or emergency session, and all proceedings or court actions involving the state or its agencies or authorities, now or hereafter required to be brought or conducted at the seat of state government, shall be as valid, effective, and binding as if regularly done, performed, brought, or conducted at the permanent seat of state government.

Source: Laws 1959, c. 332, § 4, p. 1208.

72-701.05 Emergency seat of state government; designation, when; plans and preparations; Governor; adopt; purchase of real estate prohibited; exception.

(1) The official designation of the location or locations of the emergency seat of state government, and the removal thereto of the government of the state, shall in no event precede: (a) The inception of an attack; or (b) the inception of a strategic or tactical warning period duly proclaimed by the President of the

United States, the Governor of Nebraska, or by both such officials, and based on the imminence of an attack.

(2) Prior to any such attack or warning period, however, and subject to such rules and regulations as the Governor may promulgate, such preliminary plans and preparations may be made as shall be deemed necessary and advisable to facilitate the subsequent accomplishment, during such emergency, of the actions provided in sections 72-701.01 to 72-701.06. Such planning and preparations may include any or all of the following steps, but shall not necessarily be limited thereto: (a) Selection of a tentative location or locations for the emergency seat of state government in the event that, as provided in subsection (1) of this section, it subsequently becomes necessary and advisable to designate such tentative location or locations as the official location or locations of the emergency seat of state government; (b) negotiation with local authorities, property owners, and other proper persons, for the possible use and occupancy of specific buildings or areas or buildings and areas, at or near such tentative location or locations, for the purposes mentioned in sections 72-701.01 to 72-701.06 during a subsequent emergency; and (c) storing and stockpiling, at or near the tentative location or locations, of essential supplies and equipment, and vital records or duplicates thereof which would be necessary to permit the continuity of the governmental operations of the state in an emergency.

(3) Prior to an attack or warning period, as set out in subsection (1) of this section, neither the state, nor any official or agency thereof, shall, except only for the storage and safeguarding of vital records and duplicates thereof, purchase, contract for the purchase of, or obligate funds of the state for the purchase of any real estate or appurtenance thereto, for subsequent use as an emergency seat of state government.

Source: Laws 1959, c. 332, § 5, p. 1208.

72-701.06 Sections, how construed; precedence over other laws.

The provisions of sections 72-701.01 to 72-701.06, in the event they shall be employed, shall control and take precedence over any provision of any other law to the contrary or in conflict therewith; *Provided*, that nothing herein shall be construed as contravening, suspending, or otherwise affecting the provisions of the Constitution of Nebraska or general laws of this state relating to the permanent relocation of the seat of state government.

Source: Laws 1959, c. 332, § 6, p. 1209.

72-701.07 Repealed. Laws 1963, c. 340, § 1.

72-701.08 Transferred to section 81-1108.22.

72-702 Repealed. Laws 1973, LB 149, § 5.

72-703 Department of Correctional Services adult correctional facility; location.

A Department of Correctional Services adult correctional facility of the state shall be located upon a reservation in the city of Lincoln or upon lands belonging to the state and adjacent to the city of Lincoln.

Source: Laws 1867, § 12, p. 55; R.S.1913, § 5887; C.S.1922, § 5250; C.S.1929, § 72-703; R.S.1943, § 72-703; Laws 1993, LB 31, § 21.

Cross References

For provisions relating to the Department of Correctional Services adult correctional facility, see Chapter 83, article 4.

- 72-704 Repealed. Laws 1955, c. 278, § 6.
- 72-705 Repealed. Laws 1955, c. 278, § 6.
- 72-706 Transferred to section 81-1108.17.
- 72-706.01 Transferred to section 81-1108.18.
- 72-707 Transferred to section 81-1118.02.
- 72-708 Transferred to section 81-1108.19.
- 72-709 Transferred to section 81-1108.20.
- 72-709.01 Repealed. Laws 1974, LB 1048, § 45.
- 72-709.02 Transferred to section 81-1108.23.
- 72-709.03 Repealed. Laws 1959, c. 266, § 1.
- 72-710 Transferred to section 81-1108.26.
- 72-710.01 Transferred to section 81-1108.27.
- 72-710.02 Transferred to section 81-1108.28.
- 72-710.03 Transferred to section 81-1108.29.
- 72-711 Transferred to section 81-1108.30.
- 72-712 Transferred to section 81-1108.31.
- 72-713 Repealed. Laws 1951, c. 241, § 5.
- 72-714 Repealed. Laws 1951, c. 241, § 5.
- 72-715 Repealed. Laws 1951, c. 241, § 5.
- 72-716 Transferred to section 81-1108.32.
- 72-716.01 Transferred to section 81-1108.33.
- 72-716.02 Transferred to section 81-1108.34.
- 72-716.03 Transferred to section 81-1108.35.
- 72-716.04 Transferred to section 81-1108.37.
- 72-717 Repealed. Laws 1974, LB 1048, § 45.
- 72-718 Transferred to section 81-1108.38.
- 72-718.01 Repealed. Laws 1971, LB 1031, § 2.
- 72-718.02 Repealed. Laws 1971, LB 1031, § 2.
- 72-718.03 Repealed. Laws 1993, LB 311, § 7.
- 72-718.04 Repealed. Laws 1984, LB 933, § 20.

72-718.05 Repealed. Laws 1993, LB 311, § 7.

72-718.06 Repealed. Laws 1972, LB 1436, § 1.

72-718.07 Transferred to section 81-1108.40.

72-719 Repealed. Laws 1982, LB 592, § 2.

72-720 Repealed. Laws 2000, LB 1135, § 34.

72-721 Repealed. Laws 2000, LB 1135, § 34.

72-722 Repealed. Laws 2000, LB 1135, § 34.

72-723 State Capitol; monuments and memorials; permanent fixtures; removal with consent of Legislature.

All monuments and memorials now fixed to the building or the grounds of the State Capitol shall be regarded as permanent fixtures, and shall not be removed without the consent of the Legislature.

Source: Laws 1953, c. 262, § 1, p. 872.

72-724 Nebraska Hall of Fame Commission; created; members; appointment; administration.

(1) There is hereby created a Nebraska Hall of Fame Commission, which shall consist of seven members, six of whom shall be appointed by the Governor. The Director of the Nebraska State Historical Society shall be the seventh member of the commission and shall serve as secretary of the commission. The Governor shall appoint no more than three members of the commission from the same political party. The Governor shall consider gender and ethnic diversity and the person's appreciation for the history and culture of the state when making the appointments. In making the initial appointments of the commission, the Governor shall appoint two members for a term of two years, two members for a term of four years, and two members for a term of six years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the commission for a term of six years to succeed the member whose term expires. The members shall serve without compensation. The Governor shall be an ex officio member of the commission.

(2) The Nebraska State Historical Society shall be responsible for the administration of the Nebraska Hall of Fame Commission.

Source: Laws 1961, c. 355, § 1, p. 1118; Laws 1998, LB 1129, § 3; Laws 2005, LB 37, § 1.

72-725 Nebraska Hall of Fame; location.

The Nebraska Hall of Fame shall be located in the State Capitol and other locations as approved by the Nebraska Hall of Fame Commission.

Source: Laws 1961, c. 355, § 2, p. 1118; Laws 1998, LB 1129, § 4.

72-726 Nebraska Hall of Fame; purpose.

The purpose of the Nebraska Hall of Fame shall be to bring to public attention and to recognize officially those people who, in their lives, have achieved prominence and who were outstanding Nebraskans. For the purpose of this section Nebraskans shall mean those (1) who were born in Nebraska, (2)

who gained prominence while living in Nebraska, or (3) who lived in Nebraska and whose residence in Nebraska was an important influence on their lives and which contributed to their greatness.

Source: Laws 1961, c. 355, § 3, p. 1118.

72-727 Rules and regulations.

The Nebraska Hall of Fame Commission shall adopt and promulgate rules and regulations to establish criteria of eligibility for inclusion in the Nebraska Hall of Fame and to establish standards for the creation, design, size, configuration, and placement of busts or other appropriate objects.

Source: Laws 1961, c. 355, § 4, p. 1119; Laws 1998, LB 1129, § 5.

72-728 Persons named to Nebraska Hall of Fame; limitations; Nebraskans awarded Medal of Honor; plaque.

(1) Except as provided in subsection (2) of this section, the Nebraska Hall of Fame Commission shall not name more than one person to the Nebraska Hall of Fame during each five-year period beginning on and after January 1, 2005. During the first two years of each five-year period, the commission shall receive nominations of candidates to be named to the Nebraska Hall of Fame. The commission shall review the nominations and may select the finalists for induction. During the subsequent two years of each five-year period, the commission shall review the finalists, if any, and shall hold public hearings regarding the finalists in each of the congressional districts. After the hearings, the commission may select one finalist for induction. If a finalist is selected for induction, the commission shall name him or her to the Nebraska Hall of Fame during the final year of each five-year period. No individual shall be named to the Nebraska Hall of Fame until at least thirty-five years after such person's demise.

(2) Notwithstanding the limitations imposed by subsection (1) of this section, the commission shall procure an appropriate plaque upon which shall be placed the names of each Nebraskan awarded the Medal of Honor as a result of such person's services in the armed forces of the United States. Such plaque shall have sufficient space for listing the names of persons who shall be awarded the Medal of Honor in the future. The plaque shall have a suitable place in the State Capitol.

Source: Laws 1961, c. 355, § 5, p. 1119; Laws 1969, c. 595, § 1, p. 2448; Laws 1976, LB 670, § 1; Laws 1998, LB 1129, § 6; Laws 2005, LB 37, § 2.

72-729 Nebraska Hall of Fame Commission; powers.

The Nebraska Hall of Fame Commission shall have power:

(1) To contract for the making and placing of busts or other appropriate objects commemorating the persons chosen to be placed in the State Capitol or other location as approved by the commission. No busts or other appropriate objects commemorating the persons chosen shall be placed in the State Capitol except upon the approval of the Nebraska Capitol Commission; and

(2) To receive and disburse gifts.

Source: Laws 1963, c. 414, § 1, p. 1336; Laws 1974, LB 1048, § 40; Laws 1993, LB 311, § 2; Laws 1998, LB 1129, § 7.

72-729.01 Hall of Fame Trust Fund; created; use.

There is hereby created the Hall of Fame Trust Fund to be administered by the Nebraska Hall of Fame Commission for the purpose of the creation, design, size, configuration, and placement of busts or other appropriate objects as authorized in section 72-729. Deposits to such fund shall include money received from public donation and from funds appropriated specifically for such purpose by the Legislature.

Source: Laws 1973, LB 282, § 1; Laws 1998, LB 1129, § 8.

72-730 State Capitol Restoration Fund; created; investment.

The State Capitol Restoration Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1131, § 3; Laws 2007, LB323, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-731 Repealed. Laws 1981, LB 497, § 1.

ARTICLE 8

PUBLIC BUILDINGS

Cross References

Provisions relating to materiel administrator inapplicable, see section 81-146.

Public lettings, how conducted, see section 73-101 et seq.

Section

- 72-801. Public buildings; cost; limitation; use; change prohibited.
- 72-802. Public buildings; plans and specifications; limitations; bids; appropriations; limit; exceptions; violation; penalty.
- 72-803. Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions.
- 72-804. New state building; code requirements.
- 72-805. Buildings constructed with state funds; code requirements.
- 72-806. Enforcement.
- 72-807. Repealed. Laws 1959, c. 265, § 1.
- 72-808. Historic structure; legislative findings.
- 72-809. Historic structure; defined.
- 72-810. Historic structure; alterations; requirements.
- 72-811. Vacant buildings and excess land; terms, defined.
- 72-812. Vacant Building and Excess Land Committee; created; members.
- 72-813. Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.
- 72-814. Vacant buildings and excess land; committee order; transfer of responsibilities and records; director; powers.
- 72-815. Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance.
- 72-816. Vacant Building and Excess Land Cash Fund; created; use; investment; restrictions.
- 72-817. Applicability of sections.
- 72-818. State-owned land; utility easement; Vacant Building and Excess Land Committee; powers and duties.

72-801 Public buildings; cost; limitation; use; change prohibited.

Any public building that is erected or repaired and for which an appropriation is made by the Legislature shall be constructed or repaired in a complete manner within the limits of such appropriation. Except as provided in sections 72-811 to 72-818 and 79-11,109, no building shall be changed or diverted from the use or purpose, kind, or class of building from that for which the appropriation was originally made.

Source: Laws 1911, c. 131, § 1, p. 441; R.S.1913, § 5891; C.S.1922, § 5258; C.S.1929, § 72-1001; R.S.1943, § 72-801; Laws 1973, LB 547, § 1; Laws 1992, LB 1241, § 4; Laws 1995, LB 567, § 2; Laws 1996, LB 900, § 1059; Laws 1998, Spec. Sess., LB 1, § 5; Laws 1999, LB 813, § 4.

72-802 Public buildings; plans and specifications; limitations; bids; appropriations; limit; exceptions; violation; penalty.

Any officer or board charged with the general supervision of the erection and repair of the public buildings belonging to the state shall prepare or have prepared plans and specifications of the building to be erected or repaired, and such plans shall be prepared in such a manner that the completed building, landscaping, and parking facilities, including the cost of equipment and fixtures necessary therefor, or the completed repair cost shall not exceed the amount authorized for that purpose. Construction may be commenced after contracts are awarded, but the obligation of the state in any biennium under such contracts shall not exceed the amount appropriated for that purpose in such biennium. When contracts are submitted to public bidding and a certain item is specified by trade name, make, or catalog number, a bid for the furnishing of an alternate item, equal thereto in the opinion of the architects and officers or board involved and submitted within the time limits set for receipt of bids, shall not be rejected solely on the basis that such item was not approved prior to the submission of bids. No officer, board, architect, superintendent, or contractor shall change any plan for any public building, for which an appropriation is made by the Legislature, so as to exceed such appropriation, and any officer, board, architect, superintendent, or contractor who violates any of the provisions of this section and section 72-801 shall be deemed guilty of a Class II misdemeanor.

Source: Laws 1911, c. 131, § 2, p. 442; R.S.1913, § 5892; C.S.1922, § 5259; C.S.1929, § 72-1002; R.S.1943, § 72-802; Laws 1967, c. 470, § 1, p. 1463; Laws 1973, LB 547, § 2; Laws 1977, LB 39, § 180; Laws 1986, LB 258, § 15.

72-803 Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions.

(1) The state and any department or agency thereof, subject to the powers of the state building division of the Department of Administrative Services, shall have general charge of the erection of new buildings which are being erected for such department or agency, the repair and improvement of buildings under the control of such department or agency, including fire escapes, and the improvement of grounds under the control of such department or agency.

(2) Buildings and other improvements costing more than fifty thousand dollars shall be (a) constructed under the general charge of the department or agency as provided in subsection (1) of this section and (b) let by contract to the

lowest responsible bidder after proper advertisement as set forth in subsection (4) of this section.

(3) The successful bidder at the letting shall enter into a contract with the department or agency, prepared as provided for by subsection (4) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of one hundred thousand dollars or less unless the department or agency includes a bond requirement in the specifications for the project.

(4) When contracts are to be let by the department or agency as provided in subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division stating that sealed proposals will be received by the department or agency at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department or agency. All bids or proposals shall be accompanied by a certified check or by a bid bond in a sum fixed by the department or agency and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department or agency shall exclude it from such a contract.

Source: Laws 1990, LB 257, § 4; Laws 1992, LB 1241, § 5; Laws 1995, LB 530, § 1; Laws 2007, LB256, § 1.

72-804 New state building; code requirements.

(1) Any new state building shall meet or exceed the requirements of the 2003 International Energy Conservation Code.

(2) Any new lighting, heating, cooling, ventilating, or water heating equipment or controls in a state-owned building and any new building envelope components installed in a state-owned building shall meet or exceed the requirements of the 2003 International Energy Conservation Code.

(3) The State Building Administrator of the Department of Administrative Services, in consultation with the State Energy Office, may specify:

- (a) A more recent edition of the International Energy Conservation Code;
- (b) Additional energy efficiency or renewable energy requirements for buildings; and
- (c) Waivers of specific requirements which are demonstrated through life-cycle cost analysis to not be in the state's best interest. The agency receiving the funding shall be required to provide a life-cycle cost analysis to the State Building Administrator.

Source: Laws 1999, LB 755, § 1; Laws 2003, LB 643, § 3; Laws 2004, LB 888, § 1.

72-805 Buildings constructed with state funds; code requirements.

The 2003 International Energy Conservation Code applies to all new buildings constructed in whole or in part with state funds after July 1, 2005. The State Energy Office shall review building plans and specifications necessary to determine whether a building will meet the requirements of this section. The

State Energy Office shall provide a copy of its review to the agency receiving funding. The agency receiving the funding shall verify that the building as constructed meets or exceeds the code. The verification shall be provided to the State Energy Office. The State Energy Office shall, in consultation with the State Building Administrator of the Department of Administrative Services, adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1999, LB 755, § 2; Laws 2004, LB 888, § 2.

72-806 Enforcement.

The enforcement provisions of Chapter 1 of the 2003 International Energy Conservation Code shall not apply to buildings subject to section 72-804.

Source: Laws 1999, LB 755, § 3; Laws 2003, LB 643, § 4; Laws 2004, LB 888, § 3.

72-807 Repealed. Laws 1959, c. 265, § 1.

72-808 Historic structure; legislative findings.

The Legislature finds that:

- (1) The preservation of historic structures will enrich life for Nebraska's citizens both today and for future generations;
- (2) Many historic structures are owned by the state; and
- (3) Efforts should be made by the state to identify, preserve, maintain, and restore such historic structures whenever possible.

Source: Laws 1986, LB 563, § 1.

72-809 Historic structure; defined.

For purposes of sections 72-808 to 72-810, historic structure shall mean any building significant in American history or architecture on a local, state, or national level.

Source: Laws 1986, LB 563, § 2.

72-810 Historic structure; alterations; requirements.

Improvements, alterations, or changes made by the state, its agencies, or departments on or to any historic structure owned by the State of Nebraska shall be in keeping with its historical or architectural significance. Such alterations shall be made according to standards set by the United States Department of the Interior. No alteration shall be made without review and comment by the State Historic Preservation Officer. If the state, its agencies, or departments do not agree with the review and comment of the officer, a final determination as to what action must be followed by the state shall be made by the Governor. A state agency or department shall only be required to comply with this section if it has been notified in writing by the officer that a particular structure is a historic structure.

Source: Laws 1986, LB 563, § 3; Laws 1989, LB 18, § 5.

72-811 Vacant buildings and excess land; terms, defined.

For purposes of sections 72-811 to 72-818:

- (1) Committee shall mean the Vacant Building and Excess Land Committee;

(2) Excess, referring to land, shall mean (a) unused in whole or in part by any state agency for the purposes for which the land was acquired or received or (b) without current defined plans by any state agency for the use of the land for the agency's mission for the next fiscal year; and

(3) Vacant, referring to buildings, shall mean (a) unoccupied, (b) unused in whole or in part by any state agency for the purposes for which the building was designed, intended, or remodeled, or (c) without current defined plans by any state agency for the use of the building for the agency's mission for the next fiscal year.

Source: Laws 1988, LB 1143, § 1; Laws 1990, LB 830, § 1; Laws 1992, LB 1241, § 6; Laws 1995, LB 567, § 3.

72-812 Vacant Building and Excess Land Committee; created; members.

The Vacant Building and Excess Land Committee is hereby created. The committee shall be composed of the Director of Administrative Services, the State Building Administrator, and the administrator of the Task Force for Building Renewal created pursuant to section 81-174. When reviewing and considering action to be taken in regard to a particular building or piece of land, the committee shall also include a representative of the state agency responsible for the building or land as a nonvoting member.

Source: Laws 1988, LB 1143, § 2; Laws 1990, LB 830, § 2; Laws 1992, LB 1241, § 7; Laws 1997, LB 314, § 3.

72-813 Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.

Each state agency shall by September 15 of each year submit to the State Building Administrator a list of all state-owned buildings and land for which it is responsible and shall note the current and planned uses of each building and parcel of land. The State Building Administrator shall compile the information on state-owned buildings and land and provide it, along with any other information or recommendations he or she may consider relevant to the purposes of sections 72-811 to 72-818, to the committee and to the Legislative Fiscal Analyst.

The committee shall meet to review the information and consider further action or possible amendments to orders made pursuant to this section. If the committee determines that there is reason to believe that any particular state-owned building or piece of land is vacant or excess, the committee shall review the status of the building or land and by majority vote determine whether it should be declared vacant or excess.

If the committee declares a building or land to be vacant or excess, it shall order either maintenance of the building or land by the state building division of the Department of Administrative Services or the disposal of the building or land through sale, lease, demolition, or otherwise. Any order for disposal of a building may include related lands. In determining the appropriate action to be taken in regard to a building or land, the committee shall consider the benefits to the state of the alternative possible actions, including cost-effectiveness, other possible future uses of the building or land for state purposes, and the

necessity or utility of the building or land for the furtherance of existing or planned state programs.

Source: Laws 1988, LB 1143, § 3; Laws 1990, LB 830, § 3; Laws 1992, LB 1241, § 8; Laws 1995, LB 567, § 4.

72-814 Vacant buildings and excess land; committee order; transfer of responsibilities and records; director; powers.

When a building or land is declared vacant or excess by the committee, the committee shall certify to the Director of Administrative Services its determination and order in regard to the building or land. All responsibilities for and records of ownership of the building or land and all records of maintenance of the building or land shall be transferred as soon as possible to the Department of Administrative Services.

If the order includes the sale, lease, or other disposal of any building or land as an appropriate action, the director may execute any quitclaim deed, lease, or other instrument necessary to sell, lease, or dispose of the building or land. The director may reserve, in the best interest of the state, an easement, license, or other interest in the building or land for the state in such sale, lease, or disposal. The director may also trade the building or land for other property needed by the state. The director may, at the expense of the state agency formerly responsible for the building or land, remove or order the agency to remove any movable property not attached to the building or land.

Source: Laws 1988, LB 1143, § 4; Laws 1990, LB 830, § 4; Laws 1992, LB 1241, § 9.

72-815 Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance.

(1) The state building division of the Department of Administrative Services shall be responsible for the sale, lease, or other disposal of a building or land, whichever action is ordered by the committee.

(2) If a building is to be demolished, section 72-810 shall not apply, but the state building division shall notify the State Historic Preservation Officer of such demolition at least thirty days prior to the beginning of the demolition or disassembly so that the officer may collect any photographic or other evidence he or she may find of historic value.

(3)(a) If a building or land is to be sold or leased, the state building division shall cause an appraisal to be made of the building or land. The sale, lease, or other disposal of the building or land shall comply with all relevant statutes pertaining to the sale or lease of surplus state property, except that if the state building division fails to receive an offer from a state agency in which the agency certifies that it (i) intends to use the building for the purposes for which it was designed, intended, or remodeled or to remodel the building for uses which will serve the agency's purposes or (ii) intends to use the land for the purposes for which it was acquired or received, the state building division shall then notify the Department of Economic Development that the building or land is available for sale or lease so that the department may refer to the state building division any potential buyers or lessees of which the department may be aware. The state building division may then sell or lease the building or land by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale and, if necessary, by private sale, but in all

situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property. The state building division may use the services of a real estate broker licensed under the Nebraska Real Estate License Act. Priority shall be given to other political subdivisions of state government, then to persons contracting with the state or political subdivisions of the state who will use the building or land for middle-income or low-income rental housing for at least fifteen years, and finally to referrals from the Department of Economic Development.

(b) All sales and leases shall be in the name of the State of Nebraska. The state building division may provide that a deed of sale include restrictions on the building or land to ensure that the use and appearance of the building or land remain compatible with any adjacent state-owned property.

(c) Except as otherwise provided in subsection (4) of this section, the proceeds of the sale or lease shall be remitted to the State Treasurer for credit to the Vacant Building and Excess Land Cash Fund unless the state agency formerly responsible for the building or land certifies to the state building division that the building or land was purchased in part or in total from cash, federal, or revolving funds, in which event, after the costs of selling or leasing the building or land are deducted from the proceeds of the sale or lease and such amount is credited to the fund, the remaining proceeds of the sale or lease shall be credited to the cash, federal, or revolving fund in the percentage used in originally purchasing the building or land.

(4) Any state-owned military property, including any armories considered surplus property, shall be sold by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale, and if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property, and pursuant to section 72-816, all proceeds from the sale of the property, less maintenance expenses pending the sale and selling expenses, but including investment income on the sale proceeds of the property, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund to the General Fund by the State Building Administrator.

(5) The state building division shall be responsible for the maintenance of the building or land if maintenance is ordered by the committee and shall be responsible for maintenance of the building or land pending sale or lease of the building or land.

Source: Laws 1988, LB 1143, § 5; Laws 1989, LB 18, § 6; Laws 1990, LB 830, § 5; Laws 1992, LB 1241, § 10; Laws 2000, LB 1216, § 21; Laws 2003, LB 403, § 6.

Cross References

Nebraska Real Estate License Act, see section 81-885.

72-816 Vacant Building and Excess Land Cash Fund; created; use; investment; restrictions.

(1) The Vacant Building and Excess Land Cash Fund is created. The fund shall consist of proceeds credited to the fund pursuant to sections 72-815 and

90-268. Except as provided in sections 90-268 and 90-269, the fund shall be used to pay for the maintenance of vacant state buildings and excess state land and for expenses related to the disposal of state buildings and land referred to the Department of Administrative Services by the committee pursuant to sections 72-811 to 72-818. The fund shall be administered by the state building division of the Department of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Funds may be transferred from the Vacant Building and Excess Land Cash Fund to the General Fund at the direction of the Legislature.

(2) If there are insufficient funds in the fund to enable the division to fully implement the orders of the committee issued pursuant to sections 72-811 to 72-818, the division shall implement them in the order which most efficiently meets the purposes of such sections.

(3) Funds appropriated to the Task Force for Building Renewal shall not be used to carry out any of the purposes of such sections (a) unless the building would otherwise qualify for the use of such funds pursuant to the Deferred Building Renewal Act and (b) except for any expenses incurred by the administrator of the Task Force for Building Renewal in fulfilling his or her duties under such sections.

Source: Laws 1988, LB 1143, § 6; Laws 1990, LB 830, § 6; Laws 1992, LB 1241, § 11; Laws 1994, LB 1066, § 73; Laws 1995, LB 567, § 5; Laws 1997, LB 314, § 4; Laws 1999, LB 873, § 6; Laws 2000, LB 1216, § 22; Laws 2002, Second Spec. Sess., LB 1, § 4; Laws 2003, LB 403, § 7; Laws 2005, LB 426, § 13; Laws 2006, LB 1061, § 11.

Cross References

Deferred Building Renewal Act, see section 81-190.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-817 Applicability of sections.

Sections 72-811 to 72-818 shall apply to every state agency except the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, and the Board of Educational Lands and Funds, except that any such agency may elect to include under such sections any building or land for which it has responsibility. Such sections shall not apply to interests in real property held by the Department of Roads.

Source: Laws 1988, LB 1143, § 7; Laws 1990, LB 830, § 7; Laws 1995, LB 567, § 6.

72-818 State-owned land; utility easement; Vacant Building and Excess Land Committee; powers and duties.

Except as provided in section 37-330, a state agency shall submit any request for granting a utility easement on state-owned land to the committee. The committee may only approve utility easements by majority vote. Utility easements may only be granted to political subdivisions or their contractors for utility or construction-related purposes. The committee shall certify the approval of a utility easement to the Director of Administrative Services who shall

execute the instrument necessary to grant the easement. The state building division of the Department of Administrative Services shall be responsible for the implementation of easements granted under this section.

Source: Laws 1995, LB 567, § 1; Laws 2007, LB256, § 2.

ARTICLE 9

LEASE OF SCHOOL LANDS FOR OIL AND GAS

Section

- 72-901. School lands; oil and gas leases; Board of Educational Lands and Funds; powers and duties.
- 72-902. Leases; terms and conditions; bids, when taken.
- 72-903. Leases; reservation of royalty to lessor; monthly accounting.
- 72-904. Lessees; bond required.
- 72-905. Leases; forfeiture; notice to lessee; hearing; filing of order.
- 72-906. Lease; application; form; contents.
- 72-907. Lease; sale; public auction required; notice; publication costs; payment.
- 72-908. Exploration, development, and operation for oil and gas production; agreements authorized.
- 72-909. Leases; reservation of use of lands for agricultural purposes; conditions.
- 72-910. Rules and regulations; authority of board.
- 72-911. Amended lease; exchange authorized; terms and conditions.
- 72-912. Leases; assignment; conditions of approval.

72-901 School lands; oil and gas leases; Board of Educational Lands and Funds; powers and duties.

The Board of Educational Lands and Funds is authorized and empowered to lease any school and public lands belonging to the state and under its control, including oil and gas rights which have been or may hereafter be reserved to the state, for oil and gas exploration and development upon terms and conditions herein prescribed. In all cases where the lands are under lease for grazing, agricultural or similar purposes, the rights of such lessees shall be protected.

Source: Laws 1943, c. 164, § 1, p. 579; R.S.1943, § 72-901.

72-902 Leases; terms and conditions; bids, when taken.

All oil and gas leases issued hereunder shall be for terms not to exceed ten years, and as long thereafter as oil or gas is produced in paying quantities from the land covered thereby. Such leases shall also provide for annual delay rentals of not less than fifty cents per acre of land leased. If two or more parties desire to lease the same land, the representatives of the Board of Educational Lands and Funds present at the offering shall accept bids from all or any parties, and the board may grant a lease to the person, partnership, limited liability company, or corporation that would pay for a lease contract on the land the greatest amount of such bonus. Lands shall be leased in as compact bodies as the form and area of the tracts subject to lease will permit. No lease shall embrace noncontiguous subdivisions of land unless such subdivision shall be within an area comprising not more than one square mile.

Source: Laws 1943, c. 164, § 2, p. 580; R.S.1943, § 72-902; Laws 1959, c. 333, § 1, p. 1211; Laws 1978, LB 802, § 1; Laws 1993, LB 121, § 459.

72-903 Leases; reservation of royalty to lessor; monthly accounting.

In every oil and gas lease granted pursuant hereto, there shall be reserved to the lessor a royalty of not less than twelve and one-half percent of all oil, gas, hydrocarbons and all other petroleum products produced and saved from the lands covered thereby and not used in connection with the development and operation of the leased premises, or twelve and one-half percent of the market value thereof at the leased premises. Such leases shall provide that the interest so reserved shall be produced free of cost to lessor and that an accounting shall be made therefor on a monthly basis.

Source: Laws 1943, c. 164, § 3, p. 580; R.S.1943, § 72-903.

72-904 Lessees; bond required.

The Board of Educational Lands and Funds shall require lessees of such oil and gas leases, and assigns thereof, to furnish bonds to the state in such form and substance as may be prescribed by the board, and in amounts adequate to indemnify the state against loss, damage or detriment by reason of the failure of the lessee to fully discharge the obligations contained in the lease, or assignment thereof; *Provided*, that a blanket bond may be accepted by the board to cover more than one lease issued to the same lessee.

Source: Laws 1943, c. 164, § 4, p. 580; R.S.1943, § 72-904.

72-905 Leases; forfeiture; notice to lessee; hearing; filing of order.

All oil and gas leases granted pursuant hereto shall provide for forfeiture and cancellation thereof upon the failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and a reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice, concerning which the lessee is in default. Such notice shall not be required in case of the failure of the lessee to pay any delay rental provided for in such lease. The Board of Educational Lands and Funds is granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases, under such rules and regulations as it may adopt; and any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the board before any lease is declared forfeited or canceled by the board. A copy of any order of forfeiture and cancellation made pursuant to this section shall be filed with the register of deeds of the county where the land is situated, but such filing shall not be a condition to the effectiveness of the order, and no further processing of any type shall be necessary to complete the record of such forfeiture and cancellation.

Source: Laws 1943, c. 164, § 5, p. 580; R.S.1943, § 72-905; Laws 1961, c. 356, § 1, p. 1120.

72-906 Lease; application; form; contents.

Applications for the issuance of any lease authorized by sections 72-901 to 72-912 shall be executed under oath by the applicant, applicant's agent or attorney, or an officer or agent of a corporation if the application is made by a corporation. The form of the application shall be prescribed by the Board of Educational Lands and Funds, and shall contain a description of the land, by legal subdivisions, upon which the lease is desired, and the terms upon which the applicant desires to acquire such lease.

Source: Laws 1943, c. 164, § 6, p. 581; R.S.1943, § 72-906.

72-907 Lease; sale; public auction required; notice; publication costs; payment.

No lease shall be sold except at public auction, to be held at the office of the Board of Educational Lands and Funds, after notice of the time and place of such sale by publication two consecutive weeks in a newspaper of general circulation in the State of Nebraska, and such other notice, if any, as the board may require. Proof of such publication shall be made by an affidavit of the publisher, manager, or foreman of such newspaper, to be filed in the office of the board. Subject to the board's right to reject all bids, such lease shall be sold to the highest and best bidder. The purchaser of such lease shall pay the cost of publishing the notice herein provided for. Should the lease not be sold following the publishing of such notice, the one who filed application for lease shall pay the publication costs, and, to secure the payment thereof, the board may require the applicant to furnish satisfactory security therefor.

Source: Laws 1943, c. 164, § 7, p. 581; R.S.1943, § 72-907; Laws 1999, LB 779, § 49.

72-908 Exploration, development, and operation for oil and gas production; agreements authorized.

The Board of Educational Lands and Funds is hereby authorized, in its discretion, to enter into appropriate agreements for the purpose of unit or cooperative exploration, development, and operation of acreage, or any part of the acreage, covered by leases granted pursuant hereto, with other acreage for the production of oil and gas. Such agreements shall provide for the allocation of production on a proportionate acreage or other agreed equitable basis.

Source: Laws 1943, c. 164, § 8, p. 581; R.S.1943, § 72-908; Laws 1955, c. 280, § 1, p. 885.

72-909 Leases; reservation of use of lands for agricultural purposes; conditions.

There shall be reserved, from leases granted pursuant hereto, the right to fully use and enjoy, for agricultural and grazing purposes, the area leased for oil and gas purposes, except such parts thereof as may be necessary for use in the development and operation thereof for oil and gas and in the marketing of production therefrom. The owner of the agricultural and grazing rights, as to lands covered by any oil and gas lease issued hereunder, shall have prior right to the use of water on said premises. The lessee shall pay all damages to growing crops, including grass, caused by operations under such lease, and, after due notice thereof, shall protect the lessor from claims of such nature.

Source: Laws 1943, c. 164, § 9, p. 582; R.S.1943, § 72-909.

72-910 Rules and regulations; authority of board.

The Board of Educational Lands and Funds shall have the power and authority to prescribe such rules and regulations as it may deem necessary and proper, but which are not inconsistent with the Constitution and statutes of this state, relating to the leasing of school and public lands for oil and gas exploration and development.

Source: Laws 1943, c. 164, § 10, p. 582; R.S.1943, § 72-910.

72-911 Amended lease; exchange authorized; terms and conditions.

Any holder of existing oil or gas leases heretofore issued by the Board of Educational Lands and Funds on properties of the nature covered hereby, shall have the right to exchange such lease for an amended lease issued under the provisions of sections 72-901 to 72-912, and embracing the same land. When the holder of any such lease makes written application to the board in due form for such exchange, the board shall issue an amended lease embracing the same land as the former lease in the ordinary and regulation form duly adopted by the board under the provisions of said sections, but there shall be deducted from the term for which such amended lease may be issued the time that has passed from the date of the issue of the former lease to the date of the issue of the amended lease, except that in no case shall the amended lease be granted for a longer period than seven years from the date of issue of the amended lease. Such amended lease shall provide for an increase of twenty-five cents per acre over the amount of the annual delay rental specified in the former lease.

Source: Laws 1943, c. 164, § 11, p. 582; R.S.1943, § 72-911.

72-912 Leases; assignment; conditions of approval.

Except as hereinafter provided, the assignment of any oil and gas lease issued under the provisions of sections 72-901 to 72-912, either in whole or in part, shall be permitted if made to an assignee qualified as provided herein. Such assignment shall not, however, be binding upon the state until filed with the Board of Educational Lands and Funds, accompanied by a filing fee of one dollar and a bond, and approved by the board, or its lawful representatives; *Provided*, that the approval of such assignment so filed and supported shall not be withheld in any case where satisfactory compliance has been made with the requirements of said sections. In no case shall the board be required to approve an assignment of a lease in part, covering a tract less than forty acres nor shall it be required to approve an assignment of an undivided interest in such lease until a showing, satisfactory to the board, has been made evidencing which one of the parties, assignor or assignee is to be the one to pay the delay rentals thereafter accruing, as to an undivided interest thereafter to be jointly owned, nor shall it be required to approve an assignment covering an undivided interest of less than forty leasehold acres.

Source: Laws 1943, c. 164, § 12, p. 583; R.S.1943, § 72-912.

ARTICLE 10**BUILDING FUNDS**

Section

- 72-1001. Nebraska Capital Construction Fund; created; use; investment.
- 72-1002. Repealed. Laws 1959, c. 265, § 1.
- 72-1003. Repealed. Laws 1959, c. 265, § 1.
- 72-1004. Repealed. Laws 1959, c. 265, § 1.
- 72-1005. State Building Fund; created; use; transfer of funds.
- 72-1006. Repealed. Laws 1963, c. 422, § 6.
- 72-1007. Repealed. Laws 1969, c. 594, § 4.
- 72-1008. Repealed. Laws 1972, LB 1044, § 1.
- 72-1009. Repealed. Laws 1972, LB 1044, § 1.
- 72-1010. Repealed. Laws 1972, LB 1044, § 1.
- 72-1011. Repealed. Laws 1972, LB 1044, § 1.

72-1001 Nebraska Capital Construction Fund; created; use; investment.

The Nebraska Capital Construction Fund is created. The fund shall consist of revenue and transfers credited to the fund as authorized by law. Money shall be appropriated from the fund to state agencies for making payments on projects as determined by the Legislature, including, but not limited to, purchases of land, structural improvements to land, acquisition of buildings, construction of buildings, including architectural and engineering costs, replacement of or major repairs to structural improvements to land or buildings, additions to existing structures, remodeling of buildings, and acquisition of equipment and furnishings of new or remodeled buildings. The fund shall be administered by the State Treasurer as a multiple-agency-use fund and appropriated to state agencies as determined by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 426, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-1002 Repealed. Laws 1959, c. 265, § 1.**72-1003 Repealed. Laws 1959, c. 265, § 1.****72-1004 Repealed. Laws 1959, c. 265, § 1.****72-1005 State Building Fund; created; use; transfer of funds.**

The State Building Fund is created. The fund shall consist of administrative General Fund transfers credited to the State Building Fund as authorized by law. Money shall be appropriated from the fund to state agencies for making payments on projects as determined by the Legislature, including, but not limited to, purchases of land, structural improvements to land, acquisition of buildings, construction of buildings, including architectural and engineering costs, replacement of or major repairs to structural improvements to land or buildings, additions to existing structures, remodeling of buildings, and acquisition of equipment and furnishings of new or remodeled buildings. The fund shall be administered by the State Treasurer as a multiple-agency-use fund and appropriated to state agencies as determined by the Legislature.

The State Treasurer shall administratively transfer from the General Fund to the State Building Fund such amounts as required to make expenditures, except that the fund balance in the State Building Fund plus any administrative fund transfers made shall not exceed the total state unexpended appropriations balances from the State Building Fund, as authorized by law. Such administrative transfers shall be made periodically as required to make expenditures from the State Building Fund.

Source: Laws 1947, c. 236, § 1, p. 751; Laws 1953, c. 287, § 71, p. 971; Laws 1955, c. 279, § 2, p. 883; Laws 1957, c. 307, § 1, p. 1113; Laws 1959, c. 413, § 1, p. 1379; Laws 1959, c. 331, § 3, p. 1206; Laws 1959, c. 334, § 1, p. 1212; Laws 1959, c. 335, § 1, p. 1214; Laws 1963, c. 418, § 4, p. 1344; Laws 1963, c. 422, § 1, p. 1348; Laws 1965, c. 441, § 1, p. 1398; Laws 1965, c. 478, § 3, p. 1540; Laws 1969, c. 594, § 2, p. 2447; Laws 1969, c. 584, § 78, p. 2392; Laws 1979, LB 187, § 260; Laws 2005, LB 426, § 14.

STANDARDS FOR PUBLIC BUILDINGS

§ 72-1108

Under former law, the State Institutional and Military Department Fund was made up of other funds, namely, (1) the proceeds derived from a special tax, and (2) a part of the state's share of the intangible tax. Board of Regents v. Gillette, 149 Neb. 56, 30 N.W.2d 296 (1947).

72-1006 Repealed. Laws 1963, c. 422, § 6.

72-1007 Repealed. Laws 1969, c. 594, § 4.

72-1008 Repealed. Laws 1972, LB 1044, § 1.

72-1009 Repealed. Laws 1972, LB 1044, § 1.

72-1010 Repealed. Laws 1972, LB 1044, § 1.

72-1011 Repealed. Laws 1972, LB 1044, § 1.

ARTICLE 11

STANDARDS FOR PUBLIC BUILDINGS

Section

- 72-1101. Repealed. Laws 1993, LB 377, § 9.
- 72-1102. Repealed. Laws 1993, LB 377, § 9.
- 72-1103. Repealed. Laws 1993, LB 377, § 9.
- 72-1104. Repealed. Laws 1993, LB 377, § 9.
- 72-1105. Repealed. Laws 1993, LB 377, § 9.
- 72-1106. Repealed. Laws 1993, LB 377, § 9.
- 72-1107. Repealed. Laws 1993, LB 377, § 9.
- 72-1108. Repealed. Laws 1993, LB 377, § 9.
- 72-1109. Repealed. Laws 1993, LB 377, § 9.
- 72-1110. Repealed. Laws 1993, LB 377, § 9.
- 72-1111. Repealed. Laws 1993, LB 377, § 9.
- 72-1112. Repealed. Laws 1993, LB 377, § 9.
- 72-1113. Repealed. Laws 1993, LB 377, § 9.
- 72-1114. Repealed. Laws 1993, LB 377, § 9.
- 72-1115. Repealed. Laws 1993, LB 377, § 9.
- 72-1116. Repealed. Laws 1993, LB 377, § 9.
- 72-1117. Repealed. Laws 1993, LB 377, § 9.
- 72-1118. Repealed. Laws 1993, LB 377, § 9.
- 72-1119. Transferred to section 81-5,148.
- 72-1120. Transferred to section 81-5,149.
- 72-1121. Transferred to section 81-5,150.
- 72-1122. Transferred to section 81-5,147.
- 72-1123. Repealed. Laws 1993, LB 377, § 9.
- 72-1124. Repealed. Laws 1993, LB 377, § 9.

72-1101 Repealed. Laws 1993, LB 377, § 9.

72-1102 Repealed. Laws 1993, LB 377, § 9.

72-1103 Repealed. Laws 1993, LB 377, § 9.

72-1104 Repealed. Laws 1993, LB 377, § 9.

72-1105 Repealed. Laws 1993, LB 377, § 9.

72-1106 Repealed. Laws 1993, LB 377, § 9.

72-1107 Repealed. Laws 1993, LB 377, § 9.

72-1108 Repealed. Laws 1993, LB 377, § 9.

- 72-1109 Repealed. Laws 1993, LB 377, § 9.
- 72-1110 Repealed. Laws 1993, LB 377, § 9.
- 72-1111 Repealed. Laws 1993, LB 377, § 9.
- 72-1112 Repealed. Laws 1993, LB 377, § 9.
- 72-1113 Repealed. Laws 1993, LB 377, § 9.
- 72-1114 Repealed. Laws 1993, LB 377, § 9.
- 72-1115 Repealed. Laws 1993, LB 377, § 9.
- 72-1116 Repealed. Laws 1993, LB 377, § 9.
- 72-1117 Repealed. Laws 1993, LB 377, § 9.
- 72-1118 Repealed. Laws 1993, LB 377, § 9.
- 72-1119 Transferred to section 81-5,148.
- 72-1120 Transferred to section 81-5,149.
- 72-1121 Transferred to section 81-5,150.
- 72-1122 Transferred to section 81-5,147.
- 72-1123 Repealed. Laws 1993, LB 377, § 9.
- 72-1124 Repealed. Laws 1993, LB 377, § 9.

ARTICLE 12

INVESTMENT OF STATE FUNDS

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

Section	
72-1201.	Repealed. Laws 1969, c. 614, § 1.
72-1202.	Repealed. Laws 1969, c. 614, § 1.
72-1203.	Repealed. Laws 1969, c. 614, § 1.
72-1204.	Repealed. Laws 1969, c. 614, § 1.
72-1205.	Repealed. Laws 1969, c. 614, § 1.
72-1206.	Repealed. Laws 1969, c. 614, § 1.
72-1207.	Repealed. Laws 1969, c. 614, § 1.
72-1208.	Repealed. Laws 1969, c. 614, § 1.
72-1209.	Repealed. Laws 1969, c. 614, § 1.
72-1210.	Repealed. Laws 1969, c. 614, § 1.
72-1211.	Repealed. Laws 1969, c. 614, § 1.
72-1212.	Repealed. Laws 1969, c. 614, § 1.
72-1213.	Repealed. Laws 1969, c. 614, § 1.
72-1214.	Repealed. Laws 1969, c. 614, § 1.
72-1215.	Repealed. Laws 1969, c. 614, § 1.
72-1216.	Repealed. Laws 1969, c. 614, § 1.
72-1217.	Repealed. Laws 1969, c. 614, § 1.
72-1218.	Repealed. Laws 1969, c. 614, § 1.
72-1219.	Repealed. Laws 1969, c. 614, § 1.
72-1220.	Repealed. Laws 1969, c. 614, § 1.
72-1221.	Repealed. Laws 1969, c. 614, § 1.
72-1222.	Repealed. Laws 1969, c. 614, § 1.
72-1223.	Repealed. Laws 1969, c. 614, § 1.

INVESTMENT OF STATE FUNDS

Section	
72-1224.	Repealed. Laws 1969, c. 614, § 1.
72-1225.	Repealed. Laws 1969, c. 614, § 1.
72-1226.	Repealed. Laws 1969, c. 614, § 1.
72-1227.	Repealed. Laws 1969, c. 614, § 1.
72-1228.	Repealed. Laws 1969, c. 614, § 1.
72-1229.	Repealed. Laws 1969, c. 614, § 1.
72-1230.	Repealed. Laws 1969, c. 614, § 1.
72-1231.	Repealed. Laws 1969, c. 614, § 1.
72-1232.	Repealed. Laws 1969, c. 614, § 1.
72-1233.	Repealed. Laws 1969, c. 614, § 1.
72-1234.	Repealed. Laws 1969, c. 614, § 1.
72-1235.	Repealed. Laws 1969, c. 614, § 1.
72-1236.	Repealed. Laws 1969, c. 614, § 1.
72-1237.	Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.
72-1237.01.	Repealed. Laws 1997, LB 4, § 6.
72-1238.	Nebraska Investment Council; members; qualifications.
72-1239.	Nebraska Investment Council; purpose; members; meetings; compensation.
72-1239.01.	Nebraska Investment Council; duties and responsibilities.
72-1240.	State investment officer; appointment; qualifications; salary; removal.
72-1241.	State investment officer; deputy; duties; bond or insurance.
72-1242.	State investment officer; personnel; employ; approval of Governor; employees; duties; exempted from State Personnel System; when.
72-1243.	State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.
72-1244.	State Treasurer; boards, commissions, departments, and agencies; money to invest; notify state investment officer; conditions.
72-1245.	Repealed. Laws 1971, LB 152, § 7.
72-1246.	State investment officer; investments; duties.
72-1246.01.	Student loans; purchase.
72-1246.02.	Student loans; sale; resale; conditions.
72-1246.03.	Student loans; Nebraska State Colleges; service loans; security.
72-1246.04.	Student loans; purchasing, selling, servicing; approval.
72-1246.05.	Student loans; priority; liquidation of investments; prior investments, how treated; interest.
72-1246.06.	Northern Ireland investments; state investment officer; duties; MacBride principles; report.
72-1246.07.	Northern Ireland investments; state investment officer; Nebraska Investment Council; duties.
72-1246.08.	Northern Ireland investments; sections, how construed.
72-1247.	Repealed. Laws 2002, LB 407, § 67.
72-1248.	Income from investments; disbursement.
72-1249.	Expenses; how paid.
72-1249.01.	Repealed. Laws 1977, LB 364, § 2.
72-1249.02.	State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.
72-1250.	Securities in custody of State Treasurer; held in name of nominee; registered nominee; selection.
72-1250.01.	Cash funds deposited with fiscal agent; constitute investment made by state investment officer.
72-1251.	State Treasurer; interest, premium, income, and principal; collect.
72-1252.	State investment officer; earned income; notice.
72-1253.	Repealed. Laws 2003, LB 149, § 8.
72-1254.	State investment officer; operations; report; contents; public inspection.
72-1255.	Investment transactions; Auditor of Public Accounts; postaudits; report.
72-1256.	Repealed. Laws 1981, LB 545, § 52.
72-1257.	Default; proceedings.
72-1258.	Investment of state funds; boards, commissions, departments, agencies, officials; powers and duties.
72-1259.	State investment officer; political subdivisions; assistance; fee.

§ 72-1201 PUBLIC LANDS, BUILDINGS, AND FUNDS

Section

- 72-1260. Act, how cited.
(b) NEBRASKA CAPITAL EXPANSION ACT
- 72-1261. Declaration of intent.
72-1262. Terms, defined.
72-1263. State investment officer; time deposit open account; conditions.
72-1264. Funds; when offered; time deposit open account; state investment officer; powers.
72-1265. State investment officer; deposits; fix interest rate and term; legislative intent.
72-1266. Nebraska Investment Council; adopt rules and regulations.
72-1267. State investment officer; combine and pool investable funds; when; prorate interest.
72-1268. Depositories; eligibility for funds; bond or bond alternatives.
72-1268.01. Funds deposited; bond; requirements.
72-1268.02. Bond; form.
72-1268.03. State investment officer; limitation on deposits.
72-1268.04. Depository; bond alternatives; requirements.
72-1268.05. Repealed. Laws 1996, LB 1274, § 57.
72-1268.06. Repealed. Laws 1996, LB 1274, § 57.
72-1268.07. Subsidiary bank of out-of-state bank holding company; filing required; deposit of public funds; restriction; applicability and construction of section.
72-1269. Act, how cited.

(c) SOUTH AFRICAN INVESTMENTS

- 72-1270. Repealed. Laws 1994, LB 1066, § 149.
72-1271. Repealed. Laws 1994, LB 1066, § 149.
72-1272. Repealed. Laws 1994, LB 1066, § 149.
72-1273. Repealed. Laws 1994, LB 1066, § 149.
72-1274. Repealed. Laws 1994, LB 1066, § 149.
72-1275. Repealed. Laws 1994, LB 1066, § 149.
72-1276. Repealed. Laws 1994, LB 1066, § 149.

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

- 72-1277. Legislative findings.
72-1278. Nebraska Investment Council; comprehensive review of council; contract.

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

- 72-1201 Repealed. Laws 1969, c. 614, § 1.**
72-1202 Repealed. Laws 1969, c. 614, § 1.
72-1203 Repealed. Laws 1969, c. 614, § 1.
72-1204 Repealed. Laws 1969, c. 614, § 1.
72-1205 Repealed. Laws 1969, c. 614, § 1.
72-1206 Repealed. Laws 1969, c. 614, § 1.
72-1207 Repealed. Laws 1969, c. 614, § 1.
72-1208 Repealed. Laws 1969, c. 614, § 1.
72-1209 Repealed. Laws 1969, c. 614, § 1.
72-1210 Repealed. Laws 1969, c. 614, § 1.
72-1211 Repealed. Laws 1969, c. 614, § 1.

72-1212 Repealed. Laws 1969, c. 614, § 1.

72-1213 Repealed. Laws 1969, c. 614, § 1.

72-1214 Repealed. Laws 1969, c. 614, § 1.

72-1215 Repealed. Laws 1969, c. 614, § 1.

72-1216 Repealed. Laws 1969, c. 614, § 1.

72-1217 Repealed. Laws 1969, c. 614, § 1.

72-1218 Repealed. Laws 1969, c. 614, § 1.

72-1219 Repealed. Laws 1969, c. 614, § 1.

72-1220 Repealed. Laws 1969, c. 614, § 1.

72-1221 Repealed. Laws 1969, c. 614, § 1.

72-1222 Repealed. Laws 1969, c. 614, § 1.

72-1223 Repealed. Laws 1969, c. 614, § 1.

72-1224 Repealed. Laws 1969, c. 614, § 1.

72-1225 Repealed. Laws 1969, c. 614, § 1.

72-1226 Repealed. Laws 1969, c. 614, § 1.

72-1227 Repealed. Laws 1969, c. 614, § 1.

72-1228 Repealed. Laws 1969, c. 614, § 1.

72-1229 Repealed. Laws 1969, c. 614, § 1.

72-1230 Repealed. Laws 1969, c. 614, § 1.

72-1231 Repealed. Laws 1969, c. 614, § 1.

72-1232 Repealed. Laws 1969, c. 614, § 1.

72-1233 Repealed. Laws 1969, c. 614, § 1.

72-1234 Repealed. Laws 1969, c. 614, § 1.

72-1235 Repealed. Laws 1969, c. 614, § 1.

72-1236 Repealed. Laws 1969, c. 614, § 1.

72-1237 Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.

The Nebraska Investment Council is created. For purposes of the Nebraska State Funds Investment Act, council means the Nebraska Investment Council. The council shall consist of five members, appointed by the Governor with the approval of the Legislature, and the State Treasurer and the director of the Nebraska Public Employees Retirement Systems as nonvoting, ex officio members. One of the appointed members shall be designated chairperson by the Governor.

Prior to September 1, 2006, each of the appointed members of the council shall serve for a term of five years and may be removed by the Governor for cause after notice and an opportunity to be heard. The term of any appointed member shall be extended until the date on which his or her successor's appointment is effective. Beginning September 1, 2006, each of the appointed members of the council shall serve for a term of five years that begins on January 1 and may be removed by the Governor for cause after notice and an opportunity to be heard. Such term shall be extended until the date on which his or her successor's appointment is effective. For members serving on September 1, 2006, and whose terms would otherwise end on September 18, such terms shall be extended until the following December 31, or until the date on which his or her successor's appointment is effective. A member may be reappointed. A successor shall be appointed in the same manner as provided for the members first appointed, and in case of a vacancy caused by death, resignation, or otherwise, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

No member of the council shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violation of law, for actions relating to his or her duties as a member of the council.

Source: Laws 1969, c. 584, § 1, p. 2350; Laws 1991, LB 368, § 1; Laws 1991, LB 549, § 20; Laws 1996, LB 847, § 18; Laws 2002, LB 407, § 17; Laws 2006, LB 1019, § 7.

72-1237.01 Repealed. Laws 1997, LB 4, § 6.

72-1238 Nebraska Investment Council; members; qualifications.

(1) Prior to July 1, 2005, the appointed members of the council shall have at least ten years of experience in the financial affairs of a public or private organization or have at least five years of experience in the field of investment management or analysis. For members appointed on or after July 1, 2005, the appointed members of the council shall have at least seven years of experience in the field of investment management or analysis or have at least twelve years of experience in the financial management of a public or private organization. There is a preference for members who are appointed to have experience in investment management or analysis.

(2) The members serving on July 1, 2005, shall serve for the remainder of their five-year terms which will be extended until the date on which the successor's appointment is effective.

Source: Laws 1969, c. 584, § 2, p. 2350; Laws 1996, LB 847, § 19; Laws 2005, LB 503, § 5.

72-1239 Nebraska Investment Council; purpose; members; meetings; compensation.

The purpose of the council is to formulate and establish such policies as it may deem necessary and proper which shall govern the methods, practices, and procedures followed by the state investment officer for the investment or reinvestment of state funds and funds described in section 83-133 and the purchase, sale, or exchange of securities as provided by the Nebraska State Funds Investment Act. The council shall meet from time to time as directed by the Governor or the chairperson or as requested by the state investment officer.

The members of the council, except the State Treasurer and the director of the Nebraska Public Employees Retirement Systems, shall be paid seventy-five dollars per diem. The members shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties as members as provided in sections 81-1174 to 81-1177.

Source: Laws 1969, c. 584, § 3, p. 2350; Laws 1981, LB 204, § 145; Laws 1985, LB 335, § 1; Laws 1991, LB 368, § 2; Laws 1996, LB 847, § 20; Laws 1997, LB 4, § 1; Laws 2005, LB 503, § 6.

72-1239.01 Nebraska Investment Council; duties and responsibilities.

(1)(a) The appointed members of the Nebraska Investment Council shall have the responsibility for the investment management of the assets of the retirement systems administered by the Public Employees Retirement Board as provided in section 84-1503 and the assets of the Nebraska educational savings plan trust created pursuant to sections 85-1801 to 85-1814. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of the retirement systems and of the Nebraska educational savings plan trust and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of the retirement systems and of the Nebraska educational savings plan trust solely in the interests of the members and beneficiaries of the retirement systems or the interests of the participants and beneficiaries of the Nebraska educational savings plan trust, as the case may be, for the exclusive purposes of providing benefits to members, members' beneficiaries, participants, and participants' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law.

(2)(a) The appointed members of the Nebraska Investment Council shall have the responsibility for the investment management of the assets of state funds. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of state funds and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of state funds solely in the interests of the citizens of the state within the limitations and according to the powers, duties, and purposes prescribed by law.

(3) The appointed members of the council shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the assets of the retirement systems, the Nebraska educational savings plan trust, and state funds so as to minimize risk of large losses, unless in light of such circumstances it is clearly prudent not to do so. No assets of the retirement systems or the Nebraska educational savings plan trust shall

be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

Source: Laws 1996, LB 847, § 21; Laws 2002, LB 407, § 18; Laws 2003, LB 574, § 25.

72-1240 State investment officer; appointment; qualifications; salary; removal.

The council shall appoint a state investment officer. The appointment shall be subject to the approval of the Governor and a majority of the Legislature. The state investment officer shall be a person well qualified by training to administer and invest the money available for investment, and he or she shall have at least five years of experience in the management of investment portfolios. The state investment officer's salary shall be fixed by the council at not less than twenty-five thousand dollars per year. The state investment officer shall serve without term and may be removed for cause by the council.

Source: Laws 1969, c. 584, § 4, p. 2350; Laws 1974, LB 396, § 1; Laws 1996, LB 847, § 22; Laws 1997, LB 4, § 2.

72-1241 State investment officer; deputy; duties; bond or insurance.

The state investment officer shall devote his or her entire time and attention to the duties of his or her office. The state investment officer shall not engage in any other occupation or profession or hold any other public office, appointive or elective. If for any reason the state investment officer is unable to perform the duties of his or her office, or the office is vacant due to death, resignation, or otherwise, the council shall designate an acting state investment officer to serve until the state investment officer is able to act or the vacancy is filled. With the approval of the council, the state investment officer may designate a deputy to perform such acts and duties as the state investment officer shall authorize, subject to the same restrictions as apply to the state investment officer. The deputy shall be bonded or insured as required by section 11-201. The state investment officer shall be responsible for all official acts of the deputy.

Source: Laws 1969, c. 584, § 5, p. 2351; Laws 1971, LB 53, § 6; Laws 1978, LB 653, § 28; Laws 2004, LB 884, § 35.

72-1242 State investment officer; personnel; employ; approval of Governor; employees; duties; exempted from State Personnel System; when.

The state investment officer shall employ qualified personnel as may be required to carry out the duties and responsibilities required under the Nebraska State Funds Investment Act. Such employees shall be deemed state employees and covered by the State Personnel System pursuant to sections 81-1301 to 81-1368 and other personnel rules or regulations. At the discretion of the Nebraska Investment Council, investment managers who are employees of the council may be exempted from the State Personnel System. The state investment officer shall be exempt from the State Personnel System. All employees shall comply with state accounting regulations and applicable state and federal laws in the discharge of their duties. With the approval of the Governor, the state investment officer may retain counsel, auditors, financial advisors and private consultants on a contract basis or otherwise to render such professional

service or advice as he or she may require in the performance of his or her duties.

Source: Laws 1969, c. 584, § 6, p. 2351; Laws 1996, LB 847, § 23.

One of the tests of compensability under the Workmen's Compensation Act, in cases related to recreational or social activities, is whether the employer derives substantial direct benefit from the activity. *Kueth v. State*, 191 Neb. 167, 214 N.W.2d 380 (1974).

72-1243 State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.

(1) Except as otherwise specifically provided by law, the state investment officer shall direct the investment and reinvestment of money in all state funds not currently needed and all funds described in section 83-133 and order the purchase, sale, or exchange of securities for such funds. He or she shall notify the State Treasurer of any payment, receipt, or delivery that may be required as a result of any investment decision, which notification shall be the authorization and direction for the State Treasurer to make such disbursement, receipt, or delivery from the appropriate fund.

(2) The council shall have an analysis made of the investment returns that have been achieved on the assets of each retirement system administered by the Public Employees Retirement Board as provided in section 84-1503. By March 15 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee. The analysis shall be prepared by an independent organization which has demonstrated expertise to perform this type of analysis and for which there exists no conflict of interest in the analysis being provided. The analysis may be waived by the council for any retirement system with assets of less than one million dollars.

(3) By March 15 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee at a public hearing. The plan shall include, but not be limited to, the council's investment portfolios, investment strategies, the duties and limitations of the state investment officer, and an organizational structure of the council's office.

Source: Laws 1969, c. 584, § 7, p. 2351; Laws 1971, LB 53, § 7; Laws 1985, LB 335, § 2; Laws 1991, LB 549, § 21; Laws 1996, LB 847, § 24; Laws 2005, LB 503, § 7.

72-1244 State Treasurer; boards, commissions, departments, and agencies; money to invest; notify state investment officer; conditions.

The State Treasurer shall notify the state investment officer as to the amount of money in the General Fund and the funds of any board, commission, department, agency, or official charged with the control of any other state fund not currently needed and available for investment. When it shall appear to the State Treasurer that any such invested money is needed, he or she shall notify the state investment officer who shall make available from the pooled investments the amount required.

Source: Laws 1969, c. 584, § 8, p. 2351; Laws 1985, LB 335, § 3; Laws 2003, LB 149, § 1.

72-1245 Repealed. Laws 1971, LB 152, § 7.**72-1246 State investment officer; investments; duties.**

The state investment officer shall invest in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another, and if the state investment officer has special skills or is named on the basis of representations of special skills or expertise, he or she is under a duty to use such skills, subject to the direction of the Nebraska Investment Council.

Source: Laws 1969, c. 584, § 10, p. 2352; Laws 1971, LB 152, § 1; Laws 1974, LB 396, § 2; Laws 1981, LB 460, § 1; Laws 2002, LB 407, § 19.

72-1246.01 Student loans; purchase.

The Nebraska Investment Council, out of funds available to it, upon the application of any qualified lending agent as defined under the Federal Higher Education Act of 1965, may purchase all student loans which are federally guaranteed, as to principal and interest, and made to Nebraska residents attending Nebraska institutions, which are offered to the Nebraska Investment Council for purchase and shall give preference to such loans when an investment in such loans would be equally as good as any other investment; *Provided*, such offers shall be in amounts of five thousand dollars or more from a single lending agent.

Source: Laws 1971, LB 152, § 2.

72-1246.02 Student loans; sale; resale; conditions.

The Nebraska Investment Council may hold such loans or offer them for sale or resale on such terms and conditions as shall be negotiated with purchasers. Conditions of such sale or resale may be, but shall not be limited to, amounts to be retained for service, degree of servicing requirements, conditions of repurchase and responsibility for collection and reports to the guaranteeing agency of the federal government.

Source: Laws 1971, LB 152, § 3.

72-1246.03 Student loans; Nebraska State Colleges; service loans; security.

The Nebraska Investment Council may negotiate with the Board of Trustees of the Nebraska State Colleges for the servicing of such loans which may be purchased by the council, retained in its investment portfolio or resold as provided in section 72-1246.02. The council may require such security for the performance of the servicing duties as it may deem necessary to insure full compliance with a servicing agreement.

Source: Laws 1971, LB 152, § 4.

72-1246.04 Student loans; purchasing, selling, servicing; approval.

The Nebraska Investment Council shall obtain the approval of the United States Department of Education before purchasing, selling, or servicing loans pursuant to sections 72-1246.01 to 72-1246.03.

Source: Laws 1971, LB 152, § 5; Laws 1991, LB 2, § 15.

72-1246.05 Student loans; priority; liquidation of investments; prior investments, how treated; interest.

The Nebraska Investment Council may give priority to the investments authorized by section 72-1246.01 and shall liquidate other investments if necessary to meet the demand for such loans; *Provided*, that any investments made prior to May 24, 1971, may be retained in kind, notwithstanding the provisions of section 72-1246, until such time as in the discretion of the Nebraska Investment Council the same may be sold for the best advantage of the retirement fund. All interest received on such loans shall be credited to the fund from which the loan was made.

Source: Laws 1971, LB 152, § 6.

72-1246.06 Northern Ireland investments; state investment officer; duties; MacBride principles; report.

(1) By January 1 of each year, the state investment officer shall (a) compile a list of corporations that directly or through a subsidiary do business in Northern Ireland and in whose stocks or obligations the state investment officer has invested state funds and (b) determine whether each corporation on the list has during the preceding year taken affirmative action to eliminate religious or ethnic discrimination in Northern Ireland.

(2) In making the determination required by this section, the state investment officer shall consider whether a corporation has during the preceding year taken substantial action designed to lead toward the achievement of the following goals, known internationally as the MacBride principles:

(a) Increasing representation of persons from underrepresented religious groups at all levels on its work force;

(b) Providing adequate security for employees who are members of minority religious groups, both at the workplace and while traveling to and from work;

(c) Banning provocative religious or political emblems from the workplace;

(d) Publicly advertising all job openings and making special recruiting efforts to attract applicants from underrepresented religious groups;

(e) Providing that layoff, recall, and termination procedures do not in practice favor or discriminate against workers who are members of particular religious groups;

(f) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religious or ethnic origin;

(g) Developing new programs and expanding existing programs to prepare current employees who are members of minority religious groups for skilled jobs;

(h) Establishing procedures to assess, identify, and recruit employees who are members of minority religious groups and who have potential for advancement; and

(i) Appointing senior management employees to oversee affirmative action efforts and the setting of timetables for carrying out this section.

(3) The state investment officer shall provide to the Legislature a copy of his or her report and findings on the first day of each regular session of the Legislature.

Source: Laws 1994, LB 1066, § 144.

72-1246.07 Northern Ireland investments; state investment officer; Nebraska Investment Council; duties.

(1) With respect to corporations doing business in Northern Ireland, the state investment officer shall, consistent with section 72-1246, invest in corporate stocks or obligations in a manner to encourage corporations that in the state investment officer's determination pursue a policy of affirmative action in Northern Ireland.

(2) Whenever feasible, the Nebraska Investment Council shall sponsor, co-sponsor, or support shareholder resolutions designed to encourage corporations in which the state investment officer has invested to pursue a policy of affirmative action in Northern Ireland.

Source: Laws 1994, LB 1066, § 145.

72-1246.08 Northern Ireland investments; sections, how construed.

Nothing in sections 72-1246.06 to 72-1246.08 shall be construed to require the state investment officer to dispose of existing investments.

Source: Laws 1994, LB 1066, § 146.

72-1247 Repealed. Laws 2002, LB 407, § 67.**72-1248 Income from investments; disbursement.**

Interest, premium, and other income received from investments pursuant to sections 72-1244 and 72-1267 shall be credited to the fund from which the investment was made except as otherwise provided by law.

Source: Laws 1969, c. 584, § 12, p. 2354; Laws 2003, LB 149, § 2.

72-1249 Expenses; how paid.

Any expenses with respect to the purchase, sale, or exchange of any security shall be charged to the fund or funds on behalf of which such purchase, sale, or exchange was made. All other expenses of the state investment officer shall be paid out of appropriations for the office of the state investment officer.

Source: Laws 1969, c. 584, § 13, p. 2354; Laws 1972, LB 1279, § 1; Laws 1977, LB 364, § 1.

72-1249.01 Repealed. Laws 1977, LB 364, § 2.**72-1249.02 State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.**

The State Investment Officer's Cash Fund is created. A pro rata share of the budget appropriated for the Nebraska Investment Council shall be charged to the income of each fund managed, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the Nebraska Investment Council. Approval of the agencies and boards administering these funds shall not be required.

It is the intent of this section to have funds managed by the state investment officer pay a pro rata share of the investment management expense when this is not prohibited by statute or the constitution.

Management, custodial, and service costs which are a direct expense of state funds may be paid from the income of such funds when this is not prohibited by statute or the constitution. For purposes of this section, management, custodial, and service costs shall include, but not be limited to, investment counsel fees for managing assets, real estate mortgage loan service fees, real estate management fees, and custody fees for fund securities. All such fees shall be approved by the Nebraska Investment Council and the state investment officer.

Source: Laws 1983, LB 468, § 1; Laws 1987, LB 31, § 2; Laws 1987, LB 786, § 1; Laws 2002, LB 407, § 20.

72-1250 Securities in custody of State Treasurer; held in name of nominee; registered nominee; selection.

All securities purchased or held shall be in the custody of the State Treasurer who may deposit with a fiscal agent in any financial institution, approved by the Nebraska Investment Council, such securities as he shall consider advisable to be held in safekeeping by such agent for collection of principal and interest, or of the proceeds of sale thereof or, at the direction of the state investment officer, the State Treasurer shall have such securities held in the name of a nominee. The State Treasurer shall join with the deputy state treasurer in obtaining for the State of Nebraska a registered nominee from the American Society of Corporate Secretaries and shall hold securities registered in the nominee's name in the same manner as he shall consider appropriate for holding other securities.

Source: Laws 1969, c. 584, § 14, p. 2354; Laws 1974, LB 925, § 1.

72-1250.01 Cash funds deposited with fiscal agent; constitute investment made by state investment officer.

Whenever cash funds belonging to the State of Nebraska shall be deposited with any fiscal agent authorized by section 72-1250, the holding thereof shall be and constitute an investment made pursuant to direction of the state investment officer for purposes of subdivision (8) of section 84-602.

Source: Laws 1974, LB 925, § 2.

Cross References

State Treasurer, duties, see section 84-602.

72-1251 State Treasurer; interest, premium, income, and principal; collect.

The State Treasurer shall collect the interest, premium or other income on and the principal of such securities in his custody as the same become due and payable.

Source: Laws 1969, c. 584, § 15, p. 2355.

72-1252 State investment officer; earned income; notice.

The available money from the General Fund and each board, commission, department, agency, or official charged with the control of any other state funds shall be invested by the state investment officer. On a monthly basis the state investment officer shall notify the Department of Administrative Services and the State Treasurer as to the earned income to be credited pursuant to section 72-1248.

Source: Laws 1969, c. 584, § 16, p. 2355; Laws 2003, LB 149, § 3.

72-1253 Repealed. Laws 2003, LB 149, § 8.**72-1254 State investment officer; operations; report; contents; public inspection.**

The state investment officer shall report no later than fifteen days after the close of each month to the Governor, the State Treasurer, the Auditor of Public Accounts, the Department of Administrative Services, and the members of the council on the operations for the pooled accounts during such month. The report shall include a summary of investments, purchases, and dealers utilized. Such reports shall be available for public inspection in the office of the state investment officer.

Source: Laws 1969, c. 584, § 18, p. 2355; Laws 2003, LB 149, § 4.

72-1255 Investment transactions; Auditor of Public Accounts; postaudits; report.

The Auditor of Public Accounts shall conduct from time to time postaudits of the investment transactions provided for in the Nebraska State Funds Investment Act and shall submit annually a report of his or her findings to the Governor and the state investment officer.

Source: Laws 1969, c. 584, § 19, p. 2355; Laws 1997, LB 4, § 4.

72-1256 Repealed. Laws 1981, LB 545, § 52.**72-1257 Default; proceedings.**

In the event of default in the payment of principal of, or interest on, any investment made by the state investment officer, the State Treasurer may institute the proper proceedings to collect such matured principal or interest, and may, with the approval of the state investment officer, accept for exchange purposes refunding bonds or other evidences of indebtedness. The State Treasurer, with the approval of the state investment officer, may make such compromise, adjustment, or other disposition of the past-due interest or principal in default, or make such compromises, adjustments or other disposition as to future payments of interest or principal as deemed advisable to protect the money invested.

Source: Laws 1969, c. 584, § 21, p. 2355.

72-1258 Investment of state funds; boards, commissions, departments, agencies, officials; powers and duties.

Except as otherwise provided in sections 72-1244 and 72-1267, each board, commission, department, agency, or official that previously was charged with the investment of state funds shall continue in all other respects as provided by law and shall continue to have all other powers and shall exercise all the functions and duties fixed or imposed upon it by law.

Source: Laws 1969, c. 584, § 22, p. 2356; Laws 2003, LB 149, § 5.

72-1259 State investment officer; political subdivisions; assistance; fee.

The state investment officer may provide assistance and furnish advice regarding the investment of money to any political subdivision of the State of Nebraska whenever such advice is requested by a political subdivision. In

connection with the rendering of such service, the state investment officer may charge and collect any fee he determines to be reasonable.

Source: Laws 1969, c. 584, § 23, p. 2356.

72-1260 Act, how cited.

Sections 72-1237 to 72-1260 shall be known and may be cited as the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 584, § 132, p. 2432; Laws 1994, LB 1066, § 74; Laws 1996, LB 847, § 25.

(b) NEBRASKA CAPITAL EXPANSION ACT

72-1261 Declaration of intent.

It is hereby declared that the lending of money is an activity which affects the economic conditions of the State of Nebraska, that Nebraska is a state short of sufficient capital to properly serve the needs of the state, especially the agricultural credit requirements and housing credit requirements, and that if additional funds are deposited into the commercial banking channels and capital stock financial institution or qualifying mutual financial institution channels the available capital will increase many times the amount of the initial deposit.

Source: Laws 1978, LB 258, § 1; Laws 2003, LB 175, § 2.

72-1262 Terms, defined.

For purposes of the Nebraska Capital Expansion Act, unless the context otherwise requires:

(1) Bank means a state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(2) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, or a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(3) Time deposit open account means a bank account or a deposit with a capital stock financial institution or a qualifying mutual financial institution with respect to which there is in force a written contract which provides that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which date shall be not less than thirty days after the date of the deposit, or prior to the expiration of the period of notice which shall be given by the state investment officer in writing not less than thirty days in advance of withdrawal. The time deposit open account contract shall be uniform and shall be furnished by the state investment officer to each bank, capital stock financial institution, or qualifying mutual financial institution for execution;

(4) Funds available for investment means all funds over which the state investment officer has investment jurisdiction less those funds necessary for operations and except those funds which are eligible for long-term investment; and

(5) Qualifying mutual financial institution has the same meaning as in section 77-2365.01.

Source: Laws 1978, LB 258, § 2; Laws 1985, LB 614, § 1; Laws 1992, LB 757, § 23; Laws 1997, LB 275, § 1; Laws 2002, LB 957, § 25; Laws 2003, LB 175, § 3; Laws 2004, LB 999, § 43.

72-1263 State investment officer; time deposit open account; conditions.

The state investment officer shall, out of funds available for investment, cause to be offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions in this state a time deposit open account in the amount of one million dollars, except that the minimum amount that any bank, capital stock financial institution, or qualifying mutual financial institution may accept is the amount of one hundred thousand dollars. Such deposit shall be available at any investment date to such banks, capital stock financial institutions, or qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 72-1268.07. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank, capital stock financial institution, or qualifying mutual financial institution may receive for deposit a sum of more than one million dollars.

Source: Laws 1978, LB 258, § 3; Laws 1985, LB 614, § 2; Laws 1990, LB 1146, § 3; Laws 2000, LB 932, § 35; Laws 2002, LB 957, § 26; Laws 2003, LB 175, § 4.

72-1264 Funds; when offered; time deposit open account; state investment officer; powers.

Funds shall be offered for deposit as they become available. The time of such deposit shall be known as an investment date. The state investment officer may make prudent interim investments. If the funds available for investment are less than the amount required for banks, capital stock financial institutions, or qualifying mutual financial institutions under section 72-1263, the state investment officer shall prorate the available funds among the desiring banks, capital stock financial institutions, or qualifying mutual financial institutions.

Source: Laws 1978, LB 258, § 4; Laws 2000, LB 932, § 36; Laws 2002, LB 957, § 27; Laws 2003, LB 175, § 5.

72-1265 State investment officer; deposits; fix interest rate and term; legislative intent.

The state investment officer shall fix the rate of interest to be paid on deposits and the term of deposits to be offered on the first day of each month. The rate per annum for each period shall be equal to the interest rate paid for other qualified investments of equal term available for investment by the state investment officer. It is the Legislature's intent that the state receive a competitive rate from Nebraska banks, capital stock financial institutions, and qualify-

ing mutual financial institutions, but that rates received should not exceed the rates that would be paid for other qualified investments.

Source: Laws 1978, LB 258, § 5; Laws 2003, LB 175, § 6.

72-1266 Nebraska Investment Council; adopt rules and regulations.

The Nebraska Investment Council shall adopt and promulgate rules and regulations to establish procedures for the distribution of funds to banks, capital stock financial institutions, and qualifying mutual financial institutions.

Source: Laws 1978, LB 258, § 6; Laws 2002, LB 957, § 28; Laws 2003, LB 175, § 7.

72-1267 State investment officer; combine and pool investable funds; when; prorate interest.

For purposes of investment under the Nebraska Capital Expansion Act, the state investment officer shall combine and pool all investable funds of all state agencies subject to his or her investment powers except when doing so would violate a fiduciary obligation of the state. The interest earned on any pooled investment shall be prorated in accordance with the participation of the respective funds.

Source: Laws 1978, LB 258, § 7; Laws 1985, LB 614, § 3.

72-1268 Depositories; eligibility for funds; bond or bond alternatives.

(1) Notwithstanding any other provision of law, every bank, capital stock financial institution, and qualifying mutual financial institution shall be eligible for the maximum investment provided for in section 72-1263. The bank, capital stock financial institution, or qualifying mutual financial institution shall give a bond or, in lieu of a bond, may give security for any investment under the Nebraska Capital Expansion Act as provided in sections 72-1268.01 to 72-1268.04. Any bank, capital stock financial institution, or qualifying mutual financial institution may apply for the privilege of keeping on deposit such funds.

(2)(a) Every bank, capital stock financial institution, and qualifying mutual financial institution shall, as a condition of accepting state funds, agree to cash free of charge state warrants which are presented by payees of the state without regard to whether or not such payee has an account with such bank, capital stock financial institution, or qualifying mutual financial institution, and such bank, capital stock financial institution, or qualifying mutual financial institution shall not require such payee to place his or her fingerprint or thumbprint on the state warrant as a condition to cashing such warrant.

(b) The condition of accepting state funds in subdivision (2)(a) of this section shall not preclude any bank, capital stock financial institution, or qualifying mutual financial institution from refusing to cash a state warrant presented to the bank, capital stock financial institution, or qualifying mutual financial institution if (i) a stop-payment order has been placed on the state warrant, (ii) the state warrant has been reported as unregistered, voided, lost, stolen, or destroyed or a duplicate state warrant has been issued in its place, (iii) the state warrant is incomplete or is forged or altered in any manner, (iv) the state warrant lacks any necessary indorsement or an indorsement is illegible, unauthorized, or forged, (v) the state warrant is stale-dated, or (vi) the bank, capital

stock financial institution, or qualifying mutual financial institution has a reasonable belief that the individual presenting the state warrant is not the payee named on the state warrant.

Source: Laws 1978, LB 258, § 8; Laws 1985, LB 614, § 4; Laws 1996, LB 1274, § 24; Laws 1999, LB 217, § 1; Laws 2003, LB 175, § 8.

72-1268.01 Funds deposited; bond; requirements.

For the security of funds deposited under the Nebraska Capital Expansion Act, the state investment officer shall require all such depositories to give bond for the safekeeping of payments of such deposits. The officers of the bank, capital stock financial institution, or qualifying mutual financial institution seeking to qualify as a depository shall be ineligible to sign the bond provided for under this section. The bond shall run to the people of the State of Nebraska and shall be approved by the Governor, Secretary of State, and Attorney General. No bond shall be valid unless approved by all three of such officers. The bond shall be conditioned (1) that the depository at the end of each and every month render to the state investment officer a statement in duplicate showing the daily balance and the amount of money of the state held by it during the month, (2) for the payment of the deposit when demanded by the state investment officer on his or her check at any time, and (3) generally to do and perform whatever may be required by the Nebraska Capital Expansion Act and a faithful discharge of the trust reposed in such depository.

Source: Laws 1985, LB 614, § 6; Laws 2003, LB 175, § 9.

72-1268.02 Bond; form.

The bond referred to in section 72-1268.01 shall be in substance as follows:

Know all Persons by these Presents, That we as principals, and as sureties, are held and firmly bound unto the State of Nebraska, in the just and full sum of Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Dated the day of A.D.

Whereas, such bank, capital stock financial institution, or qualifying mutual financial institution, in consideration of the deposit of certain of the money of the State of Nebraska for safekeeping with and in the bank, capital stock financial institution, or qualifying mutual financial institution of the amount whereof shall be subject to withdrawal or diminution by the state investment officer as the requirements of the state shall demand, and which amount may be increased or decreased as the state investment officer may determine.

Now, Therefor, if such bank, capital stock financial institution, or qualifying mutual financial institution of shall at the end of every month render to the state investment officer a statement in duplicate showing the daily balance of the state money held by it during the month next preceding, and how the same has been credited, and shall well and truly keep all such sums of money so deposited or to be deposited as aforesaid subject to the check and order of the state investment officer as aforesaid, and shall pay over the same, and each and every part thereof, upon the written demand of the state investment officer, and to his or her successor in office as shall be by him or her demanded, and shall

in all respects save and keep the people of the State of Nebraska and the state investment officer harmless and indemnified for and by reason of the making of such deposit or deposits, then this obligation shall be void and of no effect, otherwise to be and remain in full force and virtue.

Source: Laws 1985, LB 614, § 7; Laws 2003, LB 175, § 10.

72-1268.03 State investment officer; limitation on deposits.

The state investment officer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution or in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution. All bonds of such depositories shall be deposited with and held by the state investment officer.

Source: Laws 1985, LB 614, § 8; Laws 1992, LB 757, § 24; Laws 2002, LB 957, § 29; Laws 2003, LB 175, § 11; Laws 2009, LB259, § 13.

72-1268.04 Depository; bond alternatives; requirements.

In lieu of the bond required by section 72-1268.01, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository under the Nebraska Capital Expansion Act may give security as provided in the Public Funds Deposit Security Act to the state investment officer.

Source: Laws 1985, LB 614, § 9; Laws 1989, LB 33, § 30; Laws 1989, LB 377, § 11; Laws 1996, LB 1274, § 25; Laws 2003, LB 175, § 12.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

72-1268.05 Repealed. Laws 1996, LB 1274, § 57.

72-1268.06 Repealed. Laws 1996, LB 1274, § 57.

72-1268.07 Subsidiary bank of out-of-state bank holding company; filing required; deposit of public funds; restriction; applicability and construction of section.

(1) Each subsidiary bank of an out-of-state bank holding company shall file with the state investment officer a copy of the public section of the subsidiary bank's most current written evaluation issued pursuant to the terms of section 807 of the Community Reinvestment Act of 1977, as amended, 12 U.S.C. 2906. The copy shall be filed with the state investment officer within thirty days of receipt of the evaluation from the subsidiary bank's primary appropriate federal financial supervisory agency.

(2) On and after January 1, 1992, the state investment officer shall not further deposit or redeposit public funds as authorized by section 72-1263 in any subsidiary bank of an out-of-state bank holding company which has been assigned, by its primary appropriate federal financial supervisory agency, a

rating of substantial noncompliance in meeting community credit needs. Upon the filing with the state investment officer of a copy of an updated written evaluation which reflects that the subsidiary bank is no longer assigned such rating, the subsidiary bank shall immediately be eligible for further deposit or redeposit of public funds as authorized by such section.

(3) For purposes of this section, bank holding company shall have the meaning provided in 12 U.S.C. 1841 as it exists on April 7, 1990, and appropriate federal financial supervisory agency shall have the meaning provided in 12 U.S.C. 2902 as it exists on such date.

(4) This section shall not apply to any subsidiary bank of an out-of-state bank holding company, as defined in 12 U.S.C. 1842(d) as it existed on August 26, 1983, which on March 12, 1963, owned at least two banks in this state.

(5) This section shall not be construed or interpreted in any manner to be a condition precedent to the acquisition or control of a bank in this state by an out-of-state bank or out-of-state bank holding company.

Source: Laws 1990, LB 1146, § 2.

72-1269 Act, how cited.

Sections 72-1261 to 72-1269 shall be known and may be cited as the Nebraska Capital Expansion Act.

Source: Laws 1978, LB 258, § 9; Laws 1985, LB 614, § 5; Laws 1990, LB 1146, § 4.

(c) SOUTH AFRICAN INVESTMENTS

72-1270 Repealed. Laws 1994, LB 1066, § 149.

72-1271 Repealed. Laws 1994, LB 1066, § 149.

72-1272 Repealed. Laws 1994, LB 1066, § 149.

72-1273 Repealed. Laws 1994, LB 1066, § 149.

72-1274 Repealed. Laws 1994, LB 1066, § 149.

72-1275 Repealed. Laws 1994, LB 1066, § 149.

72-1276 Repealed. Laws 1994, LB 1066, § 149.

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

72-1277 Legislative findings.

The Legislature finds that:

(1) The Nebraska Investment Council was created by the Legislature in Laws 1967, LB 335. Additional legislation was passed in Laws 1969, LB 1345, which provided for centralization of the investment of state funds and addressed types of authorized investments and since then the statutory framework of the council has been modified periodically by the Legislature;

(2) The laws of Nebraska provide that the appointed members of the council and the state investment officer are deemed fiduciaries with respect to investment of the assets (a) in the retirement systems and the Nebraska educational

savings plan trust and as fiduciaries are required to discharge their duties with respect to such assets solely in the best interest of the members and beneficiaries of such plans and (b) of other state funds solely in the best interest of the residents of Nebraska;

(3) As fiduciaries, the appointed members of the council and the officer must act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims by diversifying the investments of assets in the various plans so as to minimize the risk of large losses;

(4) The council managed over fifteen billion three hundred million dollars of assets as of September 30, 2007. Those assets have quadrupled since 1995. The assets managed by the council produced almost one billion five hundred million dollars in investment earnings in 2006 and almost seven billion dollars of investment earnings since December 31, 1995;

(5) The council has the responsibility of the management of portfolios for over thirty state entities. The financial markets and investment strategies that must be employed to achieve satisfactory returns have become more complex and the best practices of similar state government investment agencies have evolved since the creation of the council; and

(6) Pursuant to section 72-1249.02, the operating costs of the council are charged to the income of each fund managed by the council, and such charges are transferred to the State Investment Officer's Cash Fund. Management, custodial, and service costs that are a direct expense of state funds are paid from the income of such funds.

Source: Laws 2008, LB1147, § 17.

72-1278 Nebraska Investment Council; comprehensive review of council; contract.

The Nebraska Investment Council shall enter into a contract with a qualified independent organization familiar with similar state investment offices to complete a comprehensive review of the current statutory, regulatory, and organizational situation of the council, review best practices of similar state investment offices, and make recommendations to the council, the Governor, and the Legislature for changes needed to ensure that the council has adequate authority to independently execute its fiduciary responsibilities to the members and beneficiaries of the retirement systems and the Nebraska educational savings plan trust and the residents of Nebraska with regards to other state funds.

Source: Laws 2008, LB1147, § 18.

ARTICLE 13

PUBLICLY OWNED LANDS

(a) PUBLICLY OWNED FARM LANDS

Section

72-1301. Farm land, defined; nonfarm land; designation.

72-1302. Leases; required.

72-1303. Capital improvements; prohibited; exceptions.

72-1304. Lease; cash rent; term; rules and regulations; cancellation of lease.

Section

72-1305. Application for lease; affidavit; contents; deposit for rental; sealed bids; when.

(b) VIRGIN PRAIRIE

72-1306. Virgin prairie; legislative findings.

72-1307. Virgin prairie; preservation; sale; conditions.

72-1308. Virgin prairie; sale; when allowed.

(a) PUBLICLY OWNED FARM LANDS

72-1301 Farm land, defined; nonfarm land; designation.

As used in sections 72-1301 to 72-1305, unless the context otherwise requires, farm land shall mean land suitable for cultivation or grazing and devoted primarily to such purposes for a profit. Land suitable for cultivation or grazing acquired or owned by any entity of the state and devoted primarily to other public uses may administratively be designated as nonfarm land.

Source: Laws 1967, c. 461, § 1, p. 1431.

72-1302 Leases; required.

All departments, boards, and commissions of the State of Nebraska, except the Board of Educational Lands and Funds, the Department of Correctional Services, the Department of Health and Human Services, and the University of Nebraska shall cease operating any farm lands except as landlords under written leases by March 1, 1968, as provided in sections 72-1304 and 72-1305.

Source: Laws 1967, c. 461, § 2, p. 1431; Laws 1973, LB 563, § 12; Laws 1996, LB 1044, § 788.

Cross References

Purpose of sections 72-1302 to 72-1304, see section 83-901.

72-1303 Capital improvements; prohibited; exceptions.

No capital improvements shall be made to any farm land owned by the State of Nebraska, its departments, boards or commissions, except that this provision shall not apply to the Board of Educational Lands and Funds, the Department of Correctional Services, the Department of Health and Human Services, or the University of Nebraska or projects where the only purpose of the capital improvement would be soil and water conservation.

Source: Laws 1967, c. 461, § 3, p. 1431; Laws 1973, LB 563, § 13; Laws 1996, LB 1044, § 789.

72-1304 Lease; cash rent; term; rules and regulations; cancellation of lease.

All publicly owned farm lands not classified as school or saline lands, or lands of the Department of Health and Human Services, the Department of Correctional Services, or the University of Nebraska shall be subject to lease at a fixed annual cash rental for a term of not more than ten years. The department, commission, or board shall have authority to adopt such rules and regulations as it shall deem necessary in the leasing of such lands and to prescribe such terms and conditions of the lease as it shall deem necessary to protect the interests of the state. All departments, boards, or commissions, the Department of Health and Human Services, the Department of Correctional Services, and the University of Nebraska shall adopt and enforce a soil conservation program based on a conservation plan as developed by the local

natural resources district. Failure of the lessee to utilize the land for the purpose for which the land was leased or to observe and carry out soil conservation requirements as provided in the rules and regulations of the department, commission, or board shall be cause for cancellation of the lease.

Source: Laws 1967, c. 461, § 4, p. 1432; Laws 1969, c. 597, § 1, p. 2451; Laws 1973, LB 563, § 14; Laws 1996, LB 1044, § 790.

72-1305 Application for lease; affidavit; contents; deposit for rental; sealed bids; when.

Applications to lease any such publicly owned farm lands shall be made to the department, commission, or board having charge thereof. Each such application shall contain an affidavit that the applicant desires to lease and operate such land for the applicant's own use and benefit, that the applicant will not sublease or otherwise dispose of the same without the written approval of the department, commission, or board, and will commit no waste or damage on the land nor permit others to do so. If two or more applicants apply to lease the same land, the department, commission, or board having charge of the same shall grant the lease to the applicant who, after investigation or hearing, appears to have the best qualifications according to the rules and regulations of such department, commission, or board; *Provided*, that the order of the filing of the application shall be given no consideration in the granting of such lease. Each application shall be accompanied by the amount due as rental for the first year for which the application is made. If, after due diligence and effort to lease such land upon application, the department, commission, or board is unable to lease part or all of the same according to its rules and regulations, it may at a stated time and after due notice receive sealed bids on a fixed cash rental basis and lease such land on the highest offer if, in the judgment of such department, commission, or board, it is for the best interest of the state to accept such bid.

Source: Laws 1967, c. 461, § 5, p. 1432; Laws 1969, c. 597, § 2, p. 2451.

(b) VIRGIN PRAIRIE

72-1306 Virgin prairie; legislative findings.

The Legislature finds that:

- (1) Examples of Nebraska's prairie soil in a condition which existed before the state was settled during the early part of the nineteenth century are becoming increasingly rare;
- (2) Such virgin prairie is an important tool for scientists who seek to determine the highest and best use of Nebraska's soil resources;
- (3) Such virgin prairie is an important part of botanical and zoological studies offered by institutions of learning in this state; and
- (4) It is in the public interest that such virgin prairie which has been used as an educational tool by an educational institution of this state in suitable quantities be preserved and protected.

Source: Laws 1981, LB 58, § 1.

72-1307 Virgin prairie; preservation; sale; conditions.

When any agency or political subdivision of the State of Nebraska, except the Board of Educational Lands and Funds, owns land with virgin prairie as

described in section 72-1306, such agency or political subdivision may take action to establish the location and boundaries of such virgin prairie or a part thereof that may be preserved and protected. Such action shall be taken only after holding a public hearing with at least one week's advance notice of such hearing in a newspaper of general circulation in the county where the virgin prairie is located. Any such agency or political subdivision which has established the location and boundaries of such virgin prairie and which decides to sell such land may require the purchaser to enter into a covenant to continue to preserve and protect the area established as virgin prairie, and such covenant by its terms shall run with the title to the land binding future owners. In the event such covenant to preserve and protect the area as virgin prairie should lapse or be declared invalid or unconstitutional by any court of competent jurisdiction, the agency or political subdivision which sold the land or its successor in interest shall be afforded first option to repurchase the land, at the current market value to be determined as if the covenant were valid and enforceable.

Source: Laws 1981, LB 58, § 2.

72-1308 Virgin prairie; sale; when allowed.

No sale authorized under sections 72-1306 to 72-1308 shall take place after July 1, 1983.

Source: Laws 1981, LB 58, § 3.

ARTICLE 14

STATE OFFICE BUILDING

Cross References

State office building, conveyance by city of Lincoln, see section 81-1108.37.

Section

- 72-1401. Purpose of sections.
- 72-1402. Municipality, defined.
- 72-1403. Municipality; powers; bonds; liability; agreements; limitations; sections, how construed.
- 72-1404. Municipality; state; agreement; Governor; approval.
- 72-1405. Municipality; state; agreement; contents.
- 72-1406. Municipality; state; agreement; condition precedent; appropriation by Legislature; failure to appropriate; effect.
- 72-1407. Actions by state; liability; sections, how construed.
- 72-1408. Municipality; state; joint facility; agreement authorized.
- 72-1409. State of Nebraska; power to lease or sublease.
- 72-1410. Municipality; state; agreement; provisions.
- 72-1411. Municipality; power to lease.
- 72-1412. Political subdivision; power to lease; with whom; when.
- 72-1413. Repealed. Laws 1976, LB 1006, § 10.
- 72-1414. Repealed. Laws 1976, LB 1006, § 10.
- 72-1415. Repealed. Laws 1976, LB 1006, § 10.
- 72-1416. Repealed. Laws 1976, LB 1006, § 10.

72-1401 Purpose of sections.

The purposes of sections 72-1401 to 72-1408 are (1) to permit the state and cities, villages, and counties to make the most efficient use of their powers by enabling them to cooperate with each other in providing services and facilities, and (2) to permit cities, villages, and counties to assist the state by making

available to the state, at no greater cost to the state than the cost thereof to the municipality, buildings and facilities, or portions thereof, thereby enabling the state better to serve the inhabitants of such cities, villages, and counties and the surrounding region thereof or better to serve the public of the state at large.

Source: Laws 1967, c. 464, § 1, p. 1435; Laws 1974, LB 914, § 5.

72-1402 Municipality, defined.

For the purposes of sections 72-1401 to 72-1408 municipality shall mean any city, village, or county of this state.

Source: Laws 1967, c. 464, § 2, p. 1435; Laws 1974, LB 914, § 6.

72-1403 Municipality; powers; bonds; liability; agreements; limitations; sections, how construed.

Any municipality is hereby authorized and empowered:

(1) To supply or make available to the state buildings or portions thereof or other facilities or parts thereof in such municipality or the zoning area authorized by law for the municipality for use either in whole or in part by the state, which buildings or facilities may be either existing buildings or existing facilities or buildings and facilities to be constructed or acquired by such municipality;

(2) To acquire, construct, reconstruct, improve, extend, equip, or furnish in such municipality or the zoning area authorized by law for the municipality any building or facility for the purposes of making the same available in whole or in part to the state;

(3) To operate and maintain any building or facility made available in whole or in part to the state;

(4) To appropriate funds for any cost incurred by the municipality in acquiring, constructing, reconstructing, improving, extending, equipping, or furnishing any such building or facility or incurred in the operation and maintenance thereof;

(5) In order to finance any costs of acquisition, construction, reconstruction, improvement, extension, equipping, or furnishing any such building or facility, to issue its general obligation bonds in the manner and pursuant to the procedures as are otherwise provided by law, or in anticipation of the receipt by such municipality of any payments to be made by the state to such municipality for the supplying by the municipality to the state of such building or facility, or portions thereof, or in anticipation of the receipt of any other revenue with respect to the building or facility, including donations, to issue its revenue bonds in the manner and pursuant to the procedures as are otherwise provided by law and to secure such revenue bonds by a pledge of any or all of the revenue or other money to be derived by the municipality from its ownership or operation of such building or facility, including any payments to be made to such municipality by the state for the use by the state of such building or facility, or donations made for or with respect to such building or facility, which building or facility shall constitute and be deemed to be a revenue-producing facility of such municipality and which revenue bonds shall not impose any general liability upon the municipality. Any city having a home rule charter may, in the discretion of the governing body of such city, issue such general obligation bonds or revenue bonds either in the manner and pursuant

to such procedures as are provided by state statutes or in the manner and pursuant to such procedures as are provided by such home rule charter; and

(6) To enter into an agreement with the state provided by the provisions of section 72-1405, which agreement shall be approved by the governing body of such municipality by ordinance, resolution, or otherwise before such agreement shall enter into force.

The issuance of bonds by a municipality as provided in this section shall not create or impose any liability on the state, whether such bonds be general obligation bonds or revenue bonds of such municipality, and the state shall not be indebted thereon. Any such bond issued by a municipality shall recite therein in substance that such bond is solely the obligation of the municipality issuing the same and is not an obligation of the State of Nebraska nor a debt of the State of Nebraska within the meaning of any constitutional or statutory limitation upon the creation of indebtedness of the State of Nebraska and that the State of Nebraska is not, and in no event shall be, liable for the payment thereof or interest thereon.

In the event that the municipality is a party to an agreement entered into under the provisions of section 13-804 or 13-2504, such municipality may enter into an agreement with the state pursuant to the provisions of sections 72-1401 to 72-1408 whereby the municipality may supply or make available to the state all or a portion of that part or that use of the building or facility to which the municipality is entitled under the agreement entered into under the provisions of section 13-804 or 13-2504, but the municipality may enter into such an agreement with the state only if the terms and provisions thereof and the carrying out of such provisions does not violate the agreement of the municipality entered into under the provisions of section 13-804 or 13-2504.

Neither sections 72-1401 to 72-1408 nor anything contained therein shall be construed as a reduction or limitation upon any powers which a municipality might otherwise have under law or charter, but shall be construed as cumulative, and the powers granted to a municipality herein shall be in addition to any other powers which it might now have.

Source: Laws 1967, c. 464, § 3, p. 1435; Laws 1976, LB 1006, § 5; Laws 1999, LB 87, § 83.

72-1404 Municipality; state; agreement; Governor; approval.

The State of Nebraska is hereby authorized to enter into agreements with a municipality providing for the supplying by such municipality to the state of buildings or other facilities or portions thereof in such municipality or the zoning area authorized by law for the municipality. No such agreement shall be entered into unless (1) the Legislature shall theretofore specify the municipality and in general terms the type of building or facility or portion thereof to which such agreement shall pertain, and (2) in the event that any such agreement shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to the entry into force, be submitted to the state officer or agency for such power or control and shall be approved or disapproved by him or it within all matters of his or its jurisdiction. Each such agreement shall be approved by the

Governor, shall be executed in the name and on behalf of the state and shall be signed by the Governor.

Source: Laws 1967, c. 464, § 4, p. 1437.

72-1405 Municipality; state; agreement; contents.

(1) Any agreement entered into between the state and a municipality pursuant to the provisions of sections 72-1401 to 72-1408 shall contain provisions specifying the following:

(a) The dates of commencement and termination of the agreement; *Provided*, that the duration of any such agreement from such commencement date, together with all extensions or renewals thereof, shall not exceed fifty years;

(b) The particular building or facility or portions thereof to which such agreement pertains;

(c) Whether the building or facility shall be used exclusively by the state or in part by the state and in part by other public bodies;

(d) The respective obligations of the parties to the agreement with respect to the construction, acquisition, furnishing and equipping and operation and maintenance of the building or facility;

(e) The allocation between the parties to the agreement of the costs of operation and maintenance and of utilities of such building or facility. In the event that the state is the sole user of such building or facility or is the occupier of the largest amount of space in such building or the primary user of the facility, such agreement may provide that all costs of operation and maintenance of the building or facility shall be at the expense of the state, in which event, if the state is not the sole user and occupier of the building or facility, the agreement shall provide for reimbursement to the state for proportionate costs of operation and maintenance supplied by the state to the other users and occupiers of the building or facility;

(f) The apportionment of all other costs to the parties thereto and the payments to be made by the state to the municipality for the use by the state of such building or facility or portion thereof. The computation of such costs and payments may reflect and include such items as would customarily be included by private parties entering into similar agreements for similar types of buildings and facilities, such as, but not limited to, indebtedness incurred with respect to such building or facility and reserves therefor, insurance, assessments and taxes or payments in lieu of taxes;

(g) Increasing the amount of costs allocated to the parties thereunder and the amount of the payments to be made by the state to the municipality thereunder in the event the items entered into in determining the costs to the parties thereunder and the payments by the state to the municipality thereunder shall be increased during the duration of such agreement and for credits or reimbursements by the parties thereto in the event of decreases in any such items, it being the intent of sections 72-1401 to 72-1408 that neither the state nor the municipality shall derive credit, profit or surplus by reason of the supplying by such municipality to the state of buildings or facilities or portions thereof, but that the cost to the state for the supplying by the municipality of such building or facility or portion thereof shall be at cost to the municipality;

(h) Permitting the occupancy or use of such building or facility or portion thereof by any officer, board, department, bureau or agency of the state so long

as the use or occupancy thereof is consistent with the type and nature of such building or facility, it being the intention of sections 72-1401 to 72-1408 that the state may vary the use or occupancy of the building or facility or portion thereof from one officer, board, bureau, agency or department of the state to another in accordance with the interests of the state; and

(i) If the state is the sole user and occupier of the building or facility, or is the occupier of the largest amount of space in the building or facility or the primary user of the facility, granting the state an option to purchase such building or facility so long as the state shall continue to be such occupier or user. Such purchase price shall be established by the parties in the agreement and may be based on depreciated value or such other standard as the parties thereto may agree, and may include provision for any payment of damages which may be occasioned by the municipality upon the exercise by the state of such purchase option; *Provided*, that it shall be specified in such agreement that such purchase price shall be recomputed at the time of any exercise of the purchase option so that no gain or loss results to the municipality by reason of the exercise of such option by the state.

(2) Any such agreement may contain provisions as to the following:

(a) Type of insurance to be carried and whether such insurance shall be carried by the state or municipality, and the rights and obligations of the parties in the event of damage or destruction in whole or in part of such building or facility;

(b) Provision for indemnification to the municipality by the state for any liability incurred by the municipality by reason of the actions of the state, and for indemnification to the state by the municipality for any liability incurred by the state by reason of the actions of the municipality;

(c) In the event that the municipality is the occupier of the larger amount of space in the building or the primary user of the facility, granting to the municipality the right to terminate the agreement prior to the date of termination stated therein, upon such notice as is specified in such agreement, in the event the municipality determines that the space occupied by the state, or the full use of the facility thereof by the municipality, are required by the municipality in order to carry out its purposes;

(d) The rights and obligations of the parties thereto in the event of condemnation in whole or in part of such building or facility; and

(e) Any other matters deemed necessary or proper by the parties thereto.

Any agreement entered into pursuant to this section may be in the form of a lease agreement or agreement to lease and, subject to the provisions of section 72-1406, may contain provisions similar to those customarily found in a lease between private parties or customarily found in a lease between parties for buildings or facilities similar to the type of building or facility to which the agreement between the state and municipality shall pertain.

Source: Laws 1967, c. 464, § 5, p. 1438.

72-1406 Municipality; state; agreement; condition precedent; appropriation by Legislature; failure to appropriate; effect.

It shall be a condition precedent to any agreement entered into pursuant to the provisions of sections 72-1401 to 72-1408, whether or not such condition be specified in any such agreement, that the state shall incur no liability under

such agreement unless an appropriation shall have been made by the Legislature for the payment of any sums to become due and payable by the state under such agreement, in which event the state shall be liable thereunder only for the period for which an appropriation has been lawfully made, and that the continued effectiveness of such agreement shall be subject to the condition that appropriations shall be made from time to time by the Legislature for the payment of any sums to become due and payable by the state thereunder thereafter, in which event the state shall be liable thereunder only for the respective period or periods for which such an appropriation or appropriations have been lawfully made. In the event that the Legislature shall fail prior to the commencement of the term of the agreement to make an appropriation for the payment of sums which would otherwise become due and payable by the state thereunder, the effectiveness of the agreement shall thereupon immediately terminate, or in the event that the Legislature shall fail thereafter to make appropriations for the payment of sums which would otherwise become due and payable thereunder by the state, such agreement shall immediately terminate upon the last day of any period for which an appropriation has been lawfully made by the Legislature. The provisions of this section shall not prohibit the entering into of any agreement authorized by sections 72-1401 to 72-1408 prior to the making of any such appropriation, but the state shall not incur any liability thereunder thereby.

Source: Laws 1967, c. 464, § 6, p. 1441.

72-1407 Actions by state; liability; sections, how construed.

In the event that the state shall be the sole occupier of any building furnished by the municipality or the sole user of a facility furnished by the municipality, the municipality shall not be liable in tort, contract or otherwise for actions by the state solely by reason of the fact that legal ownership, or title, to such building or facility may be in such municipality; *Provided*, that the provisions of this section shall not be deemed or construed in any way to affect any rights of holders of bonds of a municipality issued to finance such building or facility or the obligations of the municipality to the holders of such bonds.

Source: Laws 1967, c. 464, § 7, p. 1442.

72-1408 Municipality; state; joint facility; agreement authorized.

Whenever any municipality has entered into an agreement with the state pursuant to the provisions of section 72-1405, the state may construct a building or facility for its use which may be used, operated and maintained jointly with the building or facility of the municipality made available to the state as authorized herein, and the state and the municipality are authorized to enter into an agreement for that purpose.

Source: Laws 1967, c. 464, § 8, p. 1442.

72-1409 State of Nebraska; power to lease or sublease.

The State of Nebraska is hereby empowered to enter into a lease or sublease, as lessor or sublessor, with any public body corporate or any political subdivision of the State of Nebraska relating to any building or other facility which is or has been the subject of an agreement pursuant to the provisions of section 72-1405.

Source: Laws 1974, LB 945, § 1.

72-1410 Municipality; state; agreement; provisions.

Any agreement entered into between the state and a municipality pursuant to the provisions of sections 72-1401 to 72-1408 may provide for the following:

(1) The subleasing by the State of Nebraska to any public body corporate or political subdivision of the State of Nebraska of a portion of the space in the building or other facility with respect to which the agreement has been made; and

(2) The leasing by such municipality to any public body corporate or political subdivision of the State of Nebraska of a portion of the space in the building or other facility with respect to which the agreement has been made.

Source: Laws 1974, LB 945, § 2.

72-1411 Municipality; power to lease.

Any municipality is hereby empowered to enter into a lease, as lessor, with any public body corporate or political subdivision of the State of Nebraska relating to any building or other facility which is the subject of an agreement pursuant to the provisions of section 72-1405.

Source: Laws 1974, LB 945, § 3.

72-1412 Political subdivision; power to lease; with whom; when.

Any public body corporate or political subdivision of the State of Nebraska is hereby empowered to enter into a lease or sublease, as lessee or sublessee, with the State of Nebraska or any municipality relating to any building or other facility which is or has been the subject of an agreement pursuant to the provisions of section 72-1405.

Source: Laws 1974, LB 945, § 4.

72-1413 Repealed. Laws 1976, LB 1006, § 10.

72-1414 Repealed. Laws 1976, LB 1006, § 10.

72-1415 Repealed. Laws 1976, LB 1006, § 10.

72-1416 Repealed. Laws 1976, LB 1006, § 10.

ARTICLE 15**POLITICAL SUBDIVISION DELINQUENT ACCOUNTS**

Section

72-1501. Terms, defined.

72-1502. Delinquent accounts; how collected.

72-1503. Delinquent accounts; agency notify director; withholding of state aid payment; procedure.

72-1501 Terms, defined.

For purposes of sections 72-1501 to 72-1503, unless the context otherwise requires:

(1) Agency shall mean the State of Nebraska or any agency, commission, department, division, or office thereof, including the University of Nebraska and the state colleges;

(2) Account shall mean any amount of money owed to any agency by a political subdivision;

(3) Delinquent, as it applies to accounts, shall mean any account, not the subject of a bona fide dispute or litigation, that is not paid on or before the date specified by statute, rule, regulation, agreement, or court order, or the prior notice of the agency that payment of such account is now due;

(4) Political subdivision shall mean any city, village, township, district, county, or other political subdivision of the State of Nebraska;

(5) Director shall mean the Director of Administrative Services; and

(6) State aid payment shall mean any money appropriated from the General Fund for payment to a political subdivision.

Source: Laws 1982, LB 931, § 1.

72-1502 Delinquent accounts; how collected.

Unless otherwise specifically provided by law, delinquent accounts shall be collected in the manner provided by sections 72-1501 to 72-1503.

Source: Laws 1982, LB 931, § 2.

72-1503 Delinquent accounts; agency notify director; withholding of state aid payment; procedure.

(1) Each agency shall notify the director of all accounts in an amount, including interest and penalties, in excess of one thousand dollars that have been delinquent for a period of sixty days or more. Such notice shall certify the amount due, any penalties or interest thereon, and the political subdivision responsible for the payment of the account.

(2) Upon receipt of the notice required pursuant to subsection (1) of this section, the director shall notify the political subdivision of the delinquency and that such amount and any interest and penalties thereon, if not paid within thirty days, shall be withheld from the next state aid payment to such political subdivision and that, if the amount of such next state aid payment is insufficient to pay the account in full, plus interest and penalties thereon, a deduction shall continue to be made from subsequent state aid payments payable to such political subdivision until such time as the account and interest and penalties thereon are paid in full.

(3) At the end of the thirty-day period, the director shall contact the reporting agency and verify that the account is still delinquent. If the agency verifies that the account is still delinquent, the director shall notify the State Treasurer of the amount that shall be withheld from state aid payments to the political subdivision and the state aid payments from which such amount shall be withheld.

(4) The State Treasurer shall contact the agency in question and upon verification by the agency that the account remains delinquent, shall withhold the specified amounts from the specified state aid payments. The State Treasurer shall then credit the amount withheld to the fund to which the original payment was due.

Source: Laws 1982, LB 931, § 3.

ARTICLE 16
DEBTS OWED TO STATE

Section

72-1601. Delinquent tax or obligation owed to the state; statements; Director of Administrative Services; duties.

72-1601 Delinquent tax or obligation owed to the state; statements; Director of Administrative Services; duties.

When any person is indebted to the State of Nebraska on account of any tax or other obligation then due and owing to the state, the officer, commission, or other division of state government charged with administration of the law under which such tax or other obligation arose may file with the Director of Administrative Services a statement of the amount so owing and shall at the same time mail a copy of such statement to the person owing such tax or other obligation. When such statement is filed, the director shall withhold an amount, not exceeding the amount of the statement, from any debt then owing by the State of Nebraska to such person and by warrant or other order shall direct the State Treasurer to credit the amount so withheld to the proper fund. If the amount so withheld is not sufficient to satisfy the statement in full, successive statements may be filed with the director whenever the State of Nebraska becomes further indebted to such person. The withholding referred to in this section shall apply solely to money owing by the state.

Source: Laws 1959, c. 378, § 1, p. 1318; R.S.1943, (1986), § 77-2418; Laws 1989, LB 13, § 3.

Cross References

Tuition assistance program for Nebraska National Guard members, repayment provisions, see section 85-505.01.

ARTICLE 17
SMALL BUSINESS INCUBATORS

Section

- 72-1701. Act, how cited.
 72-1702. Terms, defined.
 72-1703. Business incubation centers; designation.
 72-1704. Community board; appointment; members; meetings; public records; certain disclosures prohibited.
 72-1705. Community board; duties; petition for designation of business incubation center.
 72-1706. Community board; public agency; business incubation center; feasibility study; decision; requirements.
 72-1707. Designation of business incubation center; duration; termination.
 72-1708. Small businesses; location within business incubation center; application.
 72-1709. Application for location within business incubation center; evaluation by community board; factors; notification.
 72-1710. Community board; report; contents.
 72-1711. Tenant of business incubation center; duties; extension; when authorized.
 72-1712. Tenant of business incubation center; benefits; services.

72-1701 Act, how cited.

Sections 72-1701 to 72-1712 shall be known and may be cited as the Nebraska Small Business Incubator Act.

Source: Laws 1990, LB 409, § 1.

72-1702 Terms, defined.

For purposes of the Nebraska Small Business Incubator Act:

- (1) Business incubation center shall mean a facility in which units of space may be leased by a tenant and in which a tenant has access to business development services as described in section 72-1712;
- (2) Community board shall mean a board created pursuant to section 72-1704;
- (3) Public agency shall mean a state agency or commission or a political subdivision which retains ownership or control of one or more public buildings; and
- (4) Tenant shall mean a sole proprietorship, business partnership, limited liability company, or corporation operating a business for profit and leasing or otherwise occupying space in a business incubation center.

Source: Laws 1990, LB 409, § 2; Laws 1993, LB 121, § 461.

72-1703 Business incubation centers; designation.

Upon receipt of a petition from a community board pursuant to section 72-1705, a public agency may designate, in whole or in part, vacant or partially vacant public buildings as business incubation centers for the purpose of encouraging and assisting the establishment and expansion of small businesses within this state. A community board may lease the building from the public agency.

Source: Laws 1990, LB 409, § 3.

72-1704 Community board; appointment; members; meetings; public records; certain disclosures prohibited.

(1) A political subdivision, educational institution, or other organization that desires to have a vacant or partially vacant public building designated, in whole or in part, as a business incubation center shall appoint, in conjunction with political subdivisions or private organizations that agree to contribute monetarily or in kind to the center, a community board to perform the duties required by the Nebraska Small Business Incubator Act. The appointing body may designate an existing board of an economic development entity, upon consent of that entity, as the community board.

(2) Except as provided in subsection (3) of this section, the community board shall consist of not more than fifteen persons. The members of the community board shall consist of representatives from key segments of the community, including, but not limited to, political, financial, business, labor, and educational representatives. The community board shall elect from its members a chairperson.

(3) An existing board of an economic development entity designated as a community board pursuant to subsection (1) of this section need not meet the number requirements of subsection (2) of this section but shall meet the composition requirements of subsection (2) of this section.

(4) Community board members shall serve at the pleasure of the appointing bodies or until the community board is dissolved by the appointing body. Dissolution shall not occur before the expiration of any lease agreement between the community board and a public agency.

(5) Except as provided in subsection (7) of this section, the business which the community board may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act.

(6) Except as provided in subsection (7) of this section, a community board shall be subject to sections 84-712 to 84-712.09.

(7) The community board shall not disclose, orally or in writing, matters of a proprietary nature as described in subsection (7) of section 72-1708 without the consent of the applicant or tenant submitting the information.

Source: Laws 1990, LB 409, § 4; Laws 2004, LB 821, § 21.

Cross References

Open Meetings Act, see section 84-1407.

72-1705 Community board; duties; petition for designation of business incubation center.

(1) The community board shall:

(a) Identify the building or part of the building under consideration for designation as a business incubation center;

(b) Advertise the concept of a business incubation center in the surrounding area;

(c) Solicit the views of the community concerning the designation of the building or part of the building under consideration as a business incubation center;

(d) Identify possible tenants; and

(e) Obtain commitments from persons, organizations, businesses, or other sources amounting to at least fifty percent of those costs not covered by rental fees that the board estimates will be needed for the establishment and operation of the business incubation center for three years.

(2) If after performing the duties required by subsection (1) of this section the community board determines that a designation of the building under consideration as a business incubation center is desirable and possible, the community board shall petition the public agency which has ownership or control of such building for the designation.

Source: Laws 1990, LB 409, § 5.

72-1706 Community board; public agency; business incubation center; feasibility study; decision; requirements.

(1) After filing a petition pursuant to section 72-1705, the community board, in cooperation with the public agency, shall conduct and complete within one hundred eighty calendar days a center feasibility study. The study shall include, but not be limited to, all of the following factors:

(a) Necessary lease, purchase, renovation, or construction costs;

(b) Estimated rental costs for tenants;

(c) Estimated utility costs;

(d) Estimated wage or salary rates of potential employees of the center which may include a building manager, receptionist, typist, and security guard;

(e) Proposed operating budget for the center;

(f) Prospects of attracting suitable businesses to the center; and

(g) The ability of the community to provide necessary support for the center, including, but not limited to, technical assistance and training, assistance in attracting employees, assistance in relocating a business, assistance in business startup, and library facilities.

(2) Within thirty calendar days after completion of the feasibility study, the public agency, based upon the study, the criteria set forth in subsection (1) of this section, and any plans for future use of the building by the public agency, shall notify the community board of its decision. If the public agency does not designate the building as a business incubation center, the public agency shall set forth the reasons for its decision in its notification letter to the community board.

Source: Laws 1990, LB 409, § 6.

72-1707 Designation of business incubation center; duration; termination.

(1) Except as provided in subsection (2) of this section, a designation of a building as a business incubation center shall remain in effect for such time as agreed to by the public agency and the community board.

(2) A public agency which has a building or a portion of a building designated as a business incubation center and which desires to terminate such designation prior to the date agreed to in subsection (1) of this section may terminate such designation by notifying the community board at least two years before the time the building will be needed. Upon receipt of notification, the community board shall publicize the closing date of the center to the tenants and to the community.

Source: Laws 1990, LB 409, § 7.

72-1708 Small businesses; location within business incubation center; application.

When a building is designated as a business incubation center by a public agency, its community board shall accept applications from any person desiring to start or expand a small business and to locate that business within the business incubation center. The community board shall develop an application form requiring at least the following information:

(1) The type of business that the applicant wishes to start or expand;

(2) An estimate of the number of employees the applicant will need in order to start or expand the business and a two-year projection of future employment;

(3) The skill and educational level of the employees that the applicant plans to hire;

(4) The ability of the applicant to start or operate a successful business;

(5) A general statement as to why the applicant wishes to be accepted into the business incubation center;

(6) A signed statement by the applicant that he or she understands and accepts the obligations placed upon him or her under section 72-1711 if accepted into the business incubation center; and

(7) A designation by the applicant of information that the applicant considers to be of a proprietary nature and that he or she does not want to be made public.

Source: Laws 1990, LB 409, § 8.

72-1709 Application for location within business incubation center; evaluation by community board; factors; notification.

(1) A community board shall evaluate applicants who want to start or expand a small business and to locate within the business incubation center based upon, but not limited to, all of the following factors:

- (a) The likelihood that the business will be profitable;
- (b) Whether the product that would be manufactured or the service that would be rendered would be new to the state or the community;
- (c) The potential marketability of the product or service;
- (d) The likelihood that the business will generate a significant number of new jobs and not eliminate existing jobs;
- (e) The likelihood that new jobs generated will be filled by persons who presently are unemployed or whose skills are underemployed; and
- (f) The likelihood that the business will not be started if the applicant is not accepted into the business incubation center.

(2) A community board shall forward to each applicant whose application it rejects notice of its rejection together with the reasons for the rejection.

(3) A community board shall forward to each applicant it favorably evaluates notification of its decision and of whether or not space exists to accept the applicant.

Source: Laws 1990, LB 409, § 9.

72-1710 Community board; report; contents.

A community board shall report in writing at least annually to the Legislature on the activities of the community board and the center. The report shall include, at minimum, the name of each applicant whose application the community board rejects, together with the reasons for the rejection, and the name of each applicant whose application the community board favorably evaluates.

Source: Laws 1990, LB 409, § 10.

72-1711 Tenant of business incubation center; duties; extension; when authorized.

A tenant shall:

- (1) Pay rent to the community board in an amount to be determined by the community board. The community board may agree to have the rent for a predetermined number of months payable at a later date by which time the business is expected to have received committed starting capital;
- (2) Pay utilities as determined by the community board; and
- (3) Relocate to a permanent location not later than two years after entering a business incubation center, except that a business may request in writing extensions of this requirement for periods of not more than twelve months. The

community board may grant extensions of up to twelve months at a time based upon a review of the factors in subsection (1) of section 72-1709. A tenant shall be given an opportunity to submit written information concerning those factors to the community board before the community board makes its decision approving or denying an extension.

Source: Laws 1990, LB 409, § 11.

72-1712 Tenant of business incubation center; benefits; services.

(1) In return for meeting the requirements of section 72-1711, a tenant shall receive the following benefits:

- (a) Physical space within the center;
- (b) The services of a building manager; and
- (c) Services or facilities available within the center that are agreed upon by the community board and the tenants. These services and facilities may include, but are not limited to, cleaning, building security, typing, and reception services, conference, laboratory, and library facilities, duplicating machines, and computers.

(2) In addition to the benefits described in subsection (1) of this section, the center may make available certain professional services on a fee-for-use basis. These services, which the building manager or community board shall arrange, may include, but are not limited to, information on government regulations, basic management skills, advertising and promotion, marketing, sales, control of inventory levels, recruitment of employees, labor relations, and financial counseling in areas such as venture capital, risk management, taxes, insurance, and qualifying for government small business loans.

Source: Laws 1990, LB 409, § 12.

ARTICLE 18

JOSLYN CASTLE

Section

72-1801. Joslyn Castle; Department of Administrative Services; powers; legislative intent.

72-1802. Joslyn Castle Trust Fund; created; use; investment.

72-1801 Joslyn Castle; Department of Administrative Services; powers; legislative intent.

The Department of Administrative Services may enter into agreements for the operation, administration, maintenance, restoration, and renovation of Joslyn Castle and may accept gifts, grants, and bequests for the operation, administration, maintenance, restoration, and renovation of Joslyn Castle. It is the intent of the Legislature that no General Funds shall be expended for the renovation, restoration, or tenant improvements described in the Joslyn Castle Reuse Study.

Source: Laws 1990, LB 164, § 4; R.S.Supp.,1992, § 82-136; Laws 1993, LB 321, § 2.

72-1802 Joslyn Castle Trust Fund; created; use; investment.

There is hereby created the Joslyn Castle Trust Fund to be administered by the Department of Administrative Services. The fund shall consist of such sums

as are contributed as gifts, grants, or bequests. The fund shall be used only for the operation, administration, maintenance, restoration, and renovation of Joslyn Castle. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 164, § 2; R.S.Supp.,1992, § 82-134; Laws 1993, LB 321, § 1; Laws 1994, LB 1066, § 75.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 19

NEBRASKA TREE RECOVERY PROGRAM

Section

72-1901. Legislative findings.

72-1902. Nebraska Tree Recovery Program; legislative intent; administration; rules and regulations.

72-1903. Grants; eligible applicants.

72-1904. Grants; application; considerations.

72-1901 Legislative findings.

The Legislature finds that, due to severe weather conditions and diseases, cities and villages across Nebraska are experiencing tree mortality. Most cities and villages have been unable to act decisively due to insufficient funds to remove, dispose of, and replace trees situated on public land. Dead trees are fast becoming a liability and a safety problem for cities and villages.

Source: Laws 1994, LB 695, § 1.

72-1902 Nebraska Tree Recovery Program; legislative intent; administration; rules and regulations.

It is the intent of the Legislature that two hundred fifty thousand dollars be appropriated from the General Fund for fiscal year 1994-95 for a program to fund tree removal, disposal, and replacement costs. The Nebraska Forest Service of the University of Nebraska Institute of Agriculture and Natural Resources Department of Forestry, Fisheries and Wildlife shall administer the program through a grant process, and the program shall be known as the Nebraska Tree Recovery Program. The Nebraska Community Forestry Council shall act as an advisory body in administration of the program. The service shall adopt and promulgate rules and regulations necessary to carry out sections 72-1901 to 72-1904.

Source: Laws 1994, LB 695, § 2.

72-1903 Grants; eligible applicants.

Any city, village, county, or agency thereof or any state agency responsible for the upkeep of state-owned real property may apply for a grant from the Nebraska Tree Recovery Program. Any civic group, tree advisory board, or other entity working with a governmental agency on tree planting, removal, and replacement may apply for a grant under the program.

Source: Laws 1994, LB 695, § 3.

72-1904 Grants; application; considerations.

Applications for grants for the first year of the Nebraska Tree Recovery Program shall be received not later than July 1, 1994, and grants shall be awarded not later than October 1, 1994. In subsequent years the Nebraska Forest Service of the University of Nebraska Institute of Agriculture and Natural Resources Department of Forestry, Fisheries and Wildlife shall establish the date by which applications must be submitted, and grants shall be awarded not later than ninety days after such date.

The following shall be considered in reviewing a proposal of an applicant for a grant from the program:

- (1) Grant money shall be used to plant or remove trees only on land owned by state or local governments, including parks, public grounds, and city rights-of-way;
- (2) Trees shall be purchased from commercial Nebraska nurseries;
- (3) The applicant shall provide funds to match the grant at a fifty-fifty match rate;
- (4) Local labor may be considered as in-kind participation in calculating the amount of the applicant's matching funds required by subdivision (3) of this section;
- (5) No state or local funds under the program shall be used to purchase real property;
- (6) Tree species to be planted under the proposal shall be adaptable to Nebraska and the local area in order for such trees to grow and thrive;
- (7) Arboricultural experts may be consulted at the local and state levels for expertise in developing local tree replanting programs;
- (8) Local programs shall indicate a partnership between the applicant and property owners showing how to best replant and maintain trees for the first three years after planting; and
- (9) Cities, villages, civic groups, students, and families should be involved in selecting, replanting, and caring for trees for the valuable educational aspects of the program.

Source: Laws 1994, LB 695, § 4.

ARTICLE 20**NIOBRARA RIVER CORRIDOR**

Section	
72-2001.	Repealed. Laws 2000, LB 1234, § 24.
72-2002.	Repealed. Laws 2000, LB 1234, § 24.
72-2003.	Repealed. Laws 2000, LB 1234, § 24.
72-2004.	Repealed. Laws 2000, LB 1234, § 24.
72-2004.01.	Act, how cited.
72-2005.	Legislative findings.
72-2006.	Niobrara scenic river corridor, defined.
72-2007.	Niobrara Council; created; members; terms; meetings; expenses.
72-2008.	Niobrara Council; powers and duties.
72-2009.	Niobrara Council Fund; created; use; investment.
72-2010.	Niobrara Council; zoning duties.
72-2011.	Activities within corridor; limitations.
72-2012.	Niobrara Council; zoning jurisdiction.

72-2001 Repealed. Laws 2000, LB 1234, § 24.

72-2002 Repealed. Laws 2000, LB 1234, § 24.

72-2003 Repealed. Laws 2000, LB 1234, § 24.

72-2004 Repealed. Laws 2000, LB 1234, § 24.

72-2004.01 Act, how cited.

Sections 72-2004.01 to 72-2012 shall be known and may be cited as the Niobrara Scenic River Act.

Source: Laws 2002, LB 1003, § 47.

72-2005 Legislative findings.

As a result of the recent federal court ruling in National Parks and Conservation Association v. National Park Service and in order to maintain an aspect of local control over the Niobrara scenic river corridor, the Legislature finds that there is a need to reconstitute the existing Niobrara Council with the express authority and responsibility to manage the Niobrara scenic river corridor in conjunction with the National Park Service. The purpose of the Niobrara Scenic River Act is to effectuate changes in the council necessary to ensure the continuation of the cooperative management relationship between the Niobrara Council and the National Park Service so that local participation and control over this valuable natural resource can be maintained.

Source: Laws 2000, LB 1234, § 1; Laws 2002, LB 1003, § 42.

72-2006 Niobrara scenic river corridor, defined.

For purposes of the Niobrara Scenic River Act, Niobrara scenic river corridor means the area designated as a national scenic river and a part of the national wild and scenic rivers system under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, and described in the 1996 Niobrara National Scenic River General Management Plan/Environmental Impact Statement.

Source: Laws 2000, LB 1234, § 2; Laws 2002, LB 1003, § 43.

72-2007 Niobrara Council; created; members; terms; meetings; expenses.

(1) The Niobrara Council is created. The council membership shall include:

(a) A representative of each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;

(b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;

(c) The secretary of the Game and Parks Commission or his or her designee;

(d) A representative of the United States Fish and Wildlife Service and a representative of the National Park Service chosen by the Governor from lists of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the federal services. The appointments under this subdivision shall be nonvoting members unless and until the agencies represented by these appointees formally authorize such appointees to vote on all matters before the council;

(e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board representatives on the council;

(f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board representatives on the council;

(g) A timber industry representative operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board representatives on the council; and

(h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board representatives on the council.

The council members shall be selected within ninety days after July 13, 2000. The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor.

(2) The council shall elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council shall meet on a regular basis, preferably once a month, with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council.

(3) A quorum shall be present at a meeting before any action may be taken by the council. A quorum shall be a majority of the members who are selected and serving and who vote on issues before the council. All actions of the council require a majority vote of the quorum present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 72-2010 requires a vote of two-thirds of all the council members who are selected and serving and who vote on issues before the council. A council member may not participate or vote on any matter on which he or she participated or voted as a member of a county board, county planning commission, or natural resources district board, and in such a case such council member shall not be counted for purposes of determining whether quorum or vote requirements have been satisfied.

(4) Members shall be reimbursed for actual and necessary expenses incurred in carrying out their duties on the council as provided in sections 81-1174 to 81-1177.

Source: Laws 2000, LB 1234, § 3; Laws 2001, LB 182, § 1.

72-2008 Niobrara Council; powers and duties.

The mission of the Niobrara Council is to assist in all aspects of the management of the Niobrara scenic river corridor since portions of the Niobrara River have been designated as a national scenic river under 16 U.S.C. 1274(a)(117), as such section existed on May 24, 1991, giving consideration and

respect to local and governmental input and private landowner rights, and to maintain and protect the integrity of the resources associated with the Niobrara scenic river corridor. The council shall perform management functions related to the Niobrara scenic river corridor, including, but not limited to, those authorized and delegated to it by the National Park Service. The council may promulgate its own rules and internal policies to carry out the purposes of the Niobrara Scenic River Act. The Game and Parks Commission may provide administrative support when requested by the council to carry out its duties. This support shall not exceed fifty thousand dollars in any calendar year. In the Niobrara scenic river corridor, the council may hold title to real estate in the name of the council. The council may purchase, accept gifts of, or trade real estate and may obtain conservation easements as provided in the Conservation and Preservation Easements Act. Acquisition of conservation easements outside the boundaries of the Niobrara scenic river corridor shall require the approval of the appropriate governing body as provided in section 76-2,112.

Source: Laws 2000, LB 1234, § 4; Laws 2002, LB 1003, § 44.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

72-2009 Niobrara Council Fund; created; use; investment.

The Niobrara Council Fund is created. The fund shall be administered by the Niobrara Council. The council may accept any private or public funds to carry out its work and such funds shall be remitted to the State Treasurer for credit to the fund. The fund shall consist of such funds and legislative appropriations made to the council. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 1234, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-2010 Niobrara Council; zoning duties.

The Niobrara Council shall review and approve or reject all zoning regulations, including existing regulations, new regulations, proposed regulations, and variances of any type including variances for use and location, which affect land in the Niobrara scenic river corridor that is not incorporated within the boundaries of a municipality. If the council rejects a zoning regulation or variance, the governing body enacting the regulation or variance has six months to present an alternative to the council. If no alternative is proposed or if the alternative is also rejected, the council may adopt zoning regulations for such area. In counties without zoning the council may develop and enforce zoning regulations within the Niobrara scenic river corridor under the guidance of the federal Wild and Scenic Rivers Act or under the guidance of the general management plan as written by the National Park Service. The council shall follow the requirements for zoning regulations in sections 23-114 to 23-114.05 and 23-164 to 23-174.10, except that no separate planning commission is required and the council shall fulfill the duties of both the county board and the planning commission in such sections.

Source: Laws 2000, LB 1234, § 6; Laws 2002, LB 1003, § 45.

72-2011 Activities within corridor; limitations.

(1) Any state or state-assisted activity or undertaking proposed within the Niobrara scenic river corridor shall be consistent with the purpose of the scenic river designation, including the scenic river's free-flowing condition and scenic, geological, biological, agricultural, historic, and prehistoric resources.

(2) The head of any state or local agency having direct or indirect jurisdiction over a proposed state or state-assisted undertaking within the Niobrara scenic river corridor and the head of any agency having authority to license or permit any undertaking in such area shall prepare a detailed proposal and submit it to the Niobrara Council for its review.

(3) The council shall review the proposal and consult with the agency. The council has ninety days after the date that the proposal is received to make a determination of whether or not the proposed action is consistent with the purposes of this section. If the council determines that the proposal is not consistent with the purposes of this section, the council shall so notify the agency and the agency shall not proceed with the action until after a justification for the action has been submitted to the Governor and approved by the Governor in writing. The justification shall include the following elements: The anticipated current, future, and cumulative effects on the scenic and natural resources of the designated scenic river corridor; the social and economic necessity for the proposed action; all possible alternatives to the proposed action including a no-action alternative; the comparative benefits of proposed alternative actions; and the mitigation measures outlined in the proposed action.

Source: Laws 2000, LB 1234, § 7; Laws 2002, LB 1003, § 46.

72-2012 Niobrara Council; zoning jurisdiction.

The Niobrara Council shall not have zoning jurisdiction outside the boundaries of the Niobrara scenic river corridor.

Source: Laws 2000, LB 1234, § 8.

ARTICLE 21**GOVERNOR'S RESIDENCE**

Section

- 72-2101. Governor's Residence Advisory Commission; created; duties.
- 72-2102. Governor's Residence Advisory Commission; members.
- 72-2103. Commission members; expenses.
- 72-2104. Commission members; terms; vacancies.
- 72-2105. Commission; meetings; quorum.

72-2101 Governor's Residence Advisory Commission; created; duties.

The Governor's Residence Advisory Commission is created. The commission shall conduct an annual inspection of the Governor's residence. A report on the inspection shall be submitted to the Governor within thirty days after the day of the inspection. The report shall include recommendations for major maintenance or repair projects, if needed. Implementation and priority of an approved major maintenance or repair project shall be determined by the Governor in cooperation with the Director of Administrative Services. Additionally, no changes, additions, deletions, or other alterations to the residence, including its

exterior, interior, decorative objects, contents, or grounds shall be made without the prior approval of the commission, except for the Governor's private living quarters located on the second floor of the residence.

Source: Laws 1998, LB 1129, § 28; Laws 2009, LB207, § 1.

72-2102 Governor's Residence Advisory Commission; members.

The Governor's Residence Advisory Commission consists of the following members: (1) The Governor's spouse; (2) the Director of Administrative Services or his or her designee; (3) the administrator of the Task Force for Building Renewal; (4) six at-large members, two from each congressional district, with no more than three of the six members being from the same political party; (5) the Director of the Nebraska State Historical Society; and (6) a current professional member of the American Society of Interior Designers. The Governor's spouse is designated the chairperson of the Governor's Residence Advisory Commission. If the Governor is unmarried or the Governor's spouse is unable to fulfill his or her duties on the commission, the Governor shall appoint an at-large member to fill that seat on the commission. The at-large member shall have the same duties as the Governor's spouse would have had. The Director of Administrative Services or his or her designee is designated the vice-chairperson of the commission. The administrator of the Task Force for Building Renewal is designated the secretary of the commission and is responsible for the submission of the annual report and any other reports or correspondence from the commission.

Source: Laws 1998, LB 1129, § 29.

72-2103 Commission members; expenses.

The members of the Governor's Residence Advisory Commission shall serve without compensation. The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1998, LB 1129, § 30.

72-2104 Commission members; terms; vacancies.

The Governor's spouse shall remain on the Governor's Residence Advisory Commission as chairperson during the time his or her spouse is Governor, but in the case of an at-large member appointed in place of the Governor's spouse, the at-large member shall serve at the pleasure of the Governor. The agency directors and task force administrator on the commission shall serve as long as such persons hold those positions. The remaining members of the commission shall serve four-year terms, subject to removal by the Governor for cause. Vacancies on the commission caused by the death, removal, or resignation of a member shall be filled by the Governor for the remainder of the unexpired term.

Source: Laws 1998, LB 1129, § 31.

72-2105 Commission; meetings; quorum.

The Governor's Residence Advisory Commission shall meet at the direction of the chairperson of the commission. At least one meeting shall be held after the

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annual inspection. A simple majority of the commission shall constitute a quorum for the transaction of business.

Source: Laws 1998, LB 1129, § 32; Laws 2009, LB207, § 2.

ARTICLE 22

NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION ACT

Section

- 72-2201. Act, how cited.
- 72-2202. Legislative intent.
- 72-2203. Terms, defined.
- 72-2204. Office of the Nebraska Capitol Commission; established; State Capitol Administrator; appointment.
- 72-2205. Administrator; powers and duties.
- 72-2205.01. Administrator; additional services; authorized.
- 72-2206. Administrator; qualifications.
- 72-2207. Administrator; bond or insurance.
- 72-2208. State Building Administrator; transfer of personnel and property.
- 72-2209. Administrator; personnel; materiel; duties.
- 72-2210. Office; facilities planning, construction, and administration; powers and duties.
- 72-2211. Capitol Restoration Cash Fund; created; use; investment.
- 72-2211.01. Capitol Commission Revolving Fund; created; use; investment.
- 72-2212. Motor vehicle parking; rules and regulations; enforcement.
- 72-2213. Office space; determination of use; maintenance of building.
- 72-2214. Administrator; policies and guidelines; required.

72-2201 Act, how cited.

Sections 72-2201 to 72-2214 shall be known and may be cited as the Nebraska State Capitol Preservation and Restoration Act.

Source: Laws 2004, LB 439, § 1; Laws 2005, LB 684, § 1.

72-2202 Legislative intent.

(1) In 1919, the Nebraska State Capitol Commission began the search for an architect to design a new State Capitol to replace the existing structure in Lincoln. New York architect Bertram Grosvenor Goodhue was selected as the chief architect, and construction began in April 1922. During the ten-year construction period, the Nebraska State Capitol Commission, comprised at that time of the Governor, the State Engineer, and three appointed members, oversaw the building's construction, with the final phase completed in 1932. The final cost of construction was nine million eight hundred thousand dollars.

(2) Considered one of the world's greatest architectural achievements, the Nebraska State Capitol contains all three branches of government and is an inspiring monument for all Nebraskans. No other building in the State of Nebraska is as recognized and open to all Nebraskans as the State Capitol.

(3) Because of the history and unique beauty of the State Capitol, it is the intent of the Legislature that the Office of the Nebraska Capitol Commission, created pursuant to the Nebraska State Capitol Preservation and Restoration Act, provide the highest quality preservation, restoration, and enhancement of and long-term planning for the State Capitol and capitol grounds for the perpetual use by state government and the enjoyment of all persons.

Source: Laws 2004, LB 439, § 2.

72-2203 Terms, defined.

For purposes of the Nebraska State Capitol Preservation and Restoration Act:

- (1) Administrator means the State Capitol Administrator;
- (2) Commission means the Nebraska Capitol Commission; and
- (3) Office means the Office of the Nebraska Capitol Commission.

Source: Laws 2004, LB 439, § 3.

72-2204 Office of the Nebraska Capitol Commission; established; State Capitol Administrator; appointment.

The Nebraska Capitol Commission shall be the custodian of the State Capitol and capitol grounds. To aid in these duties, the Office of the Nebraska Capitol Commission is established under the Nebraska Capitol Commission. The State Capitol Administrator shall be the head of the office and shall be recommended by the commission and appointed by the Governor. The compensation of the administrator shall be established by the Governor, subject to availability of appropriations. For administrative and budgetary purposes, the office shall be housed within the Department of Administrative Services, which department shall provide all of the accounting, personnel, information management, and communication support services for the office. The office and all staff shall be physically located in the State Capitol. All administration and budgetary decisions for the office shall be made by the administrator.

Source: Laws 2004, LB 439, § 4.

72-2205 Administrator; powers and duties.

(1) The administrator shall have the authority to develop, produce, and distribute books, brochures, pictures, slides, postcards, and other informational or promotional material concerning the State Capitol. The administrator shall have control over money received from the distribution of such material and from private or public donations. Such proceeds and donations shall be remitted to the State Treasurer for credit to the Capitol Restoration Cash Fund.

(2) The administrator, after receiving advice from the commission, is authorized to provide facilities for restaurants, cafeterias, or other services and newsstands for convenience of state officers and employees in the State Capitol when such space is not needed for public use. Proceeds from the operations and rental of such facilities shall be remitted to the State Treasurer for credit to the Capitol Restoration Cash Fund.

(3) The administrator, after receiving advice from the commission, is authorized to lease, rent, or permit for use as apartments, dwellings, or offices any or all of the property acquired for future building needs for the State Capitol and capitol grounds, except that all leases shall contain the provision that upon notice that such property is needed for public use, the use or occupancy thereof shall cease. All money received as rent from such property shall be remitted to the State Treasurer for credit to the Capitol Restoration Cash Fund and, with interest accrued, be designated as prescribed in section 72-2211.

(4) The administrator shall see that all parts and apartments of the State Capitol and capitol grounds are properly ventilated and kept clean and orderly.

(5) The administrator shall acquire a flag of the United States of America of suitable and convenient size. The colors of the flag shall be fast colors, and the

cloth shall be of substantial material. The administrator shall display this flag and the Nebraska State Flag of similar specifications prominently on State Capitol grounds.

(6) The administrator shall ensure that, at proper hours, all visitors are properly escorted through the State Capitol and over the capitol grounds, free of expense.

(7) The administrator shall at all times have charge of and supervision over janitors and other employees in and about the State Capitol and capitol grounds.

(8) The administrator shall institute, in the name of the state and with the advice of the Attorney General, civil and criminal proceedings against any person for injury or threatened injury to any public property in the State Capitol or on the capitol grounds or for committing or threatening to commit a nuisance therein or thereon.

(9) The administrator shall keep in his or her office a complete record containing plans, specifications, and surveys of the State Capitol and capitol grounds and of underground construction thereto.

Source: Laws 2004, LB 439, § 5.

72-2205.01 Administrator; additional services; authorized.

The administrator, with the approval of the commission, may enter into agreements to provide additional facility-related maintenance, renovation, and operation services requested by agencies housed in the State Capitol. The charges collected from such agencies shall be placed in the Capitol Commission Revolving Fund. The administrator shall make payments for the costs associated with such additional services from the Capitol Commission Revolving Fund.

Source: Laws 2005, LB 684, § 2.

72-2206 Administrator; qualifications.

The administrator shall have (1) a bachelor's degree or higher degree in architecture from an accredited college or university and (2) at least five years of administrative experience in historic preservation and planning, design, and construction of major construction projects.

Source: Laws 2004, LB 439, § 6.

72-2207 Administrator; bond or insurance.

Before entering upon the discharge of the duties of his or her office, the administrator shall be bonded or insured as required by section 11-201. The premium shall be paid by the state.

Source: Laws 2004, LB 439, § 7.

72-2208 State Building Administrator; transfer of personnel and property.

The State Building Administrator shall transfer all Capitol Group staff, offices, records, including Nebraska Capitol Collections, powers, duties, and responsibilities of the state building division on or before July 1, 2004, to the State Capitol Administrator, who shall be reestablished in the Office of the Nebraska Capitol Commission.

Source: Laws 2004, LB 439, § 8.

72-2209 Administrator; personnel; materiel; duties.

The administrator, with the advice of the commission, shall employ all assistants, architects, engineers, janitors, custodians, and caretakers necessary for the efficient and economical discharge of the duties imposed by the Nebraska State Capitol Preservation and Restoration Act. All such employees, except for the administrator, shall be included within the State Personnel System. The administrator shall purchase, through the materiel division of the Department of Administrative Services, such supplies, material, and equipment as may be necessary for the proper maintenance of the State Capitol and capitol grounds. The total expenditures for such purposes shall not exceed the appropriations made therefor.

Source: Laws 2004, LB 439, § 9.

72-2210 Office; facilities planning, construction, and administration; powers and duties.

(1) The office shall have the primary functions and responsibilities of facilities planning, facilities construction, and facilities administration for the State Capitol and capitol grounds and may adopt and promulgate rules and regulations to carry out the provisions of this section and subsection (1) of section 81-1108.38.

(2) Facilities planning includes the following responsibilities and duties:

- (a) To maintain utilization records of the State Capitol and capitol grounds;
- (b) To define and review program statements based on space utilization standards;
- (c) To prepare and review planning and construction documents;
- (d) To develop and maintain time-cost schedules for capital construction projects;
- (e) To prepare annually a long-range plan for the commission, listing the maintenance needed for the interior and exterior of the State Capitol; and
- (f) To assist the commission, the budget division of the Department of Administrative Services, and the Legislative Fiscal Analyst in preparing budget recommendations.

(3) Facilities construction includes the following powers and duties:

- (a) To maintain close contact with and inspections of each project for the State Capitol and capitol grounds so as to assure execution of the highest quality work product, time-cost schedules, and efficient contract performance;
- (b) To perform final acceptance inspections and evaluations; and
- (c) To coordinate all modifications or change orders and progress payment orders.

(4) Facilities administration includes the following powers and duties:

- (a) To provide or assure adequate administration and preservation maintenance of, repairs to, and custodial duties for the State Capitol and capitol grounds;
- (b) To be responsible for all maintenance, repairs, and custodial duties necessary to preserve properly and maintain the State Capitol and capitol grounds;

(c) To report to the commission quarterly, or as prescribed by the commission, the time-cost data on State Capitol construction projects;

(d) To be responsible for parking on the capitol grounds; and

(e) To submit to the commission a final report on each State Capitol project. The report shall include, but not be limited to, a comparison of final costs and appropriations made for the project, change orders, and modifications, and a conclusion as to whether the construction complied with the related approved project purpose and program statement. Such report shall be required on all projects costing fifty thousand dollars or more and any other projects designated by the commission.

Source: Laws 2004, LB 439, § 10.

72-2211 Capitol Restoration Cash Fund; created; use; investment.

The Capitol Restoration Cash Fund is created. The administrator shall administer the fund, which shall consist of money received from the sale of material, rental revenue, private donations, and public donations. The fund shall be used to finance projects to restore the State Capitol and capitol grounds to their original condition, to purchase and conserve items to be added to the Nebraska Capitol Collections housed in the State Capitol, and to produce promotional material concerning the State Capitol, its grounds, and the Nebraska State Capitol Environs District. Such expenditures shall be prescribed by the administrator and approved by the commission. Any money in the Capitol Restoration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 439, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-2211.01 Capitol Commission Revolving Fund; created; use; investment.

The Capitol Commission Revolving Fund is created. The administrator shall administer the fund. The fund shall consist of receipts collected pursuant to agreements between the commission and other entities as provided by law. The fund shall be used to support the operations of the commission. Any money in the Capitol Commission Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 684, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

72-2212 Motor vehicle parking; rules and regulations; enforcement.

To promote the public safety and welfare, the State Building Administrator, in consultation with the State Capitol Administrator, shall adopt and promulgate rules and regulations governing motor vehicle parking on the approaches to the State Capitol. Such rules and regulations may limit, restrict, or prohibit parking thereon. Notwithstanding the provisions of the Administrative Proce-

Act, such rules and regulations shall become effective upon posting notice of the same on or about the premises to be regulated. If any vehicle is found upon any regulated premises in violation of this section, or the rules and regulations adopted pursuant thereto, and the driver cannot be determined, the owner or person in whose name such vehicle is registered shall be held responsible for such violation.

Source: Laws 2004, LB 439, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

72-2213 Office space; determination of use; maintenance of building.

(1) The office space in the State Capitol or any other state office building occupied by the Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, Auditor of Public Accounts, or Chief Justice and judges of the Supreme Court and Court of Appeals, including the office of the Clerk of the Supreme Court and courtrooms, shall remain under the control of such constitutional officer or Chief Justice. The Executive Board of the Legislative Council shall determine its office space requirements in the State Capitol and may occupy such office space as it requires except as provided in this subsection.

(2) After the determination by the Executive Board of the Legislative Council pursuant to subsection (1) of this section, the administrator, with the advice of the commission, shall determine the space needs of all other departments and agencies of the state located in the State Capitol and assign the remaining office space. The determination of such needs shall be based on the following considerations: (a) The availability of space within the State Capitol as provided in this section; (b) the desirability of locating all divisions and other organizational subunits of each department and agency of the state in physical proximity to the office of its head; (c) the degree to which the convenience of the public may be served by assignment of various areas within the State Capitol; (d) the interdependence of functions and operating procedures of the various agencies; (e) applicable standards governing office requirements; and (f) the availability of appropriations with which to finance renovations, remodeling, and movement of equipment necessary to accommodate any proposed assignment or reassignment of area.

(3) The office shall have responsibility for provision and replacement of lighting, lighting fixtures, heating, cooling and ventilation, and janitorial, custodial, and all other building services, including care and custody of the State Capitol and capitol grounds, as may now be provided by law.

(4) Responsibility for employment and supervision of custodial workers for areas of the State Capitol occupied by the Legislature, the courts, and executive departments and agencies shall be in accordance with such agreements as may be defined by authorized representatives of the three branches. All funds for improvements, remodeling, renovation, partitioning, or replacement of major fixtures, including carpeting, flooring, provision of drapes, lighting fixtures, and lamps, within any area of the State Capitol shall be at the disposal of the administrator.

Source: Laws 2004, LB 439, § 13.

72-2214 Administrator; policies and guidelines; required.

The administrator, with the advice of the commission, shall establish policies and guidelines for the implementation of the approved Capitol Landscape Restoration Master Plan on and around the capitol grounds, for site development in and around the State Capitol and capitol grounds, and for use of the State Capitol’s preservation and adaptive-use spaces, including the adoption of a document of standards.

Source: Laws 2004, LB 439, § 14.

ARTICLE 23

PUBLIC FACILITIES CONSTRUCTION AND FINANCE ACT

Section

- 72-2301. Act, how cited.
- 72-2302. Purpose of act.
- 72-2303. Terms, defined.
- 72-2304. Bonds authorized; public hearing; notice; election, when required; remonstrance petition.
- 72-2305. Public buildings, recreational facilities, drainage, streets, and roads; bonds; amount authorized.
- 72-2306. Information technology for libraries; bonds; amount authorized.
- 72-2307. Taxes authorized.
- 72-2308. Act; how construed; bonds; applicability of other provisions.

72-2301 Act, how cited.

Sections 72-2301 to 72-2308 shall be known and may be cited as the Public Facilities Construction and Finance Act.

Source: Laws 2005, LB 217, § 1.

72-2302 Purpose of act.

It is the purpose of the Public Facilities Construction and Finance Act to allow local governmental units which cooperate with other governmental units to issue bonds to finance joint projects which may be serviced by property taxes, regardless of the restrictions on the issuance of debt contained in other statutory provisions, home rule charters, or the limitations in section 77-3442, for the acquisition, construction, financing, operation, and ownership of (1) public buildings and related improvements to real estate, recreational facilities and related improvements, flood control and storm water drainage, and street and road construction and improvements and (2) information technology for libraries operated by counties, municipalities, school districts, educational service units, and community colleges.

Source: Laws 2005, LB 217, § 2.

72-2303 Terms, defined.

For purposes of the Public Facilities Construction and Finance Act:

- (1) Bond measure means a resolution or ordinance which authorizes bonds to be issued and sold in accordance with the act and which sets the terms of such bonds;
- (2) Joint project means a project financed and operated by at least two or more qualified public agencies cooperating as a joint entity or joint public agency for (a) any public building or buildings and related improvements to real estate, including parking facilities, any recreational facilities and related

improvements to real estate, any flood control and storm water drainage, and any street and road construction and improvements and related fixtures and (b) any item of hardware or software used in providing for the delivery of information, including the purchasing of upgrades or related improvements to information technology for the operation of libraries operated by counties, municipalities, school districts, educational service units, and community colleges; and

(3) Qualified public agency means any city, village, municipal county, community college, county, educational service unit, rural or suburban fire protection district, hospital district, school district, and sanitary and improvement district.

Source: Laws 2005, LB 217, § 3.

72-2304 Bonds authorized; public hearing; notice; election, when required; remonstrance petition.

(1) In addition to any other borrowing powers provided for by law, a qualified public agency shall have the power to issue its negotiable bonds to any joint entity as defined in section 13-803 or to any joint public agency as defined in section 13-2503 in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of the qualified public agency. The bonds may be issued only if the second largest participant in the joint project has a financial contribution in the joint project of at least twenty-five percent of the debt service. Such bonds may be issued after the qualified public agency has conducted a public hearing on the issuance of bonds. Notice of such public hearing shall be given by publication in a newspaper of general circulation within the territory of the qualified public agency by at least one publication occurring not less than ten days prior to the time of hearing. After the public hearing, the governing body of the qualified public agency may proceed to adopt a bond measure authorizing bonds.

(2) Notice of any such bond measure shall be given by publication of notice of intention to issue bonds in a newspaper of general circulation within the territory of the qualified public agency at least twice after the adoption of the bond measure. Such publications shall be at least three weeks apart. The notice shall state:

- (a) The name of the qualified public agency;
- (b) The purpose of the issue;
- (c) The principal amount of the issue;
- (d) The amount of annual debt service payment anticipated for the bonds, which may be stated as an approximation or estimate, and the anticipated duration for such debt service payments; and
- (e) The time and place where a copy of the form of the bond measure may be examined for a period of at least thirty days.

(3) No election shall be required prior to the issuance of bonds under the Public Facilities Construction and Finance Act unless, within sixty days after the first publication of the notice of intention to issue bonds, a remonstrance petition against the issuance of bonds is filed with the clerk or secretary of the qualified public agency. Such remonstrance petition shall be signed by registered voters of the qualified public agency equal in number to at least five percent of the number of registered voters of the qualified public agency at the

time the remonstrance petition is filed or at least the number of signatures listed in subsection (5) of this section for the applicable qualified public agency, whichever is less. If a remonstrance petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the qualified public agency at a general election or a special election called for the purpose of approving the bonds proposed to be issued. Any joint project for which bonds are issued in accordance with the procedures of the act shall not require any other approval or proceeding by the governing body or the voters of the qualified public agency.

(4) No election shall be required for any qualified public agency not issuing bonds to participate in such joint project unless, within sixty days after the governing body of the qualified public agency adopts the measure approving the interlocal or cooperative agreement related to the joint project, a remonstrance petition is filed with the clerk or secretary of the qualified public agency. Such remonstrance petition shall be signed by registered voters of the qualified public agency equal in number to at least five percent of the number of registered voters of the qualified public agency at the time the remonstrance petition is filed or at least the number of signatures listed in subsection (5) of this section for the applicable qualified public agency, whichever is less. If a remonstrance petition with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the qualified public agency at a general election or a special election called for the purpose of approving the interlocal or cooperative agreement related to the joint project.

(5) The chart in this subsection provides the alternative number of signatures of registered voters of a qualified public agency which may be used to submit a remonstrance petition under subsection (3) or (4) of this section. The classification of counties in section 23-1114.01 applies for purposes of this section.

Qualified Public Agency	Number of Signatures of Registered Voters
City of the Metropolitan Class	1500
City of the Primary Class	1000
City of the First Class	750
City of the Second Class	250
Villages	50
Municipal County	1500
Class 7 County	1500
Class 6 County	1000
Class 5 County	750
Class 4 County	500
Class 3 County	250
Class 2 County	100
Class 1 County	50
Class VI School District	250
Class V School District	1500
Class IV School District	1000
Class III School District	500
Class II School District	250
Class I School District	250
Educational Service Unit	250
Community College Area	1500
Fire Protection District	500
Hospital District	500

Source: Laws 2005, LB 217, § 4.

72-2305 Public buildings, recreational facilities, drainage, streets, and roads; bonds; amount authorized.

For joint projects described in subdivision (2)(a) of section 72-2303, the principal amount of bonds which may be issued by a qualified public agency under the Public Facilities Construction and Finance Act shall not exceed five million dollars as to the total principal amount of such bonds which may be outstanding at any time, and the annual amounts due by reason of such bonds from each qualified public agency shall not exceed five percent of the restricted funds of the obligated qualified public agency in the year prior to issuance. The principal amount of bonds of qualified public agencies in the aggregate issued for any one such joint project shall not exceed five million dollars.

Source: Laws 2005, LB 217, § 5.

72-2306 Information technology for libraries; bonds; amount authorized.

For joint projects described in subdivision (2)(b) of section 72-2303, the principal amount of bonds which may be issued by a qualified public agency under the Public Facilities Construction and Finance Act shall not exceed two hundred fifty thousand dollars for cities of the metropolitan and primary classes, one hundred thousand dollars for counties, cities of the first class, school districts, educational service units, and community colleges, and fifty thousand dollars for cities of the second class and villages, as to the total principal amount of such bonds which may be outstanding at any time, and the annual amounts due by reason of such bonds from each qualified public agency shall not exceed five percent of the restricted funds of the obligated qualified public agency in the year prior to issuance. The principal amount of bonds of a qualified public agency in the aggregate issued for any one such joint project shall not exceed two hundred and fifty thousand dollars for cities of the metropolitan and primary classes and one hundred thousand dollars for counties, cities of the first class, cities of the second class, villages, school districts, educational service units, and community colleges.

Source: Laws 2005, LB 217, § 6.

72-2307 Taxes authorized.

Any qualified public agency which has issued bonds in accordance with the Public Facilities Construction and Finance Act shall levy and collect taxes on all the taxable property within the territory of the qualified public agency, in addition to all other taxes, for the purpose of paying the principal and interest of such bonds as the principal and interest become due. Taxes levied for such purposes shall not be subject to the limitations in section 77-3442. The levying of taxes to pay such bonds for any county shall be subject to the constitutional limitation upon levying taxes by a county.

Source: Laws 2005, LB 217, § 7.

72-2308 Act; how construed; bonds; applicability of other provisions.

The Public Facilities Construction and Finance Act shall be independent of and in addition to any other provisions of the laws of the State of Nebraska or

provisions of home rule charters, and bonds may be issued under the act for any purpose authorized in the act even though other provisions of the laws of the State of Nebraska or provisions of home rule charters may provide for the issuance of bonds for the same or similar purposes. The act shall not be considered amendatory of or limited by any other provisions of the laws of the State of Nebraska or provisions of home rule charters, and bonds may be issued under the act without complying with the restrictions or requirements of any other provisions of the laws of the State of Nebraska or without complying with the restrictions or requirements of home rule charters. Nothing in the act shall prohibit or limit the issuance of bonds in accordance with the provisions of other applicable laws of the State of Nebraska or of home rule charters if the governing body determines to issue such bonds under such other laws or charter, or otherwise limit the provisions of any home rule charter.

Source: Laws 2005, LB 217, § 8.

ARTICLE 24 FERGUSON HOUSE

Section
72-2401. Ferguson House Fund; created; use; investment.

72-2401 Ferguson House Fund; created; use; investment.

The Ferguson House Fund is created. The fund shall be used by the Nebraska Environmental Trust Board only for the operation, administration, maintenance, restoration, and renovation of the Ferguson House and grounds. Revenue credited to the fund may consist of rental or other income related to the Ferguson House as well as gifts, grants, and bequests. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 426, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 25 NEBRASKA INCENTIVES FUND

Section
72-2501. Nebraska Incentives Fund; created; investment.

72-2501 Nebraska Incentives Fund; created; investment.

The Nebraska Incentives Fund is created. Any money in the Employment and Investment Growth Fund, the Invest Nebraska Fund, the Nebraska Advantage Fund, the Nebraska Advantage Rural Development Fund, the Quality Jobs Fund, or the Rural Economic Opportunities Fund, on July 18, 2008, shall be transferred by the State Treasurer to the Nebraska Incentives Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB914, § 24.

§ 72-2501

PUBLIC LANDS, BUILDINGS, AND FUNDS

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 73

PUBLIC LETTINGS AND CONTRACTS

Article.

1. Public Lettings. 73-101 to 73-106.
2. Public Contracts.
 - (a) Contingent Fee Contracts. 73-201 to 73-204.
 - (b) Technology Access Clause. 73-205.
3. Contracts for Personal Services. 73-301 to 73-307.
4. Health and Human Services Contracts. 73-401.
5. State Contracts for Services. 73-501 to 73-509.

Cross References

County Purchasing Act, see section 23-3101.

State agencies, bidding procedures, see sections 81-145 to 81-162 and 81-1118 to 81-1118.07.

ARTICLE 1

PUBLIC LETTINGS

Cross References

Political Subdivisions Construction Alternatives Act, see section 13-2901.

Section

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| 73-101. | Public lettings; how conducted. |
| 73-101.01. | Resident bidder, defined; preference. |
| 73-101.02. | Resident bidder; preference; exception. |
| 73-102. | Fair labor standards; statement of compliance required. |
| 73-103. | Fair labor standards; low bidder; disqualification. |
| 73-104. | Fair labor standards, defined. |
| 73-105. | Violations; penalties. |
| 73-106. | School district; construction, remodeling, or repair of building; advertise for bids; exception. |

73-101 Public lettings; how conducted.

Whenever the State of Nebraska, or any department or any agency thereof, any county board, county clerk, county highway superintendent, the mayor and city council or commissioner of any municipality, any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, or the officers of any school district, township, or other governmental subdivision, shall advertise for bids in pursuance of any statutes of the State of Nebraska, on any road contract work or any public improvements work, or for supplies, construction, repairs, and improvements, and in all other cases where bids for supplies or work, of any character whatsoever, are received for the various departments and agencies of the state, and other subdivisions and agencies enumerated in this section, they shall fix not only the day upon which such bids shall be returned, received, or opened, as provided by other statutes, but shall also fix the hour at which such bids shall close, or be received or opened, and they shall also provide that such bids shall be immediately and simultaneously opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close. If bids are being opened on more than one

contract, the officials having in charge the opening of such bids may, if they deem it advisable, award each contract as the bids are opened.

Source: Laws 1923, c. 131, § 1, p. 324; C.S.1929, § 73-101; Laws 1935, c. 145, § 1, p. 539; C.S.Supp.,1941, § 73-101; R.S.1943, § 73-101; Laws 1959, c. 181, § 18, p. 662; Laws 1999, LB 87, § 84.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

City ordinance requiring payment of minimum wage on public contracts did not implement statute. *Philson v. City of Omaha*, 167 Neb. 360, 93 N.W.2d 13 (1958).

73-101.01 Resident bidder, defined; preference.

When a public contract is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference over a nonresident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder. Resident bidder as used in sections 73-101.01 and 73-101.02 shall mean any person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and which has met the residency requirement of the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced or has had a bona fide establishment for doing business within this state for the length of time established by the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced. Any contract entered into without compliance with sections 73-101.01 and 73-101.02 shall be null and void.

Source: Laws 1967, c. 471, § 1, p. 1465; Laws 1993, LB 121, § 462.

73-101.02 Resident bidder; preference; exception.

The provisions of section 73-101.01 shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of sections 73-101.01 and 73-101.02.

Source: Laws 1967, c. 471, § 2, p. 1466.

73-102 Fair labor standards; statement of compliance required.

All governing authorities of the State of Nebraska, and governmental subdivisions thereof, and every person acting as purchasing agent for the State of Nebraska, or any governmental subdivision thereof, shall, in awarding contracts for public works, require all contractors bidding on public works to file with such authority a statement that he is complying with, and will continue to comply with, fair labor standards in the pursuit of his business and in the execution of the contract on which he is bidding. The governing authorities shall also require to be written into each and every contract for public works, in addition to such other provisions as are necessary and prescribed by law, a provision that in the execution of such contract fair labor standards shall be maintained; *Provided*, no agency or department of the State of Nebraska shall make any requirements, because of the provisions of sections 73-101 to 73-104,

that will increase the cost to the state of merchandise, materials, supplies or services. This section shall not apply to such governing authorities that prescribe, in the terms of their contracts for public works, provisions governing the hours of labor, rates of pay, and conditions of employment.

Source: Laws 1939, c. 55, § 1, p. 227; C.S.Supp.,1941, § 73-102; R.S. 1943, § 73-102.

Fair Labor Standards Act is a general law of statewide application. *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

73-103 Fair labor standards; low bidder; disqualification.

A showing in a public hearing by interested parties, to the satisfaction of the awarding authority, that any contractor bidding upon public works, and having filed the statement as required by section 73-102, has not complied with fair labor standards in the pursuit of his business or occupation, shall be the basis for the disqualification of the low bid, in which case the awarding authority shall let the bid to the next lowest responsible bidder.

Source: Laws 1939, c. 55, § 2, p. 227; C.S.Supp.,1941, § 73-103; R.S. 1943, § 73-103.

Lowest money bid may not always constitute lowest responsible bid. *Day v. City of Beatrice*, 169 Neb. 858, 101 N.W.2d 481 (1960).

73-104 Fair labor standards, defined.

Fair labor standards, as used in sections 73-102 and 73-103 shall be construed to mean such a scale of wages and conditions of employment as are paid and maintained by at least fifty percent of the contractors in the same business or field of endeavor as the contractor filing such statement.

Source: Laws 1939, c. 55, § 2, p. 227; C.S.Supp.,1941, § 73-103; R.S. 1943, § 73-104.

Provision for payment of a sum no less than going wage is a proper fair labor standard, while payment of fixed sum irrespective of going wage is not. *Philson v. City of Omaha*, 167 Neb. 360, 93 N.W.2d 13 (1958).

Home rule charter controlled contract for improvement of water system. *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

73-105 Violations; penalties.

Any officer or person who may be in charge of any such bids prior to the time fixed for the simultaneous opening, who shall open prior to such time, or otherwise disclose to any bidder the contents, amount or other details of any rival bid, shall be guilty of a Class IV misdemeanor. Any person violating any of the provisions of sections 73-101 to 73-104 shall be guilty of a Class IV misdemeanor.

Source: Laws 1923, c. 131, § 1, p. 324; C.S.1929, § 73-101; Laws 1935, c. 145, § 1, p. 539; C.S.Supp.,1941, § 73-101; R.S.1943, § 73-105; Laws 1977, LB 39, § 181.

Effect of penalty raised but not decided. *Niklaus v. Miller*, 159 Neb. 301, 66 N.W.2d 824 (1954).

73-106 School district; construction, remodeling, or repair of building; advertise for bids; exception.

Whenever any public school district in the state expends public funds for the construction, remodeling, or repair of any school-owned building or for site

improvements, other than those expenditures authorized by section 79-10,104 for facilities which are not to be owned by the district following their completion, the school board or its representative shall advertise for bids in the regular manner established by the board and accept or reject bids pursuant to section 73-101, except that nothing in this section applies to such construction, remodeling, repair, or site improvements when the contemplated expenditure for the complete project does not exceed forty thousand dollars. This section does not apply to the acquisition of existing buildings, purchase of new sites, or site expansions by the school district.

Source: Laws 1979, LB 130, § 1; Laws 1981, LB 218, § 2; Laws 1996, LB 900, § 1061; Laws 2001, LB 420, § 34.

**ARTICLE 2
PUBLIC CONTRACTS**

(a) CONTINGENT FEE CONTRACTS

Section

- 73-201. Legislative findings.
- 73-202. Terms, defined.
- 73-203. Contingent fee contract; executed by state; void; exception.
- 73-204. Contingent fee contract; executed by constitutional agency; void; exception.

(b) TECHNOLOGY ACCESS CLAUSE

- 73-205. Technology access clause; requirements.

(a) CONTINGENT FEE CONTRACTS

73-201 Legislative findings.

The Legislature finds that:

- (1) Article IV, section 6, of the Constitution of Nebraska requires that the affairs of the state be economically and efficiently administered and thereby imposes a duty to expend no more for any service than it is worth;
- (2) The types and provisions of contracts executed on behalf of the state have a direct bearing on the economical and efficient administration of the affairs of the state; and
- (3) Fee-for-service contracts are the usual, customary, and accepted manner of contracting on behalf of the state.

Source: Laws 1995, LB 519, § 1.

73-202 Terms, defined.

For purposes of sections 73-201 to 73-204:

- (1) Contingent fee means any fee, whether commission, percentage, brokerage, finder's fee, or contingent fee or otherwise denominated, which is a percentage or portion of the amount or value recovered, obtained, or involved;
- (2) Contingent fee contract means any contract or agreement which provides for payment of a contingent fee; and
- (3) State means any department or agency of the state other than (a) the University of Nebraska, (b) the Nebraska state colleges, and (c) any other board, commission, or agency established by the Constitution of Nebraska.

Source: Laws 1995, LB 519, § 4.

73-203 Contingent fee contract; executed by state; void; exception.

Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of twenty-five thousand dollars per annum executed by the state or by any person on behalf of the state after September 9, 1995, is void unless executed by the Governor upon thirty days' notice to the public at large.

Source: Laws 1995, LB 519, § 2.

73-204 Contingent fee contract; executed by constitutional agency; void; exception.

Any contingent fee contract of any kind whatsoever reasonably anticipated to result in the payment of a contingent fee or fees in excess of twenty-five thousand dollars per annum executed by (1) the University of Nebraska, (2) the Nebraska state colleges, or (3) any other board, commission, or agency established by the Constitution of Nebraska after September 9, 1995, is void unless executed by the highest executive officer thereof upon thirty days' notice to the public at large.

Source: Laws 1995, LB 519, § 3.

(b) TECHNOLOGY ACCESS CLAUSE

73-205 Technology access clause; requirements.

(1) The Commission for the Blind and Visually Impaired, the Nebraska Information Technology Commission, and the Chief Information Officer, in consultation with other state agencies and after at least one public hearing, shall develop a technology access clause to be included in all contracts entered into by state agencies on and after January 1, 2001.

(2) The technology access clause shall clearly state, as a condition for the expenditure of state funds in the purchase of information technology, that the input and output technology shall be capable of supporting modification and otherwise provide for equivalent access for both visual and nonvisual use.

(3) The technology access clause shall be included in all contracts made by state agencies that involve the purchase of an automated information system, without regard to:

- (a) The source of funds used to make the purchase;
- (b) Whether the purchase is made under delegated purchasing authority; or
- (c) The source of law under which the purchase is made.

Source: Laws 2000, LB 352, § 19.

ARTICLE 3**CONTRACTS FOR PERSONAL SERVICES**

Section

- 73-301. Director of Administrative Services; duties.
- 73-302. State agency; duties.
- 73-303. State agency; displaced state employees; plan of assistance.
- 73-304. Director of Administrative Services; approve contract; when.
- 73-305. Director of Administrative Services; report required.
- 73-306. Rules and regulations.
- 73-307. Sections; applicability; how construed.

73-301 Director of Administrative Services; duties.

The Director of Administrative Services shall review and approve or disapprove any contract for personal services between a private entity and any state agency, other than (1) the University of Nebraska, (2) the Nebraska state colleges, and (3) any other board, commission, or agency established by the Constitution of Nebraska, if, on the effective date of the contract, the personal services are performed by permanent state employees of the agency and will be replaced by services performed by the private entity. The contract shall be subject to the public bidding procedures established in sections 81-145 to 81-162 except in emergencies approved by the Governor.

For purposes of this section, contract for personal services means an agreement by a contractor to provide human labor but does not mean a contract to supply only goods or personal property. The term includes contracts with private service providers, consultants, and independent service contractors.

Source: Laws 1995, LB 519, § 5.

73-302 State agency; duties.

(1) A state agency that seeks to enter into a contract described in section 73-301 with a private entity shall submit the following information to the Director of Administrative Services: (a) The proposed contract, (b) a review of the long-term actual cost savings, (c) the measurable goals for improving the quality of the service, and (d) an assessment of the feasibility of alternatives within the agency to contracting for performance of the service.

(2) In calculating the cost savings under subsection (1) of this section, the state agency shall project, for twelve months and for sixty months, the following:

(a) Direct costs, including salary and fringe benefits;

(b) Indirect overhead costs which shall include only those costs that can be attributed solely to the work in question and that would not exist if the work were not performed by state employees. Indirect overhead costs shall include the pro rata share of existing administrative salaries and benefits, rents, equipment costs, utilities, and materials;

(c) Any continuing or transitional costs that are directly associated with contracting for the work, including unemployment compensation and the cost of transitional services; and

(d) Additional costs of performance of the work by state employees, including the salaries and benefits of additional staff performing inspection, supervision, and monitoring duties and the cost of additional space, equipment, and materials needed to perform the services.

Source: Laws 1995, LB 519, § 6.

73-303 State agency; displaced state employees; plan of assistance.

A state agency that seeks to enter into a contract described in section 73-301 shall also submit to the Director of Administrative Services a formal plan of assistance to the state employees of such state agency who will be displaced by such contract. The plan shall include, but need not be limited to, the following provisions:

- (1) Efforts by the state agency to place displaced employees in vacant positions in that agency or another state agency;
- (2) Provisions in the contract for personal services, if feasible, for the hiring of displaced employees by the contractor; and
- (3) Demonstration by the state agency that it has taken formal and positive steps in considering alternatives to such contract, including reorganization, reevaluation of service, and reevaluation of performance.

Source: Laws 1995, LB 519, § 7.

73-304 Director of Administrative Services; approve contract; when.

The Director of Administrative Services may approve a proposed contract if:

- (1) The potential economic advantage of contracting is not outweighed by the public's interest in having the particular services performed directly by the state agency;
- (2) The contract does not adversely affect the state's affirmative action efforts;
- (3) The contract will include adequate control mechanisms to insure that the services are provided pursuant to the terms of the contract; and
- (4) The private entity is fairly compensating its employees.

Source: Laws 1995, LB 519, § 8.

73-305 Director of Administrative Services; report required.

The Director of Administrative Services shall, within forty-five days after receipt of the information described in sections 73-302 and 73-303 from the state agency, prepare a report detailing why the proposed contract was approved or disapproved. The report shall be delivered to the chairperson of the Appropriations Committee of the Legislature and the Legislative Fiscal Analyst.

Source: Laws 1995, LB 519, § 9.

73-306 Rules and regulations.

The Department of Administrative Services shall adopt and promulgate rules and regulations to carry out sections 73-301 to 73-305. Such rules and regulations shall apply to the Director of Administrative Services in carrying out his or her duties pursuant to such sections.

Source: Laws 1995, LB 519, § 10.

73-307 Sections; applicability; how construed.

Sections 73-301 to 73-306 shall not apply to the Nebraska Consultants' Competitive Negotiation Act.

Sections 73-301 to 73-306 shall not be construed to apply to renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.

Source: Laws 1995, LB 519, § 11.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

ARTICLE 4

HEALTH AND HUMAN SERVICES CONTRACTS

Section

73-401. Contract with state agency; Public Counsel; jurisdiction.

73-401 Contract with state agency; Public Counsel; jurisdiction.

Except for long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act, the contracting agency shall ensure that any contract which a state agency enters into or renews which agrees that a corporation, partnership, business, firm, governmental entity, or person shall provide health and human services to individuals on behalf of the State of Nebraska shall contain a clause requiring the corporation, partnership, business, firm, governmental entity, or person to submit to the jurisdiction of the Public Counsel under sections 81-8,240 to 81-8,254 with respect to the provision of services under the contract.

Source: Laws 1997, LB 622, § 120.

Cross References

Long-Term Care Ombudsman Act, see section 81-2237.

ARTICLE 5

STATE CONTRACTS FOR SERVICES

Section

- 73-501. Purposes of sections.
- 73-502. Terms, defined.
- 73-503. Documentation; requirements.
- 73-504. Competitive bidding requirements.
- 73-505. State agency directors; duties.
- 73-506. State agency contracts for services; requirements.
- 73-507. Exceptions.
- 73-508. Preapproval; required; when.
- 73-509. Pre-process; required; when; procedure.

73-501 Purposes of sections.

The purposes of sections 73-501 to 73-509 are to establish a standardized, open, and fair process for selection of contractual services and to create an accurate reporting of expended funds for contractual services. This process shall promote a standardized method of selection for state contracts for services, assuring a fair assessment of qualifications and capabilities for project completion. There shall also be an accountable, efficient reporting method of expenditures for these services.

Source: Laws 2003, LB 626, § 1.

73-502 Terms, defined.

For purposes of sections 73-501 to 73-509:

(1) Contract for services means any contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable

task, study, or report rather than to furnish an end item of supply, goods, equipment, or material;

(2) Emergency means necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;

(3) Materiel division means the materiel division of the Department of Administrative Services established in section 81-1118;

(4) Sole source means of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required; and

(5) State agency or agency means any state agency, board, or commission other than the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or any officer or agency established by the Constitution of Nebraska.

Source: Laws 2003, LB 626, § 2.

73-503 Documentation; requirements.

(1) All state agencies shall process and document all contracts for services through the state accounting system. The Director of Administrative Services shall specify the format and type of information for state agencies to provide and approve any alternatives to such formats. All state agencies shall enter the information on new contracts for services and amendments to existing contracts for services. No later than September 15, 2003, all state agencies shall have entered such information about all contracts for services made prior to April 1, 2003, that are still in effect. State agency directors shall ensure that contracts for services are coded appropriately into the state accounting system.

(2) The requirements of this section also apply to the courts, the Legislature, and any officer or agency established by the Constitution of Nebraska, but not to the University of Nebraska.

(3) The Nebraska state colleges shall document all contracts for services through the state accounting system.

(4) The Director of Administrative Services shall establish a centralized data base, either through the state accounting system or through an alternative system, which specifically identifies where a copy of each contract for services may be found.

Source: Laws 2003, LB 626, § 3.

73-504 Competitive bidding requirements.

Except as provided in section 73-507:

(1) All state agencies shall comply with the review and competitive bidding processes provided in this section for contracts for services. Unless otherwise exempt, no state agency shall expend funds for contracts for services without complying with this section;

(2) All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the materiel division procurement manual or a process approved by the Director of Administrative Services.

Bidding may be performed at the state agency level or by the materiel division. Any state agency may request that the materiel division conduct the competitive bidding process;

(3) If the bidding process is at the state agency level, then state agency directors shall ensure that bid documents for each contract for services in excess of fifty thousand dollars are prereviewed by the materiel division and that any changes to the proposed contract that differ from the bid documents in the proposed contract for services are reviewed by the materiel division before signature by the parties;

(4) State agency directors, in cooperation with the materiel division, shall be responsible for appropriate public notice of an impending contractual services project in excess of fifty thousand dollars in accordance with the materiel division's procurement manual and sections 73-501 to 73-509; and

(5) State agency directors, in cooperation with the materiel division, shall be responsible for ensuring that a request for contractual services in excess of fifty thousand dollars is filed with the materiel division for dissemination or web site access to vendors interested in competing for contracts for services.

Source: Laws 2003, LB 626, § 4.

73-505 State agency directors; duties.

State agency directors shall be responsible for maintaining accurate documentation of the process used for selection of all contracts for services and for ensuring and documenting that services required under the contract are being performed in compliance with the terms of the contract for services. Such documentation shall be kept with each contract for services.

Source: Laws 2003, LB 626, § 5.

73-506 State agency contracts for services; requirements.

State agency contracts for services shall be subject to the following requirements:

(1) Payments shall be made when contractual deliverables are received or in accordance with specific contractual terms and conditions;

(2) State agencies may not enter into contracts for services with an unspecified or unlimited duration; and

(3) State agencies may not structure contracts for services to avoid any of the requirements of sections 73-501 to 73-509.

Source: Laws 2003, LB 626, § 6.

73-507 Exceptions.

(1) Subject to review by the Director of Administrative Services, the materiel division shall provide procedures to grant limited exceptions from the provisions of sections 73-504, 73-508, and 73-509 for:

(a) Sole source and emergency contracts; and

(b) Other circumstances or specific contracts when any of the requirements of sections 73-504, 73-508, and 73-509 are not appropriate for or are not compatible with the circumstances or contract. The materiel division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 73-504, 73-508, and 73-509:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Roads contracts for all road and bridge projects; and

(j) Nebraska Investment Council contracts.

Source: Laws 2003, LB 626, § 7.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

73-508 Preapproval; required; when.

Except as provided in section 73-507, all proposals for sole source contracts for services in excess of fifty thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.

Source: Laws 2003, LB 626, § 8; Laws 2007, LB256, § 3.

73-509 Pre-process; required; when; procedure.

Each proposed contract for services in excess of fifty thousand dollars which requests services that are now performed or have, within the year immediately preceding the date of the proposed contract, been performed by a state employee covered by the classified personnel system or by any labor contract

shall use a pre-process prescribed by the materiel division. The pre-process shall include evaluation of the displacement of the employee of the state agency or position held by the employee of the state agency within the preceding year and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise. Documentation of each evaluation shall be maintained in the contract file by the state agency.

Source: Laws 2003, LB 626, § 9.

RAILROADS

CHAPTER 74 RAILROADS

Article.

1. Incorporation. Repealed.
2. Public Offices. Repealed.
3. Acquisition of Real Estate. 74-301 to 74-329.
4. Purchase, Lease, or Consolidation of Lines. Transferred or Repealed.
5. Operation. 74-501 to 74-5,103.
6. Fencing and Mowing Right-of-Way. 74-601 to 74-614.
7. Liability to Employees, Shippers, and Passengers. Transferred or Repealed.
8. Rates and Fares. Repealed.
9. Safety of Employees and Passengers. 74-901 to 74-925.
10. Freight. Repealed.
11. Street Railways. Repealed.
12. Claims against Common Carriers. Repealed.
13. Railroad Safety.
 - (a) Railroad Transportation Safety District. 74-1301 to 74-1309.
 - (b) Railroad Crossings. 74-1310 to 74-1323.
 - (c) Nebraska Highway-Rail Crossing Safety Committee. 74-1324 to 74-1328. Repealed.
 - (d) Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act. 74-1329 to 74-1343.
14. Light-Density Rail Lines. 74-1401 to 74-1429.
15. Nebraska Transit and Rail Advisory Council Act. Repealed.
16. Midwest Interstate Passenger Rail Compact. 74-1601 to 74-1603.

Cross References

Constitutional provisions:

- Capital stock, not increased except upon notice and as provided by law, see Article X, section 5, Constitution of Nebraska.
- Consolidation, permit from Public Service Commission required, see Article X, section 3, Constitution of Nebraska.
- Discrimination and extortion, Legislature may prevent, see Article X, section 7, Constitution of Nebraska.
- Dividends, payable only out of earnings, see Article X, section 5, Constitution of Nebraska.
- Eminent domain:
 - Just compensation, see Article I, section 21, Constitution of Nebraska.
 - Must become Nebraska corporation before exercising, see Article X, section 8, Constitution of Nebraska.
 - Property and franchises of railroad companies taken for public necessity, see Article X, section 6, Constitution of Nebraska.
- Liability, see Article X, section 4, Constitution of Nebraska.
- Local or special legislation granting right to lay down tracks or amend charters prohibited, see Article III, section 18, Constitution of Nebraska.
- Maximum rates, Legislature may fix, see Article X, section 4, Constitution of Nebraska.
- Physical connection or joint use, may be required by law, see Article X, section 3, Constitution of Nebraska.
- Public highways, railroads are, see Article X, section 4, Constitution of Nebraska.
- Reports under oath, see Article X, section 1, Constitution of Nebraska.
- Rolling stock and movables, not exempt from execution, see Article X, section 2, Constitution of Nebraska.
- State land, donation prohibited, see Article III, section 21, Constitution of Nebraska.
- Subscriptions to stock, political subdivisions must not make, see Article XI, section 1, Constitution of Nebraska.

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- Attorney's fees, recovery allowed, when, see section 25-1801.
- By employees, assumption of risk, no defense, see section 25-21,184.
- Damages for trespass or injury to real property, see section 25-401.

Agricultural Suppliers Lease Protection Act, see section 2-5501.

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Bee husbandry, shipping regulations relative to, see sections 81-2,170 to 81-2,173.

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- Liability, see section 74-594.
- Penalty, see section 17-225.

Cattle, removal from brand inspection area, see section 54-1,115.

Cigarettes, bonded carriers of, requirements, see sections 77-2621 and 77-2622.

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Counties and municipalities, internal improvement bonds for aid in railroad construction, see sections 10-401 to 10-406 and 10-607 et seq.

§ 74-101

RAILROADS

County road grade crossings, elimination by county board, see section 39-1730.

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Explosive materials, permit to transport required, see section 28-1235.

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Fur, shipments of raw, see section 37-512.

Game and Parks Commission, acquire right-of-way, see sections 37-912, 37-914, 37-1011 et seq., and 81-2801.

Industrial disputes, jurisdiction of Commission of Industrial Relations, see Chapter 48, article 8.

Intersections between railroads and highways, see section 75-702 et seq.

Irrigation works, construction across railways, see section 46-153.

Issuance of securities, consolidation, see sections 75-146 to 75-151.

Labor or material liens, see sections 52-115 to 52-117.

Landmarks and corners, see sections 34-201 and 34-202.

Leases with agricultural suppliers, Agricultural Suppliers Lease Protection Act, see section 2-5501.

Liquors:

Railroad licenses, see sections 53-123.05 and 53-191.

Transportation of, see section 53-192 et seq.

Motor vehicle fuels, carriers' reports, see section 66-525.

Municipalities, regulatory powers of:

Cities of the first class, see sections 16-211 and 16-212.

Cities of the metropolitan class, see section 14-102.

Cities of the primary class, see sections 15-209 and 15-261.

Cities of the second class and villages, see sections 17-143, 17-144, 17-551, 17-552, and 17-561.

Weeds, removal from right-of-way, see section 18-1719.

Nursery stock, Plant Protection and Plant Pest Act, see section 2-1072.

Political contributions, when prohibited, see section 14-225 and the Nebraska Political Accountability and Disclosure Act, see section 49-1401.

Public Service Commission, jurisdiction and powers of, see Chapter 75, article 4.

Radioactive waste, shipping, fees, see section 71-3525.

Rates, charges, and tariffs, see sections 75-118 to 75-127.

Real property for construction and operation of railroads, aliens and foreign corporations may own, see section 76-412.

Rebates, granting or receiving prohibited, see section 59-818.

Right-of-way, acquisition by state agency, see section 81-2801.

Security interests, see section 76-1101 et seq.

Sign or other device, prohibited, when, see section 60-6,127.

Streets, paving between rails, requirements, see sections 16-625 and 17-521.

Taxation of railroads, assessment and equalization, see Chapter 77, article 6.

Trails, recreational:

Abandoned railroad rights-of-way, see sections 37-1010 to 37-1015.

Acquisition by Game and Parks Commission, see sections 37-912 and 37-914.

Trail Development Assistance Act, see section 37-1001.

Viaducts and subways in municipalities, see Chapter 18, article 6.

ARTICLE 1 INCORPORATION

Section

74-101. Repealed. Laws 1994, LB 414, § 137.

74-102. Repealed. Laws 1994, LB 414, § 137.

74-103. Repealed. Laws 1994, LB 414, § 137.

74-104. Repealed. Laws 1994, LB 414, § 137.

74-105. Repealed. Laws 1994, LB 414, § 137.

74-106. Repealed. Laws 1994, LB 414, § 137.

74-107. Repealed. Laws 1994, LB 414, § 137.

74-108. Repealed. Laws 1994, LB 414, § 137.

74-109. Repealed. Laws 1994, LB 414, § 137.

74-110. Repealed. Laws 1994, LB 414, § 137.

74-111. Repealed. Laws 1994, LB 414, § 137.

74-101 Repealed. Laws 1994, LB 414, § 137.

- 74-102 Repealed. Laws 1994, LB 414, § 137.**
- 74-103 Repealed. Laws 1994, LB 414, § 137.**
- 74-104 Repealed. Laws 1994, LB 414, § 137.**
- 74-105 Repealed. Laws 1994, LB 414, § 137.**
- 74-106 Repealed. Laws 1994, LB 414, § 137.**
- 74-107 Repealed. Laws 1994, LB 414, § 137.**
- 74-108 Repealed. Laws 1994, LB 414, § 137.**
- 74-109 Repealed. Laws 1994, LB 414, § 137.**
- 74-110 Repealed. Laws 1994, LB 414, § 137.**
- 74-111 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 2
PUBLIC OFFICES**

Section

- 74-201. Repealed. Laws 1994, LB 414, § 137.
- 74-202. Repealed. Laws 1994, LB 414, § 137.
- 74-203. Repealed. Laws 1994, LB 414, § 137.
- 74-204. Repealed. Laws 1994, LB 414, § 137.

- 74-201 Repealed. Laws 1994, LB 414, § 137.**
- 74-202 Repealed. Laws 1994, LB 414, § 137.**
- 74-203 Repealed. Laws 1994, LB 414, § 137.**
- 74-204 Repealed. Laws 1994, LB 414, § 137.**

**ARTICLE 3
ACQUISITION OF REAL ESTATE**

Cross References

For eminent domain procedure, see sections 25-2501 to 25-2506 and Chapter 76, article 7.

Section

- 74-301. Repealed. Laws 1994, LB 414, § 137.
- 74-302. Repealed. Laws 1994, LB 414, § 137.
- 74-303. Repealed. Laws 1994, LB 414, § 137.
- 74-304. Repealed. Laws 1994, LB 414, § 137.
- 74-305. Repealed. Laws 1994, LB 414, § 137.
- 74-306. Repealed. Laws 1994, LB 414, § 137.
- 74-307. Roads, streams, or canals; crossings; conditions.
- 74-308. Real estate; acquisition; damages; procedure.
- 74-309. Repealed. Laws 1951, c. 101, § 127.
- 74-310. Repealed. Laws 1951, c. 101, § 127.
- 74-311. Repealed. Laws 1951, c. 101, § 127.
- 74-312. Repealed. Laws 1951, c. 101, § 127.
- 74-313. Repealed. Laws 1951, c. 101, § 127.
- 74-314. Repealed. Laws 1951, c. 101, § 127.
- 74-315. Repealed. Laws 1951, c. 101, § 127.
- 74-316. Repealed. Laws 1951, c. 101, § 127.

Section

- 74-317. Repealed. Laws 1951, c. 101, § 127.
 74-318. Repealed. Laws 1951, c. 101, § 127.
 74-319. Repealed. Laws 1951, c. 101, § 127.
 74-320. Repealed. Laws 1951, c. 101, § 127.
 74-321. Repealed. Laws 1951, c. 101, § 127.
 74-322. Repealed. Laws 1951, c. 101, § 127.
 74-323. Repealed. Laws 1994, LB 414, § 137.
 74-324. Repealed. Laws 1951, c. 101, § 127.
 74-325. Repealed. Laws 1951, c. 101, § 127.
 74-326. Repealed. Laws 1951, c. 101, § 127.
 74-327. Repealed. Laws 1994, LB 414, § 137.
 74-328. Repealed. Laws 1994, LB 414, § 137.
 74-329. Repealed. Laws 1951, c. 244, § 1.

74-301 Repealed. Laws 1994, LB 414, § 137.

74-302 Repealed. Laws 1994, LB 414, § 137.

74-303 Repealed. Laws 1994, LB 414, § 137.

74-304 Repealed. Laws 1994, LB 414, § 137.

74-305 Repealed. Laws 1994, LB 414, § 137.

74-306 Repealed. Laws 1994, LB 414, § 137.

74-307 Roads, streams, or canals; crossings; conditions.

Any railroad may construct and carry its tracks across, over, or under any road, railroad, canal, stream, or watercourse when it may be necessary in the construction thereof. In such cases, the railroad shall construct its railroad crossings so as to not unnecessarily impede the travel, transportation, or navigation upon the road, railroad, canal, stream, or watercourse so crossed. The railroad may change the channel of any stream or watercourse whenever it may be necessary in the location, construction, or use of its road if it does not change the general course of the stream or watercourse or materially impair its usefulness.

Source: R.S.1866, c. 25, § 86, p. 219; R.S.1913, § 5944; C.S.1922, § 5282; C.S.1929, § 74-305; R.S.1943, § 74-307; Laws 1994, LB 414, § 2.

Omission of word necessary in instruction to jury was not prejudicial. *Sawyer v. Chicago, B. & Q. R. R. Co.*, 99 Neb. 294, 156 N.W. 504 (1916).

It is the duty of a railroad company when its right-of-way passes over a stream to so construct its roadbed as to carry off the waters of that stream. *Chicago, R. I. & P. Ry. Co. v. Andreesen*, 62 Neb. 456, 87 N.W. 167 (1901).

A railroad corporation, though authorized by law to construct its road across a stream, must do so with due regard for the

rights of adjacent landowners, and is liable for damage to adjacent land if its bridge is so constructed as to cause water and ice to gorge and overflow such land. *McCleneghan v. Omaha & R. V. R. R. Co.*, 25 Neb. 523, 41 N.W. 350 (1889), 13 A.S.R. 508 (1889).

Legislature may put the burden of repair of viaducts crossing several railroads upon one of the companies or apportion it among all as it sees fit. *Chicago, B. & Q. R. R. Co. v. State of Nebraska ex rel. City of Omaha*, 170 U.S. 57 (1898).

74-308 Real estate; acquisition; damages; procedure.

Any railroad may purchase and use real estate for a price to be agreed upon with the owners thereof and may acquire the same through the exercise of the power of eminent domain. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: R.S.1866, c. 25, § 95, p. 223; R.S.1913, § 5945; C.S.1922, § 5283; C.S.1929, § 74-306; R.S.1943, § 74-308; Laws 1951, c. 101, § 113, p. 501; Laws 1994, LB 414, § 3.

Although railroads are private corporations, they have been given the statutory authority to acquire land through eminent domain. Railroads are required to exercise their eminent domain power in accordance with Nebraska's general eminent domain statutes, set forth at sections 76-701 to 76-726. *Burlington Northern and Santa Fe Ry. Co. v. Chaulk*, 262 Neb. 235, 631 N.W.2d 131 (2001).

An attempt to agree with owner is condition precedent to condemnation. *Higgins v. Loup River Public Power Dist.*, 157 Neb. 652, 61 N.W.2d 213 (1953).

Taxation of costs in eminent domain proceedings by railroad company contrasted with procedure under other statutes. *Kennedy v. Department of Roads & Irrigation*, 150 Neb. 727, 35 N.W.2d 781 (1949).

The fact that negotiations for purchase of a tract of land failed because of disagreement is sufficient to show that the parties were unable to agree and to authorize ascertainment of damages by condemnation. *Rogers v. Cosgrave*, 98 Neb. 608, 153 N.W. 569 (1915).

The fact that by statute the railroad company may condemn land for a right-of-way if the parties are unable to agree will be considered with evidence tending to show that a contract for the purchase of such land is inequitable and not to be specifically enforced. *Rice v. Lincoln & N. W. R. R. Co.*, 88 Neb. 307, 129 N.W. 425 (1911).

Statutory provisions for the ascertainment of damages to a landowner whose property is taken by eminent domain apply only when real estate is taken or appropriated by the railroad company. *Republican V. R. R. Co. v. Fellers*, 16 Neb. 169, 20 N.W. 217 (1884).

The mode provided for assessing damages for right-of-way does not apply where property is damaged but no portion thereof is taken. *Burlington & M. R. R. Co. v. Reinhackle*, 15 Neb. 279, 18 N.W. 69 (1883), 48 Am. R. 342 (1883).

Provisions of this section for ascertaining damages apply only where property is taken. Where property is damaged, relief must be sought in an action for damages. *Omaha Horse Ry. Co. v. Cable Tram-Way Co. of Omaha*, 32 F. 727 (Cir. Ct., D. Neb. 1887).

74-309 Repealed. Laws 1951, c. 101, § 127.

74-310 Repealed. Laws 1951, c. 101, § 127.

74-311 Repealed. Laws 1951, c. 101, § 127.

74-312 Repealed. Laws 1951, c. 101, § 127.

74-313 Repealed. Laws 1951, c. 101, § 127.

74-314 Repealed. Laws 1951, c. 101, § 127.

74-315 Repealed. Laws 1951, c. 101, § 127.

74-316 Repealed. Laws 1951, c. 101, § 127.

74-317 Repealed. Laws 1951, c. 101, § 127.

74-318 Repealed. Laws 1951, c. 101, § 127.

74-319 Repealed. Laws 1951, c. 101, § 127.

74-320 Repealed. Laws 1951, c. 101, § 127.

74-321 Repealed. Laws 1951, c. 101, § 127.

74-322 Repealed. Laws 1951, c. 101, § 127.

74-323 Repealed. Laws 1994, LB 414, § 137.

74-324 Repealed. Laws 1951, c. 101, § 127.

74-325 Repealed. Laws 1951, c. 101, § 127.

74-326 Repealed. Laws 1951, c. 101, § 127.

74-327 Repealed. Laws 1994, LB 414, § 137.

74-328 Repealed. Laws 1994, LB 414, § 137.

74-329 Repealed. Laws 1951, c. 244, § 1.

ARTICLE 4

PURCHASE, LEASE, OR CONSOLIDATION OF LINES

Section

- 74-401. Repealed. Laws 1994, LB 414, § 137.
- 74-402. Repealed. Laws 1994, LB 414, § 137.
- 74-403. Repealed. Laws 1994, LB 414, § 137.
- 74-404. Repealed. Laws 1994, LB 414, § 137.
- 74-405. Repealed. Laws 1994, LB 414, § 137.
- 74-406. Repealed. Laws 1994, LB 414, § 137.
- 74-407. Repealed. Laws 1994, LB 414, § 137.
- 74-408. Repealed. Laws 1994, LB 414, § 137.
- 74-409. Repealed. Laws 1994, LB 414, § 137.
- 74-410. Repealed. Laws 1994, LB 414, § 137.
- 74-411. Repealed. Laws 1994, LB 414, § 137.
- 74-412. Repealed. Laws 1994, LB 414, § 137.
- 74-413. Repealed. Laws 1994, LB 414, § 137.
- 74-414. Repealed. Laws 1994, LB 414, § 137.
- 74-415. Repealed. Laws 1994, LB 414, § 137.
- 74-416. Repealed. Laws 1994, LB 414, § 137.
- 74-417. Repealed. Laws 1994, LB 414, § 137.
- 74-418. Repealed. Laws 1994, LB 414, § 137.
- 74-419. Repealed. Laws 1994, LB 414, § 137.
- 74-420. Repealed. Laws 1994, LB 414, § 137.
- 74-421. Repealed. Laws 1994, LB 414, § 137.
- 74-422. Repealed. Laws 1994, LB 414, § 137.
- 74-423. Repealed. Laws 1994, LB 414, § 137.
- 74-424. Transferred to section 81-2801.

74-401 Repealed. Laws 1994, LB 414, § 137.

74-402 Repealed. Laws 1994, LB 414, § 137.

74-403 Repealed. Laws 1994, LB 414, § 137.

74-404 Repealed. Laws 1994, LB 414, § 137.

74-405 Repealed. Laws 1994, LB 414, § 137.

74-406 Repealed. Laws 1994, LB 414, § 137.

74-407 Repealed. Laws 1994, LB 414, § 137.

74-408 Repealed. Laws 1994, LB 414, § 137.

74-409 Repealed. Laws 1994, LB 414, § 137.

74-410 Repealed. Laws 1994, LB 414, § 137.

74-411 Repealed. Laws 1994, LB 414, § 137.

74-412 Repealed. Laws 1994, LB 414, § 137.

74-413 Repealed. Laws 1994, LB 414, § 137.

74-414 Repealed. Laws 1994, LB 414, § 137.

74-415 Repealed. Laws 1994, LB 414, § 137.

74-416 Repealed. Laws 1994, LB 414, § 137.

74-417 Repealed. Laws 1994, LB 414, § 137.

74-418 Repealed. Laws 1994, LB 414, § 137.

74-419 Repealed. Laws 1994, LB 414, § 137.

74-420 Repealed. Laws 1994, LB 414, § 137.

74-421 Repealed. Laws 1994, LB 414, § 137.

74-422 Repealed. Laws 1994, LB 414, § 137.

74-423 Repealed. Laws 1994, LB 414, § 137.

74-424 Transferred to section 81-2801.

ARTICLE 5 OPERATION

Section

74-501.	Repealed. Laws 1994, LB 414, § 137.
74-502.	Repealed. Laws 1994, LB 414, § 137.
74-503.	Repealed. Laws 1994, LB 414, § 137.
74-504.	Repealed. Laws 1994, LB 414, § 137.
74-505.	Repealed. Laws 1994, LB 414, § 137.
74-506.	Repealed. Laws 1994, LB 414, § 137.
74-507.	Repealed. Laws 1994, LB 414, § 137.
74-508.	Repealed. Laws 1994, LB 414, § 137.
74-509.	Repealed. Laws 1994, LB 414, § 137.
74-510.	Repealed. Laws 1994, LB 414, § 137.
74-511.	Repealed. Laws 1994, LB 414, § 137.
74-512.	Repealed. Laws 1994, LB 414, § 137.
74-513.	Repealed. Laws 1994, LB 414, § 137.
74-514.	Repealed. Laws 1994, LB 414, § 137.
74-515.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-516.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-517.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-518.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-519.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-520.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-521.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-522.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-523.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-524.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-525.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-526.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-527.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-528.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-529.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-530.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-531.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-532.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-533.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-534.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-535.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-536.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-537.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-538.	Repealed. Laws 1994, LB 414, § 137.
74-539.	Repealed. Laws 1994, LB 414, § 137.

RAILROADS

Section	
74-540.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-541.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-542.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-543.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-544.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-545.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-546.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-547.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-548.	Shipments; weighing; certificates.
74-549.	Shipments; stations without scales; weighing.
74-550.	Shipments; failure to weigh; penalty.
74-551.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-552.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-553.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-554.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-555.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-556.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-557.	Repealed. Laws 1994, LB 414, § 137.
74-558.	Repealed. Laws 1994, LB 414, § 137.
74-559.	Repealed. Laws 1994, LB 414, § 137.
74-560.	Repealed. Laws 1994, LB 414, § 137.
74-561.	Repealed. Laws 1994, LB 414, § 137.
74-562.	Repealed. Laws 1994, LB 414, § 137.
74-563.	Repealed. Laws 1994, LB 414, § 137.
74-564.	Repealed. Laws 1994, LB 414, § 137.
74-565.	Repealed. Laws 1994, LB 414, § 137.
74-566.	Repealed. Laws 1994, LB 414, § 137.
74-567.	Repealed. Laws 1994, LB 414, § 137.
74-568.	Repealed. Laws 1994, LB 414, § 137.
74-569.	Repealed. Laws 1994, LB 414, § 137.
74-570.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-571.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-572.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-573.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-574.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-575.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-576.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-577.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-578.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-579.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-580.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-581.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-582.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-582.01.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-582.02.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-583.	Repealed. Laws 1994, LB 414, § 137.
74-584.	Repealed. Laws 1994, LB 414, § 137.
74-585.	Repealed. Laws 1994, LB 414, § 137.
74-586.	Repealed. Laws 1994, LB 414, § 137.
74-587.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-588.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-589.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-590.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-591.	Repealed. Laws 1963, c. 425, art. 8, § 2.
74-592.	Track motor cars; headlights; rear light; windshield; equip.
74-593.	Track motor cars; failure to equip; violation; penalty.
74-594.	Train, yard, or engine crew; blocking street or highway; liability; exempt.
74-595.	Litter; duty to remove.
74-596.	Speed limitation ordinance; requirements for enactment.
74-597.	Railroad accident or unlawful operation; prohibited law enforcement procedures.

Section	
74-598.	Repealed. Laws 1994, LB 414, § 137.
74-599.	Repealed. Laws 1994, LB 414, § 137.
74-5,100.	Repealed. Laws 1994, LB 414, § 137.
74-5,100.01.	Repealed. Laws 1994, LB 414, § 137.
74-5,101.	Repealed. Laws 1994, LB 414, § 137.
74-5,102.	Repealed. Laws 1994, LB 414, § 137.
74-5,103.	Repealed. Laws 1994, LB 414, § 137.

74-501 Repealed. Laws 1994, LB 414, § 137.

74-502 Repealed. Laws 1994, LB 414, § 137.

74-503 Repealed. Laws 1994, LB 414, § 137.

74-504 Repealed. Laws 1994, LB 414, § 137.

74-505 Repealed. Laws 1994, LB 414, § 137.

74-506 Repealed. Laws 1994, LB 414, § 137.

74-507 Repealed. Laws 1994, LB 414, § 137.

74-508 Repealed. Laws 1994, LB 414, § 137.

74-509 Repealed. Laws 1994, LB 414, § 137.

74-510 Repealed. Laws 1994, LB 414, § 137.

74-511 Repealed. Laws 1994, LB 414, § 137.

74-512 Repealed. Laws 1994, LB 414, § 137.

74-513 Repealed. Laws 1994, LB 414, § 137.

74-514 Repealed. Laws 1994, LB 414, § 137.

74-515 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-516 Repealed. Laws 1963, c. 425, art. 8, § 2.

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74-527 Repealed. Laws 1963, c. 425, art. 8, § 2.

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74-530 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-531 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-532 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-533 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-534 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-535 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-536 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-537 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-538 Repealed. Laws 1994, LB 414, § 137.

74-539 Repealed. Laws 1994, LB 414, § 137.

74-540 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-541 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-542 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-543 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-544 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-545 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-546 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-547 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-548 Shipments; weighing; certificates.

The owner, consignor, or consignee of any carload lots of grain, coal, merchandise, or other property in course of transportation over any railroad within the state, transporting the same for hire, may request in writing any agent of the operators of such railroad to weigh any such carloads of grain, coal, merchandise, or other property in course of transportation. Upon such a request being received, it shall become the duty of the operators of such railroad to weigh the car or cars designated in such written request, together with their contents, upon such track scale as may be designated in such written request, over which such car or cars in the regular course of transit will thereafter pass, and deliver to the person making such request a written certificate showing the name and number of the car so weighed, the date of the taking of such weight, and the place where weighed, with the number of pounds of gross and net weights, after deducting the tare marked on the car from such gross weight. The certificate so executed and delivered shall be admissible evidence against such railroad in any legal proceeding, thereafter instituted or then pending against any such railroad weighing and transporting

the property contained in such car or cars, of all the facts stated in such certificate.

Source: Laws 1907, c. 88, § 3, p. 307; R.S.1913, § 6007; C.S.1922, § 5352; C.S.1929, § 74-535; R.S.1943, § 74-548; Laws 1994, LB 414, § 5.

74-549 Shipments; stations without scales; weighing.

Wherever any carload lot of merchandise, coal, grain, or other property is delivered for transportation for hire to any railroad within this state, consigned to any person at a station on the line of the railroad or upon any other railroad within this state, where no track scale is located and maintained, and such car in the course of transit will not pass a track scale on the line of such connecting railroad, it shall immediately become the duty of such initial railroad to cause the same to be weighed in the manner required by section 74-548 on the track scale located nearest the station to which such car is consigned and to stamp upon the waybill for such car all of the matters required to be set out in the certificate provided for in such section. Where coal, grain, merchandise, or other property in carload lots is consigned to stations where track scales are located and the consignee requests the same to be weighed, the weights shall be taken, both gross and tare, with the car uncoupled, on such track scales at the point of destination.

Source: Laws 1907, c. 88, § 4, p. 308; R.S.1913, § 6008; C.S.1922, § 5353; C.S.1929, § 74-536; R.S.1943, § 74-549; Laws 1994, LB 414, § 6.

74-550 Shipments; failure to weigh; penalty.

Any railroad operating in this state and violating any of the provisions of sections 74-548 and 74-549 by neglecting or refusing to furnish weights as provided in section 74-549 shall upon conviction thereof be fined in the sum of one hundred dollars for each and every such violation. The fine shall be recovered by the state in an action in its name upon complaint of any owner, consignor, or consignee of the property which such railroad refuses to weigh, made before any court of competent jurisdiction.

Source: Laws 1907, c. 88, § 5, p. 308; R.S.1913, § 6009; C.S.1922, § 5354; C.S.1929, § 74-537; R.S.1943, § 74-550; Laws 1994, LB 414, § 7.

74-551 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-552 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-553 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-554 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-555 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-556 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-557 Repealed. Laws 1994, LB 414, § 137.

74-558 Repealed. Laws 1994, LB 414, § 137.

- 74-559 Repealed. Laws 1994, LB 414, § 137.
- 74-560 Repealed. Laws 1994, LB 414, § 137.
- 74-561 Repealed. Laws 1994, LB 414, § 137.
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- 74-566 Repealed. Laws 1994, LB 414, § 137.
- 74-567 Repealed. Laws 1994, LB 414, § 137.
- 74-568 Repealed. Laws 1994, LB 414, § 137.
- 74-569 Repealed. Laws 1994, LB 414, § 137.
- 74-570 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-571 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-572 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-573 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-574 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-575 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-576 Repealed. Laws 1963, c. 425, art 8, § 2.
- 74-577 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-578 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-579 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-580 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-581 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-582 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-582.01 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-582.02 Repealed. Laws 1963, c. 425, art. 8, § 2.
- 74-583 Repealed. Laws 1994, LB 414, § 137.
- 74-584 Repealed. Laws 1994, LB 414, § 137.
- 74-585 Repealed. Laws 1994, LB 414, § 137.
- 74-586 Repealed. Laws 1994, LB 414, § 137.
- 74-587 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-588 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-589 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-590 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-591 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-592 Track motor cars; headlights; rear light; windshield; equip.

Each railroad shall equip each of its track motor cars used during the period from sunset to sunrise with (1) an electric headlight of such construction either permanent or portable and with sufficient candlepower to render plainly visible at a distance of not less than three hundred feet in advance of such track motor car any track obstruction, landmark, warning sign, or grade crossing and (2) a red rear electric light of such construction and with sufficient candlepower as to be plainly visible at a distance of three hundred feet. Such track motor cars shall be equipped with a shield of sufficient width and height to afford reasonable protection to the employees transported by it, part of which shall be a windshield of transparent shatterproof material.

Source: Laws 1949, c. 217, § 1, p. 616; Laws 1959, c. 336, § 1, p. 1218; Laws 1993, LB 575, § 52; Laws 1994, LB 414, § 8.

74-593 Track motor cars; failure to equip; violation; penalty.

Any railroad which uses or permits to be used on its line in this state a track motor car in violation of section 74-592 shall be guilty of a Class V misdemeanor.

Source: Laws 1949, c. 217, § 2, p. 616; Laws 1977, LB 39, § 185; Laws 1994, LB 414, § 9.

74-594 Train, yard, or engine crew; blocking street or highway; liability; exempt.

No member of a train crew, yard crew, or engine crew of a railroad shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road, or highway crossing-at-grade by trains or passenger or freight cars upon reasonable proof that the occupying or blocking of the street, road, or highway crossing-at-grade was necessary to comply with orders or instructions either written or oral of his or her employer or its officers or supervisory officials. This section shall not relieve the employer or railroad from any responsibility placed upon the employer or railroad by any such state laws or by such municipal ordinances. This section shall be supplemental to any other law.

Source: Laws 1967, c. 473, § 1, p. 1468; R.S.Supp., 1967, § 75-594; Laws 1994, LB 414, § 10.

74-595 Litter; duty to remove.

Each railroad shall be responsible for the removal of all litter as defined in section 28-523 on property owned or leased by the railroad which is under a bridge, trestle, or similar structure.

Source: Laws 1979, LB 42, § 11; Laws 1994, LB 414, § 11.

74-596 Speed limitation ordinance; requirements for enactment.

No speed limitation ordinance which would directly affect the operations of an interstate railroad shall be valid or enforceable unless its adoption is in compliance with this section. Before the first reading of the proposed ordinance, each railroad the operations of which would be directly affected by the ordinance shall be given written notice by United States mail of the proposed ordinance and the date, time, and place of such reading. Such notice shall be given at least ten days prior to the reading. Each affected railroad shall have an opportunity to be heard at the first reading. After enactment, each railroad the operations of which would be directly affected shall be provided a written or printed copy of the ordinance by United States mail.

Source: Laws 1981, LB 437, § 1; Laws 1994, LB 414, § 12.

74-597 Railroad accident or unlawful operation; prohibited law enforcement procedures.

In any circumstances involving a railroad accident or the operation of a train in violation of state law or local ordinance, no engineer or other crew member of the train shall be required to furnish a motor vehicle operator's license to any state or local law enforcement officer, nor shall any citation involving the operation of a train be issued against the motor vehicle operator's license of the engineer or any other crew member of the train.

Source: Laws 1981, LB 437, § 2.

74-598 Repealed. Laws 1994, LB 414, § 137.

74-599 Repealed. Laws 1994, LB 414, § 137.

74-5,100 Repealed. Laws 1994, LB 414, § 137.

74-5,100.01 Repealed. Laws 1994, LB 414, § 137.

74-5,101 Repealed. Laws 1994, LB 414, § 137.

74-5,102 Repealed. Laws 1994, LB 414, § 137.

74-5,103 Repealed. Laws 1994, LB 414, § 137.

ARTICLE 6**FENCING AND MOWING RIGHT-OF-WAY**

Section	
74-601.	Fencing; cattle guards.
74-602.	Failure to fence or repair; liability.
74-603.	Fencing; duty; landowner may fence; cost.
74-604.	Failure to fence; injury to livestock; liability.
74-605.	Injured animals; care; violation; penalty.
74-606.	Repealed. Laws 1994, LB 414, § 137.
74-607.	Repealed. Laws 1994, LB 414, § 137.
74-608.	Right-of-way; cover for wildlife; vegetation; exceptions.
74-609.	Right-of-way; vegetation; treatment; charge by county; collection.
74-609.01.	Right-of-way; hunting upon; unlawful; penalty.
74-610.	Repealed. Laws 1994, LB 414, § 137.
74-611.	Repealed. Laws 1994, LB 414, § 137.
74-612.	Repealed. Laws 1994, LB 414, § 137.
74-613.	Repealed. Laws 1963, c. 425, art. 8, § 2.

Section
74-614. Repealed. Laws 1963, c. 425, art. 8, § 2.

74-601 Fencing; cattle guards.

Within six months after the lines of the railroad or any part thereof is open, each railroad shall erect and thereafter maintain fences on the sides of its right-of-way, or the part thereof so open for use, suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting on such right-of-way, except at the crossings of public roads and highways, and within the limits of towns, cities, and villages, with openings, gates, or bars at all the farm crossings of its tracks for the use of the proprietors of the lands adjoining such right-of-way. Each railroad shall also construct and maintain, at all road crossings, cattle guards suitable and sufficient to prevent cattle, horses, sheep, and hogs from getting onto such right-of-way.

Source: Laws 1867, § 1, p. 88; Laws 1883, c. 62, § 1, p. 262; R.S.1913, § 6035; C.S.1922, § 5396; C.S.1929, § 74-601; R.S.1943, § 74-601; Laws 1994, LB 414, § 13.

1. Necessity of fencing
2. Liability for failure to fence
3. Miscellaneous

1. Necessity of fencing

The refusal of the War Department to permit the erection of fences upon a military reservation constituted sufficient justification for the failure of the railway company to fence its tracks running through said reservation. *Anderson v. Chicago & N. W. Ry. Co.*, 102 Neb. 578, 168 N.W. 196 (1918).

The spirit of this statute requires a railroad company to so fence and enclose its tracks, aside from the exceptions therein noted and except at such points as would endanger the lives of its employees, in such a manner as to prevent stock from entering upon the right-of-way. *De Graw v. Chicago, B. & Q. Ry. Co.*, 101 Neb. 724, 164 N.W. 706 (1917).

The fact that this statute does not make fencing obligatory within the limits of cities or villages does not mean that there cannot be actionable negligence for failure to enclose such premises which may be dangerous under particular circumstances. *Krummack v. Missouri P. Ry. Co.*, 98 Neb. 773, 154 N.W. 541 (1915).

Where the establishment of fences or cattle guards would endanger the lives of trainmen, the company is not only excused from enclosing its right-of-way but is also under a duty not to do so. *Burnham v. Chicago, B. & Q. Ry. Co.*, 83 Neb. 183, 119 N.W. 235 (1909).

Whether the business of the public with the railroad or the operation of the railroad with due regard to its employees' safety would excuse a failure to fence the track at the point where the injury occurred is a question for the jury. *Rosenberg v. Chicago, B. & Q. R.R. Co.*, 77 Neb. 663, 110 N.W. 641 (1906).

A railroad company is not required to fence its right-of-way across a public highway, whether such highway is established by legal authority or by adverse user. *Chicago, B. & Q. R.R. Co. v. Dowhower*, 74 Neb. 600, 104 N.W. 1070 (1905).

Failure to fence the right-of-way in a particular locality outside the limits of a city, town, or village, is excusable to an extent sufficient to afford the public and the railroad company necessary facilities for transacting the business reasonably to be expected at such locality. *Chicago, B. & Q. R.R. Co. v. Sevcek*, 72 Neb. 793, 101 N.W. 981 (1904), reversed on the evidence, 72 Neb. 793, 110 N.W. 639 (1906).

A track remote from the depot grounds, not within the limits of any city, town, or village, not near a crossing, and not necessary for use in making up trains is not within the exception

to this statute requiring rights-of-way to be fenced. *Union P. R.R. Co. v. Knowlton*, 43 Neb. 751, 62 N.W. 203 (1895).

Gates at farm crossings are part of the railway fence and, like it, must be sufficient for the purposes indicated in this section. *Fremont, E. & M. V. R.R. Co. v. Pounder*, 36 Neb. 247, 54 N.W. 509 (1893).

A railroad company is not required to fence that part of its station grounds extending outside the city limits and upon which abuts a platted addition to such city, when such grounds are constantly used and are necessary for the proper transaction of its business as a common carrier. *Chicago, B. & Q. R.R. Co. v. Hogan*, 30 Neb. 686, 46 N.W. 1015 (1890), rehearing of 27 Neb. 801, 43 N.W. 1148 (1889).

This section does not impose upon railroad companies the duty of putting in cattle guards at farm crossings, but requires only that openings shall be made in the right-of-way fence with gates or bars to close and secure such openings. *Omaha & R. V. R. Co. v. Severin*, 30 Neb. 318, 46 N.W. 842 (1890).

2. Liability for failure to fence

Constitutionality of act imposing liability for failure to maintain fences on railroad right-of-way sustained. *Linenbrink v. Chicago and N.W. Ry. Co.*, 177 Neb. 838, 131 N.W.2d 417 (1964).

This statute does not impose liability upon a railway company for injuries to stock caused by themselves when straying upon the right-of-way, for, to warrant recovery under its terms, not only must the company have been negligent in maintaining a fence but the damages must have been done by its agents, engines, or trains. *Brei v. Chicago, B. & Q. R.R. Co.*, 130 Neb. 496, 265 N.W. 539 (1936).

Where the railway company failed to maintain fences as required by this section and in consequence thereof animals went upon the tracks and were injured, the simple negligence of the owner in allowing his stock to escape was no defense in an action for damages incurred by such owner. *Burlington & M. R.R. Co. v. Webb*, 18 Neb. 215, 24 N.W. 706 (1885), 53 Am. R. 809 (1885).

3. Miscellaneous

Failure to fence the right-of-way does not in any respect affect the railroad company's right to its easement nor determine the width thereof. *Roberts v. Sioux City & P. R. Co.*, 73 Neb. 8, 102 N.W. 60 (1905), 2 L.R.A.N.S. 272 (1905).

The fence which is erected by the railroad company must conform to the requirements of this section. *Chicago, B. & Q. Ry. Co. v. James*, 26 Neb. 188, 41 N.W. 992 (1889).

Railroad right-of-way across Fort Robinson Military Reservation was subject to exclusive jurisdiction of federal government. *United States v. Unzeuta*, 281 U.S. 138 (1930).

74-602 Failure to fence or repair; liability.

So long as such fences and cattle guards are not made after the time prescribed in section 74-601 has elapsed and when such fences and guards, or any part thereof, are not in sufficiently good repair to accomplish the objects for which they are intended, such railroad and its agents shall be liable for any damage which is done by the agents, engines, or trains of any such railroad, or by the locomotives or trains of any other railroad permitted to run over or upon such tracks, to any cattle, horses, sheep, or hogs thereon. When such fences and guards have been fully and duly made and are kept in sufficient repair, such railroad shall not be liable for any damages, unless the damage arises from negligent or willful acts of the railroad or its agents.

Source: Laws 1867, § 1, p. 88; Laws 1883, c. 62, § 1, p. 262; R.S.1913, § 6035; C.S.1922, § 5396; C.S.1929, § 74-601; R.S.1943, § 74-602; Laws 1994, LB 414, § 14.

This statute does not deprive the railroad company of its property without due process of law or deny to it the equal protection of the law, and under its terms a company may be liable for injuries to animals upon its right-of-way although there be no collision between its trains and the animals injured. *Middaugh v. Chicago & N. W. Ry. Co.*, 114 Neb. 438, 208 N.W. 139 (1926).

If a railway company fails to maintain a fence along its right-of-way as required by this section and in consequence thereof horses go upon the track and are injured, the fact that the horses were, at the time, running away does not exonerate the company. *Larson v. Chicago & N. W. Ry. Co.*, 89 Neb. 247, 131 N.W. 201 (1911).

This statute was not intended to provide a penalty for a failure to maintain cattle guards but to afford compensation to an owner for stock injured in consequence of such failure, so that, to warrant a recovery under its terms, the injury must be

traceable to the railroad company's omission to perform that duty. *Chicago, B. & Q. R.R. Co. v. King*, 76 Neb. 591, 107 N.W. 981 (1906).

To create liability under this section, in addition to the company's failure to maintain a fence, the injury must have been occasioned by an agent, engine, or train of the company, but it is not essential to recovery that there must have been a collision between the animals and the train. *Chicago, B. & Q. R.R. Co. v. Cox*, 51 Neb. 479, 71 N.W. 37 (1897). Overruling *B. & M. R.R. Co. v. Shoemaker*, 18 Neb. 369, 25 N.W. 365 (1885).

In an action for the wrongful death of an infant, evidence of the company's failure to fence its tracks as required by this section is admissible, for the statute is in the nature of a police regulation imposing a positive duty upon the company, and the failure to obey its provisions is negligence. *Chicago, B. & Q. R.R. Co. v. Grablin*, 38 Neb. 90, 56 N.W. 796 (1893).

74-603 Fencing; duty; landowner may fence; cost.

Any person who owns land adjoining the right-of-way of any railroad and not within the limits of any town, village, or city who intends to enclose the land, or any part thereof, that adjoins such right-of-way with a fence may notify the railroad in writing of such intention and request the railroad to build a lawful fence as described in section 74-601 on the line between its railroad and the land intended to be enclosed. The notice shall specify two points on such line between which points the fence is requested to be erected and shall describe the land intended to be enclosed. The railroad shall, within six months after receiving such notice, cause the fence requested by such notice to be erected, and in case of a failure so to do, the party giving notice may cause such fence to be erected at a reasonable cost and collect such amount from the railroad.

Source: Laws 1883, c. 62, § 1, p. 262; R.S.1913, § 6035; C.S.1922, § 5396; C.S.1929, § 74-601; R.S.1943, § 74-603; Laws 1994, LB 414, § 15.

To entitle one to recover the reasonable expense of erecting a fence along a railroad right-of-way, after the company failed to do so, he must show that the fence erected complies with the

requirements of this section. *Chicago, B. & Q. R.R. Co. v. Lyon*, 50 Neb. 640, 70 N.W. 261 (1897).

74-604 Failure to fence; injury to livestock; liability.

Any railroad which fails to fence on both sides of its right-of-way against all livestock running at large at all points shall be absolutely liable to the owner of

any livestock injured or killed by the railroad's agents or the agents of any other railroad which runs over and upon such right-of-way.

Source: Laws 1867, § 2, p. 89; R.S.1913, § 6036; C.S.1922, § 5397; C.S.1929, § 74-602; R.S.1943, § 74-604; Laws 1994, LB 414, § 16.

In an action to recover the value of animals killed on the railroad company's track by reason of the company's failure to maintain the required fence, the question of the owner's negligence in permitting the stock to run at large is not to be considered. *Chicago, B. & Q. R.R. Co. v. Sims*, 17 Neb. 691, 24 N.W. 388 (1885).

Under this statute, a railroad company failing to fence its track at a point where it is required to fence is liable for stock killed or injured on its track by its engines or cars and the mere negligence of the owner of the stock is no defense. *Burlington & M. R. R. v. Franzen*, 15 Neb. 365, 18 N.W. 511 (1884).

Where the railroad company failed to fence its track, the question of negligence of the owner of stock killed or injured on the right-of-way is not to be considered in an action for damages brought under this and the preceding section. *Burlington & M. R. R. Co. v. Brinkman*, 14 Neb. 70, 15 N.W. 197 (1883).

Where it was stipulated that the stock owner's animals were at large without his fault and that they were killed without any negligence on the part of the railroad company, other than may be inferred from the neglect to fence the right-of-way, the owner was entitled to recover the value of the animals. *Union P. Ry. Co. v. High*, 14 Neb. 14, 14 N.W. 547 (1883).

74-605 Injured animals; care; violation; penalty.

Whenever any horse, cow, or other domestic animal is injured on the right-of-way of any railroad, the trackwalkers and section personnel of the railroad shall care for the animal at once and report the facts to the nearest station agent. If the animal is injured by a train, such member of the train crew as is required by the railroad shall, upon arriving at the first communications facility, notify the person in charge of the track of the fact, and such person shall at once notify the railroad employee having charge of the section upon which the animal is injured who shall at once care for the animal. If any such animal is maimed beyond hope of recovery, such persons shall kill the animal at once. When the animal is not killed, the section official shall give immediate notice, when possible, of the condition of the animal to the owner or his or her agent who shall have the animal cared for at once. When immediate notice to the owner is not possible, the section official shall have the injured animal properly cared for at once. No act of the railroad, its employees or agents, or the owner of an injured animal pursuant to this section shall be held to be an admission of liability or responsibility on the part of the railroad for the injury of the animal nor a waiver or relinquishment by the owner of any right or claim to damages from the railroad. Any person who violates any provision of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1911, c. 86, § 1, p. 344; R.S.1913, § 6037; C.S.1922, § 5398; C.S.1929, § 74-603; R.S.1943, § 74-605; Laws 1951, c. 245, § 1, p. 856; Laws 1994, LB 414, § 17.

74-606 Repealed. Laws 1994, LB 414, § 137.

74-607 Repealed. Laws 1994, LB 414, § 137.

74-608 Right-of-way; cover for wildlife; vegetation; exceptions.

In order to provide cover for wildlife, the vegetation other than noxious weeds within the fenced right-of-way of all railroads outside the corporate limits of any city or village in Nebraska shall not be destroyed, except that (1) such vegetation shall be destroyed from the space between points a distance of seven feet from the outside of each outermost rail each year between May 1 and August 15 or at such places as may be deemed necessary by the railroad for proper operation or maintenance and (2) the county board or board of supervisors of any county may, by written notice, direct any railroad to spray, mow, or

otherwise treat specified portions of such fenced right-of-way to kill or destroy vegetation.

Source: Laws 1897, c. 17, § 1, p. 183; R.S.1913, § 6040; C.S.1922, § 5401; C.S.1929, § 74-606; R.S.1943, § 74-608; Laws 1959, c. 337, § 1, p. 1219; Laws 1969, c. 599, § 1, p. 2454; Laws 1994, LB 414, § 18.

74-609 Right-of-way; vegetation; treatment; charge by county; collection.

If any railroad neglects or refuses to cause its right-of-way to be mowed, sprayed, or otherwise treated as provided in section 74-608, the county board or board of supervisors in which county the right-of-way is located shall, after the time in which the railroad is required to act, cause the vegetation on the railroad right-of-way to be mowed, sprayed, or otherwise treated and the county may charge the railroad the reasonable cost thereof. The county clerk shall include such amounts in making the county tax list as an assessment against such railroad, and the assessment shall be collected in the same manner and at the same time as other taxes.

Source: Laws 1897, c. 17, § 2, p. 183; Laws 1909, c. 99, § 1, p. 407; R.S.1913, § 6041; Laws 1915, c. 105, § 1, p. 251; C.S.1922, § 5402; Laws 1925, c. 162, § 1, p. 424; C.S.1929, § 74-607; R.S.1943, § 74-609; Laws 1959, c. 337, § 2, p. 1220; Laws 1994, LB 414, § 19.

74-609.01 Right-of-way; hunting upon; unlawful; penalty.

It shall be unlawful for anyone to hunt upon the fenced right-of-way of any railroad in Nebraska without permission of the owner or responsible authority. Any person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1959, c. 337, § 3, p. 1220; Laws 1977, LB 39, § 187; Laws 1994, LB 414, § 20.

74-610 Repealed. Laws 1994, LB 414, § 137.

74-611 Repealed. Laws 1994, LB 414, § 137.

74-612 Repealed. Laws 1994, LB 414, § 137.

74-613 Repealed. Laws 1963, c. 425, art. 8, § 2.

74-614 Repealed. Laws 1963, c. 425, art. 8, § 2.

ARTICLE 7

LIABILITY TO EMPLOYEES, SHIPPERS, AND PASSENGERS

Section

- 74-701. Repealed. Laws 1951, c. 246, § 1.
- 74-702. Repealed. Laws 1994, LB 414, § 137.
- 74-703. Repealed. Laws 1994, LB 414, § 137.
- 74-704. Repealed. Laws 1994, LB 414, § 137.
- 74-705. Repealed. Laws 1994, LB 414, § 137.
- 74-706. Transferred to section 74-921.
- 74-707. Repealed. Laws 1994, LB 414, § 137.
- 74-708. Repealed. Laws 1994, LB 414, § 137.
- 74-709. Repealed. Laws 1994, LB 414, § 137.

Section

- 74-710. Repealed. Laws 1994, LB 414, § 137.
- 74-711. Repealed. Laws 1994, LB 414, § 137.
- 74-712. Repealed. Laws 1994, LB 414, § 137.
- 74-713. Repealed. Laws 1994, LB 414, § 137.
- 74-714. Repealed. Laws 1994, LB 414, § 137.
- 74-715. Repealed. Laws 1994, LB 414, § 137.

74-701 Repealed. Laws 1951, c. 246, § 1.

74-702 Repealed. Laws 1994, LB 414, § 137.

74-703 Repealed. Laws 1994, LB 414, § 137.

74-704 Repealed. Laws 1994, LB 414, § 137.

74-705 Repealed. Laws 1994, LB 414, § 137.

74-706 Transferred to section 74-921.

74-707 Repealed. Laws 1994, LB 414, § 137.

74-708 Repealed. Laws 1994, LB 414, § 137.

74-709 Repealed. Laws 1994, LB 414, § 137.

74-710 Repealed. Laws 1994, LB 414, § 137.

74-711 Repealed. Laws 1994, LB 414, § 137.

74-712 Repealed. Laws 1994, LB 414, § 137.

74-713 Repealed. Laws 1994, LB 414, § 137.

74-714 Repealed. Laws 1994, LB 414, § 137.

74-715 Repealed. Laws 1994, LB 414, § 137.

ARTICLE 8

RATES AND FARES

Cross References

Constitutional provisions:

Regulatory authority of Public Service Commission, see Article IV, section 20, Constitution of Nebraska.
Schedules of rates, charges, and tariffs, see sections 75-118 to 75-127.

Section

- 74-801. Repealed. Laws 1994, LB 414, § 137.
- 74-802. Repealed. Laws 1957, c. 308, § 3.
- 74-803. Repealed. Laws 1957, c. 308, § 3.
- 74-804. Repealed. Laws 1994, LB 414, § 137.
- 74-805. Repealed. Laws 1994, LB 414, § 137.
- 74-806. Repealed. Laws 1994, LB 414, § 137.
- 74-807. Repealed. Laws 1994, LB 414, § 137.
- 74-808. Repealed. Laws 1957, c. 308, § 3.
- 74-809. Repealed. Laws 1957, c. 308, § 3.
- 74-810. Repealed. Laws 1957, c. 308, § 3.
- 74-811. Repealed. Laws 1957, c. 308, § 3.
- 74-812. Repealed. Laws 1945, c. 181, § 1.
- 74-813. Repealed. Laws 1945, c. 181, § 1.
- 74-814. Repealed. Laws 1945, c. 181, § 1.

Section

- 74-815. Repealed. Laws 1994, LB 414, § 137.
- 74-816. Repealed. Laws 1994, LB 414, § 137.
- 74-817. Repealed. Laws 1994, LB 414, § 137.
- 74-818. Repealed. Laws 1994, LB 414, § 137.
- 74-819. Repealed. Laws 1994, LB 414, § 137.
- 74-820. Repealed. Laws 1994, LB 414, § 137.
- 74-821. Repealed. Laws 1994, LB 414, § 137.
- 74-822. Repealed. Laws 1994, LB 414, § 137.
- 74-823. Repealed. Laws 1994, LB 414, § 137.

74-801 Repealed. Laws 1994, LB 414, § 137.

74-802 Repealed. Laws 1957, c. 308, § 3.

74-803 Repealed. Laws 1957, c. 308, § 3.

74-804 Repealed. Laws 1994, LB 414, § 137.

74-805 Repealed. Laws 1994, LB 414, § 137.

74-806 Repealed. Laws 1994, LB 414, § 137.

74-807 Repealed. Laws 1994, LB 414, § 137.

74-808 Repealed. Laws 1957, c. 308, § 3.

74-809 Repealed. Laws 1957, c. 308, § 3.

74-810 Repealed. Laws 1957, c. 308, § 3.

74-811 Repealed. Laws 1957, c. 308, § 3.

74-812 Repealed. Laws 1945, c. 181, § 1.

74-813 Repealed. Laws 1945, c. 181, § 1.

74-814 Repealed. Laws 1945, c. 181, § 1.

74-815 Repealed. Laws 1994, LB 414, § 137.

74-816 Repealed. Laws 1994, LB 414, § 137.

74-817 Repealed. Laws 1994, LB 414, § 137.

74-818 Repealed. Laws 1994, LB 414, § 137.

74-819 Repealed. Laws 1994, LB 414, § 137.

74-820 Repealed. Laws 1994, LB 414, § 137.

74-821 Repealed. Laws 1994, LB 414, § 137.

74-822 Repealed. Laws 1994, LB 414, § 137.

74-823 Repealed. Laws 1994, LB 414, § 137.

ARTICLE 9

SAFETY OF EMPLOYEES AND PASSENGERS

Section

- 74-901. Repealed. Laws 1994, LB 414, § 137.
- 74-902. Repealed. Laws 1994, LB 414, § 137.
- 74-903. Repealed. Laws 1994, LB 414, § 137.
- 74-904. Repealed. Laws 1994, LB 414, § 137.
- 74-905. Repealed. Laws 1994, LB 414, § 137.
- 74-906. Repealed. Laws 1994, LB 414, § 137.
- 74-907. Repealed. Laws 1994, LB 414, § 137.
- 74-908. Repealed. Laws 1994, LB 414, § 137.
- 74-909. Repealed. Laws 1994, LB 414, § 137.
- 74-910. Repealed. Laws 1994, LB 414, § 137.
- 74-911. Repealed. Laws 1994, LB 414, § 137.
- 74-912. Repealed. Laws 1994, LB 414, § 137.
- 74-913. Repealed. Laws 1980, LB 203, § 2.
- 74-914. Repealed. Laws 1986, LB 744, § 1.
- 74-915. Health and safety of employees; rules and regulations.
- 74-916. Drinking water and cups; duty to provide.
- 74-917. Rules and regulations; dispute; notice; hearing.
- 74-918. Drinking water; toilet facilities; locomotives and waycars; duty to provide; violation; penalty.
- 74-919. Margins along tracks; keep free from debris and vegetation; enforcement.
- 74-920. Repealed. Laws 1994, LB 414, § 137.
- 74-921. Locomotive operators; conductors; intoxication; penalty.
- 74-922. Repealed. Laws 2004, LB 940, § 4.
- 74-923. Repealed. Laws 2004, LB 940, § 4.
- 74-924. Repealed. Laws 2004, LB 940, § 4.
- 74-925. Repealed. Laws 2004, LB 940, § 4.

74-901 Repealed. Laws 1994, LB 414, § 137.

74-902 Repealed. Laws 1994, LB 414, § 137.

74-903 Repealed. Laws 1994, LB 414, § 137.

74-904 Repealed. Laws 1994, LB 414, § 137.

74-905 Repealed. Laws 1994, LB 414, § 137.

74-906 Repealed. Laws 1994, LB 414, § 137.

74-907 Repealed. Laws 1994, LB 414, § 137.

74-908 Repealed. Laws 1994, LB 414, § 137.

74-909 Repealed. Laws 1994, LB 414, § 137.

74-910 Repealed. Laws 1994, LB 414, § 137.

74-911 Repealed. Laws 1994, LB 414, § 137.

74-912 Repealed. Laws 1994, LB 414, § 137.

74-913 Repealed. Laws 1980, LB 203, § 2.

74-914 Repealed. Laws 1986, LB 744, § 1.**74-915 Health and safety of employees; rules and regulations.**

The Department of Labor is hereby authorized to promulgate and enforce reasonable rules and regulations after due notice and hearing for the safety, sanitation, shelter, and health of railroad maintenance-of-way employees, as far as shelter and drinking water for human consumption pertain to the railroad maintenance-of-way employees.

Source: Laws 1955, c. 189, § 1, p. 537; Laws 1969, c. 600, § 1, p. 2455.

74-916 Drinking water and cups; duty to provide.

An adequate supply of cool, sanitary water, for drinking purposes, shall be made available for use of all employees of railroads. Sanitary containers, equipped with a faucet or other dispenser, and individual paper drinking cups shall be furnished by the railroad.

Source: Laws 1955, c. 189, § 2, p. 537; Laws 1969, c. 600, § 2, p. 2455; Laws 1994, LB 414, § 22.

74-917 Rules and regulations; dispute; notice; hearing.

In the event of any dispute or disagreement between any employee and any employer as to the intent, meaning, and interpretation of any or all of the rules adopted in accordance with section 74-915, the Department of Labor shall give notice, to the parties interested, of a date for hearing thereon. After hearing the testimony of all parties, it shall enter an order in accordance therewith.

Source: Laws 1955, c. 189, § 3, p. 537.

74-918 Drinking water; toilet facilities; locomotives and waycars; duty to provide; violation; penalty.

Each railroad which operates in this state shall provide sanitary drinking water and toilet facilities on all road locomotives and waycars owned by such railroad when ordered, after investigation, notice, and hearing, by the Public Service Commission. The commission shall specify the type of facilities that shall be installed on each road locomotive and waycar placed in service after January 1, 1971. This section shall not prevent any railroad from operating equipment not in conformity with this section for less than fifty miles. Any railroad which violates this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: Laws 1969, c. 598, § 1, p. 2453; Laws 1994, LB 414, § 23.

74-919 Margins along tracks; keep free from debris and vegetation; enforcement.

Each railroad in this state shall keep and maintain the margins alongside its tracks where railroad employees are required to walk in the course of their duties reasonably free from debris and vegetation which affect the safety of such employees while working. The Public Service Commission shall enforce and prosecute any violation of this section.

Source: Laws 1973, LB 177, § 1; Laws 1994, LB 414, § 24.

74-920 Repealed. Laws 1994, LB 414, § 137.

74-921 Locomotive operators; conductors; intoxication; penalty.

Any person who is intoxicated while in charge of a locomotive running upon the track of any railroad or while acting as the conductor of a car or train of cars on any railroad shall be guilty of a Class I misdemeanor.

Source: R.S.1866, c. 25, § 108, p. 227; R.S.1913, § 6057; C.S.1922, § 5414; C.S.1929, § 74-706; R.S.1943, § 74-706; Laws 1977, LB 39, § 188; R.S.1943, (1990), § 74-706; Laws 1994, LB 414, § 21.

74-922 Repealed. Laws 2004, LB 940, § 4.

74-923 Repealed. Laws 2004, LB 940, § 4.

74-924 Repealed. Laws 2004, LB 940, § 4.

74-925 Repealed. Laws 2004, LB 940, § 4.

ARTICLE 10

FREIGHT

Section

- 74-1001. Repealed. Laws 1994, LB 414, § 137.
- 74-1002. Repealed. Laws 1957, c. 308, § 3.
- 74-1003. Repealed. Laws 1957, c. 308, § 3.
- 74-1004. Repealed. Laws 1994, LB 414, § 137.
- 74-1005. Repealed. Laws 1994, LB 414, § 137.
- 74-1006. Repealed. Laws 1994, LB 414, § 137.
- 74-1007. Repealed. Laws 1957, c. 308, § 3.
- 74-1008. Repealed. Laws 1994, LB 414, § 137.
- 74-1009. Repealed. Laws 1957, c. 308, § 3.
- 74-1010. Repealed. Laws 1994, LB 414, § 137.
- 74-1011. Repealed. Laws 1994, LB 414, § 137.
- 74-1012. Repealed. Laws 1994, LB 414, § 137.

74-1001 Repealed. Laws 1994, LB 414, § 137.

74-1002 Repealed. Laws 1957, c. 308, § 3.

74-1003 Repealed. Laws 1957, c. 308, § 3.

74-1004 Repealed. Laws 1994, LB 414, § 137.

74-1005 Repealed. Laws 1994, LB 414, § 137.

74-1006 Repealed. Laws 1994, LB 414, § 137.

74-1007 Repealed. Laws 1957, c. 308, § 3.

74-1008 Repealed. Laws 1994, LB 414, § 137.

74-1009 Repealed. Laws 1957, c. 308, § 3.

74-1010 Repealed. Laws 1994, LB 414, § 137.

74-1011 Repealed. Laws 1994, LB 414, § 137.

74-1012 Repealed. Laws 1994, LB 414, § 137.

**ARTICLE 11
STREET RAILWAYS**

Section

74-1101. Repealed. Laws 1980, LB 741, § 1.
 74-1102. Repealed. Laws 1980, LB 741, § 1.
 74-1103. Repealed. Laws 1980, LB 741, § 1.
 74-1104. Repealed. Laws 1980, LB 741, § 1.
 74-1105. Repealed. Laws 1980, LB 741, § 1.
 74-1106. Repealed. Laws 1980, LB 741, § 1.
 74-1107. Repealed. Laws 1980, LB 741, § 1.
 74-1108. Repealed. Laws 1980, LB 741, § 1.
 74-1109. Repealed. Laws 1980, LB 741, § 1.
 74-1110. Repealed. Laws 1980, LB 741, § 1.
 74-1111. Repealed. Laws 1980, LB 741, § 1.
 74-1112. Repealed. Laws 1980, LB 741, § 1.
 74-1113. Repealed. Laws 1980, LB 741, § 1.
 74-1114. Repealed. Laws 1980, LB 741, § 1.
 74-1115. Repealed. Laws 1980, LB 741, § 1.
 74-1116. Repealed. Laws 1980, LB 741, § 1.
 74-1117. Repealed. Laws 1980, LB 741, § 1.
 74-1118. Repealed. Laws 1980, LB 741, § 1.
 74-1119. Repealed. Laws 1980, LB 741, § 1.
 74-1120. Repealed. Laws 1980, LB 741, § 1.
 74-1121. Repealed. Laws 1980, LB 741, § 1.
 74-1122. Repealed. Laws 1980, LB 741, § 1.
 74-1123. Repealed. Laws 1980, LB 741, § 1.
 74-1124. Repealed. Laws 1980, LB 741, § 1.
 74-1125. Repealed. Laws 1980, LB 741, § 1.

74-1101 Repealed. Laws 1980, LB 741, § 1.

74-1102 Repealed. Laws 1980, LB 741, § 1.

74-1103 Repealed. Laws 1980, LB 741, § 1.

74-1104 Repealed. Laws 1980, LB 741, § 1.

74-1105 Repealed. Laws 1980, LB 741, § 1.

74-1106 Repealed. Laws 1980, LB 741, § 1.

74-1107 Repealed. Laws 1980, LB 741, § 1.

74-1108 Repealed. Laws 1980, LB 741, § 1.

74-1109 Repealed. Laws 1980, LB 741, § 1.

74-1110 Repealed. Laws 1980, LB 741, § 1.

74-1111 Repealed. Laws 1980, LB 741, § 1.

74-1112 Repealed. Laws 1980, LB 741, § 1.

74-1113 Repealed. Laws 1980, LB 741, § 1.

74-1114 Repealed. Laws 1980, LB 741, § 1.

74-1115 Repealed. Laws 1980, LB 741, § 1.

74-1116 Repealed. Laws 1980, LB 741, § 1.

74-1117 Repealed. Laws 1980, LB 741, § 1.

74-1118 Repealed. Laws 1980, LB 741, § 1.

74-1119 Repealed. Laws 1980, LB 741, § 1.

74-1120 Repealed. Laws 1980, LB 741, § 1.

74-1121 Repealed. Laws 1980, LB 741, § 1.

74-1122 Repealed. Laws 1980, LB 741, § 1.

74-1123 Repealed. Laws 1980, LB 741, § 1.

74-1124 Repealed. Laws 1980, LB 741, § 1.

74-1125 Repealed. Laws 1980, LB 741, § 1.

ARTICLE 12

CLAIMS AGAINST COMMON CARRIERS

Section

74-1201. Repealed. Laws 1994, LB 414, § 137.

74-1202. Repealed. Laws 1994, LB 414, § 137.

74-1203. Repealed. Laws 1994, LB 414, § 137.

74-1204. Repealed. Laws 1994, LB 414, § 137.

74-1201 Repealed. Laws 1994, LB 414, § 137.

74-1202 Repealed. Laws 1994, LB 414, § 137.

74-1203 Repealed. Laws 1994, LB 414, § 137.

74-1204 Repealed. Laws 1994, LB 414, § 137.

ARTICLE 13

RAILROAD SAFETY

(a) RAILROAD TRANSPORTATION SAFETY DISTRICT

Section

74-1301. Policy of state.

74-1302. Railroad transportation safety district; formation; purpose.

74-1303. District; formation; procedure.

74-1304. Board of directors; members; appointment; expenses.

74-1305. District; powers.

74-1306. Budget; submit to county board; levy; tax.

74-1307. Bonds; issuance; sinking fund.

74-1308. Officers; meetings; bond; records; inspection; treasurer; report; violations; penalty.

74-1309. Repealed. Laws 1995, LB 80, § 4.

(b) RAILROAD CROSSINGS

74-1310. Department, defined.

74-1311. Department; determine railroad crossing safety measures needed.

74-1312. Department; establish priority list for railroad crossing safety improvement.

74-1313. Priority list; factors to be considered.

§ 74-1301**RAILROADS**

Section

- 74-1314. Political subdivision; determine need for railroad crossing safety measure; notice to railroad; priority.
- 74-1315. Department; utilize federal funds; matching funds; how paid.
- 74-1316. Railroad crossing accident; notice to department; when.
- 74-1317. Grade Crossing Protection Fund; created; purpose; investment.
- 74-1318. Grade Crossing Protection Fund; Department of Roads; administer; procedure; division of cost; responsibility for protection devices; powers and duties.
- 74-1319. Abandoned railroad line; removal of grade crossing protection devices.
- 74-1320. Excise tax on railroads transporting freight; rate; collection; report; payment.
- 74-1321. Excise tax on railroad transporting freight; similar appropriation; how used.
- 74-1322. Failure to file report or pay taxes; violation; penalty.
- 74-1323. Railroad car; obstructing view at crossing; violation; penalty.

(c) NEBRASKA HIGHWAY-RAIL CROSSING SAFETY COMMITTEE

- 74-1324. Repealed. Laws 1998, LB 899, § 1.
- 74-1325. Repealed. Laws 1998, LB 899, § 1.
- 74-1326. Repealed. Laws 1998, LB 899, § 1.
- 74-1327. Repealed. Laws 1998, LB 899, § 1.
- 74-1328. Repealed. Laws 1998, LB 899, § 1.

(d) NEBRASKA HIGHWAY-RAIL GRADE CROSSING SAFETY AND CONSOLIDATION ACT

- 74-1329. Act, how cited.
- 74-1330. Legislative intent.
- 74-1331. Bridges; construction; dimensions; maintenance; violation; penalty.
- 74-1332. Crossings; jurisdiction of department.
- 74-1333. Crossings; public; maintenance.
- 74-1334. Crossings; public; safety regulations; gates and alarms; closure; when.
- 74-1335. Crossings; private; railroad; duties.
- 74-1336. Crossings; complaints; hearing; order; rules and regulations.
- 74-1337. Crossings; public; county board; agreement.
- 74-1338. Crossings; public; failure of county board and railroad to agree; power of department.
- 74-1339. Crossings; agreement of department; county board or other public authority; powers.
- 74-1340. Crossings; department orders; violation; penalty.
- 74-1341. Grade crossing safety; responsibility.
- 74-1342. Comprehensive public safety program; department; duties.
- 74-1343. Assessment process; recommendations; department; duties.

(a) RAILROAD TRANSPORTATION SAFETY DISTRICT**74-1301 Policy of state.**

It is declared to be the policy of this state to reduce the number of fatalities and injuries caused by collisions between motor vehicles and railroad trains; to eliminate as far as possible unnecessary conflicts between railroad transportation and highway transportation; to improve the movement of both rail and highway traffic by eliminating grade crossings; and to assist in relocation of railroad facilities that bisect the central portions of municipalities, thus hampering the growth of both the municipality and the railroad services; the effect of such policies being to benefit and enhance the community as a whole. These policies shall not be implemented in any manner without just compensation to all damaged parties, including both railroads and shippers, and, where appropriate, alternate routes for affected railroads.

Source: Laws 1971, LB 919, § 1.

74-1302 Railroad transportation safety district; formation; purpose.

Whenever, in a county in which is located a city or cities of the primary or first class, it will be conducive to the public health, safety, convenience, or welfare (1) to move, relocate, or remove any railroad tracks or railroad right-of-way, including improvements, (2) to relocate or remove any railroad yard, switch yard, or switch tracks, (3) to change, construct, eliminate, or reconstruct, including the use of protective devices of any kind or nature, any highway or street crossing of a railroad property, (4) to move, construct, or reconstruct any railroad bridge, viaduct, or subway, (5) to acquire, negotiate, sell, or eliminate any joint trackage operating rights or any rights of other individuals or entities over, in, or on any railroad tracks, rights-of-way, switch yards, or switch tracks, or (6) to do any two or more of the activities listed in subdivisions (1) through (5) of this section, a special district to be known as a railroad transportation safety district may be formed and may proceed, as provided in sections 74-1301 to 74-1308, for the purpose of inaugurating, developing, and negotiating for programs which may involve the constructing, reconstructing, leasing, maintaining, or selling of such work or works of public transportation improvement.

Source: Laws 1971, LB 919, § 2; Laws 1975, LB 188, § 1; Laws 1981, LB 65, § 1; Laws 1995, LB 80, § 1.

74-1303 District; formation; procedure.

Such a district shall be formed by the adoption of a resolution of formation, after a finding that such district is conducive to the public health, safety, convenience, or welfare, by the city council of the city or cities and by the county commissioners of any county in which such city or cities are located. Such district shall then come into existence in accordance with the date set in the resolutions of formation.

Source: Laws 1971, LB 919, § 3; Laws 1981, LB 65, § 2.

74-1304 Board of directors; members; appointment; expenses.

(1) If a district is formed which includes only one city, such district shall be governed by a board of directors made up of three members from the city council of such city adopting such resolution, which members shall be designated by such council, and of three members from the county commissioners of such county adopting such resolution, which members shall be designated by the county board.

(2) If a district is formed which has two or more cities of the primary or first class, such district shall be governed by a board of directors made up of three members from each city council adopting such resolution, which members shall be designated by such council, and of three members from the county commissioners of such county adopting such resolution which members shall be designated by the county board. When participating in the district's affairs, the members representing the cities shall each have one vote and the members representing the county shall each have one vote for each city represented, so that the total number of votes of members of the cities is equal to the total number of votes of members of the county.

(3) In each instance such designated individual shall be an elected member of such body. No additional compensation shall be paid to such directors, but such directors shall be paid their actual expenses while engaged in the business

of the district. Such directors shall be appointed annually by the respective bodies, or when a vacancy shall earlier occur.

Source: Laws 1971, LB 919, § 4; Laws 1981, LB 65, § 3.

74-1305 District; powers.

(1) Such district shall have the power, right, and authority after notice and public hearing (a) to purchase within or without such county railroad rights-of-way including the improvements, (b) to purchase land not presently owned or used by any railroad company for additional right-of-way or additional switch or yard space where changes of routes or construction of interconnections or of new railroad yards is necessary or desirable, and (c) to acquire through the exercise of the power of eminent domain, but only upon the vote of the directors of such district, which vote shall require a five-sixths majority in districts governed pursuant to subsection (1) of section 74-1304 and a two-thirds majority in districts governed pursuant to subsection (2) of section 74-1304, and the written approval by each railroad involved in the contemplated relocation project, such land as set forth in subdivision (1)(b) of this section for the purposes set forth in such subdivision, which acquisition shall follow the procedures set forth in sections 76-704 to 76-724.

Such land and improvements as may be acquired for the purpose of the removal of railroad trackage may be disposed of by conveying the same for reasonable consideration to a governmental entity for public purposes or by sale of the same as set forth in this section. Such new railroad rights-of-way, switches, and yards as may be obtained and constructed may be leased for use to railroads or may be sold to such railroads or may be traded to such railroads for other property belonging to such railroads.

Such property, real or personal, shall be sold in such manner and under such terms and conditions as the board shall deem in the best interests of the district, except that if the fair market value exceeds five thousand dollars, it may only be sold after due notice and hearing by such board at a regular meeting upon the vote of a majority of such board.

(2) The board of directors of such district shall also have the right and authority to enter into contracts or other arrangements with the United States Government or its departments, any persons, railroads, corporations, political subdivisions, public and municipal corporations, and the state government of this state, making full use of the Interlocal Cooperation Act and the Joint Public Agency Act, for (a) cooperation or assistance in the design, construction, maintenance, sale, or lease of the works of the district, (b) making surveys and investigations or reports in relation to the objectives of the district, (c) cooperation or assistance in obtaining the construction, maintenance, or operation of a work or works of public improvement within the district for any of the purposes described in section 74-1302, (d) receiving the title or possession, or both, of any property and funds connected directly or indirectly with the purposes described in section 74-1302, (e) assuming, and becoming bound by, any obligations, promises, or covenants so connected, or (f) holding and saving the United States or others free from damages resulting from any construction works that may be undertaken.

(3) Prior to implementing any plans affecting matters of planning by or the interests of any planning commission located within such district, the interests of any municipality, county or state educational institution or school district a

portion of which lies within such district, any municipal county, any agricultural society, any airport authority, any natural resources district, or any other similar political entity, and any railroads, shippers, and affected property owners, the board shall consult with and submit such plans to such entities as may be concerned for study, review, comment, and suggestion. Approval of any state or federal regulatory agency shall be secured, when necessary, prior to implementing any of the provisions contained in sections 74-1301 to 74-1308 and the district shall comply with the requirements of any such agency.

(4) In developing plans for specific projects, to determine the feasibility of implementing the purposes of sections 74-1301 to 74-1308, the district shall examine the costs and benefits to the community or communities, the railroads, and the highway users and shall calculate the costs and benefits by consideration being given but not limited to loss of revenue, increased operating costs, costs of installation, acquisition of real and personal property, relocation, signalization, communication, utilities, avoidance of hazards, creation of transportation efficiencies, resolving conflicts of land use, and any other ancillary or peripheral costs or benefits.

Source: Laws 1971, LB 919, § 5; Laws 1974, LB 717, § 1; Laws 1977, LB 510, § 8; Laws 1981, LB 65, § 4; Laws 1995, LB 80, § 2; Laws 1999, LB 87, § 85; Laws 2001, LB 142, § 54.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

74-1306 Budget; submit to county board; levy; tax.

Before July 1 of each calendar year, the board of directors shall prepare an itemized budget of funds needed for the next fiscal year which are necessary to carry out the authorities granted under sections 74-1302, 74-1303, and 74-1305. The board of directors shall transmit such budget to the county board. The county board shall levy a tax sufficient to produce the amount of funds requested but not to exceed two and six-tenths cents on each one hundred dollars upon the taxable value of all taxable property in the county subject to section 77-3443. Such levy shall be in addition to all other levies authorized or limited by law. The tax so levied shall be collected in the same manner as other property taxes, and the proceeds therefrom shall be kept in a separate account identified by the official name of the transportation district. The county treasurer shall transfer such funds to the district as requested by the board of directors.

Source: Laws 1971, LB 919, § 6; Laws 1979, LB 187, § 190; Laws 1992, LB 719A, § 161; Laws 1996, LB 1114, § 66.

74-1307 Bonds; issuance; sinking fund.

For carrying out the purposes and powers set forth in sections 74-1302, 74-1303, and 74-1305, including paying the cost thereof, the district may: (1) Borrow money and issue its negotiable general obligation bonds upon such terms and conditions as the board of directors may determine and without a vote of the electors; (2) issue warrants to contractors and others furnishing services or materials or in satisfaction of other obligations created under sections 74-1302, 74-1303, and 74-1305, such warrants to be issued in such amounts and on such terms and conditions as the board shall determine, and to

be redeemed and paid upon the sale of bonds or receipt of other funds available for such purpose; and (3) establish a sinking fund for the payment of such bonds as may be issued under this section.

Source: Laws 1971, LB 919, § 7; Laws 1985, LB 81, § 1; Laws 2005, LB 161, § 12.

74-1308 Officers; meetings; bond; records; inspection; treasurer; report; violations; penalty.

(1) The board of directors shall annually elect a president, vice president, secretary, and such other officers as may be necessary. The board shall cause to be kept accurate minutes of its meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management, and business of the district, which shall be kept at the principal place of business of the district. All books, papers, and vouchers shall be subject to public inspection at reasonable hours, and the district shall be subject to the Open Meetings Act.

(2) The treasurer of such district shall be the treasurer of the county of such district and shall annually make a detailed report in writing of all receipts and disbursements. The report shall contain a statement of (a) the funds on hand belonging to the district, (b) the amount, if any, in the hands of the county treasurer, (c) all money received during the preceding year from all sources, and (d) all items of disbursement during such year and the purposes for which the same have been paid out, including all compensation paid to officers of the district and all other expenses of administration. The report shall be verified under oath. A copy of the same shall be filed annually with the county clerk of the county.

(3) Such officers and employees as may be designated by the board of directors shall furnish bonds in such amounts as may be fixed by the board of directors. Such bonds shall be conditioned upon the faithful performance of the duties of each such officer or employee and the proper accounting for all funds or property coming into the hands of each such officer or employee. Such bonds shall (a) run to the district, (b) be signed by a surety or sureties to be approved by the county clerk of the county, and (c) be filed and recorded in the office of such county clerk.

(4) If any such treasurer fails or neglects to make out the report or file the same with the county clerk as required by subsection (2) of this section, if any officer of such district neglects or refuses to submit for inspection any records or papers of such district upon demand of any person interested, or if any person otherwise neglects to perform any duties imposed upon him or her by this section, he or she shall be guilty of a Class V misdemeanor.

Source: Laws 1971, LB 919, § 8; Laws 1981, LB 65, § 5; Laws 2004, LB 821, § 22.

Cross References

Open Meetings Act, see section 84-1407.

74-1309 Repealed. Laws 1995, LB 80, § 4.

(b) RAILROAD CROSSINGS

74-1310 Department, defined.

For purposes of sections 74-1310 to 74-1322, unless the context otherwise requires, department shall mean the Department of Roads.

Source: Laws 1979, LB 42, § 1; Laws 1994, LB 414, § 25.

74-1311 Department; determine railroad crossing safety measures needed.

The department shall have authority to determine that (1) a railroad crossing shall be eliminated, (2) automatic railroad grade crossing protection devices shall be installed, modified, or improved, (3) an overpass or underpass is needed at a railroad crossing, or (4) other measures are necessary to improve public safety at railroad crossings.

Source: Laws 1979, LB 42, § 2.

74-1312 Department; establish priority list for railroad crossing safety improvement.

The department shall establish and update, as needed, a priority list for improving the safety of railroad crossings in Nebraska. The list shall identify all crossings in need of safety improvements and the relative order of need.

Source: Laws 1979, LB 42, § 3.

74-1313 Priority list; factors to be considered.

In establishing the priority list under section 74-1312, the department shall consult with governmental subdivisions to determine where railroad crossing safety measures are needed. The department shall consider the accident history of the crossing, the amount of traffic at the crossing, traffic speed limits, population density, visibility of the crossing, any information provided by notices filed with the commission under section 74-1316, the results of any investigations conducted by the Public Service Commission under section 75-426, and similar factors.

Source: Laws 1979, LB 42, § 4.

74-1314 Political subdivision; determine need for railroad crossing safety measure; notice to railroad; priority.

When any political subdivision of this state determines that public safety will be improved by eliminating a crossing, by the installation, substantial modification, or improvement of automatic railroad grade crossing protection, or by construction of an overpass or underpass where a street, road, or highway intersects with a line of the railroad company within its jurisdiction, and demand is made upon the railroad company concerned, the political subdivision shall inform the Department of Roads of such fact.

Upon receiving such notice, or upon its own determination, the Department of Roads shall forthwith examine the crossing concerned, in conjunction with representatives of the political subdivision, to determine whether the position of such crossing on the priority list established under section 74-1312 should be adjusted.

Source: Laws 1979, LB 42, § 5.

74-1315 Department; utilize federal funds; matching funds; how paid.

The department shall utilize any federal funds available in the construction of railroad grade crossing protection devices or other safety improvements. If funds are needed to match any federal funds the political subdivision in which the crossing is located shall contribute half of the matching funds needed but shall not be required to provide more than five percent of the total cost. If it is determined by the department that a railroad crossing safety project involving federal funds will result in ascertainable benefits to the railroad such railroad may be required to provide up to five percent of the total cost of the project. The balance of any matching funds needed shall be paid by the department from the Grade Crossing Protection Fund.

Source: Laws 1979, LB 42, § 6.

74-1316 Railroad crossing accident; notice to department; when.

When an accident occurs at any railroad crossing within the State of Nebraska which results in serious personal injury or loss of human life, the corporation operating the railroad which was involved in the accident shall within one day thereafter notify the department that an accident has occurred and shall promptly furnish to the department a copy of the same notice that it is required to furnish to the Nebraska Public Service Commission and the Federal Railroad Administration.

Source: Laws 1979, LB 42, § 7.

74-1317 Grade Crossing Protection Fund; created; purpose; investment.

In order to promote public safety at the intersection of railroad lines and all classes of highways, there is hereby created a special fund known as the Grade Crossing Protection Fund which shall be established in the state treasury to be used in furnishing financial assistance in the improvement of the safety of railroad grade crossings in this state, including the elimination of such crossings, the construction, substantial modification, or improvement of and the maintenance of automatic crossing protection at such grade crossings, and the construction and maintenance of overpasses and underpasses at railroad crossings. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1961, c. 359, § 1, p. 1126; R.S.Supp.,1961, § 75-219.01; Laws 1963, c. 241, § 1, p. 732; Laws 1969, c. 584, § 40, p. 2368; Laws 1973, LB 144, § 1; R.S.Supp.,1973, § 39-7,136; Laws 1975, LB 249, § 1; R.S.Supp.,1979, § 39-6,194; Laws 1979, LB 42, § 8; Laws 1995, LB 7, § 85.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

74-1318 Grade Crossing Protection Fund; Department of Roads; administer; procedure; division of cost; responsibility for protection devices; powers and duties.

The Department of Roads is hereby empowered to administer the funds deposited in the Grade Crossing Protection Fund as follows:

(1) If the department and the political subdivision with jurisdiction over the crossing agree that a grade crossing should be eliminated by closing the street, road, or highway, the political subdivision making such closing shall receive five thousand dollars from the fund and five thousand dollars from the railroad involved and the actual cost of closure not to exceed twelve thousand dollars from the fund. If pursuant to section 74-1305 it is agreed by the department and the political subdivision that such crossing should be eliminated by the removal of such rail line, the political subdivision paying for such removal, if any, shall receive two thousand dollars or the actual cost thereof not to exceed twelve thousand dollars from the fund;

(2) Except as otherwise provided in section 74-1315, in order to facilitate and protect the interest of the public as a whole and to compensate for the statewide use of such crossings by the public, the department shall pay ninety-five percent of the cost of overpasses, underpasses, and automatic railroad grade crossing protection measures or devices from the fund for all such projects in which an agreement among the department, the railroad, and the political subdivision is executed on or after May 24, 1979, and the balance of the cost shall be borne by the political subdivision, except that in any county in which a railroad transportation safety district has been formed, such balance shall be borne entirely by the political subdivision. For all such projects in which an agreement among the department, the railroad, and the political subdivision was executed prior to May 24, 1979, the costs shall continue to be borne in the same manner as they were prior to such date;

(3) It shall be the sole responsibility of the railroad company involved to maintain all automatic railroad grade crossing protection devices existing in this state;

(4) The department shall allocate the amount to be borne by the fund for the cost of construction, installation, or substantial modification or improvement of the automatic devices for the protection of the railroad grade crossing concerned under this section and section 74-1317; and

(5) The department shall enter into and enforce agreements involving the fund and the supervision of the construction, installation, substantial modification or improvement, and maintenance of such overpasses, underpasses, and automatic safety devices for which any part of the cost is borne from the fund and the auditing and collection of the bills covering the cost thereof. The department is further authorized to enter into such contracts with any railroad companies and political subdivisions affected which are necessary to carry out this section and section 74-1317.

Source: Laws 1961, c. 359, § 3, p. 1127; R.S.Supp.,1961, § 75-219.01; Laws 1963, c. 241, § 2, p. 732; Laws 1965, c. 220, § 1, p. 641; Laws 1972, LB 866, § 1; Laws 1973, LB 144, § 2; R.S.Supp.,1973, § 39-7,137; Laws 1975, LB 249, § 2; R.S.Supp.,1979, § 39-6,195; Laws 1979, LB 42, § 9; Laws 1993, LB 477, § 1.

74-1319 Abandoned railroad line; removal of grade crossing protection devices.

Whenever a railroad line is abandoned, the Department of Roads may remove grade crossing protection devices therefrom to protect the state's investment therein.

Source: Laws 1979, LB 42, § 10.

74-1320 Excise tax on railroads transporting freight; rate; collection; report; payment.

(1) There is hereby levied an excise tax on each railroad transporting freight in the State of Nebraska. Such tax shall be levied at the rate of seven and one-half cents for each train mile operated by such railroad in the state and one hundred dollars for each public grade crossing on the line of such railroad in the state. Such tax shall be independent of any assessment of costs for benefits received by the railroad from projects for the construction, rehabilitation, relocation, or modification of railroad grade separation facilities. The Department of Revenue shall collect the tax due pursuant to this section from each railroad transporting freight within the state.

(2) On each March 1, each such railroad shall submit to the Department of Revenue a report of its total train miles operated within the state during the previous January 1 through December 31 and the number of public grade crossings on its line in the state at the close of the previous year. All taxes shall be due on the date of reporting and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(3) As used in this section, train mile shall mean each mile traveled by a train in this state regardless of the number of cars in such train.

Source: Laws 1979, LB 42, § 12; Laws 1980, LB 507, § 30; Laws 1981, LB 190, § 1; Laws 1984, LB 348, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 11.

74-1321 Excise tax on railroad transporting freight; similar appropriation; how used.

All revenue derived from the tax levied pursuant to section 74-1320, together with such other funds as may be appropriated by the state for the same purposes, shall be placed in the Grade Crossing Protection Fund and may be allocated and expended in the same manner as other money in such fund for the purpose of constructing, rehabilitating, relocating, or modifying railroad grade separation facilities.

Source: Laws 1979, LB 42, § 13; Laws 1981, LB 190, § 2.

74-1322 Failure to file report or pay taxes; violation; penalty.

Failure to file a report required by section 74-1320, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each month the report is overdue or the payment is delinquent.

Source: Laws 1979, LB 42, § 14.

74-1323 Railroad car; obstructing view at crossing; violation; penalty.

(1) Unless otherwise provided by city or village ordinance, the Public Service Commission, upon complaint or on its own motion, as to the crossing which is the subject of the complaint or motion, may direct that at such crossing any railroad car that is stored or parked on a railroad track which may be obstructing or obscuring the traveling public's view of any oncoming train be stored or parked at a minimum distance from the crossing of such railroad and public road. The minimum distance shall be that deemed by the commission to be reasonable and necessary to provide a sight distance at the crossing adequate to protect the safety of the traveling public, but in no instance shall any person who is authorized to control the movement of such railroad car or cars within such distance be prevented from reasonably conducting his or her business.

(2) Any company, its officers, agents, or employees, or any other person subject to subsection (1) of this section who fails, neglects, or refuses to promptly comply with an order of the commission issued under this section shall be guilty of a Class IV misdemeanor, but shall be fined not more than two hundred dollars for each offense. Each day of such neglect, refusal, or failure shall constitute a separate offense.

Source: Laws 1984, LB 790, § 1.

(c) NEBRASKA HIGHWAY-RAIL CROSSING SAFETY COMMITTEE

74-1324 Repealed. Laws 1998, LB 899, § 1.

74-1325 Repealed. Laws 1998, LB 899, § 1.

74-1326 Repealed. Laws 1998, LB 899, § 1.

74-1327 Repealed. Laws 1998, LB 899, § 1.

74-1328 Repealed. Laws 1998, LB 899, § 1.

(d) NEBRASKA HIGHWAY-RAIL GRADE CROSSING SAFETY AND CONSOLIDATION ACT

74-1329 Act, how cited.

Sections 74-1329 to 74-1343 shall be known and may be cited as the Nebraska Highway-Rail Grade Crossing Safety and Consolidation Act.

Source: Laws 1997, LB 255, § 1.

74-1330 Legislative intent.

The Legislature hereby recognizes that the State of Nebraska leads the nation in the average number of highway-rail grade crossings per mile and that the State of Nebraska is traversed by a rail corridor that leads the nation in density of train traffic, in addition to other rail corridors in the state that also experience high levels of traffic. The Legislature further recognizes that these factors combine to create a serious and growing threat to public safety which must be addressed in a comprehensive manner that reflects the input and interests of local communities, the general motoring public, commercial highway users, and shippers of agricultural and other types of commodities who rely on rail transportation for efficient, timely transport of their goods.

It is the intent of the Legislature that any state role regarding highway-rail grade crossings, including public safety, Operation Lifesaver, maintenance, design, consolidation, separation, signalization, improvement, or relocation, be consolidated under one agency.

Source: Laws 1997, LB 255, § 2.

74-1331 Bridges; construction; dimensions; maintenance; violation; penalty.

Any person who operates a railroad in the State of Nebraska shall construct all bridges on its railway so that each bridge over a running stream in this state has an opening below high water line the area of which is sufficient to allow the free and unobstructed passage of the water of such running stream at extreme high water state. If in the case of any given bridge satisfactory proof is made to the Department of Roads that the dimensions prescribed in this section are greater than are necessary to permit the unimpeded passage of the water under such bridge at high water, the department may authorize construction of the bridge with dimensions less than those prescribed in this section. Each railroad shall maintain and keep in good repair all bridges and abutments which the railroad constructs to enable its tracks to pass over or under any turnpike, road, canal, watercourse, or other way. Any operator of a railroad in this state who violates any of the provisions of this section or who permits any such violation on the part of any employee shall be guilty of a Class III misdemeanor.

Source: Laws 1963, c. 425, art. IV, § 27, p. 1408; Laws 1994, LB 414, § 93; R.S.1943, (1996), § 75-427; Laws 1997, LB 255, § 3.

74-1332 Crossings; jurisdiction of department.

The Department of Roads shall have jurisdiction over all crossings outside of incorporated villages, towns, and cities, both public and private, across, over, or under all railroads in the state, except as provided in sections 74-1338 to 74-1340, and shall adopt and promulgate such rules and regulations for the construction, repair, and maintenance of the crossings as the department deems adequate and sufficient for the protection and necessity of the public.

Source: Laws 1963, c. 425, art. IV, § 10, p. 1401; R.S.1943, (1996), § 75-410; Laws 1997, LB 255, § 4.

The Nebraska Public Service Commission has no authority to order a railroad company to construct a crossing over its railroad at a point within the limits of a city or village where no street has been opened. The Nebraska Public Service Commission does not have jurisdiction over questions of law arising out of contract or title to real estate. The Nebraska Public Service

Commission has no jurisdiction over crossings of railroads within incorporated villages, towns, and cities, except to provide regulations for the safety and convenience of the public. *Davis-Moore Industrial Park v. Missouri Pacific Railroad Co.*, 210 Neb. 652, 316 N.W.2d 593 (1982).

74-1333 Crossings; public; maintenance.

The owner of any railroad tracks which are crossed by a public road shall make and keep in good repair good and sufficient crossings for such road over its tracks, including all the grading, bridges, ditches, and culverts that may be necessary within its right-of-way. Such crossings shall be not less than twenty feet wide and shall be solidly constructed with no openings or filled spaces except such as are necessary for the track. The railroad crossings shall be made of durable material equal to the height of the railroad track. The Department of Roads may, upon proper investigation and hearing, impose additional reasonable requirements as the circumstances may warrant.

Source: Laws 1963, c. 425, art. IV, § 11, p. 1402; Laws 1994, LB 414, § 86; R.S.1943, (1996), § 75-411; Laws 1997, LB 255, § 5.

74-1334 Crossings; public; safety regulations; gates and alarms; closure; when.

(1) Wherever any railroad track crosses any public road in a cut, on a curve or side hill, in timber lands, near buildings, or near any obstruction of view from the road, the Department of Roads shall direct such precautions to be taken as it deems necessary for the safety of the traveling public. Each railroad carrier shall also provide and maintain such gates, crossings, signs, signals, alarm bells, and warning personnel as the department directs. The department may direct the placement of special signs where the physical conditions of any crossing warrant such action.

(2) Except as provided in subsection (3) of this section, any public railroad crossing without gates, signals, alarm bells, or warning personnel located within one-quarter mile from a public railroad crossing with gates, signals, alarm bells, or warning personnel shall be closed unless it is the only railroad crossing which provides access to property.

(3) An interested party may object to an action taken under subsection (2) of this section only if a written request is submitted to the Department of Roads by a professional engineer licensed to practice in the State of Nebraska. The engineer shall state in writing that the engineer is familiar with the requirements in this section and with all relevant aspects of the railroad crossing. The engineer shall also provide a detailed explanation of why subsection (2) of this section should not apply to the railroad crossing in question and a statement that the railroad crossing corridor has been examined by the engineer and the engineer believes that the railroad crossing will be safe as designed. Such a written request shall exempt a railroad crossing from being closed under subsection (2) of this section.

Source: Laws 1963, c. 425, art. IV, § 12, p. 1402; Laws 1994, LB 414, § 87; R.S.1943, (1996), § 75-412; Laws 1997, LB 255, § 6; Laws 2006, LB 79, § 1; Laws 2008, LB837, § 1.

74-1335 Crossings; private; railroad; duties.

Whenever any person owns land on both sides of the right-of-way of any railroad, such railroad shall provide and keep in repair at least one adequate means for such landowner to cross the right-of-way. Any interested landowner with land on both sides of the right-of-way of any railroad may file written complaint with the Department of Roads against any such railroad that the crossing is not adequate or is unsafe and dangerous to the life and property of those who use it, and the department thereupon shall make such investigation, hold such hearing, and issue such orders as it deems necessary, proper, and adequate. If circumstances warrant, the department may require overhead, underground, or grade crossings and wing fences at underground crossings or may require existing crossings to be relocated so as to be safe to those who use them, but when a special crossing involves an expenditure of more than one thousand five hundred dollars, the landowner shall bear one-half the expenses in excess of one thousand five hundred dollars.

Source: Laws 1963, c. 425, art. IV, § 13, p. 1402; Laws 1994, LB 414, § 88; R.S.1943, (1996), § 75-413; Laws 1997, LB 255, § 7.

Railroad was under duty to deceased truck driver, a member of crew repairing gas pipelines on farm property, to exercise reasonable care at private farm road crossing being used by decedent with permission of landowner. *Kloewer v. Burlington Northern, Inc.*, 512 F.2d 300 (8th Cir. 1975).

74-1336 Crossings; complaints; hearing; order; rules and regulations.

(1) Whenever a complaint is filed in writing with the Department of Roads by the duly authorized officers of any incorporated village or city or by the owner or operator of any railroad track, relative to any crossing within the affected village or city, praying for relief from the matters complained of, the department shall hold a hearing and shall make such order as the facts warrant. The findings of the department, subject to the right of appeal, shall be binding on the parties to the suit.

(2) The department shall adopt and promulgate rules and regulations for the construction, repair, and maintenance of all crossings, both public and private, across, over, and under all railroads within the corporate limits of any incorporated village or city. The rules and regulations shall be substantially the same as the rules and regulations under section 74-1332.

Source: Laws 1963, c. 425, art. IV, § 14, p. 1403; Laws 1994, LB 414, § 89; R.S.1943, (1996), § 75-414; Laws 1997, LB 255, § 8; Laws 2003, LB 259, § 1.

The Nebraska Public Service Commission has no authority to order a railroad company to construct a crossing over its railroad at a point within the limits of a city or village where no street has been opened. The Nebraska Public Service Commis-

sion does not have jurisdiction over questions of law arising out of contract or title to real estate. *Davis-Moore Industrial Park v. Missouri Pacific Railroad Co.*, 210 Neb. 652, 316 N.W.2d 593 (1982).

74-1337 Crossings; public; county board; agreement.

Whenever railroad tracks cross a public highway at grade, outside of incorporated cities and villages, the owner of the railroad tracks and the county board of the county in which such crossing is located may agree upon any change, alteration, or construction of any crossing as will promote the public convenience or safety, and they may also agree upon the relocation of any highway so as to eliminate such crossings entirely or so as to carry them over or under such railroad and upon the apportionment of the expenses incident to any such change, alteration, relocation, or construction between the owner of the railroad tracks and the county or other public authority in interest.

Source: Laws 1963, c. 425, art. IV, § 15, p. 1403; Laws 1994, LB 414, § 90; R.S.1943, (1996), § 75-415; Laws 1997, LB 255, § 9.

74-1338 Crossings; public; failure of county board and railroad to agree; power of department.

If the owner of the railroad track and the county board or other public authority in interest fail to agree upon any of the matters or things mentioned in section 74-1337, either the owner or the county board or other public authority in interest, in the name of the county or other public authority in interest, may file an application with the Department of Roads, setting forth such fact together with a statement of the change, alteration, relocation, or construction it wants, the estimated cost thereof, and such other facts as may be relevant and asking the department to enter an order directing that the change, alteration, relocation, or construction be made. The department shall proceed to hear the application in the manner provided by law, and if it finds that the application should be granted, it shall enter an order accordingly, designating in the order what portion of the expense of complying with the order shall be paid by the railroad carrier and what portion shall be paid by the county or other public authority in interest, if any.

Source: Laws 1963, c. 425, art. IV, § 16, p. 1404; Laws 1994, LB 414, § 91; R.S.1943, (1996), § 75-416; Laws 1997, LB 255, § 10.

74-1339 Crossings; agreement of department; county board or other public authority; powers.

The county board or other public authority in interest may carry out any such agreement and may establish, vacate, or relocate any public road so as to comply with any such agreement. The procedure shall be that provided by sections 39-1701 to 39-1731, insofar as the same is applicable, but no petition shall be necessary or required.

Source: Laws 1963, c. 425, art. IV, § 17, p. 1404; R.S.1943, (1996), § 75-417; Laws 1997, LB 255, § 11.

74-1340 Crossings; department orders; violation; penalty.

When the owner of railroad tracks fails, neglects, or refuses promptly to comply with any order of the Department of Roads issued under sections 74-1332 to 74-1339 or fails, refuses, or neglects to comply with such sections after the department has issued an order, the owner shall be guilty of a Class V misdemeanor and shall be fined in any sum not more than one hundred dollars for each such offense. Each week of such neglect, refusal, or failure shall constitute a separate offense.

Source: Laws 1963, c. 425, art. IV, § 18, p. 1404; Laws 1994, LB 414, § 92; R.S.1943, (1996), § 75-418; Laws 1997, LB 255, § 12.

74-1341 Grade crossing safety; responsibility.

The Department of Roads, which possesses the requisite engineering expertise, highway and rail planning function, and highway safety mission and is the repository for state and federal funding for both rail and highway projects, shall be the agency responsible for grade crossing safety.

Source: Laws 1997, LB 255, § 13.

74-1342 Comprehensive public safety program; department; duties.

(1) The Department of Roads shall adopt and promulgate rules and regulations establishing a comprehensive public safety program to deal with problems associated with public and private highway-rail grade crossings. In designing such a program, the department shall establish a process for assessing the risk to the public from particular grade crossings and for reducing or eliminating such risk in a cost-effective and timely manner. The department shall actively solicit input from the public and from representatives of county and municipal governments, the Federal Highway Administration, the Federal Railroad Administration, and any other individuals or entities with an interest in grade crossing safety.

(2) The grade crossing safety assessment process may include the following factors:

- (a) Volume of trains;
- (b) Volume of motor vehicles, including character, function, and type of vehicular traffic through the crossing;
- (c) Number of tracks at the crossing;
- (d) Geometry of the crossing, including acute angles;
- (e) Sight-distance restrictions, if any;
- (f) Train and motor vehicle speed;

- (g) Accident history;
- (h) Character of proximate road network, including distance and travel time to adjacent crossings;
- (i) Frequency and duration of roadway blockage by trains, including citation history;
- (j) Emergency response routes, including alternatives;
- (k) Economic impact of crossing;
- (l) Current and foreseeable development in the vicinity of the crossing; and
- (m) Location of schools and hospitals.

Source: Laws 1997, LB 255, § 14.

74-1343 Assessment process; recommendations; department; duties.

The Department of Roads shall establish the grade crossing safety assessment process no later than twelve months after September 13, 1997, and shall recommend to the Legislature no later than eighteen months after September 13, 1997, an equitable formula for funding grade crossing risk abatement.

Source: Laws 1997, LB 255, § 15.

ARTICLE 14

LIGHT-DENSITY RAIL LINES

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74-1419.	Repealed. Laws 1991, LB 783, § 35.
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74-1429.	Act, how cited.

74-1401 Legislative findings and intent.

(1) The Legislature finds that:

(a) Within the State of Nebraska light-density rail lines exist which are in need of rehabilitation or improvement;

(b) In some cases the railroads owning light-density rail lines are not financially able to rehabilitate or improve them or there is not sufficient economic incentive for the railroads to rehabilitate or improve them;

(c) The present condition of certain light-density rail lines imperils the public safety and well-being;

(d) Continued use of properly maintained and operated light-density rail lines is necessary for the economic and physical well-being of the citizens of this state;

(e) Properly maintained and operated light-density rail lines will contribute significantly to the conservation of limited energy resources;

(f) Properly maintained and operated light-density rail lines can avoid significant increased maintenance and construction costs on state highways and county roads caused by increased truck traffic resulting from shipments diverted if light-density rail lines are abandoned;

(g) There are light-density rail lines outside this state which connect with and provide substantial overhead traffic to light-density rail lines within the state, and because of the revenue provided by this overhead traffic, the continued existence of these out-of-state lines may be vital to the long-term viability of some of Nebraska's light-density rail lines;

(h) There are light-density rail lines which may need to be railbanked so the right-of-way may be used for future rail or other transportation purposes; and

(i) There may be a need for rail facility construction, including new connections between two or more existing rail lines, intermodal freight terminals,

industrial sidings, and relocation of existing rail lines for the purpose of improving the quality and efficiency of rail freight service.

(2) It is the intent of the Legislature, pursuant to the findings of subsection (1) of this section, to create a mechanism for the public purpose of acquiring, rehabilitating or improving, and operating light-density rail lines and providing light-density rail facility construction which will serve the public and will allow such mode of transportation to remain viable in the private and public sectors of the economy. The Legislature intends that such mechanism serve the public purpose by balancing the needs of carriers, shippers, and the public, promote adequate and efficient rail, highway, and county road transportation services, and increase the attractiveness of investing in light-density rail lines and rail-service-oriented enterprises relating to light-density rail line operations. The Legislature encourages efforts to restructure the light-density rail line system on an economically justified basis through financing mechanisms that will assure adequate acquisition, rehabilitation or improvement, operation, and construction of facilities.

(3) The Legislature has identified approximately eight hundred thirty miles of light-density rail lines on which the benefits of expending public funds to maintain rail service potentially outweigh the associated costs.

(4) The Legislature hereby declares that acquisition, rehabilitation or improvement, and operation of the light-density rail lines and construction of rail facilities in Nebraska through the encouragement of private investments and the use of federal and state funds is a public purpose and use for which public money provided by the sale of bonds and appropriations of the Legislature may be borrowed, expended, advanced, loaned, or granted. Such activity is a proper governmental function and can best be accomplished by the creation of a Nebraska Railway Council with the powers and duties specified in the Light-Density Rail Line Assistance Act. The necessity for the provisions of the act to protect the health, safety, and general economic welfare of all the people of this state is hereby declared as a matter of legislative determination.

Source: Laws 1980, LB 507, § 1; Laws 1991, LB 783, § 1; Laws 1996, LB 463, § 1.

74-1402 Definitions; where found.

For purposes of the Light-Density Rail Line Assistance Act, the definitions found in sections 74-1402.01 to 74-1412.01 shall be used.

Source: Laws 1980, LB 507, § 2; Laws 1991, LB 783, § 2; Laws 1996, LB 463, § 2.

74-1402.01 Acquiring carrier, defined.

Acquiring carrier means a business entity which acquires by purchase, lease, or otherwise a light-density rail line, except carriers acquiring an abandoned rail line, with the intent of operating the light-density rail line for the purpose of continuing the commercial transportation of goods or passengers over the light-density rail line.

Source: Laws 1991, LB 783, § 3; Laws 1996, LB 463, § 3.

74-1403 Acquisition project, defined.

Acquisition project means a project to acquire, by purchase, lease, or other appropriate method, a line of railroad or other rail properties or an interest in a line of railroad or other rail properties for existing or future rail freight service or to maintain existing transportation corridors for future rail or other transportation uses.

Source: Laws 1996, LB 463, § 4.

74-1404 Benefit-cost methodology, defined.

Benefit-cost methodology means the methodology to be used for calculating the ratio of benefits to costs of the projects considered for financial assistance as established by the Federal Railroad Administration on July 1, 1990, pursuant to 49 U.S.C. app. 1654(N).

Source: Laws 1996, LB 463, § 5.

74-1405 Council, defined.

Council means the Nebraska Railway Council.

Source: Laws 1980, LB 507, § 5; Laws 1991, LB 783, § 4; Laws 1996, LB 463, § 6.

74-1405.01 Divesting carrier, defined.

Divesting carrier means a common carrier or business entity engaged in the transportation of goods by rail which divests itself of a light-density rail line by sale, lease, or otherwise.

Source: Laws 1991, LB 783, § 5; Laws 1996, LB 463, § 7.

74-1405.02 Division, defined.

Division means the area of responsibility for rail planning activities within the Department of Roads.

Source: Laws 1991, LB 783, § 6; Laws 1996, LB 463, § 8.

74-1405.03 Facilities, defined.

Facilities means the track, ties, roadbed, and related structures, including terminals, team tracks and appurtenances, bridges, tunnels, and other structures used or usable for rail service operations.

Source: Laws 1996, LB 463, § 9.

74-1406 Federal act, defined.

Federal act means the Department of Transportation Act, Public Law 89-670, which act also includes the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, and all amendments to the Department of Transportation Act, or any federal act providing for the assistance of local light-density rail lines.

Source: Laws 1980, LB 507, § 6; Laws 1991, LB 783, § 7; Laws 1996, LB 463, § 10.

74-1407 Repealed. Laws 1991, LB 783, § 35.**74-1407.01 Light-density rail line, defined.**

Light-density rail line means any rail line classified as a light-density line by the United States Department of Transportation pursuant to the federal act or by the division under the Light-Density Rail Line Assistance Act.

Source: Laws 1980, LB 507, § 4; R.S.1943, (1990), § 74-1404; Laws 1991, LB 783, § 8; Laws 1996, LB 463, § 11.

74-1408 Operation project, defined.

Operation project means a state-funded project to assist a rail carrier in financing the operation of a rail line.

Source: Laws 1996, LB 463, § 12.

74-1409 Repealed. Laws 1991, LB 783, § 35.**74-1410 Plan, defined.**

Plan means the current state rail system plan and any additions to the plan promulgated by the division with the advice of the council.

Source: Laws 1980, LB 507, § 10; Laws 1991, LB 783, § 9; Laws 1996, LB 463, § 13.

74-1410.01 Railbanking, defined.

Railbanking means the purchase of abandoned light-density rail lines for future rail or other transportation purposes.

Source: Laws 1991, LB 783, § 10; Laws 1996, LB 463, § 14.

74-1411 Rail carrier, defined.

Rail carrier means a person or entity providing railroad transportation for compensation who or which is subject to the jurisdiction of the Interstate Commerce Commission under subchapter 1 of 49 U.S.C. chapter 105.

Source: Laws 1996, LB 463, § 15.

74-1411.01 Rail facility construction project, defined.

Rail facility construction project means the construction of rail or rail-related facilities, including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines, for the purpose of improving the quality and efficiency of rail freight service.

Source: Laws 1996, LB 463, § 16.

74-1412 Rehabilitation or improvement project, defined.

Rehabilitation or improvement project means a project for replacing, repairing, or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a rail line.

Source: Laws 1996, LB 463, § 17.

74-1412.01 Revolving fund, defined.

Revolving fund means the Light-Density Rail Line Assistance Revolving Fund.

Source: Laws 1991, LB 783, § 11; Laws 1996, LB 463, § 18.

74-1413 Nebraska Railway Council; created; members; qualifications; terms; vacancies; transition from Branch Rail Revitalization Council; per diem; expenses; immunity from liability; when.

(1) The Nebraska Railway Council is created as a body politic and corporate, not a state agency, but an independent instrumentality. The State of Nebraska shall not be responsible for the debts, contracts, general obligations, or liabilities of the council or its members or agents, including tort claims. The council shall consist of eight members to be appointed by the Governor with the approval of a majority of the Legislature as follows:

- (a) One light-density rail line shipper;
- (b) One railroad management employee;
- (c) One public service commissioner;
- (d) Two members of the general public. One member from the general public shall be a person experienced in private or public finance, and the other member from the general public shall be a person experienced in marketing;
- (e) One railroad maintenance-of-way employee;
- (f) One representative from the Department of Economic Development; and
- (g) One representative from the Department of Agriculture.

The Director-State Engineer shall serve as an ex officio member of the council.

(2) The Governor shall appoint council members for four-year terms. In appointing the original council members, the Governor shall (a) appoint the light-density rail line shipper and one of the members of the general public for one-year terms, (b) appoint the railroad management employee and one of the members of the general public for two-year terms, (c) appoint the public service commissioner and the railroad maintenance-of-way employee for three-year terms, and (d) appoint the representatives from the Department of Agriculture and the Department of Economic Development for four-year terms. The Governor shall fill vacancies caused by any reason, except that an appointment to fill a vacancy shall be only for the remainder of the unexpired term. The Governor may remove any council member for just cause.

(3) The council members shall have an interest in and knowledge of railroads and railroad-related functions. A council member shall abstain from voting on any decision or policy of the council if the decision or policy will result in any financial benefit or detriment to him or her, any member of his or her family, or any business with which he or she is associated and the benefit or detriment is distinguishable from the effects of the actions on the public generally or a broad segment of the public.

(4) To assist the transition from the Branch Rail Revitalization Council to the Nebraska Railway Council, each member of the Branch Rail Revitalization Council serving on September 6, 1991, shall serve after such date as a member of the Nebraska Railway Council until a successor is nominated, approved, and acting as a member of the Nebraska Railway Council.

(5) Members of the council who are not employed by the State of Nebraska may receive a per diem of sixty dollars, not to exceed six thousand dollars in any one year, and all members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Such amounts shall be paid by the Department of Roads but not from the Roads Operations Cash Fund.

(6) There shall be no liability for damages on the part of and no cause of action in tort of any nature shall arise against the council or its agents or employees for any action taken by any of them in the performance of their powers and duties under the Light-Density Rail Line Assistance Act, unless the action is grossly negligent.

Source: Laws 1980, LB 507, § 13; Laws 1989, LB 509, § 1; Laws 1991, LB 783, § 12; Laws 1996, LB 463, § 19; Laws 2005, LB 78, § 1.

74-1414 Council; duties.

The council shall be responsible for administering programs and funds for light-density rail line acquisition, rehabilitation or improvement, operation, and rail facility construction projects implemented pursuant to the Light-Density Rail Line Assistance Act and the federal act.

Source: Laws 1980, LB 507, § 14; Laws 1991, LB 783, § 13; Laws 1996, LB 463, § 20.

74-1415 Council; powers; enumerated.

The council may do all things necessary to implement the Light-Density Rail Line Assistance Act, including, but not limited to:

- (1) Entering into agreements and contracts for the sale, lease, or purchase of tangible, intangible, real, and personal property;
- (2) Suing and being sued in its own name;
- (3) Hiring a director and necessary staff personnel;
- (4) Entering into agreements and contracts with state and federal agencies, political subdivisions, railroads, and other persons;
- (5) Collecting, administering, and expending funds;
- (6) Issuing bonds;
- (7) Borrowing money;
- (8) Loaning federal funds, state funds, or both for approved projects;
- (9) Purchasing shares of stock or otherwise investing in light-density rail line acquisition, rehabilitation or improvement, or rail facility construction projects;
- (10) Purchasing and entering into agreements for the operation of a light-density rail line; and
- (11) Entering into agreements and performing necessary functions to grant or loan federal funds for local rail freight assistance projects pursuant to 49 U.S.C. app. 1654.

The council shall not obligate or expend state funds for repayment of federal funds granted or loaned to a rail carrier pursuant to 49 U.S.C. app. 1654.

Source: Laws 1980, LB 507, § 15; Laws 1991, LB 783, § 14; Laws 1996, LB 463, § 21.

74-1415.01 Projects; council; investment of funds; powers and duties; hearing; investment committee; authorized; expenses; acquiring carrier; duty; annual report; contents.

(1) The council may invest funds for a light-density rail line acquisition, rehabilitation or improvement, operation, or rail facility construction project after the council finds, based upon the findings of the benefit-cost study and such additional investigation as the council makes and the council incorporates in its minutes, that:

(a) The project has a ratio of benefits to costs which is greater than one as calculated in accordance with the benefit-cost methodology;

(b) The proceeds of the investment will be used only to facilitate light-density rail line acquisition, rehabilitation or improvement, operation, or rail facility construction projects;

(c) The project has a reasonable chance of success;

(d) Participation by the council is necessary to the success of the project or the retention of associated rail service in the state;

(e) The project has the reasonable potential to create or maintain employment within the state;

(f) Others have already made or are contractually committed to make a substantial financial and time commitment to the project;

(g) There is a reasonable possibility that the council will recoup at least its initial investment; and

(h) Binding commitments have been made to the council for adequate reporting of financial data as determined by the council and for such control on the part of the council as is considered prudent over the management of the project so as to protect the investment, including, in the discretion of the council, the right of access to financial and other records relating to the project.

(2) The council shall request a business plan, including a description of the project and its management, a proposed operating plan, and a statement of the amount, timing, and projected use of the capital required.

(3) After receiving information from the division on the feasibility of a project pursuant to section 74-1419.02, the chairperson of the council shall designate one or more members of the council to personally inspect the fragment, section, or line to be acquired, rehabilitated or improved, operated, or constructed and report to the council. The inspection shall take into consideration the following factors: Cost of maintenance, estimated cost of future improvements, a description of traffic service provided, whether other facilities provide comparable service, and the relationship of the fragment, section, or line to an integrated light-density rail line system.

(4) Prior to the council making a decision on a project, it may hold a public hearing on the proposed project. The council shall give written notice of the time and place of the hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations affected by the proposal.

(5) In carrying out its functions under this section, the council shall create an investment committee to assist in evaluating potential investments. The membership of the investment committee may include both members and staff of the council and persons drawn from sources other than the council who are recognized for outstanding knowledge and leadership in their fields, all of whom shall serve at the pleasure of the council. Members of the investment committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The council shall not make an investment in any light-density rail line rehabilitation or improvement project in excess of the amount necessary to own more than seventy percent of such project. This subsection shall not apply to the outright purchase and operation of a light-density rail line by the council.

(7) The council shall adopt procedures to carry out this section.

(8) An acquiring carrier using funds pursuant to the Light-Density Rail Line Assistance Act shall give priority in hiring to employees of the divesting carrier performing service in connection with the affected light-density rail line. To assert priority, the employee shall be qualified by experience and training to perform the available job.

(9) The council shall submit an annual report to the Legislature detailing investments and purchases made pursuant to this section. The report shall include a statement for each project of the current amount invested in each light-density rail line and a statement for each acquisition or operation project of (a) the current market value of assets of the company operating each light-density rail line and the current salvage value of each such line, (b) the market value of the assets of the company operating each light-density rail line, (c) the salvage value of each light-density rail line at the time of the initial investment by the council, and (d) the number and market value of any light-density rail line being operated by the council.

Source: Laws 1980, LB 507, § 21; R.S.1943, (1990), § 74-1421; Laws 1991, LB 783, § 23; Laws 1996, LB 463, § 22.

74-1415.02 Repealed. Laws 1996, LB 463, § 33.

74-1415.03 Fair rate of return; required.

Any lease agreement or option to buy entered into pursuant to the authority granted in the Light-Density Rail Line Assistance Act shall provide for a fair rate of return as determined by reasonable commercial standards in the industry.

Source: Laws 1991, LB 783, § 15.

74-1415.04 Security; required.

No loan for any acquisition, rehabilitation or improvement, operation, or rail facility construction project shall be approved by the council unless the borrower provides a guarantee and collateral for the loan which is acceptable to the council as sufficient security to protect the interests of the council.

Source: Laws 1991, LB 783, § 16; Laws 1996, LB 463, § 23; Laws 2003, LB 259, § 2.

74-1415.05 Independent certified appraiser; verification required; cost.

The council shall not acquire any property or loan funds in any acquisition, rehabilitation or improvement, operation, or rail facility construction project unless an independent certified appraiser verifies that the value of the property proposed to be acquired or to be held as security is at least equal to the amount the council determines is sufficient to protect the interests of the council. The

council shall select the independent certified appraiser. The entity requesting the financial assistance shall bear the cost of the appraisal.

Source: Laws 1991, LB 783, § 17; Laws 1996, LB 463, § 24; Laws 2003, LB 259, § 3.

74-1415.06 Trade secrets and other information; confidentiality; exceptions.

Trade secrets and other proprietary or commercial information which may be filed with an application for a grant or loan or other financial assistance pursuant to the Light-Density Rail Line Assistance Act shall not be considered public records as defined in section 84-712.01 if the release of such trade secrets or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets or information as a public record shall demonstrate to the satisfaction of the council that the release would not violate this section.

Source: Laws 1991, LB 783, § 27.

74-1416 Repealed. Laws 1991, LB 783, § 35.

74-1417 Repealed. Laws 1991, LB 783, § 35.

74-1418 Repealed. Laws 1991, LB 783, § 35.

74-1419 Repealed. Laws 1991, LB 783, § 35.

74-1419.01 Repealed. Laws 1996, LB 463, § 33.

74-1419.02 Division; duties; Department of Roads; rules and regulations.

(1) The division shall conduct research on basic railroad problems, plan and assist in the development of rail transportation, develop and maintain a federal-state relationship with regard to programs relating to railroads, assist any public or private agency or corporation in coordinating railroad services with those of other transportation modes, and recommend, prepare, and review plans and specifications for any project to be proposed to the council.

(2) The division shall:

(a) Conduct studies and investigations and act in an advisory capacity to the council in the establishment of broad policies for carrying out the Light-Density Rail Line Assistance Act;

(b) Advise the public regarding the policies, conditions, and activities of the division;

(c) Hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) Advance information and advice conducive to providing adequate and safe railroads in the state;

(e) Submit to the council its written advice regarding the feasibility of the acquisition, rehabilitation or improvement, or operation of a fragment or section of light-density rail line or of an entire light-density rail line or a rail line facility construction project when proposed by the division;

(f) Furnish necessary assistance to the council in making its inspection and study of any proposed project;

(g) Perform all planning functions required for participation in the federal act; and

(h) Make data and information of the division available to the council.

(3) The Department of Roads shall adopt and promulgate rules and regulations necessary for the division to carry out its duties under the Light-Density Rail Line Assistance Act and to participate in the federal act.

Source: Laws 1991, LB 783, § 19; Laws 1996, LB 463, § 25.

74-1419.03 Repealed. Laws 1996, LB 463, § 33.

74-1420 Light-Density Rail Line Assistance Cash Fund; created; use; investment.

(1) There is hereby created the Light-Density Rail Line Assistance Cash Fund which shall be used by the council to carry out its responsibilities under the Light-Density Rail Line Assistance Act. The fund may be used:

(a) To defray the expenses of the council;

(b) To purchase shares of stock or otherwise invest to facilitate light-density rail line acquisition or rehabilitation or improvement projects;

(c) To purchase and enter into agreements for the operation of a light-density rail line; and

(d) To carry out the purposes described in section 74-1415.01.

(2) The State Treasurer shall credit to the fund any money (a) appropriated to the fund by the Legislature, (b) donated as gifts, bequests, grants, or other contributions to the fund from public or private sources, and (c) received pursuant to section 74-1415.01. Money made available by any department or agency of the United States may also be credited to the fund if so directed by the Director-State Engineer or may be credited to the revolving fund pursuant to section 74-1420.01. Any money in the Light-Density Rail Line Assistance Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1980, LB 507, § 20; Laws 1991, LB 783, § 21; Laws 1994, LB 1066, § 76; Laws 1996, LB 463, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

74-1420.01 Light-Density Rail Line Assistance Revolving Fund; created; use; investment.

(1) There is hereby created the Light-Density Rail Line Assistance Revolving Fund which shall be used by the council to carry out its responsibilities under the Light-Density Rail Line Assistance Act. The revolving fund shall consist of any money credited to the revolving fund pursuant to section 74-1420, any loan repayment money received, any interest received on such money, and other funds as the council may designate. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The revolving fund may be used to carry out the purposes of the Light-Density Rail Line Assistance Act.

(3) State and federal light-density rail line assistance funds shall not be commingled. The use of federal funds held in the revolving fund is restricted by rules and regulations of the Federal Railroad Administration. No loans or grants using the revolving fund shall be disbursed until written approval is received from the Federal Railroad Administration.

Source: Laws 1991, LB 783, § 25; Laws 1994, LB 1066, § 77; Laws 1996, LB 463, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

74-1420.02 Federal funds; solicitation and expenditure.

The division is encouraged to solicit and may expend any federal funds which may become available for program administration or any light-density rail line projects allowable under the federal act.

Source: Laws 1980, LB 507, § 22; R.S.1943, (1990), § 74-1422; Laws 1991, LB 783, § 24; Laws 1996, LB 463, § 28.

74-1420.03 Gifts and services, acceptance.

The council may accept gifts, donations, money, and services, including in-kind resources, for any purpose allowable under the Light-Density Rail Line Assistance Act.

Source: Laws 1991, LB 783, § 26; Laws 1996, LB 463, § 29.

74-1421 Transferred to section 74-1415.01.

74-1422 Transferred to section 74-1420.02.

74-1423 Repealed. Laws 1991, LB 783, § 35.

74-1424 Repealed. Laws 1991, LB 783, § 35.

74-1425 Repealed. Laws 1991, LB 783, § 35.

74-1426 Repealed. Laws 1991, LB 783, § 35.

74-1427 Political subdivision; expend local tax funds; election; procedure.

(1) If the governing body of a political subdivision determines that it is necessary or beneficial to expend local tax funds for acquisition, rehabilitation or improvement, or operation of a light-density rail line or rail facility construction, including the issuance of bonds for the purposes set forth in the Light-Density Rail Line Assistance Act, the governing body shall by resolution place the proposition for such expenditure or bond issue on the general or primary election ballot or in odd-numbered years only call for a special election in such political subdivision for the purpose of approving such expenditure of local tax funds.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such local tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that

is published in or of general circulation in such political subdivision at least once each week for three weeks prior to such election. If no such newspaper exists, notice shall be posted in at least three public places in the political subdivision for at least three weeks prior to such election.

(4) The proposition appearing on the ballot in any election shall state the purpose for which such local tax funds will be spent, the amount of local tax funds to be so expended, and the source from which the revenue will be raised. Such proposition shall be adopted if approved by a majority of those voting in such election.

(5) If a special election is called, the governing body shall prescribe the form of the ballot to be used.

Source: Laws 1980, LB 507, § 27; Laws 1991, LB 783, § 28; Laws 1996, LB 463, § 30.

74-1428 Repealed. Laws 1991, LB 783, § 35.

74-1428.01 Council; bond issuance; powers.

The council shall have the power to issue from time to time bonds to renew or to pay bonds, including the interest on such bonds, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds and partly for any other of its corporate purposes. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded or exchanged for the bonds to be refunded.

Source: Laws 1991, LB 783, § 29.

74-1428.02 Bonds; general obligation of council; additional security.

Except as may otherwise be expressly provided by the council, every issue of its bonds shall be general obligations of the council payable solely out of any revenue or money of the council, subject only to any agreements with the holders of particular bonds pledging any particular money or revenue. The bonds may be additionally secured by a pledge of any grant or contribution from the federal government or any corporation, association, institution, or person or a pledge of any money, income, or revenue of the council from any source.

Source: Laws 1991, LB 783, § 30.

74-1428.03 Bonds; not obligation of state; statement required.

No bonds issued by the council under the Light-Density Rail Line Assistance Act shall constitute a debt, liability, or general obligation of the state or a pledge of the faith and credit of the state but shall be payable solely as provided by section 74-1428.02. Each bond issued under the act shall contain on the face thereof a statement that neither the faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on such bond.

Source: Laws 1991, LB 783, § 31.

74-1429 Act, how cited.

Sections 74-1401 to 74-1429 shall be known and may be cited as the Light-Density Rail Line Assistance Act.

Source: Laws 1980, LB 507, § 29; Laws 1991, LB 783, § 32; Laws 1996, LB 463, § 31.

ARTICLE 15

NEBRASKA TRANSIT AND RAIL ADVISORY COUNCIL ACT

Section

- 74-1501. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1502. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1503. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1504. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1505. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1506. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1507. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1508. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1509. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1510. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1511. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1512. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1513. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.
- 74-1514. Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1501 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1502 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1503 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1504 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1505 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1506 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1507 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1508 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1509 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1510 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1511 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1512 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1513 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

74-1514 Repealed. Laws 2009, LB 2, § 1; Laws 2009, LB 154, § 27.

ARTICLE 16

MIDWEST INTERSTATE PASSENGER RAIL COMPACT

Section

- 74-1601. Midwest Interstate Passenger Rail Compact; adoption.
- 74-1602. Participation by State of Nebraska; when authorized.
- 74-1603. Midwest Interstate Passenger Rail Compact Cash Fund; created; use; investment.

74-1601 Midwest Interstate Passenger Rail Compact; adoption.

Section 1. MIDWEST INTERSTATE PASSENGER RAIL COMPACT

The contracting states solemnly agree:

ARTICLE I

STATEMENT OF PURPOSE

The purposes of this compact are, through joint or cooperative action:

- (1) to promote development and implementation of improvements to intercity passenger rail service in the Midwest;
- (2) to coordinate interaction among Midwestern state elected officials and their designees on passenger rail issues;
- (3) to promote development and implementation of long-range plans for high-speed rail passenger service in the Midwest and among other regions of the United States;
- (4) to work with the public and private sectors at the federal, state, and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote Midwestern interests regarding passenger rail; and
- (5) to support efforts of transportation agencies involved in developing and implementing passenger rail service in the Midwest.

ARTICLE II

ESTABLISHMENT OF COMMISSION

To further the purposes of the compact, a commission is created to carry out the duties specified in this compact.

ARTICLE III

COMMISSION MEMBERSHIP

The manner of appointment of commission members, terms of office consistent with the terms of this compact, provisions for removal and suspension, and manner of appointment to fill vacancies shall be determined by each member state pursuant to its laws, but each commissioner shall be a resident of the state of appointment. Commission members shall serve without compensation from the commission. The commission shall consist of four resident members of each state as follows: The Governor or the Governor’s designee who shall serve during the tenure of office of the Governor, or until a successor is named; one member of the private sector who shall be appointed by the Governor and shall serve during the tenure of office of the Governor, or until a successor is named; and two legislators, one from each legislative chamber (or two legislators from any unicameral legislature), who shall serve two-year terms, or until successors are appointed, and who shall be appointed by the appropriate appointing authority in each legislative chamber (or unicameral legislature). All vacancies shall be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term. Each member state shall have equal voting privileges, as determined by the commission bylaws.

ARTICLE IV

POWERS AND DUTIES OF THE COMMISSION

The duties of the commission are to:

- (1) Advocate for the funding and authorization necessary to make passenger rail improvements a reality for the region;
- (2) Identify and seek to develop ways that states can form partnerships, including with rail industry and labor, to implement improved passenger rail in the region;
- (3) Seek development of a long-term, interstate plan for high-speed rail passenger service implementation;
- (4) Cooperate with other agencies, regions, and entities to ensure that the Midwest is adequately represented and integrated into national plans for passenger rail development;
- (5) Adopt bylaws governing the activities and procedures of the commission and addressing, among other subjects: Powers and duties of officers, voting rights of commission members, voting procedures, commission business, and any other purposes necessary to fulfill the duties of the commission;
- (6) Expend such funds as required to carry out the powers and duties of the commission; and
- (7) Report on the activities of the commission to the legislatures and Governor of the member states on an annual basis.

In addition to its exercise of these duties, the commission is empowered to:

- (1) Provide multistate advocacy necessary to implement passenger rail systems or plans, as approved by the commission;
- (2) Work with local elected officials, economic development planning organizations, and similar entities to raise the visibility of passenger rail service benefits and needs;
- (3) Educate other state officials, federal agencies, other elected officials and the public on the advantages of passenger rail as an integral part of an intermodal transportation system in the region;
- (4) Work with federal agency officials and members of Congress to ensure the funding and authorization necessary to develop a long-term, interstate plan for high-speed rail passenger service implementation;
- (5) Make recommendations to member states;
- (6) If requested by each state participating in a particular project and under the terms of a formal agreement approved by the participating states and the commission, implement or provide oversight for specific rail projects;
- (7) Establish an office and hire staff as necessary;
- (8) Contract for or provide services;
- (9) Assess dues, in accordance with the terms of this compact;
- (10) Conduct research; and
- (11) Establish committees.

RAILROADS

**ARTICLE V
OFFICERS**

The commission shall annually elect from among its members a chairperson, a vice-chairperson who shall not be a resident of the state represented by the chairperson, and others as approved in the commission bylaws. The officers shall perform such functions and exercise such powers as are specified in the commission bylaws.

**ARTICLE VI
MEETINGS AND COMMISSION ADMINISTRATION**

The commission shall meet at least once in each calendar year, and at such other times as may be determined by the commission. Commission business shall be conducted in accordance with the procedures and voting rights specified in the bylaws.

**ARTICLE VII
FINANCE**

Except as otherwise provided for, the monies necessary to finance the general operations of the commission in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the commission by the member states, when authorized by the respective legislatures, by equal apportionment among the member states. Nothing in this compact shall be construed to commit a member state to participate in financing a rail project except as provided by law of a member state.

The commission may accept, for any of its purposes and functions, donations, gifts, grants, and appropriations of money, equipment, supplies, materials, and services from the federal government, from any member state or from any department, agency, or municipality thereof, or from any institution, person, firm, or corporation. All expenses incurred by the commission in executing the duties imposed upon it by this compact shall be paid by the commission out of the funds available to it. The commission shall not issue any debt instrument. The commission shall submit to the officer designated by the laws of each member state, periodically as required by the laws of each member state, a budget of its actual past, and estimated future expenditures.

**ARTICLE VIII
ENACTMENT, EFFECTIVE DATE, AND AMENDMENTS**

The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin are eligible to join this compact. Upon approval of the commission, according to its bylaws, other states may also be declared eligible to join the compact. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by any three (3) party states incorporating the provisions of this compact into the laws of such states. Amendments to the compact shall become effective upon their enactment by the legislatures of all member states.

**ARTICLE IX
WITHDRAWAL, DEFAULT, AND TERMINATION**

Withdrawal from this compact shall be by enactment of a statute repealing the same and shall take effect one year after the effective date of such statute. A

withdrawing state shall be liable for any obligations which it may have incurred prior to the effective date of withdrawal.

If any member state shall at any time default in the performance of any of its obligations, assumed or imposed, in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission, and the commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default shall be remedied under the stipulations and within the time period set forth by the commission, this compact may be terminated with respect to such defaulting state by affirmative vote of a majority of the other commission members. Any such defaulting state may be reinstated, upon vote of the commission, by performing all acts and obligations as stipulated by the commission.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected hereby. If this compact entered into hereunder shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

Source: Laws 2001, LB 244, § 1.

74-1602 Participation by State of Nebraska; when authorized.

The State of Nebraska shall not participate in any rail project or appropriate funds for any rail project proposed by the Midwest Interstate Passenger Rail Compact unless the specific project is authorized by the enactment of a legislative bill. For purposes of this section, rail project includes the planning phase of such a project.

Source: Laws 2001, LB 245, § 3.

Cross References

Midwest Interstate Passenger Rail Compact, see section 74-1601.

74-1603 Midwest Interstate Passenger Rail Compact Cash Fund; created; use; investment.

The Midwest Interstate Passenger Rail Compact Cash Fund is created and shall consist of money appropriated by the Legislature and gifts, grants, or bequests from any source, including federal, state, public, and private sources. The money shall be used to carry out passenger rail initiatives under the Midwest Interstate Passenger Rail Compact. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2001, LB 245, § 4.

§ 74-1603

RAILROADS

Cross References

Midwest Interstate Passenger Rail Compact, see section 74-1601.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

PUBLIC SERVICE COMMISSION

CHAPTER 75
PUBLIC SERVICE COMMISSION

Article.

1. Organization and Composition, Regulatory Scope, and Procedure. 75-101 to 75-158.
2. Air Carriers. 75-201, 75-202.
3. Motor Carriers.
 - (a) Intrastate Motor Carriers. 75-301 to 75-322.04.
 - (b) Itinerant Merchants. 75-323 to 75-335. Repealed.
 - (c) Tractor Engine Tests. 75-336 to 75-347. Transferred.
 - (d) Interstate Motor Carriers. 75-348 to 75-358. Repealed.
 - (e) Safety Regulations. 75-359 to 75-369.07.
 - (f) Enforcement. 75-370, 75-371.
 - (g) Interstate Operating Authority Agreement Act. 75-372 to 75-380. Repealed.
 - (h) Restrictions on Hours on Duty. 75-381, 75-382. Repealed.
 - (i) Transport of Hazardous Material. 75-383, 75-384. Repealed.
 - (j) Division of Motor Carrier Services. 75-385 to 75-390.
 - (k) Motor Carrier Transportation Contracts. 75-391.
 - (l) Unified Carrier Registration Plan and Agreement. 75-392 to 75-399.
4. Rail Carriers. 75-401 to 75-440.
5. Pipeline Carriers. 75-501 to 75-503.
6. Telegraphs and Telephones. Transferred or Repealed.
7. Transmission Lines. 75-701 to 75-724.
8. Miscellaneous. 75-801 to 75-803.
9. Grain Dealer Act. 75-901 to 75-910.
10. Water Service Regulation. 75-1001 to 75-1012.

Cross References

Constitutional provisions:

- Creation, see Article IV, section 20, Constitution of Nebraska.
Powers and duties, see Article IV, section 20, Constitution of Nebraska.
Campaign Finance Limitation Act, see section 32-1601.
Grain moisture measuring devices, see sections 89-1,104 to 89-1,108.
Grain Warehouse Act, see section 88-525.
Jurisdiction over utilities disputes, State Natural Gas Regulation Act, see section 66-1801.
Municipal Natural Gas System Condemnation Act, see section 19-4624.
Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Railroads, generally, see Chapter 74.
State Natural Gas Regulation Act, see section 66-1801.
Telecommunications, generally, see Chapter 86.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

ARTICLE 1

**ORGANIZATION AND COMPOSITION, REGULATORY
SCOPE, AND PROCEDURE**

Section

- 75-101. Public Service Commission; members; qualifications; terms, defined.
75-101.01. Public Service Commission; districts, described.
75-101.02. Public service commission districts; description; basis.
75-101.03. Repealed. Laws 2001, LB 855, § 5.
75-102. Commissioners; official oath.
75-103. Vacancies; appointment.
75-104. Commissioners; salary; commissioners and employees; expenses; when allowed.
75-104.01. Commissioner; salary increase; when effective.
75-105. Seal; office; employees.

PUBLIC SERVICE COMMISSION

- Section
- 75-106. Executive director; qualifications; salary; duties; fees for transcripts.
- 75-107. Repealed. Laws 1981, LB 545, § 52.
- 75-108. Attorney General; act as legal advisor.
- 75-109. Commission; regulatory powers; scope.
- 75-109.01. Jurisdiction.
- 75-110. Rules and regulations.
- 75-110.01. Application or petition for authority or relief; procedures.
- 75-111. Commission; investigatory powers.
- 75-112. Commissioners and examiners; powers; certification of official acts.
- 75-113. Records; prescribe; inspection.
- 75-114. Records; refusal to permit examination; penalty.
- 75-115. Examinations and inspections; authorized; duty and power to repair; notice; injunctions; carrier enforcement division; powers.
- 75-116. Annual report; filing requirements; fee.
- 75-117. Order of commission; failure to comply; penalty.
- 75-118. Commission; duties.
- 75-118.01. Certificate, permit, tariff, rule, or regulation; interpretation; jurisdiction.
- 75-119. Rate, rule, or regulation; petition to prescribe or fix; procedure.
- 75-120. Repealed. Laws 1967, c. 479, § 22.
- 75-121. Emergency rate orders; when authorized.
- 75-122. Repealed. Laws 1967, c. 479, § 22.
- 75-122.01. Transferred to section 75-134.01.
- 75-122.02. Repealed. Laws 1982, LB 592, § 2.
- 75-123. Rates; hearing; criteria.
- 75-124. Rates; publication.
- 75-125. Rate schedule; failure to publish; mandamus.
- 75-126. Unjust discrimination and practices prohibited; exceptions.
- 75-127. Unjust discrimination and practices; violations; penalties.
- 75-128. Hearings; when held; filing fee.
- 75-129. Sessions and hearings; when and where held.
- 75-130. Witnesses; failure to testify or comply with subpoena; penalty; depositions; witness and other fees.
- 75-130.01. Contested case; ex parte communication prohibited; applicability of section.
- 75-131. Common or contract carriers; jurisdictional utility; complaint of violation; service; other proceedings.
- 75-132. Complaint; hearing; notice; order.
- 75-132.01. Exclusive original jurisdiction; appeal.
- 75-133. Regulated parties; proceeding by commission upon own motion; hearing; order.
- 75-134. Commission order; requirements; when effective.
- 75-134.01. Order; enjoin, when.
- 75-135. Commission order; authentication.
- 75-136. Orders; right to appeal.
- 75-136.01. Repealed. Laws 2003, LB 187, § 37.
- 75-137. Repealed. Laws 2003, LB 187, § 37.
- 75-138. Repealed. Laws 2003, LB 187, § 37.
- 75-139. Rate order; appeal; when effective; supersedeas bond; effect.
- 75-139.01. Person, defined.
- 75-140. Orders; enforcement; petition; notice.
- 75-141. Order; proceeding to enforce; duty of Attorney General.
- 75-142. Order; enforcement; procedure.
- 75-143. Order; appeal; effect; attorney's fees.
- 75-144. Order; violation; injunction; penalty.
- 75-145. Repealed. Laws 2000, LB 1285, § 26.
- 75-146. Common carrier other than a railroad; consolidation or increase in stock; jurisdiction of commission.
- 75-147. Repealed. Laws 1994, LB 414, § 137.
- 75-148. Common carrier; issuance of securities; conditions.
- 75-149. Consolidation; securities; issuance; limitation.
- 75-150. Securities; issuance; fees; expenses.
- 75-151. Securities; violation; penalty.

Section	
75-152.	Common carriers; consignor; designation of means and routing of shipment.
75-153.	Common carriers; consignee; designation of means and routing of shipment; exception.
75-154.	Common carriers; consignor; violation of shipping instructions; damages.
75-155.	Violations; general penalty.
75-156.	Civil penalty; procedure; order; appeal.
75-157.	Hearing; order; requirements.
75-158.	Unpaid civil penalty; how treated.

75-101 Public Service Commission; members; qualifications; terms, defined.

(1) The members of the Public Service Commission shall be resident citizens of this state, registered voters, and, if members of or practitioners in any profession, in good standing according to the established standards of such profession. The members of the Public Service Commission shall be elected as provided in section 32-509. A candidate for the office of public service commissioner shall be a resident of the district from which he or she seeks election. Each public service commissioner shall be a resident of the district from which he or she is elected. Removal from the district shall cause a vacancy in the office of public service commissioner for the unexpired term.

(2) No person shall be eligible to the office of public service commissioner who is directly or indirectly interested in any common carrier or jurisdictional utility in the state or out of it or who is in any way or manner pecuniarily interested in any common carrier subject to Chapter 75 or 86. If any commissioner becomes so interested after election or appointment, his or her office shall become vacant, except that if any commissioner becomes so interested otherwise than voluntarily, he or she shall, within a reasonable time, divest himself or herself of such interest, and failing to do so, his or her office shall become vacant.

(3) A commissioner shall not hold any other office under the government of the United States, of this state, or of any other state and shall not, while such commissioner, engage in any other occupation.

For purposes of Chapter 75:

(a) Commission, when referring to a state agency, means the Public Service Commission; and

(b) Commissioner means a member of the commission.

Source: Laws 1963, c. 425, art. I, § 1, p. 1354; Laws 1967, c. 476, § 1, p. 1472; Laws 1984, LB 623, § 14; Laws 1994, LB 76, § 587; Laws 1994, LB 414, § 26; Laws 2002, LB 1105, § 481; Laws 2003, LB 790, § 60.

75-101.01 Public Service Commission; districts, described.

Based on the 2000 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into five public service commissioner districts, and each public service commissioner district shall be entitled to one member. The limits and designations of the five districts shall be as follows:

(1) District No. 1. The counties of Lancaster, Cass, Otoe, Gage, Johnson, Pawnee, Nemaha, and Richardson;

(2) District No. 2. That part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and Harry Andersen Avenue, northwest on Harry Andersen Avenue to Golfing Green Drive, northeast on Golfing Green Drive to Oak Hills Drive, northwest on Oak Hills Drive to South 122nd Street, follow South 122nd Street north to Q Street, east on Q Street to South 120th Street, north on South 120th Street to the Union Pacific Railroad right-of-way, west along the Union Pacific Railroad right-of-way to the western boundary of precinct 5-37, north along such boundary to A Street, west on A Street to South 126th Avenue, north on South 126th Avenue to Augusta Avenue, northwest on Augusta Avenue to South 129th Avenue, north on South 129th Avenue to West Center Road, west on West Center Road to South 132nd Street, north on South 132nd Street to the northern boundary of precinct 6-9, follow such boundary west to Cedar Street, west on Cedar Street to South 135th Avenue, northeast on South 135th Avenue to Shirley Street, northwest on Shirley Street to Trendwood Drive, northeast on Trendwood Drive to South 132nd Street, north on South 132nd Street to West Dodge Road, east on West Dodge Road to the eastern boundary of precinct 6-65, follow such boundary north, east, and then north to Burt Street, east on Burt Street to Rose Lane, northeast on Rose Lane to Burt Court, east on Burt Court to North 124th Court, south on North 124th Court to Burt Plaza, east on Burt Plaza to Burt Street, east on Burt Street to North 122nd Street, north on North 122nd Street to Nicholas Street, east on Nicholas Street to North 120th Street, north on North 120th Street to Blondo Street, east on Blondo Street to Big Papillion Creek, northwest and north on Big Papillion Creek to West Maple Road, west on West Maple Road to North 120th Street, north on North 120th Street to the northern boundary of precinct 7-49, follow such boundary east then north to Military Road, east on Military Road to North 114th Street, north on North 114th Street to State Street, east on State Street to Blair High Road, north on Blair High Road to North 108th Street, east and north on North 108th Street to the Douglas-Washington County line, east along the Douglas-Washington County line to the Nebraska-Iowa state line, south along the Nebraska-Iowa state line to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning;

(3) District No. 3. The counties of Thurston, Cuming, Burt, Dodge, Washington, Saunders, and Sarpy and that part of Douglas County not located in public service commissioner district 2;

(4) District No. 4. The counties of Jefferson, Thayer, Nuckolls, Webster, Adams, Clay, Fillmore, Saline, Seward, York, Hamilton, Hall, Merrick, Polk, Butler, Colfax, Platte, Nance, Boone, Madison, Stanton, Wayne, Pierce, Cedar, Dixon, and Dakota; and

(5) District No. 5. The counties of Franklin, Harlan, Furnas, Red Willow, Hitchcock, Dundy, Chase, Hayes, Frontier, Gosper, Phelps, Kearney, Buffalo, Dawson, Lincoln, Perkins, Keith, Deuel, Cheyenne, Kimball, Banner, Scotts Bluff, Morrill, Garden, Arthur, McPherson, Logan, Custer, Sherman, Howard, Valley, Greeley, Wheeler, Garfield, Loup, Blaine, Thomas, Hooker, Grant, Box Butte, Sioux, Dawes, Sheridan, Cherry, Brown, Rock, Holt, Antelope, Knox, Boyd, and Keya Paha.

Source: Laws 1963, c. 174, § 1, p. 596; Laws 1971, LB 955, § 1; Laws 1981, LB 551, § 1; R.S.1943, (1987), § 5-107; Laws 1991, LB 618, § 1; Laws 2001, LB 855, § 2.

75-101.02 Public service commission districts; description; basis.

The descriptions of districts in section 75-101.01 are taken from the 2000 TIGER/Line files published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1971, LB 955, § 2; Laws 1981, LB 551, § 2; R.S.1943, (1987), § 5-107.01; Laws 1991, LB 618, § 2; Laws 2001, LB 855, § 3.

75-101.03 Repealed. Laws 2001, LB 855, § 5.**75-102 Commissioners; official oath.**

Before entering upon the duties of office, each of the commissioners shall take and subscribe to the oath of office prescribed in the Constitution of Nebraska and shall, in addition thereto, swear that he or she is not directly or indirectly interested in any common carrier or jurisdictional utility, subject to the provisions of Chapter 75, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any such common carrier or jurisdictional utility, and that he or she will, to the best of his or her ability, faithfully and justly execute and enforce the duties devolving upon him or her as such commissioner, which oath shall be filed with the Secretary of State.

Source: Laws 1963, c. 425, art. I, § 2, p. 1355; Laws 2003, LB 790, § 61.

75-103 Vacancies; appointment.

The Governor shall fill all vacancies in the office of commissioner by appointment, and a person so appointed shall fill such office for the unexpired term.

Source: Laws 1963, c. 425, art. I, § 3, p. 1355.

75-104 Commissioners; salary; commissioners and employees; expenses; when allowed.

(1) Until January 4, 2007, the annual salary of each commissioner shall be fifty thousand dollars. Commencing January 4, 2007, the annual salary of each commissioner shall be seventy-five thousand dollars.

(2) Each commissioner shall be entitled to receive from the state his or her mileage expenses incurred while traveling in the line of duty to and from his or her residence to the office of the Public Service Commission in Lincoln pursuant to the following conditions:

(a) The Public Service Commission has adopted and promulgated rules and regulations establishing guidelines for allowable reimbursement of such mileage expenses, except that such mileage rate shall not exceed the mileage rate established by the Department of Administrative Services pursuant to section 81-1176;

(b) The request for such reimbursement falls within such guidelines; and

(c) The total amounts authorized for such reimbursement of mileage expenses in any fiscal year does not cause the total expenses to exceed the total funds appropriated to the program established for commissioners' expenses. In addition thereto, the commissioners, executive director, clerks, and other employees of the commission shall be entitled to receive from the state their actual necessary traveling expenses, including the cost of transportation while traveling on the business of the commission, to be paid in the same manner as other

requests for payment or reimbursement from the state. In computing the cost of transportation for the commissioners, executive director, clerks, and other employees, no mileage or other traveling expense shall be requested or allowed unless sections 81-1174 to 81-1177 are strictly complied with.

Source: Laws 1963, c. 425, art. I, § 4, p. 1355; Laws 1967, c. 477, § 1, p. 1473; Laws 1969, c. 603, § 1, p. 2464; Laws 1972, LB 1389, § 1; Laws 1975, LB 311, § 1; Laws 1980, LB 872, § 1; Laws 1984, LB 826, § 2; Laws 1986, LB 43, § 3; Laws 1988, LB 864, § 11; Laws 1990, LB 503, § 1; Laws 1994, LB 414, § 27; Laws 1994, LB 872, § 16; Laws 1995, LB 16, § 1; Laws 2000, LB 956, § 1; Laws 2006, LB 817, § 1.

75-104.01 Commissioner; salary increase; when effective.

Section 75-104 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for public service commissioners, and to permit a change in such salaries as soon as the same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1967, c. 477, § 2, p. 1474.

75-105 Seal; office; employees.

The commissioners shall be known collectively as the Public Service Commission and shall have a seal, which may be either an engraved or ink stamp seal, similar to the seal of this state, with the words Public Service Commission of Nebraska included thereon. They shall be furnished with offices and with necessary furniture, stationery, and supplies. Immediately after a newly elected member of the commission has taken the oath of office prescribed in section 75-102, the commission shall meet at Lincoln and organize. The commission shall also appoint employees as may be necessary to perform the duties which may be required of the commission.

Source: Laws 1963, c. 425, art. I, § 5, p. 1356; Laws 1971, LB 653, § 7; Laws 1994, LB 414, § 28.

75-106 Executive director; qualifications; salary; duties; fees for transcripts.

Any person who is eligible to hold the office of commissioner shall also be eligible to hold the office of executive director. The salary of the executive director shall be fixed by the commission, payable monthly. The executive director shall take the same oath as the commissioners. The executive director shall keep full and correct minutes of all transactions and proceedings of the commission, and it shall be his or her duty to, upon request and being paid the lawful fees therefor, furnish a transcript, duly authenticated by the commission, of any public record of the commission and to perform such duties as may be required by the commission. The executive director shall charge such fees for furnishing a transcript as are allowed by law on appeal from the district court to the Court of Appeals and shall turn such fees into the fund provided for the expenses of the commission.

Source: Laws 1963, c. 425, art. I, § 6, p. 1356; Laws 1965, c. 445, § 1, p. 1414; Laws 1967, c. 478, § 1, p. 1474; Laws 1991, LB 732, § 128; Laws 1994, LB 414, § 29.

75-107 Repealed. Laws 1981, LB 545, § 52.

75-108 Attorney General; act as legal advisor.

The commission may consult the Attorney General with reference to any matter upon which it may require advice, and the Attorney General shall give such advice as the commission may require and perform such other services within the line of duty as the commission may require.

Source: Laws 1963, c. 425, art. I, § 8, p. 1357; Laws 1994, LB 414, § 30.

75-109 Commission; regulatory powers; scope.

Except as provided in the Agricultural Suppliers Lease Protection Act and sections 86-124 and 86-143, the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

Source: Laws 1963, c. 425, art. I, § 9, p. 1357; Laws 1965, c. 446, § 1, p. 1415; Laws 1986, LB 835, § 12; Laws 1989, LB 95, § 4; Laws 1994, LB 414, § 31; Laws 1995, LB 424, § 2; Laws 1997, LB 660, § 2; Laws 1999, LB 150, § 12; Laws 2000, LB 1285, § 1; Laws 2002, LB 435, § 9; Laws 2002, LB 1105, § 483; Laws 2003, LB 790, § 62.

Cross References

Agricultural Suppliers Lease Protection Act, see section 2-5501.

The phrase "provided by law" means prescribed or provided by statute, and thus, the Nebraska Public Service Commission's statutory authority over any particular common or contract carrier must be derived from some statute other than this section. *Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist.*, 256 Neb. 479, 590 N.W.2d 840 (1999).

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

Tacking is an extension of the authorized service under regulation of the Nebraska State Railway Commission, and the right

to tack does not exist unless granted by the commission. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

Powers of Railway Commission hereunder are not limited by statute authorizing enforcement by injunction in absence of specific legislation to that effect. *Nebraska State Railway Commission v. Chicago & N.W. Ry. Co.*, 187 Neb. 369, 191 N.W.2d 438 (1971).

A mutual or cooperative company furnishing intrastate communication services for benefit of its stockholders held, under circumstances, to be a common carrier subject to jurisdiction of railway commission. *American Communication Co., Inc. v. Buntmeyer*, 184 Neb. 220, 166 N.W.2d 116 (1969).

75-109.01 Jurisdiction.

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

- (1) Common carriers, generally, pursuant to sections 75-101 to 75-158;
- (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;
- (3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;
- (4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;
- (5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;
- (6) Pipeline carriers and rights-of-way pursuant to the State Natural Gas Regulation Act and sections 75-501 to 75-503;

(7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Source: Laws 2002, LB 1105, § 482; Laws 2003, LB 790, § 63; Laws 2006, LB 1069, § 1; Laws 2006, LB 1249, § 12.

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236.
Emergency Telephone Communications Systems Act, see section 86-420.
Enhanced Wireless 911 Services Act, see section 86-442.
Grain Dealer Act, see section 75-901.
Grain Warehouse Act, see section 88-525.
Intrastate Pay-Per-Call Regulation Act, see section 86-258.
Nebraska Telecommunications Regulation Act, see section 86-101.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
State Natural Gas Regulation Act, see section 66-1801.
Telecommunications Relay System Act, see section 86-301.
Telephone Consumer Slamming Prevention Act, see section 86-201.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.
Water Service Regulation Act, see section 75-1001.

75-110 Rules and regulations.

The Public Service Commission shall adopt and promulgate rules and regulations for the government of its proceedings, including rules of procedure for notice and hearing. The commission shall adopt and promulgate rules and regulations which the commission deems necessary to regulate persons within the commission's jurisdiction. The commission shall not take any action affecting persons subject to the commission's jurisdiction unless such action is taken pursuant to a rule, regulation, or statute.

Source: Laws 1963, c. 425, art. I, § 10, p. 1357; Laws 1967, c. 479, § 1, p. 1475; Laws 1993, LB 413, § 2; Laws 1994, LB 414, § 32; Laws 1996, LB 1218, § 37.

Cross References

For other provisions for adopting rules and regulations, see Chapter 84, article 9.

This section does not require the Public Service Commission to engage in rulemaking when defining terms in a federal statute unless the Public Service Commission first considers that such action is necessary. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

This section requires the Public Service Commission to promulgate rules only for the government of its proceedings, including rules of procedure for notice and hearing and rules

which the commission considers necessary to regulate persons within its jurisdiction. In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002).

Commission had right to adopt rule prohibiting tacking of certain authorities and regulating tacking of other authorities. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

A rate order is not a rule. Ready Mix, Inc. v. Nebraska Railroads, 181 Neb. 697, 150 N.W.2d 275 (1967).

75-110.01 Application or petition for authority or relief; procedures.

A summary of the authority or relief sought in an application or petition shall be set out in the notice given according to the rules the commission shall adopt. After notice of an application or petition has been given as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed. The commission shall not deny an application or petition of a common carrier or jurisdictional utility until after it has either given the applicant a hearing thereon, or received the applicant’s affidavits and made them a part of the record.

Source: Laws 1967, c. 479, § 2, p. 1476; Laws 2003, LB 790, § 64.

Railway Commission is required to hold a hearing on an application on a petition unless it is not opposed and its disposition is made by use of affidavits. Allen v. Omaha Transit Co., Inc., 187 Neb. 156, 187 N.W.2d 760 (1971).

75-111 Commission; investigatory powers.

The commission shall investigate any and all cases of alleged neglect or violation of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01 and take such action with reference to the neglect or violation as may be provided by law.

Source: Laws 1963, c. 425, art. I, § 11, p. 1357; Laws 1989, LB 78, § 1; Laws 1995, LB 424, § 3; Laws 2008, LB755, § 1.

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. Myers v. Blair Tel. Co., 194 Neb. 55, 230 N.W.2d 190 (1975).

75-112 Commissioners and examiners; powers; certification of official acts.

(1) For purposes of carrying out the powers and duties of the commission related to the subjects under its jurisdiction enumerated in section 75-109.01, each commissioner and examiner of the commission may:

- (a) Administer oaths;
- (b) Compel the attendance of witnesses;
- (c) Examine any of the books, papers, documents, and records of any motor carrier or regulated motor carrier as defined in section 75-302 or common or contract carrier subject to the jurisdiction of the commission under section 75-109.01 or any jurisdictional utility or have such examination made by any person that the commission may employ for that purpose;
- (d) Compel the production of such books, papers, documents, and records; or
- (e) Examine under oath or otherwise any officer, director, agent, or employee of any such carrier or jurisdictional utility or any other person.

(2) Any person employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination.

(3) The commissioners may certify to all official acts of the commission.

Source: Laws 1963, c. 425, art. I, § 12, p. 1358; Laws 1989, LB 78, § 2; Laws 1994, LB 414, § 33; Laws 1995, LB 424, § 4; Laws 2003, LB 790, § 65; Laws 2004, LB 1004, § 1.

75-113 Records; prescribe; inspection.

The commission may prescribe the forms of any and all accounts and records to be kept by a regulated motor carrier as defined in section 75-302 or common carriers subject to its jurisdiction, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money. The commission shall not prohibit any such carrier from capitalizing on its balance sheet the value of any certificate or permit held by such carrier. The commission shall at all times have access to all accounts, records, and memoranda kept by such carriers, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the commission, except as provided in this section.

Source: Laws 1963, c. 425, art. I, § 13, p. 1358; Laws 1989, LB 78, § 3; Laws 1994, LB 414, § 34; Laws 1995, LB 424, § 5.

75-114 Records; refusal to permit examination; penalty.

Any motor carrier or regulated motor carrier as defined in section 75-302, any common carrier, or any other person who has in his or her possession any book, paper, document, or record belonging to any carrier subject to the jurisdiction of the commission and who, upon proper demand, fails or refuses to exhibit to any commissioner or any person authorized by the commission to investigate the same any book, paper, document, or record of such carrier, which is in the possession or under the control of such carrier or any officer, agent, or employee thereof, shall be guilty of a Class III misdemeanor. Any officer, agent, or employee of any carrier or any other person who, upon proper demand, fails or refuses to exhibit to any commissioner or any person authorized by the commission to investigate the same any book, paper, document, or record of such carrier, which is in the possession or under the control of such person, shall be guilty of a Class III misdemeanor for each offense.

Source: Laws 1963, c. 425, art. I, § 14, p. 1358; Laws 1989, LB 78, § 4; Laws 1995, LB 424, § 6; Laws 1996, LB 1218, § 38.

75-115 Examinations and inspections; authorized; duty and power to repair; notice; injunctions; carrier enforcement division; powers.

(1) The commission shall have the power to examine and inspect, from time to time, the condition of each motor carrier or regulated motor carrier as defined in section 75-302 or each common carrier, the carrier's equipment, and the manner of the carrier's conduct and management, with regard to the public safety and convenience in the state.

(2) If any equipment is found in an unsafe and dangerous condition, the commission shall immediately notify such carrier whose duty it is to put the same in repair, which shall be done by it within a reasonable time after receiving such notice. If any such carrier fails to perform this duty, the commission may enjoin and prevent it from operating the same while in such unsafe and dangerous condition or may after notice and hearing order such carrier to make reasonable improvements of its service, facilities, and equipment as are necessary.

(3) It is the policy of the Legislature that the on-road enforcement of the provisions of law related to regulated motor carriers and motor carriers

administered by the commission shall be carried out by the carrier enforcement division of the Nebraska State Patrol.

Source: Laws 1963, c. 425, art. I, § 15, p. 1359; Laws 1971, LB 662, § 1; Laws 1989, LB 78, § 5; Laws 1995, LB 424, § 7; Laws 1996, LB 1218, § 39.

Even before 1971 amendment, Railway Commission's powers were not limited to injunction as means of enforcement; power specifically confirmed by 1971 amendment. Nebraska State *Railway Commission v. Chicago & N.W. Ry. Co.*, 187 Neb. 369, 191 N.W.2d 438 (1971).

75-116 Annual report; filing requirements; fee.

Each regulated motor carrier as defined in section 75-302 or common carrier required to furnish an annual report with a federal regulatory agency shall file a copy of the report with the commission on or before the date on which such report is filed with such agency. Each such carrier not required to file an annual report with a federal regulatory agency may be required to file an annual report with the commission in the form prescribed by the commission on or before April 30 of each year. Each carrier which files an annual report or a copy of an annual report under this section shall submit a fee of twenty-five dollars with the filing. The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

Source: Laws 1963, c. 425, art. I, § 16, p. 1359; Laws 1965, c. 447, § 1, p. 1419; Laws 1989, LB 78, § 6; Laws 1994, LB 414, § 35; Laws 1995, LB 424, § 8; Laws 1996, LB 1218, § 40; Laws 2003, LB 187, § 14.

A failure through oversight to file an annual report required by this section would not justify a revocation of authority. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co., Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

75-117 Order of commission; failure to comply; penalty.

Any motor carrier or regulated motor carrier as defined in section 75-302 or common carrier which fails, neglects, or refuses to comply with any order of the commission shall be guilty of a Class IV misdemeanor. Each day during which such failure, neglect, or refusal continues shall constitute a separate offense. If a motion is filed for reconsideration or to set aside the order, the carrier shall not be subject to such penalty during the pendency of such motion.

Source: Laws 1963, c. 425, art. I, § 17, p. 1360; Laws 1989, LB 78, § 7; Laws 1995, LB 424, § 9; Laws 2002, LB 1105, § 484; Laws 2003, LB 187, § 15.

75-118 Commission; duties.

The commission shall:

- (1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods and passengers by any common carrier in Nebraska intrastate commerce;
- (2) Make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;
- (3) Prevent and correct the unjust discriminations set forth in section 75-126;
- (4) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the

common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(5) Enforce the State Natural Gas Regulation Act.

Source: Laws 1963, c. 425, art. I, § 18, p. 1360; Laws 1989, LB 78, § 8; Laws 1994, LB 414, § 36; Laws 1995, LB 424, § 10; Laws 2003, LB 790, § 66.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

Evidence of the existing rates for services as established by the Interstate Commerce Commission constitutes prima facie evidence of the reasonableness of the rates for the same services when performed in intrastate commerce in this state. *Nebraska Railroads of Omaha v. Nebco, Inc.*, 194 Neb. 322, 231 N.W.2d 505 (1975).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. *Live-*

stock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn., 191 Neb. 1, 213 N.W.2d 443 (1973).

This section referred to in decision to the effect that the State Railway Commission is empowered to fix joint line rates. *Howard McLean Co. v. Chicago, B. & Q. R.R. Co.*, 187 Neb. 30, 187 N.W.2d 300 (1971).

Railway Commission has a duty to prescribe necessary rates and classification of freight. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

75-118.01 Certificate, permit, tariff, rule, or regulation; interpretation; jurisdiction.

Except as otherwise provided in the Administrative Procedure Act, the commission shall have original exclusive jurisdiction to determine the validity of a rule or regulation and the scope or meaning of a certificate, permit, tariff, rule, or regulation. Upon petition or complaint by any common carrier or other interested person to determine the validity, scope, or meaning of a certificate, permit, tariff, rule, or regulation, the commission shall cause notice thereof to be given according to its rules and shall proceed to hear evidence and argument on the petition or complaint. After notice and hearing, the commission shall by order render its decision.

Source: Laws 1967, c. 479, § 3, p. 1476.

Cross References

Administrative Procedure Act, see section 84-920.

Section 75-136 authorizes appellate courts to review an order of the Public Service Commission interpreting a rule or regulation pursuant to the commission's authority under this section. *In re Proposed Amend. to Title 291*, 264 Neb. 298, 646 N.W.2d 650 (2002).

This section gives the Nebraska Public Service Commission original exclusive jurisdiction to determine the scope or mean-

ing of a certificate. *In re Petition of G. Kay, Inc.*, 219 Neb. 24, 361 N.W.2d 182 (1985).

Commission had original exclusive jurisdiction to determine scope and meaning of rule relating to tacking of authorities. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

75-119 Rate, rule, or regulation; petition to prescribe or fix; procedure.

When any common carrier or other interested person petitions the commission alleging that a rate, rule, or regulation should be prescribed when none exists or alleging that an existing rule, regulation, or rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing. The minimum notice to be given under this section shall be ten days. The order granting or denying the petition or application shall be mailed to the parties of record. If a petition or application is not opposed after notice has been given, the commission may act upon such petition or application without a hearing.

Source: Laws 1963, c. 425, art. I, § 19, p. 1361; Laws 1967, c. 479, § 4, p. 1476; Laws 1994, LB 414, § 37.

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

The State Railway Commission is without authority to fix or change a schedule and classification of rates without notice and hearing. *Chicago, B. & Q. R.R. Co. v. Nebraska State Railway Commission*, 180 Neb. 587, 144 N.W.2d 432 (1966).

Common carriers are entitled to be heard in rate case. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

75-120 Repealed. Laws 1967, c. 479, § 22.

75-121 Emergency rate orders; when authorized.

To prevent interstate rate wars and injury to any common carrier or other person or in case of any other emergency to be judged by the commission, the commission shall temporarily alter, amend, or suspend any existing rates in force in respect to any common carrier or fix any such rates if none exist. The order prescribing an emergency rate shall describe the emergency and may be entered and made effective immediately. Within five days after the effective date of such order, notice of the rate shall be given to the common carriers affected in accordance with the commission's rules for notice. If an affected common carrier or other interested person files a protest to the granting of such rate within fifteen days after notice has been given, the commission shall notify the rate applicant and the protestant, hold a hearing, and issue an order within thirty days after the expiration of the time to file a protest. Emergency rate orders shall be subject to the provisions of section 75-139 and subject to review as provided in section 75-136.

Source: Laws 1963, c. 425, art. I, § 21, p. 1362; Laws 1967, c. 479, § 5, p. 1477; Laws 1991, LB 732, § 129; Laws 1994, LB 414, § 38; Laws 2003, LB 187, § 16.

75-122 Repealed. Laws 1967, c. 479, § 22.

75-122.01 Transferred to section 75-134.01.

75-122.02 Repealed. Laws 1982, LB 592, § 2.

75-123 Rates; hearing; criteria.

The following criteria shall be among those considered by the commission in fixing, modifying, or annulling any rate:

(1) The lowest rates published or charged by any common carrier for substantially the same kind of service, whether in this state or another state, shall, when introduced into evidence, be accepted as prima facie evidence of a reasonable rate for the services inquired into; and

(2) If any common carrier involved in the proceedings operates outside of this state, the rate charged for substantially the same or greater service by it in the other state shall be considered in determining what is a reasonable rate.

Source: Laws 1963, c. 425, art. I, § 23, p. 1362; Laws 1994, LB 414, § 39.

Evidence of the existing rates for services as established by the Interstate Commerce Commission constitutes prima facie evidence of the reasonableness of the rates for the same services when performed in intrastate commerce in this state. *Nebraska Railroads of Omaha v. Nebco, Inc.*, 194 Neb. 322, 231 N.W.2d 505 (1975).

lowest rate published or charged will be prima facie evidence of a reasonable rate for the service under investigation. *Howard McLean Co. v. Chicago, B. & Q. R.R. Co.*, 187 Neb. 30, 187 N.W.2d 300 (1971).

Prima facie evidence of reasonable rates may consist of the lowest rates published by any common carrier for the same kind of service. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

Where there is a differential in rates between shipping points and the circumstances appear to be substantially similar, the

75-124 Rates; publication.

The commission may compile and reproduce tariffs containing the schedules of rates and charges for transportation of persons and property and may make a charge for copies of such tariffs to cover the cost of reproducing, supplementing, and mailing the same. Every common carrier shall reproduce, keep for public inspection, and file with the commission in the manner prescribed by the commission, schedules showing the rates, fares, and charges for the transportation of passengers and household goods which have been fixed and established as provided in Chapter 75, articles 1 and 3, and which are in force at the time with respect to such common carrier.

Source: Laws 1963, c. 425, art. I, § 24, p. 1363; Laws 1995, LB 424, § 11.

75-125 Rate schedule; failure to publish; mandamus.

Any common carrier which fails, refuses, or neglects to file or publish any schedule of rates, fares, and charges, or any part of the same, shall, in addition to other penalties prescribed in sections 75-101 to 75-155, be subject to a writ of mandamus to be issued by any district court of this state in the judicial district in which its principal office is situated or in which the offense may be committed. If the common carrier is a foreign corporation, then the writ may be issued by any district court in the judicial district where it accepts traffic and has an agent to perform such service to compel compliance with the provisions of section 75-124. The writ shall issue in the name of the state on the relation or upon the petition of the commission, and the failure to comply with the requirements shall be punishable as for contempt and shall make such common carrier liable to a penalty of one thousand dollars for each day's failure to comply with the writ. Whenever any such writ of mandamus is applied for, no bond shall be required.

Source: Laws 1963, c. 425, art. I, § 25, p. 1363; Laws 1994, LB 414, § 40.

75-126 Unjust discrimination and practices prohibited; exceptions.

(1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service unless required under section 86-465;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 86-155.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes;

(e) Ministers and others giving their entire time to religious or charitable work; or

(f) Any person who is legally blind or visually handicapped.

Source: Laws 1963, c. 425, art. I, § 26, p. 1364; Laws 1967, c. 479, § 7, p. 1477; Laws 1982, LB 633, § 1; Laws 1994, LB 414, § 41; Laws 1995, LB 424, § 12; Laws 1998, LB 1056, § 7; Laws 2002, LB 1105, § 486; Laws 2008, LB755, § 2.

The Nebraska Public Service Commission cannot require that switching charges be absorbed retroactively when the approved rate schedule for such switching did not require absorption. In re Formal Complaint of Nebco, Inc., 212 Neb. 804, 326 N.W.2d 167 (1982).

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. Myers v. Blair Tel. Co., 194 Neb. 55, 230 N.W.2d 190 (1975).

Railway Commission given quasi-judicial power hereunder to examine facts, determine questions of law, and determine issue of unjust discrimination in fares charged by common carriers. Allen v. Omaha Transit Co. Inc., 187 Neb. 156, 187 N.W.2d 760 (1971).

There being substantial evidence in the record to sustain the State Railway Commission's finding of discrimination, its order fixing the joint line rates it did, appears to be reasonable and not arbitrarily made. Howard McLean Co. v. Chicago, B. & Q. R.R. Co., 187 Neb. 30, 187 N.W.2d 300 (1971).

75-127 Unjust discrimination and practices; violations; penalties.

Any common carrier, shipper, or consignee who willfully violates any provision of section 75-126 shall be guilty of a Class I misdemeanor. Any officer, agent, or employee who, for or on behalf of any common carrier, shipper, or consignee, willfully violates any provision of section 75-126 shall be guilty of a Class II misdemeanor. Each day of violation shall constitute a separate offense.

Source: Laws 1963, c. 425, art. I, § 27, p. 1365; Laws 1971, LB 843, § 1; Laws 1977, LB 39, § 198; Laws 1994, LB 414, § 42.

75-128 Hearings; when held; filing fee.

(1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days

after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-303.01 and 75-303.02 or the State Natural Gas Regulation Act, the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of five hundred dollars, payable at the time of such filing. The commission shall also charge to persons regulated by the commission, except persons regulated under the State Natural Gas Regulation Act, a hearing fee to be determined by the commission, but in an amount not to exceed the sum of two hundred fifty dollars, for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

(4) For each new tariff filed with the commission, except those filed under sections 75-301 to 75-322, the commission shall charge a fee not to exceed fifty dollars. This subsection does not apply to amendments to existing tariffs.

(5) The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

Source: Laws 1963, c. 425, art. I, § 28, p. 1365; Laws 1967, c. 479, § 8, p. 1479; Laws 1969, c. 604, § 1, p. 2464; Laws 1971, LB 24, § 1; Laws 1971, LB 839, § 1; Laws 1972, LB 1068, § 1; Laws 1982, LB 928, § 56; Laws 1982, LB 633, § 2; Laws 1985, LB 384, § 1; Laws 1989, LB 78, § 9; Laws 1993, LB 412, § 1; Laws 1994, LB 414, § 43; Laws 1994, LB 872, § 17; Laws 1995, LB 424, § 13; Laws 2002, LB 1105, § 487; Laws 2003, LB 187, § 17; Laws 2003, LB 790, § 68.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

On any matter heard by an examiner, a decision should be filed within thirty days after oral argument before the commission. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

75-129 Sessions and hearings; when and where held.

The commission may hold sessions at any place in the state when deemed necessary to facilitate the discharge of its duties and may conduct the hearing and other proceedings provided for in sections 75-101 to 75-801, in the State Natural Gas Regulation Act, or under any other law of this state at such place or places in the state as may, in the judgment of the commission, be the most convenient and practicable for determining the particular matter before the commission.

Source: Laws 1963, c. 425, art. I, § 29, p. 1366; Laws 2003, LB 790, § 69.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-130 Witnesses; failure to testify or comply with subpoena; penalty; depositions; witness and other fees.

In case any witness shall fail or refuse to obey any subpoena issued by the commission, or to produce before the commission such books, papers, documents or records as shall have been enumerated and required in any subpoena, or shall fail or refuse, when before the commission, to give testimony lawfully required by it, or fail or refuse to answer such questions as may be propounded by it which such witness would be required to answer if in court, he shall be guilty of a misdemeanor, and upon conviction thereof, for each offense, shall be fined in any sum not exceeding five thousand dollars. The claim that any such testimony may tend to incriminate the witness shall not excuse the witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. Testimony may be taken by deposition as in suits at law. Witness fees shall be paid as provided by law in attendance at any district court in this state. The sheriff or constable executing any process of the commission shall receive such compensation as is provided by law for performing similar services.

Source: Laws 1963, c. 425, art. I, § 30, p. 1366.

75-130.01 Contested case; ex parte communication prohibited; applicability of section.

With respect to any matter of fact or law at issue in a contested case and notwithstanding any other provision of law, a member, staff, or agent of the Public Service Commission shall not during the pendency of any contested case heard before the commission have any ex parte communication with any party having an interest in the outcome of the contested case. For purposes of this section, the definitions in section 84-901 shall apply. Notwithstanding subdivision (4)(c) of section 84-901, this section applies to all communications by a party in contested cases under the State Natural Gas Regulation Act, including, but not limited to, general rate filings under section 66-1838.

Source: Laws 1999, LB 514, § 1; Laws 2008, LB1072, § 3.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-131 Common or contract carriers; jurisdictional utility; complaint of violation; service; other proceedings.

Any person who complains of anything done or omitted to be done by any common or contract carrier or jurisdictional utility may request that the commission investigate and impose sanctions on such carrier or jurisdictional utility by filing a petition which briefly states the facts constituting the complaint. Notice of the complaint shall be served upon the respondent carrier or utility as in civil cases in district court, and the respondent shall be required to answer or satisfy the complaint within a reasonable time fixed by the commission. This section shall not prevent any person from proceeding against any common or contract carrier or utility under the laws of this state for such cases made and provided.

Source: Laws 1963, c. 425, art. I, § 31, p. 1366; Laws 1994, LB 414, § 44; Laws 2003, LB 790, § 70.

75-132 Complaint; hearing; notice; order.

If a carrier or jurisdictional utility does not satisfy a complaint filed pursuant to section 75-131 within the time allowed and there appears to be a reasonable ground for investigation of the complaint upon its merits, the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing. After the hearing, the commission shall make such order with respect to the complaint as it deems just and reasonable. Such order must be consistent with the statutory authority that formed the basis for the complaint.

Source: Laws 1963, c. 425, art. I, § 32, p. 1367; Laws 1994, LB 414, § 45; Laws 2003, LB 790, § 71.

75-132.01 Exclusive original jurisdiction; appeal.

(1) Notwithstanding the provisions of section 75-131, the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, or the Telephone Consumer Slamming Prevention Act by any person providing telecommunications service for a fee in Nebraska intrastate commerce pursuant to such acts or (b) sections 86-574 to 86-578 by an agency or political subdivision of the state.

(2) If the commission enters an order declining jurisdiction under subsection (1) of this section, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such acts or sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents or the agency or political subdivision of the state from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

Source: Laws 2000, LB 1285, § 6; Laws 2001, LB 827, § 18; Laws 2002, LB 1105, § 488; Laws 2003, LB 187, § 18.

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236.
Emergency Telephone Communications Systems Act, see section 86-420.
Enhanced Wireless 911 Services Act, see section 86-442.
Intrastate Pay-Per-Call Regulation Act, see section 86-258.
Nebraska Telecommunications Regulation Act, see section 86-101.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Telecommunications Relay System Act, see section 86-301.
Telephone Consumer Slamming Prevention Act, see section 86-201.

75-133 Regulated parties; proceeding by commission upon own motion; hearing; order.

Whenever the commission has reason to believe that any motor carrier, regulated motor carrier, other common or contract carrier as described in section 75-109, competitive natural gas provider as defined in section 66-1848, or jurisdictional utility as defined in section 66-1802 is in neglect or violation of a statute or rule or regulation under the jurisdiction of the commission, the commission shall at once institute an investigation and fix a time and place for

hearing thereon, upon its own motion, and shall make any order as it deems just and reasonable, including, but not limited to, an order revoking, suspending, or modifying the certificate of public convenience and necessity, permit, registration, license, or other authority granted by the commission or a cease and desist order.

Source: Laws 1963, c. 425, art. I, § 33, p. 1367; Laws 1994, LB 414, § 46; Laws 1995, LB 424, § 14; Laws 2002, LB 1105, § 489; Laws 2005, LB 247, § 1.

The Public Service Commission has exclusive power and jurisdiction to inquire into complaints concerning telephone rates and where service is woefully inadequate, may require rebates. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975).

75-134 Commission order; requirements; when effective.

(1) A commission order entered after a hearing shall be written and shall recite (a) a discussion of the facts of a basic or underlying nature, (b) the ultimate facts, and (c) the commission’s reasoning or other authority relied upon by the commission.

(2) Every order of the commission shall become effective ten days after the date of the mailing of a copy of the order to the parties of record except (a) when the commission prescribes a later effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) for cease and desist orders issued pursuant to section 75-133 which shall become effective on the date of entry, or (d) for orders entered pursuant to section 75-319 which shall become effective on the date of entry.

(3) Except as otherwise provided in this section or for rate orders provided for in section 75-139, any appeal of a commission order shall not stay enforcement of such order unless otherwise ordered under subsection (3) of section 84-917.

Source: Laws 1963, c. 425, art. I, § 34, p. 1367; Laws 1967, c. 479, § 9, p. 1479; Laws 1976, LB 426, § 1; Laws 1991, LB 732, § 130; Laws 1994, LB 414, § 47; Laws 1995, LB 424, § 15; Laws 2000, LB 1285, § 3; Laws 2002, LB 1105, § 490; Laws 2002, LB 1211, § 9; Laws 2003, LB 187, § 19; Laws 2005, LB 247, § 2.

The “reasoning” requirement of this section is satisfied by a Public Service Commission order containing a statement of underlying facts, ultimate facts, and findings where the issues involved are issues of fact. *Hugelman v. A & A Trucking, Inc.*, 198 Neb. 628, 254 N.W.2d 412 (1977).

The filing of a motion for rehearing before the Public Service Commission is the commencement of an appeal proceeding, and where followed by overruling of the motion and filing of notice

of appeal and appeal to Supreme Court the rate order is put in abeyance until a supersedeas bond is filed. *Chicago & Northwestern Transp. Co. v. Nebco, Inc.*, 196 Neb. 490, 243 N.W.2d 779 (1976).

An order of Railway Commission which fails to make findings of ultimate facts will be set aside on appeal. *Andrews Van Lines, Inc. v. Smith*, 187 Neb. 533, 192 N.W.2d 406 (1971).

75-134.01 Order; enjoin, when.

Except as otherwise provided in sections 75-132.01, 75-134, 75-144, and 75-1012 and the State Natural Gas Regulation Act, the district courts shall have jurisdiction to enjoin a commission order only when the order was not entered (1) in accordance with Chapter 75 or 86 and the commission’s rules and regulations adopted and promulgated pursuant to such chapters or (2) in accordance with other statutory authority underlying the commission’s order.

Source: Laws 1967, c. 479, § 6, p. 1477; Laws 2000, LB 1285, § 2; Laws 2002, LB 1105, § 485; R.S.Supp.,2002, § 75-122.01; Laws 2003, LB 187, § 20; Laws 2003, LB 790, § 67.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-135 Commission order; authentication.

When certified to be a true and correct copy of the original by the executive director of the commission or a commissioner, a commission order shall be admitted in evidence in all courts and tribunals of this state, without further proof, as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

Source: Laws 1963, c. 425, art. I, § 35, p. 1368; Laws 1967, c. 479, § 10, p. 1480; Laws 1994, LB 414, § 48.

75-136 Orders; right to appeal.

Except as otherwise provided by law, if a party to any proceeding is not satisfied with the order entered by the commission, such party may appeal. Any appeal filed on or after August 31, 2003, shall be in accordance with the Administrative Procedure Act. Any appeal filed prior to August 31, 2003, shall be in accordance with sections 75-134, 75-136 to 75-138, and 75-156 as such sections existed prior to the changes made by Laws 2003, LB 187.

Source: Laws 1963, c. 425, art. I, § 36, p. 1368; Laws 1967, c. 479, § 11, p. 1480; Laws 1989, LB 78, § 10; Laws 1991, LB 732, § 131; Laws 1992, LB 360, § 32; Laws 1995, LB 424, § 16; Laws 2000, LB 1285, § 4; Laws 2003, LB 187, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

The primary effect of this section is that operative August 31, 2003, all appeals from the Public Service Commission, not just telecommunications cases, generally are to be brought under the Administrative Procedure Act; it does not evince a legislative intent to confer jurisdiction over telecommunications appeals that were not perfected under the statutory requirements in effect at the time the notice of appeal was filed. *Cox Nebraska Telecom v. Qwest Corp.*, 268 Neb. 676, 687 N.W.2d 188 (2004).

This section authorizes appellate courts to review an order of the Public Service Commission interpreting a rule or regulation pursuant to the commission's authority under section 75-118.01. In re Proposed Amend. to Title 291, 264 Neb. 298, 646 N.W.2d 650 (2002).

The appropriate standard of review for appeals from the Nebraska Public Service Commission is a review for errors appearing on the record. *Nebraska Pub. Serv. Comm. v. Nebraska Pub. Power Dist.*, 256 Neb. 479, 590 N.W.2d 840 (1999).

In an appeal to the Supreme Court from an order of the Nebraska Public Service Commission, the only questions to be determined are whether the PSC acted within the scope of its authority and whether the order complained of is reasonable and not arbitrary. In re Application of Kiltthau, 236 Neb. 811, 464 N.W.2d 162 (1991).

A party is precluded from objecting to the order of the Public Service Commission if he fails to act in accordance with the time limits prescribed in the statutes governing the procedure to obtain a reversal, modification, or vacation of the order. *Nebraska Public Power Dist. v. Huebner*, 202 Neb. 587, 276 N.W.2d 228 (1979).

An order of the Public Service Commission granting authority to the public power district to construct a transmission line becomes final thirty days after the mailing of a copy of the order, and it may not be revoked after that time. *Nebraska Public Power Dist. v. Huebner*, 202 Neb. 587, 276 N.W.2d 228 (1979).

75-136.01 Repealed. Laws 2003, LB 187, § 37.**75-137 Repealed. Laws 2003, LB 187, § 37.****75-138 Repealed. Laws 2003, LB 187, § 37.****75-139 Rate order; appeal; when effective; supersedeas bond; effect.**

Except as otherwise provided in this section, the effective date of a rate order that is appealed shall be the first Monday following the date of the appellate court's mandate if the order is affirmed, except that (1) a shipper may make effective a rate order reducing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the

rate appealed and the original rate to the carrier entitled thereto if the order appealed is reversed and (2) a common carrier may make effective a rate order increasing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate finally approved and the rate appealed to shippers or subscribers entitled thereto if the order appealed is reversed. A supersedeas bond may be filed by any affected shipper or common carrier, including shippers or common carriers that were not parties to the rate proceeding, at any time prior to the issuance of the appellate court's mandate. Only the shipper or common carrier filing a supersedeas bond shall benefit from such filing. The commission shall approve a supersedeas bond which meets the requirements of this section within seven days after a written request therefor has been made, and failure to disapprove the bond within the time specified shall be deemed to be an approval. A carrier may put into effect rate increases granted by a commission order while appealing that portion of the commission's order denying a part of an application of the carrier.

Source: Laws 1963, c. 425, art. I, § 39, p. 1369; Laws 1967, c. 479, § 14, p. 1481; Laws 1976, LB 426, § 2; Laws 1991, LB 732, § 135.

The filing of a motion for rehearing before the Public Service Commission is the commencement of an appeal proceeding, and where followed by overruling of the motion and filing of notice of appeal and appeal to Supreme Court the rate order is put in

abeyance until a supersedeas bond is filed. *Chicago & Northwestern Transp. Co. v. Nebco, Inc.*, 196 Neb. 490, 243 N.W.2d 779 (1976).

75-139.01 Person, defined.

For purposes of sections 75-101 to 75-158, person shall mean any individual, corporation, governmental agency or subdivision, partnership, limited liability company, company, or association and any other legal or commercial entity, including any common or contract carrier or jurisdictional utility and its owners, directors, officers, limited liability company members, agents, and employees.

Source: Laws 1993, LB 42, § 13; Laws 1994, LB 414, § 52; Laws 1994, LB 884, § 87; Laws 2000, LB 1285, § 8; Laws 2003, LB 790, § 72.

75-140 Orders; enforcement; petition; notice.

Whenever any person violates or disobeys an order issued by the commission which has been finally established, the commission or any person interested in such order may petition to the district court of Lancaster County alleging violation or disobedience thereof. The court may determine the matter on such notice to the person complained of as the court deems reasonable. The notice may be served on such person as the court directs.

Source: Laws 1963, c. 425, art. I, § 40, p. 1369; Laws 1989, LB 78, § 12; Laws 1993, LB 42, § 12; Laws 1994, LB 414, § 53.

75-141 Order; proceeding to enforce; duty of Attorney General.

Whenever any petition authorized by section 75-140 is filed or is prosecuted by the commission or by its direction, the Attorney General shall prosecute the petition at the request of the commission, and the costs and expenses on the part of the commission of any such prosecution shall be paid out of the appropriations for the expenses of the commission.

Source: Laws 1963, c. 425, art. I, § 41, p. 1370; Laws 1993, LB 42, § 14; Laws 1994, LB 414, § 54.

75-142 Order; enforcement; procedure.

The court shall proceed to determine the matter speedily as a court of equity and without the formal pleadings and proceedings applicable to ordinary suits in equity but in such manner as to do justice in the premises. To this end, the court may direct and prosecute, in such manner and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition.

Source: Laws 1963, c. 425, art. I, § 42, p. 1370; Laws 1994, LB 414, § 55.

75-143 Order; appeal; effect; attorney's fees.

The commission and any person interested in the court's decision may appeal to the Court of Appeals under the rules provided by law as to security for an appeal to the Court of Appeals, except that in no case shall security for an appeal be required when the appeal is taken by the commission. An appeal to the Court of Appeals shall not operate to stay or supersede the order of the court or the issuance of execution thereon, and the court may in every such matter order the payment of such costs and attorney's fees as it deems reasonable.

Source: Laws 1963, c. 425, art. I, § 43, p. 1370; Laws 1991, LB 732, § 136; Laws 1994, LB 414, § 56.

75-144 Order; violation; injunction; penalty.

(1) If it appears to the court after a hearing that an order of the commission has been violated or disobeyed, the court may issue an injunction or other proper process, mandatory or otherwise, to restrain the person from further continuing such violation or disobedience of the order and enjoining disobedience to the order.

(2) In case of any disobedience of any injunction or other proper process, mandatory or otherwise, the person to whom it was directed shall be guilty of contempt of court. The court may issue a writ of attachment or other process of the court incident or applicable to an injunction or other proper process, mandatory or otherwise, against the person to pay any sum of money, not exceeding, for each such person, the sum of one thousand dollars for every day after a day to be named in the order that the person fails to obey the injunction or other proper process, mandatory or otherwise.

(3) The money shall, when paid, be disposed of according to law. The payment of the money may, without prejudice to any other motive covering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the money had been recovered by final decree in personam in such court.

Source: Laws 1963, c. 425, art. I, § 44, p. 1370; Laws 1993, LB 42, § 15; Laws 1994, LB 414, § 57.

75-145 Repealed. Laws 2000, LB 1285, § 26.**75-146 Common carrier other than a railroad; consolidation or increase in stock; jurisdiction of commission.**

The capital stock of any common carrier other than a railroad shall not be increased for any purpose except after public notice for sixty days. No common

carrier other than a railroad shall consolidate its stock, property, franchise, or earnings, in whole or in part, with any other competing common carrier without permission of the commission, and in no case shall any consolidation take place except on public notice of at least thirty days to all stockholders as provided in the rules of the commission.

Source: Laws 1963, c. 425, art. I, § 46, p. 1371; Laws 1994, LB 414, § 59.

75-147 Repealed. Laws 1994, LB 414, § 137.

75-148 Common carrier; issuance of securities; conditions.

A common carrier may issue stock, bonds, notes, or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities, the improvement or maintenance of its service, or the discharge or lawful refunding of its obligations if the common carrier first secures from the commission an order authorizing such issue and the amount thereof and stating that in the opinion of the commission the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness is reasonably required for the purposes of the carrier. A common carrier may issue notes or other evidence of indebtedness for proper corporate purposes and not in violation of any provision of law, payable in periods of not more than twelve months, without such consent if no such note is, in whole or in part, directly or indirectly, refunded by any issue of such stock or bonds, or by any evidence of indebtedness running more than twelve months, without the consent of the commission. The provisions of this section shall not apply to the security issuances of common carriers who are under the control of a federal regulatory agency.

Source: Laws 1963, c. 425, art. I, § 48, p. 1372; Laws 1994, LB 414, § 60.

75-149 Consolidation; securities; issuance; limitation.

The capital stock of a corporation formed by the merger or consolidation of two or more other corporations, shall not exceed the sum of the capital stock of the corporations so merged or consolidated at par value thereof, or such sum and any additional sum actually paid in cash; nor shall any contract, or consolidation or lease be capitalized in the stock of any corporation whatsoever; nor after October 19, 1963, shall any corporation issue any bonds against or as a lien upon any contract for consolidation or merger.

Source: Laws 1963, c. 425, art. I, § 49, p. 1373.

75-150 Securities; issuance; fees; expenses.

No order authorizing the issuance of securities shall become operative until the applicant pays to the commission fees as follows: Upon applications totaling not more than twenty-five thousand dollars, the fee shall be twenty-five dollars; and upon applications totaling more than twenty-five thousand dollars, the fee shall be twenty-five dollars for the first twenty-five thousand dollars, one dollar per one thousand dollars for the next seventy-five thousand dollars, and twenty-five cents per one thousand dollars for all amounts in excess of one hundred thousand dollars, except that the total fee shall in no case exceed the sum of two thousand five hundred dollars. The fee shall be computed on the par value

principal amount of the stock, or in the case of no par stock, on the declared or offering price, whichever is greater. The commission shall remit the fees received to the State Treasurer for credit to the General Fund. The actual and necessary expenses of the commission incurred in investigating the application to sell securities shall be paid by the applicant, who may be required by the commission to deposit in advance a sum sufficient therefor. Any balance thereof shall be returned to the applicant.

Source: Laws 1963, c. 425, art. I, § 50, p. 1373; Laws 1969, c. 605, § 1, p. 2466; Laws 1982, LB 928, § 57; Laws 1994, LB 414, § 61.

75-151 Securities; violation; penalty.

Any common carrier which violates any of the provisions of sections 75-146 to 75-150 or which fails, omits, or neglects to obey, observe, or comply with any order, direction, or requirement of the commission under the provisions of such sections shall forfeit to the State of Nebraska a sum not to exceed five thousand dollars for each and every offense. Each violation of any such order or direction or requirement of such sections shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance thereof shall be a separate and distinct offense. Each officer and agent of any common carrier who violates or procures, aids, or abets any violation by any such common carrier of any of the provisions of sections 75-146 to 75-150, who fails to obey, observe, and comply with any order of the commission or any provision of an order of the commission under the terms of such sections, or who procures, aids, or abets any such common carrier in its failure to obey, observe, and comply with any such order or provision shall be guilty of a Class III felony.

Source: Laws 1963, c. 425, art. I, § 51, p. 1373; Laws 1977, LB 39, § 199; Laws 1994, LB 414, § 62.

75-152 Common carriers; consignor; designation of means and routing of shipment.

When transportation is involved in connection with the sale of personal property and the price at which such personal property is sold is a delivered price at destination, the consignor may determine the means of transportation to be used and the routing of the shipment.

Source: Laws 1965, c. 444, § 1, p. 1413; Laws 1994, LB 414, § 63.

75-153 Common carriers; consignee; designation of means and routing of shipment; exception.

Where transportation is involved in the sale of personal property and the price at which such property is sold is determined f.o.b. shipping point, the consignee may determine the means of transportation to be used and the routing of the shipment, except that if the consignor has not received written shipping instructions from the consignee designating a specific carrier a reasonable time prior to the making of the shipment, the consignor may determine the means of transportation to be used and the routing of the shipment.

Source: Laws 1965, c. 444, § 2, p. 1413; Laws 1994, LB 414, § 64.

75-154 Common carriers; consignor; violation of shipping instructions; damages.

If, under section 75-153, a consignor of personal property violates written shipping instructions given by the consignee to the consignor a reasonable time prior to the making of the shipment, the consignor shall be liable for actual damages to the consignee or any public carrier injured by the failure of the consignor to comply with the written shipping instructions given the consignor by the consignee.

Source: Laws 1965, c. 444, § 3, p. 1413; Laws 1994, LB 414, § 65.

75-155 Violations; general penalty.

Unless a more specific criminal penalty is provided, any person who knowingly and willfully violates Chapter 75 or 86, any rule, regulation, or order of the commission, or any term or condition of any permit or certificate issued by the commission is guilty of a Class IV misdemeanor. Each day of such violation constitutes a separate offense.

Source: Laws 1965, c. 446, § 2, p. 1416; Laws 1977, LB 39, § 200; Laws 1989, LB 78, § 13; Laws 1994, LB 414, § 66; Laws 2002, LB 1105, § 492.

75-156 Civil penalty; procedure; order; appeal.

(1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, grain dealer, or grain warehouseman for each violation of (a) any provision of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, (b) any term, condition, or limitation of any certificate, permit, or authority issued by the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, or (c) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the

gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(4) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to one thousand dollars against any person for each violation of the Nebraska Uniform Standards for Modular Housing Units Act or the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant to either act. Each such violation shall constitute a separate violation with respect to each modular housing unit, manufactured home, or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(5) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation except as provided in subsection (4) of this section. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(6) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or, beginning January 1, 2004, pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(7) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the

commission, the penalty may be collected by civil action in the district court of Lancaster County.

Source: Laws 1995, LB 424, § 18; Laws 1996, LB 1218, § 41; Laws 2000, LB 1285, § 9; Laws 2002, LB 1105, § 493; Laws 2002, LB 1211, § 10; Laws 2003, LB 187, § 22; Laws 2003, LB 735, § 1; Laws 2003, LB 790, § 73; Laws 2005, LB 319, § 3; Laws 2008, LB755, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

Enhanced Wireless 911 Services Act, see section 86-442.

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.

State Natural Gas Regulation Act, see section 66-1801.

Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

75-157 Hearing; order; requirements.

Any hearing held pursuant to section 75-156 shall be held pursuant to rules and regulations adopted and promulgated by the Public Service Commission. Every decision and order rendered by the commission after the hearing is held shall be in writing and accompanied by findings of facts and conclusions of law. The decision or order shall be sent to the parties by certified or registered mail.

Source: Laws 1995, LB 424, § 19.

75-158 Unpaid civil penalty; how treated.

A civil penalty assessed pursuant to section 75-156 and unpaid shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of Lancaster County. Any civil penalty collected shall be transmitted within thirty days from receipt to the State Treasurer for credit to the permanent school fund.

Source: Laws 1995, LB 424, § 20.

ARTICLE 2

AIR CARRIERS

Section

75-201. Air carrier; exempt from commission regulation.

75-202. Repealed. Laws 1994, LB 414, § 137.

75-201 Air carrier; exempt from commission regulation.

Any person who transports passengers or property for the public in intrastate commerce by any airborne vehicle shall not be a common carrier subject to commission regulation.

Source: Laws 1963, c. 425, art. II, § 1, p. 1374; Laws 1993, LB 121, § 463; Laws 1994, LB 414, § 67.

Intrastate air carrier regulations are preempted by federal regulations. *Pioneer Airways, Inc. v. City of Kearney*, 199 Neb. 12, 256 N.W.2d 324 (1977).

75-202 Repealed. Laws 1994, LB 414, § 137.

ARTICLE 3
MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

- Section
- 75-301. Motor carriers; regulation; legislative policy.
- 75-302. Terms, defined.
- 75-303. Motor carriers; scope of law.
- 75-303.01. Department of Health and Human Services; authorized agency; contracts for transportation authorized.
- 75-303.02. Contracts for transportation; requirements; reimbursement.
- 75-303.03. Department of Health and Human Services; reimburse transportation costs; conditions.
- 75-304. Classification of carriers; rules and regulations.
- 75-304.01. Rates, fares, and charges; commission prescribe; when.
- 75-304.02. Mover of household goods; certificate or permit, when required.
- 75-305. Fees; amount; when due; disposition.
- 75-306. Receipt for fees; license plates and renewal tabs.
- 75-307. Insurance and bond requirements; subrogation.
- 75-307.01. Repealed. Laws 2007, LB 358, § 19.
- 75-307.02. Repealed. Laws 2007, LB 358, § 19.
- 75-307.03. Repealed. Laws 2007, LB 358, § 19.
- 75-308. Tariff; publication; unlawful practices.
- 75-308.01. Operational conditions; meetings of motor carriers authorized; purposes; joint-line arrangements authorized; joint rates; how treated.
- 75-309. Certificate of public convenience and necessity; required; exception.
- 75-309.01. Transportation of passengers for hire; operation without certificate; nuisance; penalty.
- 75-309.02. Repealed. Laws 1989, LB 78, § 37.
- 75-309.03. Repealed. Laws 1995, LB 424, § 54.
- 75-310. Application for certificate or permit; petition for relief; requirements.
- 75-311. Certificates; permits; issuance; review by commission; effect.
- 75-312. Repealed. Laws 1995, LB 424, § 54.
- 75-313. Certificate; permit; terms.
- 75-314. Deviation from route; special or charter parties.
- 75-315. Certificates; permits; effective date; revocation or suspension; grounds.
- 75-316. Suspension of service; approval of commission; voluntary revocation of certificate or permit.
- 75-317. Repealed. Laws 1995, LB 424, § 54.
- 75-318. Sale, transfer, lease, or consolidation; application; hearing; approval of commission required.
- 75-319. Sale, transfer, lease, or consolidation; temporary approval.
- 75-320. Sale or transfer of stock ownership; change in partnership or limited liability company; approval of commission; hearing.
- 75-321. Certificate; permit; death or incompetency of holder; transfer; approval of commission.
- 75-322. Certificate; permit; trustee, receiver, or assignee; continue operations; petition; order of commission.
- 75-322.01. Repealed. Laws 1989, LB 78, § 37.
- 75-322.02. Repealed. Laws 1995, LB 424, § 54.
- 75-322.03. Repealed. Laws 1995, LB 424, § 54.
- 75-322.04. Repealed. Laws 1995, LB 424, § 54.
- (b) ITINERANT MERCHANTS
- 75-323. Repealed. Laws 1994, LB 414, § 137.
- 75-324. Repealed. Laws 1994, LB 414, § 137.
- 75-325. Repealed. Laws 1994, LB 414, § 137.
- 75-326. Repealed. Laws 1983, LB 447, § 104.
- 75-327. Repealed. Laws 1994, LB 414, § 137.

MOTOR CARRIERS

Section	
75-328.	Repealed. Laws 1985, LB 191, § 7.
75-329.	Repealed. Laws 1994, LB 414, § 137.
75-330.	Repealed. Laws 1994, LB 414, § 137.
75-331.	Repealed. Laws 1994, LB 414, § 137.
75-332.	Repealed. Laws 1994, LB 414, § 137.
75-333.	Repealed. Laws 1994, LB 414, § 137.
75-334.	Repealed. Laws 1994, LB 414, § 137.
75-335.	Repealed. Laws 1994, LB 414, § 137.

(c) TRACTOR ENGINE TESTS

75-336.	Transferred to section 2-2701.
75-337.	Transferred to section 2-2702.
75-338.	Transferred to section 2-2703.
75-339.	Transferred to section 2-2704.
75-340.	Transferred to section 2-2705.
75-341.	Transferred to section 2-2706.
75-342.	Transferred to section 2-2707.
75-343.	Transferred to section 2-2708.
75-344.	Transferred to section 2-2709.
75-345.	Transferred to section 2-2710.
75-346.	Transferred to section 2-2711.
75-347.	Transferred to section 2-2712.

(d) INTERSTATE MOTOR CARRIERS

75-348.	Repealed. Laws 2009, LB 331, § 28.
75-349.	Repealed. Laws 2009, LB 331, § 28.
75-350.	Repealed. Laws 2009, LB 331, § 28.
75-351.	Repealed. Laws 2009, LB 331, § 28.
75-352.	Repealed. Laws 2007, LB 358, § 19.
75-353.	Repealed. Laws 2009, LB 331, § 28.
75-354.	Repealed. Laws 2009, LB 331, § 28.
75-355.	Repealed. Laws 2009, LB 331, § 28.
75-356.	Repealed. Laws 1991, LB 337, § 12.
75-357.	Repealed. Laws 1991, LB 337, § 12.
75-358.	Repealed. Laws 2009, LB 331, § 28.

(e) SAFETY REGULATIONS

75-359.	Repealed. Laws 1987, LB 4, § 1.
75-360.	Repealed. Laws 1987, LB 4, § 1.
75-361.	Repealed. Laws 1987, LB 4, § 1.
75-362.	Federal regulations; terms, defined.
75-363.	Federal motor carrier safety regulations; provisions adopted; exceptions.
75-364.	Additional federal motor carrier regulations; provisions adopted; exceptions.
75-365.	Definitions; applicability; report; requirements.
75-366.	Enforcement powers.
75-367.	Violations; penalty.
75-368.	Nebraska State Patrol; carrier enforcement division; adopt rules and regulations; prior rules and regulations; effect.
75-369.	Nebraska State Patrol; provide declaration of safety regulations; distribution; acknowledgment of applicant.
75-369.01.	Nebraska State Patrol carrier enforcement division; safety audit or compliance review.
75-369.02.	Safety rating; factors; notice.
75-369.03.	Violations; civil penalty; referral to federal agency or Public Service Commission; when.
75-369.04.	Civil penalty; order; contents; collection.
75-369.05.	Notice or order; service.
75-369.06.	Unpaid civil penalties; collection.
75-369.07.	Summary order; hearing; procedure; final order; appeal.

§ 75-301

PUBLIC SERVICE COMMISSION

Section

(f) ENFORCEMENT

- 75-370. Insurance, bond, certificate, and permit requirements; enforcement; duties.
- 75-371. Insurance, bond, certificate, and permit requirements; violations; penalty.

(g) INTERSTATE OPERATING AUTHORITY AGREEMENT ACT

- 75-372. Repealed. Laws 1993, LB 413, § 9.
- 75-373. Repealed. Laws 1993, LB 413, § 9.
- 75-374. Repealed. Laws 1993, LB 413, § 9.
- 75-375. Repealed. Laws 1993, LB 413, § 9.
- 75-376. Repealed. Laws 1993, LB 413, § 9.
- 75-377. Repealed. Laws 1993, LB 413, § 9.
- 75-378. Repealed. Laws 1993, LB 413, § 9.
- 75-379. Repealed. Laws 1993, LB 413, § 9.
- 75-380. Repealed. Laws 1993, LB 413, § 9.

(h) RESTRICTIONS ON HOURS ON DUTY

- 75-381. Repealed. Laws 2006, LB 1007, § 23.
- 75-382. Repealed. Laws 2006, LB 1007, § 23.

(i) TRANSPORT OF HAZARDOUS MATERIAL

- 75-383. Repealed. Laws 2006, LB 1069, § 7.
- 75-384. Repealed. Laws 2006, LB 1069, § 7.

(j) DIVISION OF MOTOR CARRIER SERVICES

- 75-385. Division of Motor Carrier Services; established; Administrator of Motor Carrier Services; appointment.
- 75-386. Division of Motor Carrier Services; duties.
- 75-387. Repealed. Laws 2002, LB 93, § 27.
- 75-388. Repealed. Laws 2002, LB 93, § 27.
- 75-389. Rules and regulations.
- 75-390. Repealed. Laws 2009, LB 331, § 28.

(k) MOTOR CARRIER TRANSPORTATION CONTRACTS

- 75-391. Motor carrier transportation contracts; exculpatory provisions prohibited.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

- 75-392. Terms, defined.
- 75-393. Unified carrier registration plan and agreement; director; powers.
- 75-394. Registration under unified carrier registration plan and agreement; fees; authorization to accept registration.
- 75-395. Repealed. Laws 2009, LB 331, § 28.
- 75-396. Rules and regulations.
- 75-397. Forms and electronic systems to allow filings.
- 75-398. Violations; penalty.
- 75-399. Sections not applicable to intrastate commerce.

(a) INTRASTATE MOTOR CARRIERS

75-301 Motor carriers; regulation; legislative policy.

(1) It is the policy of the Legislature to comply with the laws of the United States, to promote uniformity of regulation, to prevent motor vehicle accidents, deaths, and injuries, to protect the public safety, to reduce redundant regulation, to promote financial responsibility on the part of all motor carriers operating in and through the state, and to foster the development, coordination, and preservation of a safe, sound, adequate, and productive motor carrier system which is vital to the economy of the state.

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers and household goods in intrastate commerce upon the

public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in such transportation and among such carriers, in the public interest, (b) promote adequate economical and efficient service by motor carriers and reasonable charges therefor without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, (c) improve the relations between and coordinate transportation by and regulation of such motor carriers and other carriers, (d) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska, (e) cooperate with the several states and the duly authorized officials thereof, and (f) cooperate with the United States Government in the administration and enforcement of the unified carrier registration plan and agreement.

The commission, the Division of Motor Carrier Services, and the carrier enforcement division shall enforce all provisions of section 75-126 and Chapter 75, article 3, so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

Source: Laws 1963, c. 425, art. III, § 1, p. 1374; Laws 1989, LB 78, § 14; Laws 1995, LB 424, § 21; Laws 1996, LB 1218, § 42; Laws 2009, LB331, § 14.

1. Public interest factors
2. Jurisdiction
3. Miscellaneous

1. Public interest factors

Denial of an application for authority to provide charter service in Nebraska because such a grant would endanger or impair operations of existing carriers, contrary to the public interest, found to be appropriate. *In re Application of Crusader Coach Lines*, 213 Neb. 53, 327 N.W.2d 98 (1982).

Where there is evidence to sustain the factors for and against the issuance of a permit to a contract carrier, required to be considered by the Nebraska State Railway Commission, the determination of the public interest is for the commission and not the courts. *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 188 Neb. 584, 198 N.W.2d 195 (1972).

Purpose of Nebraska Motor Carrier Act was not to stifle legitimate competition but to permit it where public convenience and necessity requires. *Petroleum Transport Service, Inc. v. Wheeler Transport Service, Inc.*, 188 Neb. 400, 197 N.W.2d 8 (1972).

A permit which at best would merely allow one carrier to gain a competitive advantage over another in performing substantially the same service will not be granted. *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 186 Neb. 261, 182 N.W.2d 648 (1971).

Meaning of word necessary has been shaped by policy of act. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967).

75-302 Terms, defined.

For purposes of sections 75-301 to 75-322 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(2) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

2. Jurisdiction

The primary consideration of Public Service Commission control is benefit to the public rather than to the individual. *Ruan Transp. Corp. v. Herman Bros., Inc.*, 192 Neb. 343, 220 N.W.2d 245 (1974); *Herman Brothers, Inc. v. Hennis Freight Lines, Inc.*, 192 Neb. 258, 220 N.W.2d 230 (1974).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. *Livestock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn.*, 191 Neb. 1, 213 N.W.2d 443 (1973).

3. Miscellaneous

A litigant may not request a certificate of public convenience and necessity and in the same action and at the same time challenge the constitutionality of sections 75-301 through 75-322. *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 578 N.W.2d 28 (1998).

Commission had right to adopt rule prohibiting tacking of certain authorities and regulating tacking of other authorities. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

Purpose of Nebraska Motor Carrier Act stated. *Poulson v. Hargleroad Van & Storage Co.*, 183 Neb. 201, 159 N.W.2d 302 (1968).

(3) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(4) Commission means the Public Service Commission;

(5) Common carrier means any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(6) Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

(7) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(8) Escort services means an attendant or caregiver accompanying a minor or persons who are physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(13) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(14) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(15) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(16) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or

property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers; and

(17) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state.

Source: Laws 1963, c. 425, art. III, § 2, p. 1375; Laws 1969, c. 606, § 1, p. 2467; Laws 1972, LB 1370, § 1; Laws 1989, LB 78, § 18; Laws 1990, LB 980, § 25; Laws 1993, LB 121, § 464; Laws 1993, LB 412, § 2; Laws 1995, LB 424, § 22; Laws 1996, LB 1218, § 43; Laws 1999, LB 594, § 66; Laws 2006, LB 1069, § 3; Laws 2007, LB358, § 12.

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle carriers transporting livestock in intrastate commerce. *Livestock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn.*, 191 Neb. 1, 213 N.W.2d 443 (1973).

In considering an application for a permit as a contract carrier, the Nebraska State Railway Commission is required to

weigh the special needs of shippers desiring contract service against the adequacy of existing common carrier service. *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 188 Neb. 584, 198 N.W.2d 195 (1972).

75-303 Motor carriers; scope of law.

Sections 75-301 to 75-322 shall apply to transportation by a motor carrier or the transportation of passengers and household goods by a regulated motor carrier for hire in intrastate commerce except for the following:

- (1) A motor carrier for hire in the transportation of school children and teachers to and from school;
- (2) A motor carrier for hire operated in connection with a part of a streetcar system;
- (3) An ambulance, ambulance owner, hearse, or automobile used exclusively as an incident to conducting a funeral;
- (4) A motor carrier exempt by subdivision (1) of this section which hauls for hire (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly as defined in section 13-1203 and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;
- (5) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;
- (6) A motor vehicle owned and operated by a nonprofit organization which is exempt from payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, transporting solely persons over age sixty, persons who are spouses and dependents of persons over age sixty, and handicapped persons;

(7) A motor carrier engaged in the transportation of passengers operated by a transit authority created under and acting pursuant to the laws of the State of Nebraska;

(8) A motor carrier operated by a municipality or county, as authorized in section 13-1208, in the transportation of elderly persons;

(9) A motor vehicle having a seating capacity of twenty or less which is operated by a governmental subdivision or a qualified public-purpose organization as defined in section 13-1203 engaged in the transportation of passengers in the state;

(10) A motor vehicle owned and operated by a nonprofit entity organized for the purpose of furnishing electric service; and

(11) A motor carrier engaged in escort services and under contract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act.

Source: Laws 1963, c. 425, art. III, § 3, p. 1376; Laws 1969, c. 606, § 2, p. 2468; Laws 1972, LB 1178, § 1; Laws 1973, LB 54, § 1; Laws 1973, LB 70, § 1; Laws 1973, LB 345, § 2; Laws 1974, LB 762, § 1; Laws 1981, LB 85, § 2; Laws 1981, LB 144, § 8; Laws 1983, LB 98, § 1; Laws 1989, LB 78, § 19; Laws 1993, LB 412, § 3; Laws 1993, LB 413, § 3; Laws 1995, LB 424, § 23; Laws 1996, LB 1218, § 44; Laws 1999, LB 594, § 67.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

The entitlement to an exemption under this section will deny the Public Service Commission its jurisdiction over a qualified exempt carrier. In re Application of Hunt Transportation, 214 Neb. 236, 333 N.W.2d 883 (1983).

The Nebraska Public Service Commission is without jurisdiction or authority to fix rates and charges for motor vehicle

carriers transporting livestock in intrastate commerce. Livestock Carriers Div. of M. C. Assn. v. Midwest Packers Traf. Assn., 191 Neb. 1, 213 N.W.2d 443 (1973).

75-303.01 Department of Health and Human Services; authorized agency; contracts for transportation authorized.

The Department of Health and Human Services or any agency organized under the Nebraska Community Aging Services Act may contract for transportation for its clients with a contractor which does not hold a certificate or which is not otherwise exempt under section 75-303 only if:

(1) The proposed contractor is the individual who will personally drive the vehicle in question;

(2) The only compensation to the contractor for the transportation is paid by the department at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176 for the costs incurred in the transportation; and

(3)(a) There is no regulated motor carrier serving the area in which the client needs transportation, (b) the regulated motor carrier serving the area is incapable of providing the specific service in question by its own written statement or as determined by the commission upon application of the regulated motor carrier or the department, or (c) the regulated carrier cannot or will not provide such service at the rate specified in subsection (2) of section 75-303.02.

Source: Laws 1993, LB 412, § 4; Laws 1995, LB 424, § 24; Laws 1996, LB 1044, § 791; Laws 1999, LB 594, § 68; Laws 2007, LB296, § 697.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-303.02 Contracts for transportation; requirements; reimbursement.

(1) The commission, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations governing minimum liability insurance requirements, equipment standards, driver qualification requirements, and the issuance and filing of notice for any contractor utilized by the department or any agency organized under the Nebraska Community Aging Services Act pursuant to section 75-303.01.

(2) The department or any agency organized under the Nebraska Community Aging Services Act shall reimburse common and contract carriers for transportation of passengers at a rate not to exceed the rate of reimbursement pursuant to section 81-1176 multiplied by three. The maximum reimbursement rate provided for in this subsection shall not apply when the carrier (a) transports such person wholly within the corporate limits of the city or village where the transportation of the person originated or (b) transports a disabled person as defined by the federal Americans with Disabilities Act of 1990 in a vehicle that is compliant with the regulations providing for the transportation of such disabled person.

Source: Laws 1993, LB 412, § 5; Laws 1995, LB 424, § 25; Laws 1996, LB 1044, § 792; Laws 1999, LB 594, § 69; Laws 2007, LB296, § 698.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-303.03 Department of Health and Human Services; reimburse transportation costs; conditions.

(1) The Department of Health and Human Services may reimburse an individual for the costs incurred by such individual in the transportation of a person eligible to receive transportation services through the department if:

- (a) The individual is under contract with the department and provides transportation to the eligible person; and
- (b) The eligible person has chosen the individual to provide the transportation.

(2) The department shall reimburse for the costs incurred in the transportation at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176.

(3) Transportation provided to an eligible person by an individual pursuant to this section does not constitute transportation for hire.

(4) The department may adopt and promulgate rules and regulations to implement this section.

Source: Laws 2006, LB 1069, § 2; Laws 2007, LB296, § 699.

75-304 Classification of carriers; rules and regulations.

The commission may establish such just and reasonable classifications of groups of carriers, included in the terms common carrier and contract carrier, as the special nature of the services performed by such carriers require and adopt and promulgate such just and reasonable rules, regulations, and require-

ments, to be observed by the carrier so classified or grouped, as the commission deems necessary or desirable in the public interest and as are consistent with the provisions of sections 75-301 to 75-322. All certificates and permits issued by the commission shall be construed and interpreted, and the operations authorized thereunder shall be tested and determined, in accordance with such classification so established and any rule, regulation, or requirement prescribed by the commission relating to such carrier so classified.

Source: Laws 1963, c. 425, art. III, § 4, p. 1378; Laws 1969, c. 606, § 3, p. 2469; Laws 1989, LB 78, § 20; Laws 1993, LB 412, § 6; Laws 1994, LB 414, § 68; Laws 1995, LB 424, § 26.

75-304.01 Rates, fares, and charges; commission prescribe; when.

The commission shall prescribe minimum rates, fares, and charges for contract carriers. No reduction shall be made in any such charge, either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of service thereunder, except after ten days' notice of the proposed change filed in the form and manner provided for common carrier rate changes. The notice shall plainly state the change proposed and the time when the change will take effect. No contract carrier shall demand, charge, or collect less compensation for such transportation than the charges to be made by common carriers for the same transportation in accordance with sections 75-118 to 75-155 and 75-301 to 75-322, as affected by any rule, regulation, or practice so filed or as prescribed by the commission. It is unlawful for any such carrier to charge less than the rates, fares, and charges approved by the commission.

Source: Laws 1972, LB 1370, § 3; Laws 1974, LB 438, § 1; Laws 1994, LB 414, § 69; Laws 1995, LB 424, § 27.

75-304.02 Mover of household goods; certificate or permit, when required.

(1) Any mover of household goods operating in a city or village of this state or within a radius of five miles of the corporate limits of such city or village and engaged in the transportation for hire of household goods in such city or village or within such five-mile radius prior to January 1, 1996, may continue operations for a period of up to one year after April 4, 1996, without obtaining a certificate of public convenience and necessity or a permit issued by the commission authorizing such operations. Beginning on and after one year after April 4, 1996, such mover of household goods shall be subject to sections 75-301 to 75-322.

(2) During the one-year period after April 4, 1996, the commission shall grant the authority to engage in the transportation for hire of household goods in such city or village or within such five-mile radius to any such mover of household goods which applies to the commission and furnishes evidence of its operations in a manner and form as directed by the commission by rule and regulation. The authority to engage in the transportation of household goods shall become effective one year after April 4, 1996.

Source: Laws 1996, LB 1218, § 45.

75-305 Fees; amount; when due; disposition.

Every regulated motor carrier subject to sections 75-301 to 75-322 shall pay an annual fee not exceeding the sum of eighty dollars for each motor vehicle

operated, which fee shall be fixed by the commission and shall not exceed the amount actually necessary to sustain the administration and enforcement of such sections. When the applicant has registered his or her motor vehicles under section 60-3,198, such fee shall be payable on whichever shall be the lesser of (1) the proportion of his or her fleet so registered or (2) the number of motor vehicles owned by him or her and actually used in intrajurisdiction business within this state, except that such annual fee for any truck-trailer or tractor-trailer combination shall be one hundred twenty dollars. In the case of a truck-trailer or tractor-trailer combination, only one license plate shall be required for such combination. Such annual fees shall be due and payable on or before January 1 and shall be delinquent on March 1 of each year after such permit or certificate has been issued. If the initial certificate or permit is issued to a motor carrier on or after July 1, the fee shall be fifty percent of the annual fee. Such fees shall be paid to and collected by the commission and remitted to the State Treasurer within thirty days of receipt for credit to the General Fund.

Source: Laws 1963, c. 425, art. III, § 5, p. 1378; Laws 1969, c. 606, § 4, p. 2470; Laws 1982, LB 928, § 58; Laws 1989, LB 78, § 21; Laws 1993, LB 412, § 7; Laws 1995, LB 424, § 28; Laws 1996, LB 1218, § 46; Laws 2003, LB 187, § 23; Laws 2003, LB 563, § 40; Laws 2005, LB 274, § 270.

75-306 Receipt for fees; license plates and renewal tabs.

Receipt for the payment of annual fees shall be issued by the commission. The commission shall issue sufficient license plates and renewal tabs to any regulated motor carrier who is in compliance with sections 75-301 to 75-322 and the rules and regulations of the commission, except contract carriers operating pursuant to section 75-303.01, for the purpose of identification of regulated motor carriers subject to such sections and to distinguish those regulated motor carriers from other commercial motor carriers not subject to such sections. The Director of Motor Vehicles shall prepare a form of license plate and renewal tab for such regulated motor carriers and furnish a sufficient supply of them to the commission.

Source: Laws 1963, c. 425, art. III, § 6, p. 1379; Laws 1969, c. 606, § 5, p. 2471; Laws 1989, LB 78, § 22; Laws 1993, LB 412, § 8; Laws 1994, LB 414, § 70; Laws 1995, LB 424, § 29; Laws 1996, LB 1218, § 47.

75-307 Insurance and bond requirements; subrogation.

(1) Certificated intrastate motor carriers, including common and contract carriers, shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit or for loss or damage to property of others. No certificate or permit shall be issued to

a common or contract carrier or remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section.

(2) The commission may, in its discretion and under its rules and regulations, require any certificated carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements to the extent of the sum so paid.

(3) In carrying out this section, the commission may classify motor carriers and regulated motor carriers taking into consideration the hazards of the operations of such carriers and the value of the household goods carried. Nothing contained in this section shall be construed to authorize the commission to compel motor carriers other than common carriers of household goods to carry cargo insurance.

Source: Laws 1963, c. 425, art. III, § 7, p. 1379; Laws 1989, LB 78, § 23; Laws 1990, LB 980, § 26; Laws 1995, LB 424, § 30; Laws 2007, LB358, § 13.

75-307.01 Repealed. Laws 2007, LB 358, § 19.

75-307.02 Repealed. Laws 2007, LB 358, § 19.

75-307.03 Repealed. Laws 2007, LB 358, § 19.

75-308 Tariff; publication; unlawful practices.

It is unlawful for a regulated motor carrier to engage in the transportation of passengers or household goods in intrastate commerce unless the motor carrier has filed, published, and kept open for inspection its tariff schedule as provided in section 75-124 in the manner prescribed by the commission pursuant to such section. No such motor carrier shall engage in the transportation of household goods in intrastate commerce unless it has obtained a copy of the most current applicable tariff, or a tariff prepared by a tariff publishing bureau or an individual, which conforms with the rates and charges prescribed by the commission.

Source: Laws 1963, c. 425, art. III, § 8, p. 1380; Laws 1983, LB 309, § 1; Laws 1995, LB 424, § 34.

75-308.01 Operational conditions; meetings of motor carriers authorized; purposes; joint-line arrangements authorized; joint rates; how treated.

(1) Any two or more motor carriers authorized to operate under a common tariff approved by the commission under section 75-118 or 75-304.01 shall be permitted to meet and review operational conditions of affected motor carriers for the following purposes:

(a) To study the ratio of expenses to income and general financial condition of the motor carrier industry in Nebraska;

(b) To determine whether any change or changes should be made in any commission-approved tariff;

(c) To consider the joint employment of technical assistance to accomplish the purposes set forth in this section;

(d) To determine whether it is necessary to file an application to make tariff changes; and

(e) To do all other acts necessary to accomplish the filing of a rate application with the commission.

(2) Motor carriers may establish joint-line arrangements for intrastate transportation of property to exchange or to interline freight that each motor carrier transports over a part of the joint route and to agree to a joint rate for the transportation service. Motor carriers may also collectively participate in, establish, and use a freight classification system and mileage guide that can be used to determine the rates for intrastate transportation.

(3) The laws of this state relating to competition shall not apply to motor carriers and other persons who carry out the activities described in subsection (2) of this section. The commission may regulate the activities described in subsection (2) of this section and shall investigate and issue orders when necessary to preserve the sound and efficient transportation of property by motor carriers.

Source: Laws 1978, LB 845, § 1; Laws 1994, LB 414, § 71; Laws 1995, LB 424, § 35.

75-309 Certificate of public convenience and necessity; required; exception.

Except for operations pursuant to a contract authorized by sections 75-303.01 and 75-303.02, it shall be unlawful for any common or contract carrier by motor vehicle subject to the provisions of sections 75-101 to 75-155 and 75-301 to 75-322 to engage in any intrastate operations on any public highway in Nebraska unless there is in force with respect to such common carrier a certificate of public convenience and necessity, or a permit to such contract carrier, issued by the commission which authorizes such operations.

Source: Laws 1963, c. 425, art. III, § 9, p. 1381; Laws 1967, c. 479, § 15, p. 1482; Laws 1989, LB 78, § 24; Laws 1993, LB 412, § 9; Laws 1994, LB 414, § 72; Laws 1995, LB 424, § 36.

The Public Service Commission has original jurisdiction and sole power to grant, amend, deny, revoke, or transfer common carrier certificates of public convenience and necessity, and such proceedings are administrative and legislative in character. In re Application of Kiltbau, 236 Neb. 811, 464 N.W.2d 162 (1991).

Applicant's fitness and his claimed violation hereof are to be judged by the commission on the record before it. Robinson v.

National Trailer Convoy, Inc., 188 Neb. 474, 197 N.W.2d 633 (1972).

Carrier has no right to tack authorities unless that right is granted in certificate. Nebraska State Railway Commission v. Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

75-309.01 Transportation of passengers for hire; operation without certificate; nuisance; penalty.

Each motor vehicle owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of section 75-309 is declared to be a public nuisance and subject to seizure and confiscation by any person charged with the enforcement of this section. Any motor vehicle which is owned, used, or attempted to be used by any person as a common or contract carrier to transport passengers for hire in violation of

section 75-309 may be seized upon the arrest of the person who uses or owns the motor vehicle, and upon the conviction of the person for the violation of such section, the motor vehicle shall, as a part of the element of the violation, at the discretion of the court, be forfeited to the state and delivered to the commission to be disposed of as provided by law. The sale shall be subject to any liens of record. The commission shall remit the proceeds of the sale to the State Treasurer for credit to the permanent school fund.

Source: Laws 1963, c. 427, § 1, p. 1432; Laws 1994, LB 414, § 73; Laws 1995, LB 424, § 37; Laws 1996, LB 1218, § 49.

75-309.02 Repealed. Laws 1989, LB 78, § 37.

75-309.03 Repealed. Laws 1995, LB 424, § 54.

75-310 Application for certificate or permit; petition for relief; requirements.

Applications for certificates or permits and petitions for relief shall be made to the commission in writing and shall be in such form and contain such information as the commission shall by rule require. A summary of the authority or relief sought in an application or petition shall be given to interested persons according to the rules the commission shall adopt. After notice of an application or petition has been given to interested persons as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed.

Source: Laws 1963, c. 425, art. III, § 10, p. 1381; Laws 1967, c. 479, § 16, p. 1482.

Rule relating to tacking of authorities is within the ambit of authority granted to commission under this and other related sections. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

75-311 Certificates; permits; issuance; review by commission; effect.

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (6) of section 75-302. Otherwise the application shall be denied.

(3) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier for transportation of household goods by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(4) After the issuance of a certificate or permit, the commission shall review the operations of all common or contract carriers who hold authority from the commission to determine whether there are insufficient operations in the transportation of household goods to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322 and rules and regulations promulgated under such sections. If the commission determines that there are insufficient operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(5) This section shall not apply to operations pursuant to a contract authorized by sections 75-303.01 and 75-303.02.

Source: Laws 1963, c. 425, art. III, § 11, p. 1381; Laws 1969, c. 606, § 6, p. 2471; Laws 1972, LB 1370, § 2; Laws 1974, LB 438, § 2; Laws 1989, LB 78, § 25; Laws 1990, LB 980, § 27; Laws 1993, LB 412, § 10; Laws 1994, LB 414, § 74; Laws 1995, LB 424, § 38; Laws 1996, LB 1218, § 50.

1. Public convenience and necessity
2. Authority of commission
3. Burden of proof

1. Public convenience and necessity

A litigant may not request a certificate of public convenience and necessity and in the same action and at the same time challenge the constitutionality of sections 75-301 through 75-322. In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. An applicant who has been operating under color of authority need not make the same showing that an applicant who has never operated must make, and there is a presumption that the proposed service is or will be required by the present or future public convenience and necessity. When an applicant has been illegally conducting business for a sufficient period of time under a mistaken belief that its operations were legal, the color of right principles of law apply. However, if the applicant knew that its operations were illegal, then the color of right principles do not apply. In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 578 N.W.2d 28 (1998).

Public Service Commission's finding that applicant's continuing service after three warnings of illegal operation establishes applicant unfit to hold certificate of convenience and necessity was not arbitrary and capricious action. In re Application of A Touch of Class Limousine, 243 Neb. 33, 497 N.W.2d 71 (1993).

The existence of an adequate and satisfactory service by motor carriers already in the area is complete negation of public need and demand for added service by another carrier. In re Application of Kiltbau, 236 Neb. 811, 464 N.W.2d 162 (1991).

To comply with this section, the applicant must prove, in part, that the applicant is fit financially. In re Application of Overland Armored Exp., 229 Neb. 524, 428 N.W.2d 166 (1988).

Public demand or need, which an applicant must prove to obtain a certificate from the Public Service Commission, is a present actual need or a need which will likely occur within the

reasonably immediate or foreseeable future. In re Application of Renzenberger, Inc., 225 Neb. 30, 402 N.W.2d 294 (1987).

Public Service Commission's order granting certificate of public convenience and necessity was arbitrary and capricious; applicant had not met its burden of proof. In re Application of Red Carpet Limo. Serv., Inc., 221 Neb. 340, 377 N.W.2d 91 (1985).

In determining the issue of public convenience and necessity, controlling questions are whether the operation will serve a useful purpose responsive to a public demand or need; whether this purpose can or will be served as well by existing carriers; and whether it can be served by applicant in a specified manner without endangering or impairing the operations of existing carriers, contrary to public interest. In re Application of Nebraska Transport Co., Inc., 210 Neb. 269, 313 N.W.2d 686 (1981).

Under this section, a certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found after notice and hearing that the applicant is fit, willing, and able properly to perform the service proposed, and to conform to the rules and regulations of the Nebraska Public Service Commission and that the proposed service is or will be required by the present or future public convenience and necessity. Gentry Real Estate Co. v. King's Limousine Service, Inc., 201 Neb. 761, 272 N.W.2d 359 (1978).

Applicant for a certificate of public convenience and necessity who has been operating under color of authority enjoys a presumption that the proposed service applied for is or will be required by present or future public convenience and necessity. Dilts Trucking, Inc. v. Peake, Inc., 197 Neb. 459, 249 N.W.2d 732 (1977).

There must be finding that applicant is fit, willing, and able to perform the proposed service, and that the service offered is or will be required by public convenience and necessity in granting a certificate therefor. Robinson v. National Trailer Convoy, Inc., 188 Neb. 474, 197 N.W.2d 633 (1972).

Finding that proposed operation of a contract carrier will be consistent with public interest is necessary for issuance of permit. This means that the service must not conflict with the legislative policy of the state in dealing with transportation by motor vehicles. *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 186 Neb. 261, 182 N.W.2d 648 (1971).

Conditions to be shown by applicant for contract carrier permit stated; consistent with the public interest distinguished from public convenience and necessity. *Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp.*, 183 Neb. 229, 159 N.W.2d 310 (1968).

2. Authority of commission

The determination of what is consistent with public convenience and necessity is for the Public Service Commission and if there is evidence to sustain such determination the Supreme Court cannot intervene. *Hopken v. Building Movers, Inc.*, 197 Neb. 195, 247 N.W.2d 633 (1976); *Groenewold v. Building Movers, Inc.*, 197 Neb. 187, 247 N.W.2d 629 (1976).

Where there is evidence to sustain the factors for and against the issuance of a permit to a contract carrier, required to be considered by the Nebraska State Railway Commission, the determination of the public interest is for the commission and not the courts. *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 188 Neb. 584, 198 N.W.2d 195 (1972).

Tacking is an extension of the authorized service under regulation of the Nebraska State Railway Commission, and the right to tack does not exist unless granted by the commission. *Nebraska State Railway Commission v. Seward Motor Freight, Inc.*, 188 Neb. 223, 196 N.W.2d 200 (1972).

3. Burden of proof

Statement by Public Service Commission that it is inconsistent with the public interest to grant a contract carrier permit when existing common carriers can adequately serve the shipper improperly exhibited a preference for common carriers over contract carriage. Upon proof by an applicant for contract carrier authority that the proposed service is specialized and tailored to the customer's distinct needs, the burden shifts to protesting common carriers to show they can provide the same

specialized service; thus the Public Service Commission erred in requiring an applicant for a contract carrier permit to establish the inability of existing common carriers to provide the same specialized service it proposed to provide. In re *Application of Northland Transp.*, 239 Neb. 918, 479 N.W.2d 764 (1992).

The applicant has the burden to establish that its proposed service is specialized and fits the needs of the proposed contracting shipper or shippers; that it is fit, willing, and able to perform the service; and that the proposed operation will be consistent with the public interest. If the service proposed by the applicant can be performed as well by common carriers, the application should be denied because a need for a contract carrier has not been established. The Public Service Commission must weigh the special requirements of the shipper against the adequacy of the existing common carrier service. In re *Application of Slack*, 234 Neb. 704, 452 N.W.2d 538 (1990).

The burden is on the applicant to show that the extension of its present authority is required by the public convenience and necessity. Controlling questions in determining the issue of public convenience and necessity stated. In re *Application of Petroleum Transport Service, Inc.*, 210 Neb. 411, 315 N.W.2d 245 (1982).

Burden is on the applicant for a certificate of public convenience and necessity to show he has met all the requirements of this section. In re *Application of Greyhound Lines, Inc.*, 209 Neb. 430, 308 N.W.2d 336 (1981).

A certificate of public convenience and necessity may be issued only when required by the present or future public convenience and necessity and applicant has burden of proof. *Ruan Transp. Corp. v. Herman Bros., Inc.*, 192 Neb. 343, 220 N.W.2d 245 (1974).

Burden rested upon applicant for change of route to show change was required by public convenience and necessity. *Parsons v. Nebraska State Railway Commission*, 181 Neb. 185, 147 N.W.2d 521 (1966).

Burden of proof is upon the applicant in order to obtain a certificate of public convenience and necessity. *Simmerman v. National Trailer Convoy, Inc.*, 179 Neb. 400, 138 N.W.2d 481 (1965).

75-312 Repealed. Laws 1995, LB 424, § 54.

75-313 Certificate; permit; terms.

Each certificate shall specify the service to be rendered, the routes, the fixed termini, if any, and the intermediate and off-route points, if any, and in case of operations not over specified routes or between fixed termini, the territory within which such carrier is authorized to operate. Each permit shall specify the business of the contract carrier covered thereby and the scope thereof. There shall, at the time of issuance, and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate or permit such reasonable terms, conditions, and limitations as the public convenience and necessity, or the character of the holder as a contract carrier, may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission; *Provided*, that no terms, conditions or limitations shall restrict the right of a contract carrier to substitute or add contracts within the scope of the permit, or to add to his or its equipment and facilities within the scope of the permit, as the development of the business and the demands of the public may require.

Source: Laws 1963, c. 425, art. III, § 13, p. 1382.

Willful failure to perform a service and dormancy cannot in all cases be equated. *Dahlsten v. Harris*, 191 Neb. 714, 217 N.W.2d 813 (1974).

Unless carrier's certificate includes right to tack authorities, it has no such right. *Nebraska State Railway Commission v.*

Seward Motor Freight, Inc., 188 Neb. 223, 196 N.W.2d 200 (1972).

75-314 Deviation from route; special or charter parties.

A common carrier by motor vehicle operating under any certificate issued under section 75-311 may occasionally deviate from the route over which or the fixed termini between which it is authorized to operate under the certificate under such general or special rules and regulations as the commission may prescribe. Any common carrier by motor vehicle who transports passengers under its certificate may operate in intrastate commerce to any place carrying special or charter parties under such rules and regulations as prescribed by the commission.

Source: Laws 1963, c. 425, art. III, § 14, p. 1382; Laws 1995, LB 424, § 39.

75-315 Certificates; permits; effective date; revocation or suspension; grounds.

Permits and certificates shall be effective from the dates specified in the permits and certificates and shall remain in effect until terminated as provided in this section and section 75-316. A permit or certificate may, upon application of the permit or certificate holder, in the discretion of the commission, be revoked or may, upon complaint or on the commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any of the provisions of sections 75-101 to 75-801, with any lawful order, rule, or regulation of the commission promulgated under such sections, or with any term, condition, or limitation of the permit or certificate. The commission may, after notice and a hearing, suspend or revoke the permit or certificate of a motor carrier who refuses or subjects to any undue or unreasonable delay any pickup, delivery, or connecting line service, to any shipper, consignee, carrier, or any other person or persons, at any point authorized to be served by such carrier, notwithstanding any hot cargo agreement or other agreement between such motor carrier and a labor organization or any other organization or person.

Source: Laws 1963, c. 425, art. III, § 15, p. 1383; Laws 1969, c. 607, § 1, p. 2472; Laws 1995, LB 424, § 40.

An act or failure to act within the provisions of this section may be willful within the meaning of the statute even though a decision to cease operations under the certificate may be the consequence of circumstances such as financial failure over which the carrier may not have absolute control. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co. Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

The term "willful failure" as used in this section means a repeated or continued failure to file reports required by this act. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co. Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

Under the provisions of this section, the Nebraska Public Service Commission may, upon complaint or on the commis-

sion's own initiative and after notice and hearing, suspend, revoke, or change a certificate of a common carrier for willful failure to comply with any of the provisions of sections 75-101 to 75-801, R.R.S.1943. *Nebraska Public Service Commission v. Grand Island Moving & Storage Co. Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

The willful failure herein is such behavior through acts of commission or omission which justifies a belief there was an intent entered into and characterizing the failure complained of. *Herman Brothers, Inc. v. Hennis Freight Lines, Inc.*, 192 Neb. 258, 220 N.W.2d 230 (1974).

75-316 Suspension of service; approval of commission; voluntary revocation of certificate or permit.

Except for circumstances beyond the control of the regulated motor carrier, such as strikes against such carrier, acts of God, and the common enemy,

service under a certificate of public convenience and necessity or a permit shall not be suspended without first obtaining approval of the commission. Nothing in sections 75-101 to 75-801 shall prevent the holder of a certificate or permit from requesting revocation of such certificate or permit as provided for in section 75-315.

Source: Laws 1963, c. 425, art. III, § 16, p. 1383; Laws 1995, LB 424, § 41.

75-317 Repealed. Laws 1995, LB 424, § 54.

75-318 Sale, transfer, lease, or consolidation; application; hearing; approval of commission required.

It shall be lawful, only under the conditions specified in this section, for any regulated motor carrier or person or for two or more regulated motor carriers to:

(1) Consolidate or merge their properties or any part thereof or certificates of public convenience and necessity or permits, or any part thereof, into one ownership, management, or operation of the properties, certificates, or permits theretofore in separate ownership;

(2) Purchase, lease, or contract to operate the properties or any part thereof or the certificates or permits, or any part thereof, of another regulated motor carrier; or

(3) Acquire control of another regulated motor carrier or carriers through purchase of stock.

Whenever a consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, certificates, or permits is proposed, the carrier or carriers or person seeking authority therefor shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with the rules of the commission. If, after such hearing, the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such consolidation, merger, purchase, lease, operating contract, or acquisition of control of the properties, or any part thereof, or certificates or permits of the whole, or any part thereof, upon such terms and conditions as it deems just and reasonable. If any of the certificates or permits proposed to be merged, consolidated, transferred, or leased are dormant, the commission may approve an application for consolidation, merger, transfer, or lease only upon proof of and a finding that such merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. If the proposed merger, consolidation, transfer, or lease of the certificates or permits will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties or, as to passenger motor carriers, will tend to enlarge competition over that then existing, the commission may approve an application for merger, consolidation, transfer, or lease only upon proof of and a finding that the proposed merger, consolidation, transfer, or lease is or will be required by the present and future public convenience and

necessity, in the same manner as provided in section 75-311. Any restrictions, qualifications, or conditions applicable to and contained in a particular certificate of public convenience and necessity or a permit at the time of the issuance thereof or thereafter made a part of such certificate or permit, excluding any restrictions, qualifications, or conditions of general application applicable to all regulated motor carriers or a segment thereof as a class and imposed by regulation of the commission, proposed to be merged, consolidated, transferred, or leased shall not be changed, altered, or removed without the proof required in section 75-311 for certificates and permits.

When authority is transferred as provided in this section, the commission shall simultaneously cancel the authority of the transferor which is transferred.

Source: Laws 1963, c. 425, art. III, § 18, p. 1384; Laws 1965, c. 446, § 4, p. 1416; Laws 1967, c. 479, § 18, p. 1483; Laws 1994, LB 414, § 75; Laws 1995, LB 424, § 42.

The court determined that the certificate of authority held by the appellant could not be transferred to another trucking company because the certificate was dormant. Under the facts of the case, the only traffic conducted under the certificate of authority was made pursuant to leases which violated the rules and regulations of the Nebraska Public Service Commission. *Herman Bros., Inc. v. Spector Industries, Inc.*, 209 Neb. 513, 308 N.W.2d 720 (1981).

Held improper to deny request for transfer of active authority merely because the transfer may enlarge competition. *Spector Freight System, Inc. v. Herman Bros., Inc.*, 197 Neb. 835, 251 N.W.2d 376 (1977).

Where commission approval of a transfer of authority hereunder and an issue of dormancy is properly raised, the Nebraska Public Service Commission must determine both the fact of

dormancy and on the basis of the evidence whether the public convenience and necessity require the transfer. *Dahlsten v. Harris*, 191 Neb. 714, 217 N.W.2d 813 (1974).

Transfer of operating rights may be permitted without restrictions if after notice and hearing Railway Commission finds requirements herein have been met. *Andrews Van Lines, Inc. v. Smith*, 187 Neb. 533, 192 N.W.2d 406 (1971).

The reference in this section to an enlargement of competition over that then existing means a substantial or material increase in competition. *Hunt Transportation, Inc. v. Yellow Cab, Inc.*, 186 Neb. 518, 184 N.W.2d 651 (1971).

Evidence established that certificate to be transferred was dormant. *Ace Gas, Inc. v. Peake, Inc.*, 184 Neb. 448, 168 N.W.2d 373 (1969).

75-319 Sale, transfer, lease, or consolidation; temporary approval.

(1) Pending the determination of an application filed under section 75-318, the commission may, in its discretion, after not less than five days' notice to interested carriers, and without hearings or other proceedings, grant temporary approval, for a period not exceeding ninety days, of a lease of the regulated motor carrier properties and of the certificates or permits sought to be acquired to the person filing the application, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such regulated motor carrier properties, and certificates or permits sought to be acquired, or interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

(2) Transportation service rendered under such temporary authority shall be subject to the provisions of sections 75-101 to 75-801 and to the rules, regulations, and requirements of the commission.

(3) The grant of temporary authority and the operations thereunder shall not be admissible in evidence to establish or prove the present or future public convenience and necessity.

(4) No renewal or extension of the period of ninety days provided for in this section shall be granted.

Source: Laws 1963, c. 425, art. III, § 19, p. 1386; Laws 1995, LB 424, § 43.

75-320 Sale or transfer of stock ownership; change in partnership or limited liability company; approval of commission; hearing.

No transfer, assignment, or sale of stock or change of stock ownership or any interest therein which will directly or indirectly result in a transfer, assignment, sale, or change in the control of the corporation holding a certificate or permit, and no change of one or more of the partners or members, when the certificate holder is a partnership or a limited liability company, will be effective or valid, unless the carrier or person seeking to acquire control of the corporation or unless the applicant seeking to effect a change in one or more of the partners or members in a partnership or limited liability company holding a certificate or permit, respectively, obtains approval of the commission under such rules and regulations as the commission may prescribe. Approval of the proposed transaction, either in whole or in part, may be given, after notice and hearing, only upon findings by the commission that such transaction will be consistent with the public interest, that it will not unduly restrict competition, and that the applicant is fit, willing, and able to properly perform the proposed service.

Source: Laws 1963, c. 425, art. III, § 20, p. 1386; Laws 1993, LB 121, § 465.

Mere absence of applicant does not constitute failure of evidence of fitness, willingness, and ability. *Abler v. Herman Bros., Inc.*, 187 Neb. 530, 192 N.W.2d 410 (1971).

75-321 Certificate; permit; death or incompetency of holder; transfer; approval of commission.

Upon the death of an individual holder of a certificate or permit, or upon an individual certificate or permit holder being legally declared mentally incompetent, the authority conferred by such certificate shall continue with the legal representative of the deceased or mentally incompetent holder thereof for a period of one year from the date of the holder's death or the declaration of mental incompetency, after which the authority conferred thereby shall cease and the certificate or permit be revoked and canceled without further order of the commission, unless application has been made to transfer such authority, in which case the authority shall continue with the legal representative until there has been a final determination of the application. In the event that application is made by the legal representative not less than thirty days prior to the end of such period of one year, the commission may, at its discretion and for cause shown, allow the transfer of the authority to the executors, administrators, guardians, trustees, or other legal representatives of the deceased holder for a period to be fixed by the commission. In considering such application, pertinent orders or decrees of the court having jurisdiction over the estate of the decedent or mentally incompetent person may be deemed cause for the granting thereof. When the individual holder of a certificate or permit dies or is declared legally incompetent and an application is made to transfer the authority issued under the certificate or permit to his or her legal representative, the commission may dispose of the application without hearing, if notice is given to all interested parties.

Source: Laws 1963, c. 425, art. III, § 21, p. 1387; Laws 1986, LB 1177, § 31.

This section is not applicable after order authorizing permanent transfer. *Andrews Van Lines, Inc. v. Smith*, 187 Neb. 533, 192 N.W.2d 406 (1971).

75-322 Certificate; permit; trustee, receiver, or assignee; continue operations; petition; order of commission.

If a trustee, receiver, assignee, custodian, or similar officer or officers, shall be appointed by a court of competent jurisdiction, or shall be selected by creditors in accordance with provisions of law, with authority to take or retain possession and to operate the property and business of a certificate or permit holder, such officer or officers shall have authority to perform the service authorized in the certificate or permit of the debtor carrier for a period of ninety days from his or their appointment or selection. Such officer or officers may petition the commission for authority to conduct the operations for an additional period of time, and the commission may, for good cause shown, grant such authority. If such petition is filed within ninety days of the appointment or selection of the petitioner or petitioners, he or they shall have the authority to continue such operations pending decision by the commission on the petition. In considering such petitions, pertinent orders or decrees of the court having jurisdiction may be deemed cause for the granting thereof.

Source: Laws 1963, c. 425, art. III, § 22, p. 1387.

A trustee in bankruptcy, receiver, or custodian in possession under a bankruptcy arrangement, of a carrier, has the rights in the certificate of convenience and necessity of the carrier which are provided by this section, and these rights must be respected

by the Nebraska Public Service Commission. *Neb. Public Service Commission v. Grand Island Mov. & Storage Co., Inc.*, 203 Neb. 356, 278 N.W.2d 762 (1979).

75-322.01 Repealed. Laws 1989, LB 78, § 37.

75-322.02 Repealed. Laws 1995, LB 424, § 54.

75-322.03 Repealed. Laws 1995, LB 424, § 54.

75-322.04 Repealed. Laws 1995, LB 424, § 54.

(b) ITINERANT MERCHANTS

75-323 Repealed. Laws 1994, LB 414, § 137.

75-324 Repealed. Laws 1994, LB 414, § 137.

75-325 Repealed. Laws 1994, LB 414, § 137.

75-326 Repealed. Laws 1983, LB 447, § 104.

75-327 Repealed. Laws 1994, LB 414, § 137.

75-328 Repealed. Laws 1985, LB 191, § 7.

75-329 Repealed. Laws 1994, LB 414, § 137.

75-330 Repealed. Laws 1994, LB 414, § 137.

75-331 Repealed. Laws 1994, LB 414, § 137.

75-332 Repealed. Laws 1994, LB 414, § 137.

75-333 Repealed. Laws 1994, LB 414, § 137.

75-334 Repealed. Laws 1994, LB 414, § 137.

75-335 Repealed. Laws 1994, LB 414, § 137.

(c) TRACTOR ENGINE TESTS

- 75-336 Transferred to section 2-2701.
- 75-337 Transferred to section 2-2702.
- 75-338 Transferred to section 2-2703.
- 75-339 Transferred to section 2-2704.
- 75-340 Transferred to section 2-2705.
- 75-341 Transferred to section 2-2706.
- 75-342 Transferred to section 2-2707.
- 75-343 Transferred to section 2-2708.
- 75-344 Transferred to section 2-2709.
- 75-345 Transferred to section 2-2710.
- 75-346 Transferred to section 2-2711.
- 75-347 Transferred to section 2-2712.

(d) INTERSTATE MOTOR CARRIERS

- 75-348 Repealed. Laws 2009, LB 331, § 28.
- 75-349 Repealed. Laws 2009, LB 331, § 28.
- 75-350 Repealed. Laws 2009, LB 331, § 28.
- 75-351 Repealed. Laws 2009, LB 331, § 28.
- 75-352 Repealed. Laws 2007, LB 358, § 19.
- 75-353 Repealed. Laws 2009, LB 331, § 28.
- 75-354 Repealed. Laws 2009, LB 331, § 28.
- 75-355 Repealed. Laws 2009, LB 331, § 28.
- 75-356 Repealed. Laws 1991, LB 337, § 12.
- 75-357 Repealed. Laws 1991, LB 337, § 12.
- 75-358 Repealed. Laws 2009, LB 331, § 28.

(e) SAFETY REGULATIONS

- 75-359 Repealed. Laws 1987, LB 4, § 1.
- 75-360 Repealed. Laws 1987, LB 4, § 1.
- 75-361 Repealed. Laws 1987, LB 4, § 1.
- 75-362 Federal regulations; terms, defined.

For purposes of sections 75-362 to 75-369.07, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo;

(2) Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(a) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(b) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turnsignals, horn, or windshield wipers which makes them inoperative;

(9) Driver means any person who operates any commercial motor vehicle;

(10) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(11) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(12) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the

United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(13) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-362 to 75-369.07;

(14) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(15) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(16) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(17) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(18) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(19) Gross combination weight rating means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding either the gross vehicle weight rating or gross vehicle weight of the motor vehicle plus the gross vehicle weight rating or gross vehicle weight of the towed unit or units;

(20) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(21) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(22) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(23) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous

Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(24) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(25) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(26) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States:

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States; or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(27) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(28) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(29) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(30) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semi-trailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by design and function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(31) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of one hundred nineteen gallons or less as a receptacle for a liquid;

(b) A maximum net mass of eight hundred eighty-two pounds or less and a maximum capacity of one hundred nineteen gallons or less as a receptacle for a solid; or

(c) A water capacity of one thousand pounds or less as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(32) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. 386.72, 392.5, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(33) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(34) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(35) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-363 to 75-369.07 and this section available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(36) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(37) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(38) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Source: Laws 2006, LB 1007, § 14.

75-363 Federal motor carrier safety regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts,

subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2009, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382 - Controlled Substances And Alcohol Use And Testing;

(b) Part 385 - Safety Fitness Procedures;

(c) Part 386 - Rules Of Practice For Motor Carrier, Broker, Freight Forwarder, And Hazardous Materials Proceedings;

(d) Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers;

(e) Part 390 - Federal Motor Carrier Safety Regulations; General;

(f) Part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors;

(g) Part 392 - Driving Of Commercial Motor Vehicles;

(h) Part 393 - Parts And Accessories Necessary For Safe Operation;

(i) Part 395 - Hours Of Service Of Drivers;

(j) Part 396 - Inspection, Repair, And Maintenance;

(k) Part 397 - Transportation Of Hazardous Materials; Driving And Parking Rules; and

(l) Part 398 - Transportation Of Migrant Workers.

(4) The provisions of subpart E - Physical Qualifications And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and

distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded pursuant to section 75-364. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

- (a) All of part 391;
- (b) Section 395.8 of part 395; and
- (c) Section 396.11 of part 396.

(6) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(7) Part 395 - Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

- (a) More than twelve hours following eight consecutive hours off duty; or
- (b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

- (i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or
- (ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(8) Part 395 - Hours Of Service Of Drivers, as adopted in subsections (3) and (7) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(9) 49 C.F.R. 390.21 - Marking Of Commercial Motor Vehicles shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(10) 49 C.F.R. 392.9a - Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(11) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

Source: Laws 1986, LB 301, § 1; Laws 1987, LB 224, § 23; Laws 1988, LB 884, § 1; Laws 1989, LB 285, § 140; Laws 1990, LB 980, § 29; Laws 1991, LB 854, § 3; Laws 1993, LB 410, § 1; Laws 1994, LB 1061, § 5; Laws 1995, LB 461, § 1; Laws 1996, LB 938, § 4; Laws 1997, LB 722, § 1; Laws 1998, LB 1056, § 8; Laws

1999, LB 161, § 1; Laws 1999, LB 704, § 49; Laws 2000, LB 1361, § 11; Laws 2001, LB 375, § 1; Laws 2002, LB 499, § 5; Laws 2003, LB 480, § 2; Laws 2004, LB 878, § 1; Laws 2005, LB 83, § 1; Laws 2005, LB 274, § 271; Laws 2006, LB 1007, § 13; Laws 2007, LB239, § 8; Laws 2008, LB756, § 28; Laws 2008, LB845, § 1; Laws 2009, LB48, § 1; Laws 2009, LB331, § 15.

Cross References

Violation of section, penalty, see section 75-367.

75-364 Additional federal motor carrier regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2009, are adopted as part of Nebraska law and, except as provided in subsections (2) and (3) of this section, shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(a) Part 107—Hazardous Materials Program Procedures, subpart F—Registration Of Cargo Tank And Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(b) Part 107—Hazardous Materials Program Procedures, subpart G—Registration Of Persons Who Offer Or Transport Hazardous Materials;

(c) Part 171—General Information, Regulations, And Definitions;

(d) Part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

(e) Part 173—Shippers—General Requirements For Shipments And Packagings;

(f) Part 177—Carriage By Public Highway;

(g) Part 178—Specifications For Packagings; and

(h) Part 180—Continuing Qualification And Maintenance Of Packagings.

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases) as defined in 49 C.F.R. 171.8, over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier; and

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 C.F.R. 173.24, 173.24a, and 173.24b;

(b) The transportation of an agricultural product to or from a farm, within one hundred fifty miles of the farm, is excepted from the requirements in 49 C.F.R. part 172, subparts G (emergency response information) and H (training), and from the specific packaging requirements of subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted in this section; and

(c) Formulated liquid agricultural products in specification packagings of fifty-eight-gallon capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(3) Exceptions for nonspecification packagings used in intrastate transportation:

(a) Nonspecification cargo tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than three thousand five hundred gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection;

(b) Permanently secured nonbulk tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection; and

(c) Additional requirements: A packaging used pursuant to subdivision (a) or (b) of this subsection must:

(i) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(ii) Be operated in conformance with the requirements of the State of Nebraska;

(iii) Be specifically authorized by state law in effect before July 1, 1998, for use as a packaging for the hazardous material being transported and by 49 C.F.R. 173.24, 173.24a, and 173.24b;

(iv) Be offered for transportation and transported in conformance with all other applicable requirements of the hazardous material regulations;

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant as defined in 49 C.F.R. 171.8; and

(vi) On and after July 1, 2000, for a tank authorized under subdivision (a) or (b) of this subsection, conform to all requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g), in the same manner as required for a United States Department of Transportation specification MC306 cargo tank motor vehicle.

(4) For purposes of this section:

(a) Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3 (Flammable Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous), Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas), Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

(b) Bulk package means a packaging, including a transport vehicle or freight container, in which hazardous materials are loaded with no other intermediate form of containment and which has:

(i) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(ii) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas, pursuant to standards set forth in 49 C.F.R. 173.115;

(c) Farmer means a person engaged in the production or raising of crops, poultry, or livestock; and

(d) Private motor carrier means a person or persons engaged in the transportation of persons or product while in commerce, but not for hire.

Source: Laws 1986, LB 301, § 2; Laws 1987, LB 538, § 1; Laws 1988, LB 884, § 2; Laws 1990, LB 980, § 30; Laws 1991, LB 854, § 4; Laws 1993, LB 410, § 2; Laws 1994, LB 1061, § 6; Laws 1995, LB 461, § 2; Laws 1996, LB 938, § 5; Laws 1997, LB 722, § 2; Laws 1998, LB 1056, § 9; Laws 1999, LB 161, § 2; Laws 2000, LB 1361, § 12; Laws 2001, LB 375, § 2; Laws 2002, LB 499, § 6; Laws 2003, LB 480, § 3; Laws 2004, LB 878, § 2; Laws 2005, LB 83, § 2; Laws 2006, LB 1007, § 15; Laws 2007, LB239, § 9; Laws 2008, LB756, § 29; Laws 2009, LB48, § 2; Laws 2009, LB331, § 16.

75-365 Definitions; applicability; report; requirements.

(1) Definitions contained in the regulations referred to in sections 75-363 and 75-364 shall only apply to such regulations.

(2) When the regulations referred to in sections 75-363 and 75-364 require that any person submit a report to the United States Department of Transporta-

tion or any other federal agency, that person shall also submit a copy of the report to the Nebraska State Patrol.

Source: Laws 1986, LB 301, § 3.

75-366 Enforcement powers.

For the purpose of enforcing Chapter 75, article 3, any officer of the carrier enforcement division of the Nebraska State Patrol or any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any carrier or shipper. The carrier enforcement division shall enforce the provisions of Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services. For the purpose of enforcing sections 75-363 and 75-364, any officer of the carrier enforcement division of the Nebraska State Patrol or any officer of the Nebraska State Patrol shall have the authority of special agents of the Federal Motor Carrier Safety Administration.

Source: Laws 1986, LB 301, § 4; Laws 1987, LB 538, § 2; Laws 1990, LB 980, § 31; Laws 1995, LB 424, § 48; Laws 1996, LB 1218, § 60; Laws 2002, LB 93, § 18; Laws 2003, LB 480, § 4.

75-367 Violations; penalty.

Any person who violates any of the provisions adopted under section 75-363 or 75-364 shall be guilty of a Class III misdemeanor.

Source: Laws 1986, LB 301, § 5; Laws 1994, LB 414, § 79.

75-368 Nebraska State Patrol; carrier enforcement division; adopt rules and regulations; prior rules and regulations; effect.

(1) The Nebraska State Patrol or the carrier enforcement division may adopt and promulgate rules and regulations as are necessary to carry out and enforce sections 75-362 to 75-369.07.

(2) The rules and regulations utilized by the Public Service Commission to administer any function or duty transferred to the Division of Motor Carrier Services on January 1, 1997, shall be administered as if adopted by the Division of Motor Carrier Services and shall remain effective until repealed, amended, modified, or reenacted by the Division of Motor Carrier Services.

Source: Laws 1986, LB 301, § 6; Laws 1996, LB 1218, § 61; Laws 2003, LB 480, § 5; Laws 2006, LB 1007, § 16.

75-369 Nebraska State Patrol; provide declaration of safety regulations; distribution; acknowledgment of applicant.

The Nebraska State Patrol shall provide each county treasurer and the Department of Motor Vehicles with copies of a declaration which states that the motor carrier safety regulations in sections 75-362 to 75-369.07 have been enacted into state law. The declaration shall be distributed by the county treasurers and the Department of Motor Vehicles to each applicant for registration of commercial motor vehicles subject to sections 75-363 and 75-364. The applicant shall sign the registration form to acknowledge that the applicant has read the declaration and is aware that the motor carrier safety regulations are part of state law. Nothing in this section shall be construed to impose any

liability upon any county treasurer or the Department of Motor Vehicles or any employee thereof as a result of any act or failure to act under this section.

Source: Laws 1986, LB 301, § 7; Laws 2003, LB 480, § 6; Laws 2006, LB 1007, § 17.

75-369.01 Nebraska State Patrol carrier enforcement division; safety audit or compliance review.

Any officer of the Nebraska State Patrol carrier enforcement division may conduct a safety audit or compliance review of a motor carrier.

Source: Laws 1994, LB 358, § 1; Laws 2006, LB 1007, § 18.

75-369.02 Safety rating; factors; notice.

Following a compliance review of an intrastate motor carrier by an officer of the Nebraska State Patrol carrier enforcement division, the Nebraska State Patrol shall issue a safety rating of that motor carrier. The safety rating shall be based upon factors prescribed in 49 C.F.R. part 385 – Safety Fitness Procedures adopted in section 75-363, portions of 49 C.F.R. chapter I adopted in section 75-364, and insurance requirements for intrastate motor carriers set forth by the Public Service Commission pursuant to section 75-307. The motor carrier shall be notified by the Nebraska State Patrol of such safety rating by certified or registered mail.

Source: Laws 1994, LB 358, § 2; Laws 2006, LB 1007, § 19.

75-369.03 Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(1) The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-392 to 75-399 or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. part 390.5 as adopted in section 75-363.

(2) The superintendent shall issue an order imposing a civil penalty in an amount not to exceed ten thousand dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subsection (3) of section 60-4,162 based upon a conviction of such a violation.

(3) The superintendent shall issue an order imposing a civil penalty against a driver operating a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license, in violation of an out-of-service order. The civil penalty shall be in an amount not less than two thousand five hundred dollars but not more than five thousand dollars for a first violation and not less than five thousand one dollars but not more than seven thousand five hundred dollars for a second or subsequent violation.

(4) The superintendent shall issue an order imposing a civil penalty against a motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license, in violation of an out-of-service order.

The civil penalty shall be not less than two thousand seven hundred fifty dollars but not more than twenty-five thousand dollars per violation.

(5) Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce of section 75-307, 75-363, or 75-364 or sections 75-392 to 75-399 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Source: Laws 1994, LB 358, § 3; Laws 1996, LB 1218, § 62; Laws 2002, LB 499, § 7; Laws 2006, LB 1007, § 20; Laws 2007, LB358, § 14; Laws 2008, LB845, § 2; Laws 2009, LB331, § 17.

An "interstate motor carrier" within the meaning of this section is a carrier subject to federal jurisdiction pursuant to the federal motor carrier safety regulations, as delimited by 49 U.S.C. 13501 et seq., and an "intrastate motor carrier" is a carrier not subject to that federal jurisdiction. *Caspers Constr. Co. v. Nebraska State Patrol*, 270 Neb. 205, 700 N.W.2d 587 (2005).

75-369.04 Civil penalty; order; contents; collection.

Any order issued by the Superintendent of Law Enforcement and Public Safety under section 75-369.03 shall include at least (1) the date of the order, (2) a description of each act or omission upon which the violation is based, (3) the manner in which and the place where the respondent may pay the civil penalty or request a hearing within fifteen business days after receipt of the order, and (4) a notice that if the respondent fails to respond to the order within fifteen business days after receipt of the order, the order shall automatically become final and the civil penalty may be collected by civil action in the district court of Lancaster County.

Source: Laws 1994, LB 358, § 4.

75-369.05 Notice or order; service.

Any notice or order provided for in sections 75-369.01 to 75-369.07 shall be personally served on the respondent or on the person authorized by the respondent to receive notices and orders or shall be sent by registered mail or certified mail, return receipt requested, to the last-known address of the respondent or the person authorized to receive such notices and orders. A copy of the notice or order shall be filed in the records of the carrier enforcement division of the Nebraska State Patrol.

Source: Laws 1994, LB 358, § 5.

75-369.06 Unpaid civil penalties; collection.

Civil penalties assessed pursuant to section 75-369.03 and unpaid shall constitute a debt to the State of Nebraska which may be collected in the form of a lien foreclosure or recovered in a proper form of action in the name of the State of Nebraska in the district court of Lancaster County. Any civil penalty collected shall be remitted on a monthly basis to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 358, § 6; Laws 2008, LB845, § 3.

75-369.07 Summary order; hearing; procedure; final order; appeal.

(1) If no hearing is requested and none is ordered by the Superintendent of Law Enforcement and Public Safety, the summary order shall automatically become a final order after fifteen business days after receipt of the order pursuant to section 75-369.05.

(2) If a hearing is requested or ordered, the superintendent shall appoint as hearing officer an attorney licensed to practice law in Nebraska. Every hearing pursuant to sections 75-369.01 to 75-369.07 shall be conducted in accordance with the Administrative Procedure Act.

(3) Every hearing in an administrative proceeding under this section shall be public unless the hearing officer grants a request joined in by all the respondents that the hearing be conducted privately.

(4) Upon agreement by all the parties any time before or during the hearing under this section, the hearing officer may compromise, mitigate, or aggravate any civil penalty. In determining the amount of the civil penalty, the hearing officer shall consider the appropriateness of the civil penalty in light of the gravity of the violation and the good faith of such violator in attempting to achieve compliance after notification of the violation.

(5) The hearing officer, within ten days after the conclusion of the hearing, shall make written findings of fact and conclusions of law to the superintendent. Such findings of fact and conclusions of law shall not be binding upon the superintendent.

(6) If a hearing is requested or ordered, the superintendent, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(7) No final order or order after hearing may be returned by the superintendent without (a) appropriate notice to all interested persons, (b) opportunity for hearing to all interested persons, and (c) entry of written findings of fact and conclusions of law. Any order or decision of the superintendent may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 358, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

(f) ENFORCEMENT

75-370 Insurance, bond, certificate, and permit requirements; enforcement; duties.

Enforcement of sections 75-307 and 75-309 shall be carried out by the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol pursuant to the rules and regulations adopted and promulgated by the commission to enforce such sections. Any violation of such sections by any regulated motor carrier, motor carrier, or private carrier shall be referred to the commission for disposition under section 75-156, and the commission may take any other action provided by section 75-133.

Source: Laws 1990, LB 980, § 32; Laws 1994, LB 414, § 80; Laws 1995, LB 424, § 49; Laws 1996, LB 1218, § 63; Laws 2006, LB 1069, § 4; Laws 2007, LB358, § 15.

75-371 Insurance, bond, certificate, and permit requirements; violations; penalty.

Any person, private carrier, common carrier, or contract carrier which operates any motor vehicle in violation of section 75-307 or any rule, regulation, or order of the commission pertaining to such section shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Source: Laws 1990, LB 980, § 33; Laws 1994, LB 414, § 81; Laws 1995, LB 424, § 50; Laws 1996, LB 1218, § 64; Laws 2006, LB 1069, § 5; Laws 2007, LB358, § 16.

(g) INTERSTATE OPERATING AUTHORITY AGREEMENT ACT

75-372 Repealed. Laws 1993, LB 413, § 9.

75-373 Repealed. Laws 1993, LB 413, § 9.

75-374 Repealed. Laws 1993, LB 413, § 9.

75-375 Repealed. Laws 1993, LB 413, § 9.

75-376 Repealed. Laws 1993, LB 413, § 9.

75-377 Repealed. Laws 1993, LB 413, § 9.

75-378 Repealed. Laws 1993, LB 413, § 9.

75-379 Repealed. Laws 1993, LB 413, § 9.

75-380 Repealed. Laws 1993, LB 413, § 9.

(h) RESTRICTIONS ON HOURS ON DUTY

75-381 Repealed. Laws 2006, LB 1007, § 23.

75-382 Repealed. Laws 2006, LB 1007, § 23.

(i) TRANSPORT OF HAZARDOUS MATERIAL

75-383 Repealed. Laws 2006, LB 1069, § 7.

75-384 Repealed. Laws 2006, LB 1069, § 7.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-385 Division of Motor Carrier Services; established; Administrator of Motor Carrier Services; appointment.

The Division of Motor Carrier Services is established within the Department of Motor Vehicles. The Director of Motor Vehicles shall appoint the Administrator of Motor Carrier Services. The administrator shall administer the affairs of the division.

Source: Laws 1996, LB 1218, § 1.

75-386 Division of Motor Carrier Services; duties.

The Division of Motor Carrier Services shall:

- (1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;
- (2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;
- (3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;
- (4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;
- (5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the unified carrier registration plan and agreement pursuant to sections 75-392 to 75-399;
- (6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and
- (7) Carry out such other duties and responsibilities as directed by the Legislature.

Source: Laws 1996, LB 1218, § 2; Laws 2003, LB 563, § 41; Laws 2005, LB 276, § 110; Laws 2005, LB 284, § 4; Laws 2007, LB358, § 17; Laws 2009, LB331, § 18.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.

International Registration Plan Act, see section 60-3,192.

75-387 Repealed. Laws 2002, LB 93, § 27.

75-388 Repealed. Laws 2002, LB 93, § 27.

75-389 Rules and regulations.

The Division of Motor Carrier Services shall adopt and promulgate rules and regulations necessary to carry out its powers and duties.

Source: Laws 1996, LB 1218, § 5.

75-390 Repealed. Laws 2009, LB 331, § 28.

(k) MOTOR CARRIER TRANSPORTATION CONTRACTS**75-391 Motor carrier transportation contracts; exculpatory provisions prohibited.**

(1) A provision, a clause, a covenant, or an agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless or has the effect of indemnifying, defending, or holding harmless the motor carrier transportation contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the motor carrier transportation contract's promisee or any agents, employees, servants, or independent contractors who are directly responsible to the motor carrier transportation contract's promisee, is against the public policy of this state and is unenforceable.

(2) Nothing contained in this section affects a provision, a clause, a covenant, or an agreement in which a motor carrier indemnifies or holds harmless a

motor carrier transportation contract's promisee against liability for damages to the extent that the damages were caused by and resulting from the negligence of the motor carrier or its agents, employees, servants, or independent contractors who are directly responsible to the motor carrier.

(3) As used in this section:

(a) Motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport goods over any public highway in this state, whether in intrastate or interstate commerce;

(b) Motor carrier transportation contract means a contract, agreement, or understanding covering:

(i) The transportation of property for compensation or hire by a motor carrier;

(ii) The entrance on property by a motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or

(iii) A service incidental to activity described in subdivision (i) or (ii) of this subdivision, including, but not limited to, storage of property.

A motor carrier transportation contract does not include provisions of the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or any other provision, clause, covenant, or agreement providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment; and

(c) Promisee means the party to a motor carrier transportation contract who or which is not a motor carrier or, if the promisee is a motor carrier, is not the motor carrier actually doing the transporting.

Source: Laws 2006, LB 1007, § 21.

(I) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-392 Terms, defined.

For purposes of sections 75-392 to 75-399:

(1) Director means the Director of Motor Vehicles;

(2) Division means the Division of Motor Carrier Services of the Department of Motor Vehicles; and

(3) Unified carrier registration plan and agreement means the plan and agreement established and authorized pursuant to 49 U.S.C. 14504, as such section existed on January 1, 2007.

Source: Laws 2007, LB358, § 1.

75-393 Unified carrier registration plan and agreement; director; powers.

The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, 2009, and may file on behalf of this state the plan required by such plan and agreement for enforcement of the act in this state.

Source: Laws 2007, LB358, § 2; Laws 2009, LB331, § 19.

75-394 Registration under unified carrier registration plan and agreement; fees; authorization to accept registration.

(1) No foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder shall operate any motor vehicle on a highway of this state or in interstate commerce without first being registered in this state or another jurisdiction pursuant to the unified carrier registration plan and agreement and having paid all fees required under the unified carrier registration plan and agreement for such registration. A motor carrier, private carrier, leasing company, broker, or freight forwarder with its principal place of business in this state shall register in this state with and pay its required registration fees to the division. The division shall remit the fees to the State Treasurer for credit to the General Fund.

(2) The division may accept the registration of and fees required from a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder that maintains an office in this state but does not have its principal place of business in the United States or that maintains an office in this state but has its principal place of business in another jurisdiction that does not participate in the unified carrier registration plan and agreement. The division shall remit the fees to the State Treasurer for credit to the General Fund.

Source: Laws 2007, LB358, § 3; Laws 2009, LB331, § 20.

75-395 Repealed. Laws 2009, LB 331, § 28.**75-396 Rules and regulations.**

The director may adopt and promulgate rules and regulations to carry out the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 5; Laws 2009, LB331, § 21.

75-397 Forms and electronic systems to allow filings.

The director may prescribe the appropriate forms and implement the appropriate electronic systems to allow filings with the division pursuant to the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 6; Laws 2009, LB331, § 22.

75-398 Violations; penalty.

Any foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder operating any motor vehicle in violation of sections 75-392 to 75-399, any rule or regulation adopted and promulgated pursuant to such sections, or any order of the division issued pursuant to such sections is guilty of a Class IV misdemeanor and shall also be subject to section 75-369.03. Each day of the violation constitutes a separate offense.

Source: Laws 2007, LB358, § 7; Laws 2009, LB331, § 23.

75-399 Sections not applicable to intrastate commerce.

Sections 75-392 to 75-399 do not apply to a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder, includ-

ing a transporter of waste or recyclable materials, engaged exclusively in intrastate commerce.

Source: Laws 2007, LB358, § 8.

ARTICLE 4 RAIL CARRIERS

Section	
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75-433.	Repealed. Laws 1994, LB 414, § 137.
75-434.	Repealed. Laws 1994, LB 414, § 137.
75-435.	Repealed. Laws 1994, LB 414, § 137.
75-436.	Repealed. Laws 1994, LB 414, § 137.
75-437.	Repealed. Laws 1994, LB 414, § 137.
75-438.	Repealed. Laws 1994, LB 414, § 137.
75-439.	Repealed. Laws 1994, LB 414, § 137.
75-440.	Repealed. Laws 1994, LB 414, § 137.

75-401 Public Service Commission; jurisdiction; railroad safety; enforcement.

The commission shall exercise jurisdiction over the service, facilities, and equipment of all railroad carriers in this state. This jurisdiction shall extend and apply to the general public, as well as those having business relations with the railroad carrier. Sections 75-401 to 75-430 shall not be construed as giving the commission jurisdiction or control over the relations between any railroad

carrier and its employees, or its employees' order, union, or other bargaining agent, either contractual or otherwise, except as provided in sections 75-419 to 75-426.

The commission shall enforce the standards of railroad safety set forth in 49 C.F.R. parts 213, 215, 223, 229, 231, and 232.

Source: Laws 1963, c. 425, art. IV, § 1, p. 1398; Laws 1994, LB 414, § 82.

Powers of Railway Commission hereunder are not limited by statute authorizing enforcement by injunction in absence of specific legislation to that effect. Nebraska State Railway Commission v. Chicago & N.W. Ry. Co., 187 Neb. 369, 191 N.W.2d 438 (1971).

75-401.01 Railroads; discontinue agency service or close station; hearing.

In all applications before the commission to discontinue agency service or to close a railroad station or the substitution therefor of other methods of transacting business with patrons of the carrier, which applications have been protested, the commission shall conduct a hearing within the city or village served by the station sought to be affected at a suitable place meeting the convenience of the public to appear at such hearing or at the county seat of the county in which the station sought to be affected is located. If more than one city or village is included in the application, the hearing shall be held at as centrally located a meeting place as practicable to the cities or villages involved or at the county seat of the most centrally located city or village involved. If the stations involved are situated in more than one county and when the stations involved are more than thirty miles from the point where the hearing is initially held, a hearing shall be held in the seat of each such county unless waived by the affected protestants. When more than one hearing is required under this section, the commission shall designate the first hearing for the taking of testimony of the applicant and such evidence as any protestant may wish to offer. Subsequent hearings shall be for the purpose of taking the testimony of other protestants.

Source: Laws 1967, c. 472, § 1, p. 1467; Laws 1994, LB 414, § 83.

75-402 Terms, defined.

As used in sections 75-401 to 75-430, and in all rules and regulations prescribed by the commission, unless the context otherwise requires:

- (1) Railroad carrier shall mean any common carrier engaged in the carrying of freight or passengers over any line of railroad, or part thereof, within the State of Nebraska; and
- (2) Railroad shall mean any line of railroad track, or part thereof, located within the State of Nebraska.

Source: Laws 1963, c. 425, art. IV, § 2, p. 1398; Laws 1994, LB 414, § 84.

75-403 Railroads; violation of orders of commission; civil liability; defenses precluded.

Any railroad carrier shall be liable for any damage or injury that shall be caused or contributed to by a violation of any commission order, issued after due notice and hearing, relating to the efficiency, sufficiency, and safety of the service, facilities, or equipment furnished by such carrier. In such case, the

railroad carrier shall not be entitled to the defenses of assumption of risk or contributory negligence.

Source: Laws 1963, c. 425, art. IV, § 3, p. 1399; Laws 1965, c. 446, § 5, p. 1418.

75-404 Repealed. Laws 1994, LB 414, § 137.

75-405 Reciprocal demurrage; annual agreement.

Every railroad carrier which operates lines within this state shall make an annual agreement with each shipper that receives or sends ten or more cars annually which provides the terms under which reciprocal demurrage charges shall be made on the part of the railroad carrier or shipper. Such terms shall be equal for all shippers. Any agreement made under this section shall control the relation between the parties thereto, the provisions of sections 75-401 to 75-430 to the contrary notwithstanding. Monthly settlements may be entered into, but all credits due a shipper for the current month shall be carried to the shipper's credit for the succeeding month, except that at the termination of the agreement, any credits due the shipper shall be eliminated.

Source: Laws 1963, c. 425, art. IV, § 5, p. 1399; Laws 1994, LB 414, § 85.

75-406 Repealed. Laws 1979, LB 255, § 1.

75-407 Repealed. Laws 1979, LB 255, § 1.

75-408 Repealed. Laws 1979, LB 255, § 1.

75-409 Repealed. Laws 1994, LB 414, § 137.

75-410 Transferred to section 74-1332.

75-411 Transferred to section 74-1333.

75-412 Transferred to section 74-1334.

75-413 Transferred to section 74-1335.

75-414 Transferred to section 74-1336.

75-415 Transferred to section 74-1337.

75-416 Transferred to section 74-1338.

75-417 Transferred to section 74-1339.

75-418 Transferred to section 74-1340.

75-419 Employees; hours of labor.

It shall be unlawful for any railroad carrier, its officers or agents, to require or permit any employee to be or remain on duty for a longer period than sixteen consecutive hours. For the purposes of this section, employees shall mean any person actually engaged in or connected with the movements of any train. Whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such employee, who has been on duty sixteen

hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty; *Provided*, no operator, train dispatcher, or other employee who by the use of the telegraph, or telephone, dispatches reports, or transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated day and night nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in cases of emergency, when the employees named in this proviso may be permitted to be or remain on duty for four additional hours in a twenty-four-hour period and not to exceed three days in any one week. The commission may, after full hearing in a particular case, and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this section.

Source: Laws 1963, c. 425, art. IV, § 19, p. 1405.

75-420 Employees; hours of labor; violation; penalty.

Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be or remain on duty in violation of section 75-419, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation thereof, to be recovered in a suit or suits to be brought by the county attorney of the county in the state having jurisdiction in the locality where the violation shall have been committed. It shall be the duty of such county attorney to bring such suits upon satisfactory information being lodged with him, but no such suit shall be brought after the expiration of one year from the date of such violations as may come to his knowledge. In all prosecutions under this section the common carrier shall be deemed to have had knowledge of all acts of its officers and agents. The provisions of sections 75-419 and 75-420 shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officers and agents in charge of such employee at the time such employee left a terminal, and which could not have been foreseen; nor to the crews of wrecking or relief trains.

Source: Laws 1963, c. 425, art. IV, § 20, p. 1405.

75-421 Repealed. Laws 1994, LB 414, § 137.

75-422 Repealed. Laws 1965, c. 449, § 3.

75-423 Repealed. Laws 1965, c. 449, § 3.

75-424 Repealed. Laws 1994, LB 414, § 137.

75-425 Repealed. Laws 1994, LB 414, § 137.

75-426 Accidents; reports; filing; investigation; violation; penalty.

Upon the occurrence of any serious personal injury or loss of life to persons other than railroad employees resulting from an accident at a railroad crossing or from an accident involving an explosion, fire, or release of noxious fumes occurring upon any railroad within the State of Nebraska, the corporation which operates the railroad upon which the accident occurred shall report such

accident in writing or by telephone to the commission within twenty-four hours of the time such accident occurred. The commission shall promptly investigate any such accident and a report shall be made a part of the commission's official files. The corporation which operates the railroad shall also furnish to the commission a copy of the same report that it is required to furnish to the Federal Railroad Administration. Neither of such reports shall be evidence or referred to in any case in any court. Any railroad carrier violating any of the provisions of this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1963, c. 425, art. IV, § 26, p. 1408; Laws 1980, LB 203, § 1.

75-427 Transferred to section 74-1331.

75-428 Intersections; transfer facilities; duty to provide; violation; penalty.

Each owner of a railroad may cross, intersect, join, and unite its railroad with any other railroad at any point on its route and upon the grounds of the owner of such other railroad with the necessary turnouts, sidings, and switches and other conveniences in furtherance of the objects of its connection. Each owner of a railroad which is intersected by any new railroad shall unite with the owners of such new railroad to form such intersections and connections and grant the facilities specified in this section. If the two owners cannot agree upon the amount of compensation to be made therefor or the points and manner of such crossings and connections, they shall be ascertained and determined by the commission.

All owners of railroads in this state, at all points of connection, intersection, or crossing at grade of different railroads, where it is practicable, shall provide reasonable, ample, and equal facilities by track connection, passenger platforms, and otherwise, for transferring cars, passengers, and property between their respective roads without unreasonable delay. At any place where the tracks of the two owners are within five hundred feet apart, whether on the same grade or not, when it is practicable and deemed reasonably necessary, the commission, upon application of any interested person, may require such track connection. No owner shall discriminate in its rates or charges between such connecting lines or on freight coming over them, but no such owner shall be required to furnish to another owner its tracks, equipment, or terminal facilities without reasonable compensation. Each of the connecting lines shall pay its proportionate share for the building and maintenance of such track and switches as may be necessary to furnish the transfer facilities required by this section. In case they cannot agree on the amount which each line shall pay, the amount shall, upon application by either party, be determined and adjusted by the commission. When the commission has refused to require track connection as requested by the applicant, if the applicant agrees in writing to pay the cost of making and maintaining the track connection and offers adequate security, the commission shall order such track connection to be made by such owners whether the commission deems the track connection practicable or reasonably necessary or not. The railroad tracks, at the point where the connection is to be made, shall run within one mile of the corporate limits of any city or village.

Any owner of a railroad who fails or neglects to comply with the order within the time fixed shall be guilty of a Class II misdemeanor.

Source: Laws 1963, c. 425, art. IV, § 28, p. 1408; Laws 1977, LB 39, § 202; Laws 1994, LB 414, § 94.

75-429 Switch stand lights and signals; operation; violation; penalty.

Each operator of any railroad in this state shall equip with proper lights all switch stands to each switch leading from all main tracks of such road on which trains are generally operated at night except lines fully equipped with automatic block signals. Lights or other signals may be ordered by the commission to be installed on switch stands to other switches, including crossover switches and lead track switches in yards adjacent to main tracks, when they are found reasonably necessary to safe operation after hearing held upon complaint or upon the commission's own motion. The lights upon such switch stands shall be in good condition constantly and shall be lighted and kept burning between sundown and sunrise and at such other times when, by reason of excessively foggy weather, the condition of such lights or signals would render operations unsafe both for the employees of such railroad and for the general public. Signals with reflex lenses may be substituted for lighted lamps under regulations prescribed by the commission and subject to the jurisdiction of the commission to order the removal of them, after complaint and hearing, if the signals with reflex lenses are found to be unsafe.

Any operator of a railroad in this state who violates any of the provisions of this section or who permits any such violation on the part of any employee shall be guilty of a Class V misdemeanor.

Source: Laws 1963, c. 425, art. IV, § 29, p. 1410; Laws 1977, LB 39, § 203; Laws 1994, LB 414, § 95.

75-430 Railroad signals; interference with view; authority of commission.

It shall be unlawful to locate, maintain, or allow to remain any light at any place within this state in such a place or manner that the light interferes with the view of any railroad signal to an extent which causes danger in the operation of trains.

Whenever any light has been located, maintained, or allowed to remain in such a place or manner that it interferes with the view of any railroad signal to an extent which causes danger in the operation of trains, the commission shall, upon its own motion or upon the complaint of an affected owner of a railroad or other interested party, set the complaint for hearing and issue a formal order to enforce compliance with this section if it finds that the light does interfere to such an extent.

Source: Laws 1963, c. 425, art. IV, § 30, p. 1411; Laws 1994, LB 414, § 96.

75-431 Repealed. Laws 1994, LB 414, § 137.

75-432 Repealed. Laws 1994, LB 414, § 137.

75-433 Repealed. Laws 1994, LB 414, § 137.

75-434 Repealed. Laws 1994, LB 414, § 137.

75-435 Repealed. Laws 1994, LB 414, § 137.

75-436 Repealed. Laws 1994, LB 414, § 137.

75-437 Repealed. Laws 1994, LB 414, § 137.

75-438 Repealed. Laws 1994, LB 414, § 137.

75-439 Repealed. Laws 1994, LB 414, § 137.

75-440 Repealed. Laws 1994, LB 414, § 137.

**ARTICLE 5
PIPELINE CARRIERS**

Section

- 75-501. Common carrier, declaration; commission jurisdiction; rules and regulations; validity.
 75-501.01. Repealed. Laws 1994, LB 414, § 137.
 75-502. Pipeline carriers; powers.
 75-503. Pipeline carriers; tapping pipeline; commission may authorize.

75-501 Common carrier, declaration; commission jurisdiction; rules and regulations; validity.

Any person who transports, transmits, conveys, or stores liquid or gas by pipeline for hire in Nebraska intrastate commerce shall be a common carrier subject to commission regulation. The commission shall adopt, promulgate, and enforce reasonable rules and regulations establishing minimum state safety standards for the design, construction, maintenance, and operation of pipelines which transport liquefied petroleum gas or anhydrous ammonia in intrastate commerce by common carriers. Such rules and regulations, and the interpretations thereof, shall conform with the rules, regulations, and interpretations of the appropriate federal agencies with authority to regulate pipeline common carriers in interstate commerce. Any person may determine the validity of any such rule or regulation in such manner as provided by law.

Source: Laws 1963, c. 425, art. V, § 1, p. 1416; Laws 1969, c. 608, § 1, p. 2474; Laws 1994, LB 414, § 97.

75-501.01 Repealed. Laws 1994, LB 414, § 137.

75-502 Pipeline carriers; powers.

Pipeline carriers may store, transport, or convey any liquid or gas, or the products thereof, and make reasonable charges therefor, may lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, and may use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain them.

Source: Laws 1963, c. 425, art. V, § 2, p. 1416; Laws 1994, LB 414, § 98.

75-503 Pipeline carriers; tapping pipeline; commission may authorize.

Upon written application of any person who operates or proposes to operate any refinery in this state, after hearing, if in the judgment of the commission the public good shall require, the commission shall enter an order authorizing the tapping of any pipeline at or near any point where the refinery is established or is proposed to be established. In the order, the commission shall

provide for the reimbursement of the owner of the pipeline for any expense incident to the tapping thereof for the purposes provided in this section.

Source: Laws 1963, c. 425, art. V, § 3, p. 1417; Laws 1994, LB 414, § 99.

ARTICLE 6

TELEGRAPHS AND TELEPHONES

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236 et seq.
Telecommunications, generally, see Chapter 86.

Section

75-601.	Repealed. Laws 1994, LB 414, § 137.
75-602.	Repealed. Laws 1994, LB 414, § 137.
75-603.	Repealed. Laws 1994, LB 414, § 137.
75-604.	Transferred to section 86-128.
75-605.	Transferred to section 86-130.
75-606.	Transferred to section 86-161.
75-607.	Transferred to section 86-131.
75-608.	Transferred to section 86-132.
75-609.	Transferred to section 86-140.
75-609.01.	Transferred to section 86-141.
75-610.	Transferred to section 86-162.
75-611.	Transferred to section 86-133.
75-612.	Transferred to section 86-135.
75-613.	Transferred to section 86-136.
75-614.	Transferred to section 86-137.
75-615.	Transferred to section 86-138.
75-616.	Transferred to section 86-156.
75-617.	Transferred to section 86-160.

75-601 Repealed. Laws 1994, LB 414, § 137.

75-602 Repealed. Laws 1994, LB 414, § 137.

75-603 Repealed. Laws 1994, LB 414, § 137.

75-604 Transferred to section 86-128.

75-605 Transferred to section 86-130.

75-606 Transferred to section 86-161.

75-607 Transferred to section 86-131.

75-608 Transferred to section 86-132.

75-609 Transferred to section 86-140.

75-609.01 Transferred to section 86-141.

75-610 Transferred to section 86-162.

75-611 Transferred to section 86-133.

75-612 Transferred to section 86-135.

75-613 Transferred to section 86-136.

75-614 Transferred to section 86-137.

75-615 Transferred to section 86-138.

75-616 Transferred to section 86-156.

75-617 Transferred to section 86-160.

ARTICLE 7 TRANSMISSION LINES

Section

- 75-701. Public Service Commission; jurisdiction denied.
- 75-702. Transmission lines; intersections between railroads and highways; jurisdiction of commission.
- 75-703. Intersections between railroads and highways; rules and regulations.
- 75-704. Intersections between railroads and highways; prohibited acts.
- 75-705. Intersections between railroads and highways; crossing; commission may prescribe changes; cost.
- 75-706. Intersections between railroads and highways; crossing of wires; clearance.
- 75-707. Intersections between railroads and highways; crossing of wires; regulation.
- 75-708. Wires; violation; penalty; enforcement.
- 75-709. Electric lines; clearance from other lines.
- 75-710. Electric line; construction or voltage increase; application required, when.
- 75-711. Application to construct line or increase voltage; notice; hearing.
- 75-712. Electric line paralleling or intersecting certain telephone lines; inductive interference; effect.
- 75-713. Construction near airports; application; when.
- 75-714. Construction near airports; application; notice; hearing; waiver; rules and regulations by Director of Aeronautics.
- 75-715. Construction near airports; notice of hearing; to whom; objections.
- 75-716. Department of Aeronautics; file list of airports with commission.
- 75-717. Construction near airports; hearing; order.
- 75-718. Transmission, telephone, or telegraph lines; commission may vacate side of highway, when.
- 75-719. Specified electrical transmission lines; construction requirements; applications; exceptions; line extension; delayed application; procedure.
- 75-720. Proposed construction; electrical lines; application, notice, or hearing; unnecessary; when.
- 75-721. Construction; operation; commission may regulate.
- 75-722. Procedure; appeal; provisions applicable.
- 75-723. Transmission, telephone, and telegraph lines; violations; penalty.
- 75-724. Lines in cities or villages; exempt.

75-701 Public Service Commission; jurisdiction denied.

The commission shall have no jurisdiction over the rates, tolls, rents, and charges of districts organized under sections 70-601 to 70-672.

Source: Laws 1963, c. 425, art. VII, § 1, p. 1422; Laws 1987, LB 28, § 1; Laws 1994, LB 414, § 113.

75-702 Transmission lines; intersections between railroads and highways; jurisdiction of commission.

The commission shall have general supervision over any and all wires for transmitting electric current, or any other wire whatsoever, which crosses under or over any railroad track in this state at public highway crossings.

Source: Laws 1963, c. 425, art. VII, § 2, p. 1422; Laws 1994, LB 414, § 114.

75-703 Intersections between railroads and highways; rules and regulations.

The commission shall adopt and promulgate rules and regulations prescribing the manner in which the wires specified in section 75-702 will cross such railroad tracks in this state at public highway crossings.

Source: Laws 1963, c. 425, art. VII, § 3, p. 1422; Laws 1994, LB 414, § 115.

75-704 Intersections between railroads and highways; prohibited acts.

It shall be unlawful for any person to place any wire across any railroad track in this state at public highway crossings except in such manner as may be prescribed by the commission as provided in section 75-703.

Source: Laws 1963, c. 425, art. VII, § 4, p. 1422; Laws 1994, LB 414, § 116.

75-705 Intersections between railroads and highways; crossing; commission may prescribe changes; cost.

The commission shall, either by personal examination or otherwise, obtain information where the railroad track at public highway crossings is crossed by wires strung over the track contrary to or not in compliance with the rules prescribed by the commission, as contemplated by section 75-703, and shall order such change to be made by the person who owns or operates such wires as it may deem necessary to make the wires comply with such rules and within such reasonable time as it may prescribe. If the owner of the railroad and the other interested person are unable to agree as to which party shall bear the cost of any part of any such changes, the commission shall decide and determine which party shall bear the cost of such changes at public highway crossings.

Source: Laws 1963, c. 425, art. VII, § 5, p. 1422; Laws 1994, LB 414, § 117.

75-706 Intersections between railroads and highways; crossing of wires; clearance.

If any wire crosses over railroad track, in no case shall the commission prescribe a less clearance than twenty-five feet above the rails under the most unfavorable conditions of temperature and loading for all wires except electric wires for trolley cars, and such wires shall not be placed at a height of less than twenty-two feet from the top of the rails.

Source: Laws 1963, c. 425, art. VII, § 6, p. 1423; Laws 1994, LB 414, § 118.

75-707 Intersections between railroads and highways; crossing of wires; regulation.

The commission shall regulate the crossing of wires across railroad rights-of-way at public highways within the state, except that when the crossing entity is a railroad operator, the owners shall attempt to agree upon the terms and conditions of such crossing, and if such agreement cannot be concluded, the commission shall determine the terms and conditions subject to the provisions of sections 75-702 to 75-708.

Source: Laws 1963, c. 425, art. VII, § 7, p. 1423; Laws 1994, LB 414, § 119.

75-708 Wires; violation; penalty; enforcement.

Any person who strings or maintains any wire across any railroad right-of-way in this state at a different height or in a different manner than that prescribed by the commission, shall forfeit and pay to the State of Nebraska the sum of one hundred dollars for each separate period of ten days during which such wire is so maintained, such forfeiture to be recovered in a civil action brought in any court of competent jurisdiction in the name of the State of Nebraska, by the Attorney General, or by the county attorney of the county in which the wire is situated, at the request of the commission. The Attorney General and the respective county attorneys shall bring such action forthwith upon being so requested.

Source: Laws 1963, c. 425, art. VII, § 8, p. 1423; Laws 1994, LB 414, § 120.

75-709 Electric lines; clearance from other lines.

All lines constructed for the transmission of electric current, including telephone and telegraph lines, on the public highways or in other places in this state, except as provided in section 75-724, shall provide sufficient clearance between such lines and existing properly constructed transmission, telephone, and telegraph lines so that they do not interfere with the reasonable safety, operation, and efficiency of existing lines.

Source: Laws 1963, c. 425, art. VII, § 9, p. 1423; Laws 1994, LB 414, § 121.

75-710 Electric line; construction or voltage increase; application required, when.

If the voltage of any electric line described in section 75-709 will exceed fifteen thousand volts and such line will be within one-quarter mile of any existing electrical or communication line of any other person or signal line of any railroad or if the voltage of such electric line will exceed seven hundred volts and such line will be within five hundred feet of the electrical or communication line of any other person or signal line of any railroad, application to construct the line shall be made to the commission, except that no application shall be required for any line which will not exceed fifteen thousand volts, which will not exceed six hundred sixty feet in length, and which will be more than seventy-five feet from any existing electrical or communication line of any other person or signal line of any railroad. The projectors of such line shall file with their application (1) a map or drawing showing the route of the proposed line and any existing electrical or communication lines or railroad signal lines within the respective distances described in this section, which drawing shall identify and give the names of the owners of such other lines, (2) specifications showing the manner of the construction of the proposed line, and (3) such other information as the commission may prescribe. Application shall be made to increase the voltage of an existing line in the manner stated for new construction as provided in this section.

Source: Laws 1963, c. 425, art. VII, § 10, p. 1424; Laws 1980, LB 611, § 1; Laws 1981, LB 485, § 1; Laws 1994, LB 414, § 122.

75-711 Application to construct line or increase voltage; notice; hearing.

Upon application being filed pursuant to section 75-710, the commission shall notify all parties who own or operate electrical or communication lines or railroad signal lines and who are likely to be affected by the construction of the electrical lines to appear at a public hearing at a time and place to be fixed by the commission for hearing of the application. Any such party may appear as provided in the rules of procedure of the commission. The commission shall take into consideration the prior occupancy of the space by existing lines.

Source: Laws 1963, c. 425, art. VII, § 11, p. 1424; Laws 1981, LB 485, § 2; Laws 1994, LB 414, § 123.

75-712 Electric line paralleling or intersecting certain telephone lines; inductive interference; effect.

Notwithstanding any provisions of sections 75-709 to 75-711, whenever electric lines which parallel or intersect one-wire ground return telephone lines are constructed, maintained and operated in accordance with recognized standard engineering specifications, the owner of the electric lines shall not be liable for any inductive electrical interference which the use and operation of the electric lines may cause to the one-wire ground return telephone lines, and no application for authority to construct, operate and maintain such electric lines shall be denied because such lines will create inductive interference in any existing one-wire ground return telephone lines.

Source: Laws 1963, c. 425, art. VII, § 12, p. 1424.

75-713 Construction near airports; application; when.

Any public utility, public power district, or other governmental subdivision or any person in this state, before engaging in the construction or alteration of any overhead wire, cable, or pipeline, the height of which is greater than five feet above the elevation of an airport which has been approved and licensed by the Department of Aeronautics, for each five hundred feet of the distance that such construction is or will be situated from the nearest boundary of such airport, shall file with the commission an original application for permission to enter upon and complete such construction or alteration and shall also file a copy thereof with the Department of Aeronautics. No application need be made when the construction or alteration is within the corporate limits of a city or village and is adjacent to other structures of a permanent character which are of equal or greater height than the construction or alteration proposed. No such overhead wire, cable, or pipeline for which application is required to be filed under sections 75-713 to 75-717 shall be constructed or altered without specific permission granted by order of the commission.

Source: Laws 1963, c. 425, art. VII, § 13, p. 1425; Laws 1980, LB 611, § 2; Laws 1993, LB 121, § 472; Laws 1994, LB 414, § 124.

75-714 Construction near airports; application; notice; hearing; waiver; rules and regulations by Director of Aeronautics.

Upon the filing of an application by any applicant for permission to construct or alter any overhead wire, cable, or pipeline as provided in section 75-713, the commission shall notify the Director of Aeronautics of the filing of the application and the date that it will be heard before the commission, except that if the application is accompanied by approval in writing of the Director of Aeronautics, the hearing may be waived and the permission granted without such

hearing unless otherwise required by law. The Director of Aeronautics shall establish and publish rules and regulations consistent with the rules of the United States Department of Commerce, Division of Aeronautics, and the National Electrical Safety Code covering the requirements that the applicant is required to meet in order to obtain approval for the construction or alteration of any overhead wire, cable, or pipeline which is not exempt from the requirements of section 75-713.

Source: Laws 1963, c. 425, art. VII, § 14, p. 1425; Laws 1994, LB 414, § 125.

75-715 Construction near airports; notice of hearing; to whom; objections.

The Director of Aeronautics shall notify the owners of and persons operating upon any licensed airport affected by any application filed pursuant to section 75-713 and in the notice shall state the time and place of the hearing. The director may appear at the hearing and make objections to the granting of permission for the construction of any overhead wires, cable, or pipelines when, in his or her opinion, the construction would result in danger to the life, limb, or property of any person carried by and operating aircraft in the vicinity of the licensed airport.

Source: Laws 1963, c. 425, art. VII, § 15, p. 1426; Laws 1980, LB 611, § 3; Laws 1994, LB 414, § 126.

A party is precluded from objecting to the order of the Public Service Commission if he fails to act in accordance with the time limits prescribed in the statutes governing the procedure to obtain a reversal, modification, or vacation of the order. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

An order of the Public Service Commission granting authority to the public power district to construct a transmission line becomes final thirty days after the mailing of a copy of the order, and it may not be revoked after that time. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

75-716 Department of Aeronautics; file list of airports with commission.

The Department of Aeronautics shall at all times maintain on file in the office of the commission a list of the airports currently licensed by the department setting forth the legal description of the real property thus used.

Source: Laws 1963, c. 425, art. VII, § 16, p. 1426; Laws 1980, LB 611, § 4; Laws 1994, LB 414, § 127.

75-717 Construction near airports; hearing; order.

The commission shall determine from the evidence presented at the hearing held pursuant to section 75-714 whether the applicant has made adequate allowance for the proper glide angles for the landing of aircraft at the airport concerned and shall determine, in conformity with the provisions of section 75-721, what order should be entered in the premises.

Source: Laws 1963, c. 425, art. VII, § 17, p. 1426; Laws 1994, LB 414, § 128.

75-718 Transmission, telephone, or telegraph lines; commission may vacate side of highway, when.

If a transmission, telephone, or telegraph carrier proposes to construct a line under the provisions of sections 75-709 to 75-724 on a highway both sides of which are occupied by telephone and telegraph lines or transmission lines, the commission shall order one side of the highway vacated, shall designate the side to be vacated, and shall assess the expense thereof to the parties interested

in such proportions as in its judgment would best protect the rights of all parties interested and those of the general public.

Source: Laws 1963, c. 425, art. VII, § 18, p. 1426; Laws 1994, LB 414, § 129.

75-719 Specified electrical transmission lines; construction requirements; applications; exceptions; line extension; delayed application; procedure.

An electrical transmission line for which application is required under section 75-710 will have complied with all the requirements of section 75-710 when built in accordance with the order and specifications of the commission for the construction of a line giving reasonable protection to existing lines. A separate order and set of specifications shall be issued covering the construction of each transmission line or addition thereto. No application need be made to the commission for authority to construct a customer's primary service connection between an existing electric transmission line on either side of a highway and a customer's transformer location. The construction of such a primary service connection shall conform to the requirements of law and the rules and regulations of the commission and shall be used for a customer's service only no part of which shall be along or on a section line, public road, or property owned by another party. A line extension not to exceed one-half mile in length, for which application is required under section 75-710, may be built from an existing electric transmission line prior to obtaining approval of such extension by the commission if all the owners or operators of existing electrical or communication lines, or railroad signal lines located within the respective distances described in section 75-710, and the Director of Aeronautics, if required by sections 75-713 and 75-714, consent to such construction. The construction of such line extension shall conform to the requirements of law and the rules and regulations of the commission. Within thirty days after the construction of such a line extension, an application shall be made for construction of such extension as required in other cases and shall be referred to as a delayed application. All provisions of law relating to electric transmission line applications, notices, hearings, and orders shall apply to such delayed application. Neither the fact that the line extension has been built nor the consent thereto given by owners of other lines shall affect in any way the conclusion or authority of the commission. If it is finally determined that the application should be denied because the line does not comply with law, the owner shall remove the line extension.

Source: Laws 1963, c. 425, art. VII, § 19, p. 1427; Laws 1980, LB 611, § 5; Laws 1981, LB 485, § 3.

75-720 Proposed construction; electrical lines; application, notice, or hearing; unnecessary; when.

Provisions of law requiring filing of applications with the commission and other procedures for proposed construction of any electrical line pursuant to section 75-711 need not be complied with when the electric transmission carrier has given written notice by certified mail, with a copy to the commission by certified mail, of such proposed construction providing full information, including location drawing, electrical characteristics, physical configuration, and length of parallel of and proposed separation from other electrical, communication, or railroad signal lines, to any person who owns or operates

electrical, communication, or railroad signal lines within the respective distances described in section 75-710, and such person has failed to file with such electric transmission carrier, within sixty days of receipt of the notice, a written protest, together with the reasons for objecting to the proposed construction. The sixty-day notice period for protest may be waived by signed agreement between such person and the electric transmission carrier. Receipt of a waiver shall be evidence that the sixty-day notice period is also waived. When the electric transmission carrier proposing the construction is required by section 75-713 to file an application with the commission or wants to receive a commission ruling, it shall file with its application copies of the notices sent by certified mail or signed copies of agreements with any person who owns or operates electrical, communication, or railroad signal lines within the respective distances described in section 75-710 and a signed copy of the agreement of the Director of Aeronautics if required by law, indicating their concurrence in the proposed construction. Upon receipt of such filing, the commission may approve the application to construct and may grant a permit without notice or a public hearing.

Source: Laws 1963, c. 425, art. VII, § 20, p. 1428; Laws 1980, LB 611, § 6; Laws 1981, LB 485, § 4; Laws 1994, LB 414, § 130.

75-721 Construction; operation; commission may regulate.

The commission may prohibit the construction of any line found to be in violation of the terms of section 75-709. After the hearing provided for in section 75-711, the commission shall make such order and prescribe such terms and conditions for the location, construction, and operation of the proposed line as it may deem just and reasonable. It may make such orders in the premises as in its judgment would best protect the rights of all parties interested and those of the general public. It is hereby made unlawful for any person, not specifically exempt, to begin or carry on the construction of any line designed to carry electric current for which application is required under section 75-710 or to increase the voltage of any existing line which would require such application without having first secured authority from the commission as set forth in section 75-710.

Source: Laws 1963, c. 425, art. VII, § 21, p. 1428; Laws 1980, LB 611, § 7; Laws 1993, LB 121, § 473; Laws 1994, LB 414, § 131.

75-722 Procedure; appeal; provisions applicable.

Commission hearings concerning the provisions of sections 75-709 to 75-724 and any appeals therefrom shall be in accordance with the Administrative Procedure Act.

Source: Laws 1963, c. 425, art. VII, § 22, p. 1428; Laws 1994, LB 414, § 132; Laws 2000, LB 1285, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

75-723 Transmission, telephone, and telegraph lines; violations; penalty.

Any person who violates any of the provisions of sections 75-709 to 75-724 shall be guilty of a Class II misdemeanor.

Source: Laws 1963, c. 425, art. VII, § 23, p. 1428; Laws 1977, LB 39, § 206; Laws 1993, LB 121, § 474; Laws 1994, LB 414, § 133.

75-724 Lines in cities or villages; exempt.

The provisions of sections 75-709 to 75-724 shall not apply to any line within the limits of any incorporated city or village.

Source: Laws 1963, c. 425, art. VII, § 24, p. 1429; Laws 1994, LB 414, § 134.

**ARTICLE 8
MISCELLANEOUS**

Section

- 75-801. Prior license, certificate, permit, authorization; remain in force until their expiration; rights of parties not affected.
- 75-802. Transferred to section 25-226.
- 75-803. Repealed. Laws 1987, LB 5, § 1.

75-801 Prior license, certificate, permit, authorization; remain in force until their expiration; rights of parties not affected.

No license, certificate, permit, or other authorization in force on October 19, 1963, shall be invalidated by the passage of sections 75-101 to 75-801, but all such shall remain in force until their expiration under the terms of the law in effect at the time of their original issuance or until their renewal, surrender, suspension, or revocation under the provisions of sections 75-101 to 75-801. No rights, privileges, or immunities vested or accrued by and under prior statutes repealed by sections 75-101 to 75-801, no suits pending, no proceedings pending before the commission, no rights of action conferred, and no duties, restrictions, liabilities, or penalties imposed or required by and under such statutes shall be impaired, diminished, or affected by the repeal thereof.

Source: Laws 1963, c. 425, art. VIII, § 1, p. 1429.

75-802 Transferred to section 25-226.

75-803 Repealed. Laws 1987, LB 5, § 1.

**ARTICLE 9
GRAIN DEALER ACT**

Section

- 75-901. Act, how cited.
- 75-902. Terms, defined.
- 75-903. Grain dealer; licensure; requirements; fee.
- 75-903.01. License; suspension or revocation; procedure.
- 75-903.02. Criminal history record information check; fingerprinting; when.
- 75-904. Grain dealer; receipt requirements.
- 75-905. Recourse to grain dealer's security; when.
- 75-906. Violation of security; commission; powers.
- 75-907. Commission; adopt rules and regulations.
- 75-907.01. Commission; inspection; powers.
- 75-908. Enforcement of act.

Section	
75-909.	Violation; penalty.
75-910.	Civil penalty.

75-901 Act, how cited.

Sections 75-901 to 75-910 shall be known and may be cited as the Grain Dealer Act.

Source: Laws 1985, LB 389, § 3; Laws 1987, LB 507, § 1; Laws 2003, LB 735, § 2.

75-902 Terms, defined.

For purposes of the Grain Dealer Act, unless the context otherwise requires:

- (1) Commission means the Public Service Commission;
- (2) Direct delivery grain has the same meaning as in section 88-526;
- (3) Direct delivery obligation has the same meaning as in section 88-526;
- (4) Grain includes, but is not limited to, all unprocessed beans, whole corn, milo and other sorghum, wheat, rye, barley, oats, millet, safflower seed and processed plant pellets, alfalfa pellets, and any other bulk pelleted agricultural storable commodity, except grain which has been processed or packaged for distribution as seed;
- (5)(a) Grain dealer means any person, partnership, limited liability company, corporation, or association that (i) buys grain from the owner or producer of the grain within this state for purposes of selling such grain, (ii) transports grain into this state for purposes of selling such grain, or (iii) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.
- (b) Grain dealer does not include (i) a custom feeder of livestock or poultry or (ii) a warehouse licensee under the Grain Warehouse Act or a warehouse licensee under the United States Warehouse Act of a warehouse located in Nebraska if the warehouse licensee does not buy, sell, or transport grain other than grain that is received at its licensed warehouse facilities;
- (6) In-store transfer has the same meaning as in section 88-526;
- (7) Post-direct delivery storage position has the same meaning as in section 88-526; and
- (8) Producer means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land.

Source: Laws 1985, LB 389, § 4; Laws 1987, LB 507, § 2; Laws 1996, LB 1123, § 1; Laws 2003, LB 735, § 3; Laws 2005, LB 439, § 1.

Cross References

Grain Warehouse Act, see section 88-525.

75-903 Grain dealer; licensure; requirements; fee.

All grain dealers doing business in this state shall be licensed by the commission. If the applicant is an individual, the application shall include the applicant's social security number. To procure and maintain a license, each grain dealer shall:

(1) Pay an annual fee of sixty dollars which shall be due on or before the date established by the commission for each license and a registration fee not to exceed forty dollars per year for each vehicle used by such licensee to transport grain. Such fees shall be paid to the State Treasurer and credited to the General Fund;

(2) Equip each vehicle used by the licensee for grain transportation with a commercial license plate registered with the Department of Motor Vehicles, except that a licensee who resides in another state shall license such vehicles according to the laws of his or her state of residence;

(3) Affix a grain dealer plate issued by the commission to each vehicle used by the licensee;

(4) File security which may be a bond issued by a corporate surety company and payable to the commission, an irrevocable letter of credit, or a certificate of deposit, subject to the approval of the commission, for the benefit of any producer or owner within this state who files a valid claim arising from a sale to or purchase from a grain dealer. The security shall be in the amount of thirty-five thousand dollars or seven percent of grain purchases or exchanges by the grain dealer in the grain dealer's preceding fiscal year, whichever is greater, not to exceed three hundred thousand dollars. Amounts used in the calculation of the security shall include all direct delivery grain purchases and exchanges valued on the date delivery is made. Amounts used in the calculation of the security shall not include any transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is created by an in-store transfer on the same date as the delivery of the direct delivery grain. Such security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than thirty days after the date of the last shipment of any contract. The liability of the surety shall cover purchases and sales made or arranged by the grain dealer during the time the bond is in force. A grain dealer's bond filed with the commission shall be in continuous force and effect until canceled by the surety. The liability of the surety on any bond required by this section shall not accumulate for each successive license period during which the bond is in force; and

(5) File a reviewed or audited fiscal year-end financial statement prepared either by an independent certified public accountant or by an independent public accountant who holds a permit granted by the Nebraska State Board of Public Accountancy. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. If licensing as a partnership, corporation, or limited liability company, the financial statement shall be prepared in accordance with accounting principles generally accepted. The financial statement shall include: (a) A statement of income showing profit or loss; (b) a balance sheet; (c) a statement of cash flow; (d) a statement of proprietor's capital or retained earnings; (e) the volume and dollar value of the grain purchases the licensee made in Nebraska during the fiscal year; (f) the volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain; and (g) the accountant's certification, assurances, opinions, and comments and the notes with respect to the financial statement. If the volume

and dollar value of the grain purchases is not reported, the grain dealer shall file the maximum grain dealer security as required by the Grain Dealer Act.

If an applicant for a grain dealer license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its reviewed or audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission.

Source: Laws 1985, LB 389, § 5; Laws 1987, LB 507, § 3; Laws 1996, LB 1123, § 2; Laws 1997, LB 752, § 201; Laws 2003, LB 187, § 24; Laws 2003, LB 735, § 4; Laws 2005, LB 52, § 1; Laws 2005, LB 439, § 2.

75-903.01 License; suspension or revocation; procedure.

The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any grain dealer for failure to comply with the requirements of the Grain Dealer Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the grain dealer with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a grain dealer's license pending the determination of the complaint.

Source: Laws 1987, LB 507, § 4.

75-903.02 Criminal history record information check; fingerprinting; when.

For each application filed under section 75-903 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirement under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission's office, and if not, the application shall be returned

to the applicant. The commission shall deny a grain dealer license to any applicant whose primary party has been convicted of a felony financial crime.

Source: Laws 2003, LB 735, § 5; Laws 2005, LB 52, § 2.

75-904 Grain dealer; receipt requirements.

Each grain dealer or his or her agent upon taking possession of grain from a seller shall issue a receipt to the seller or his or her agent. Such receipt shall show: (1) The date and time of day the grain dealer or his or her agent took possession of the seller's grain; (2) the name and address of the buyer; (3) the name of the seller; (4) the name of the agent; (5) the motor vehicle license plate number of any vehicle used by the grain dealer or his or her agent in taking possession of the seller's grain; (6) the kind of grain delivered to the buyer; (7) the approximate quantity of grain delivered to the buyer; and (8) the provisions of section 75-905. The receipt shall be in such form as the Public Service Commission may by rule and regulation require.

Source: Laws 1985, LB 389, § 6.

A buyer's failure to give the seller a proper receipt as required by this section does not render null and void the time requirements of section 75-905 to preserve a claim against the buyer's security pursuant to section 75-906. Fecht v. The Bunnell Co., 243 Neb. 1, 497 N.W.2d 50 (1993).

75-905 Recourse to grain dealer's security; when.

(1) No seller shall have recourse to the grain dealer's security unless the seller:

(a) Demands payment from the grain dealer within thirty days after the date of the last shipment of any contract;

(b) Negotiates any negotiable instrument issued as payment for grain by the grain dealer within thirty days after its issuance; and

(c) Notifies the commission within thirty days after any apparent loss to be covered under the terms of the grain dealer's security.

(2) The grain dealer's security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed thirty days after the date of the last shipment of the contract.

Source: Laws 1985, LB 389, § 7; Laws 1986, LB 1007, § 4; Laws 1996, LB 1123, § 3; Laws 2005, LB 52, § 3; Laws 2005, LB 439, § 3.

Grain sellers claims on grain dealer's bond denied because claims were not filed with the Public Service Commission within 10 days of apparent loss. Fecht v. Quality Processing, 244 Neb. 522, 508 N.W.2d 236 (1993). requirements of this section to preserve a claim against the buyer's security pursuant to section 75-906. Fecht v. The Bunnell Co., 243 Neb. 1, 497 N.W.2d 50 (1993).

A buyer's failure to give the seller a proper receipt as required by section 75-904 does not render null and void the time

75-906 Violation of security; commission; powers.

In the event the commission determines that the conditions of a grain dealer's security have been violated, the commission may demand that such dealer's security be forfeited and may place the proceeds of the security in an interest-bearing trust until it fully determines each claim on the security. The commission shall disburse the security according to each claim determined. If the amount of the security is less than the claims against it, the security shall be distributed pro rata among the claimants. If the security is a bond or letter of credit, the surety or the issuer of such letter shall pay over the security on

demand by the commission. If such issuer of a letter of credit or surety for a grain dealer fails or refuses to pay the security to the commission within ten days, the commission may file a lawsuit in an appropriate court and recover the amount of the security plus interest at the highest legal rate from the date of its demand on the issuer of a letter of credit or surety if the court finds that any claim determined by the commission against the grain dealer's security was valid.

Source: Laws 1985, LB 389, § 8.

A buyer's failure to give the seller a proper receipt as required by section 75-904 does not render null and void the time requirements of section 75-905 to preserve a claim against the

buyer's security pursuant to this section. *Fecht v. The Bunnell Co.*, 243 Neb. 1, 497 N.W.2d 50 (1993).

75-907 Commission; adopt rules and regulations.

The commission may adopt and promulgate all rules and regulations necessary to carry out the Grain Dealer Act.

Source: Laws 1985, LB 389, § 9; Laws 1987, LB 507, § 5.

75-907.01 Commission; inspection; powers.

The property, books, records, accounts, papers, and proceedings of every grain dealer shall, at all times during business hours, be subject to inspection by the commission.

Source: Laws 1987, LB 507, § 6.

75-908 Enforcement of act.

The commission, the carrier enforcement division of the Nebraska State Patrol, the Department of Motor Vehicles, county and municipal law enforcement agencies, and the Attorney General shall enforce the Grain Dealer Act.

Source: Laws 1985, LB 389, § 10; Laws 1987, LB 507, § 7.

75-909 Violation; penalty.

Any person or partner, limited liability company member, officer, or agent of any person who knowingly and intentionally violates any of the provisions of the Grain Dealer Act shall be guilty of a Class IV felony and, in addition, shall be liable for any damages suffered as a result of such violation.

Source: Laws 1985, LB 389, § 11; Laws 1987, LB 507, § 8; Laws 1989, LB 35, § 1; Laws 1993, LB 121, § 475; Laws 1994, LB 884, § 88.

75-910 Civil penalty.

The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Dealer Act.

Source: Laws 2003, LB 735, § 6.

ARTICLE 10

WATER SERVICE REGULATION

Section

75-1001. Act, how cited.

75-1002. Terms, defined.

75-1003. Private water company; rates and charges; regulation by commission.

75-1004. Commission; access to books and records.

§ 75-1001

PUBLIC SERVICE COMMISSION

Section

- 75-1005. Review of rates and charges; petition; hearing; notice.
- 75-1006. Change to rates or charges; notice.
- 75-1007. Change to rates or charges; petition; hearing; notice; procedure.
- 75-1008. Commission; issue order; appeal; denial; effect.
- 75-1009. Rate or charge; yield authorized.
- 75-1010. Rules and regulations.
- 75-1011. Violation; civil penalty.
- 75-1012. Enforcement of act.

75-1001 Act, how cited.

Sections 75-1001 to 75-1012 shall be known and may be cited as the Water Service Regulation Act.

Source: Laws 1994, LB 1002, § 1.

75-1002 Terms, defined.

For purposes of the Water Service Regulation Act:

- (1) Commission shall mean the Public Service Commission; and
- (2) Private water company shall mean a privately owned entity organized for the purpose of furnishing water for domestic use or sewer services or both to the public, cities, villages, special districts, or other political subdivisions but shall not include (a) any entity that furnishes water for domestic use or sewer services to a mobile home park, (b) bottled water suppliers, or (c) any group of property owners who cooperatively own a water well for the sole purpose of providing water for domestic use to their property if each owner has an equal vote in determining the rates charged for the water.

Source: Laws 1994, LB 1002, § 2.

75-1003 Private water company; rates and charges; regulation by commission.

The rates and charges of a private water company shall be regulated by the commission as provided in the Water Service Regulation Act. On or before July 1 each year, each private water company shall file a schedule of its rates and charges with the commission and shall also certify to the commission the number of customers it serves.

Source: Laws 1994, LB 1002, § 3.

75-1004 Commission; access to books and records.

The commission and its agents shall be entitled to access to all books, records, and other information of a private water company which may be necessary for the commission to determine whether it may exercise regulatory authority under the Water Service Regulation Act and to carry out its regulatory authority under the act.

Source: Laws 1994, LB 1002, § 4.

75-1005 Review of rates and charges; petition; hearing; notice.

Within ninety days after July 1, 1994, a petition may be filed with the commission requesting a review of the established rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a

time, place, and date for a public hearing to consider the established rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission. Notice of a hearing shall be given in the same manner as prescribed in subsection (2) of section 75-1007.

Source: Laws 1994, LB 1002, § 5.

75-1006 Change to rates or charges; notice.

A private water company which proposes to change any of its rates or charges shall provide sixty days' notice to its customers and the commission of the proposed rates or charges.

Source: Laws 1994, LB 1002, § 6.

75-1007 Change to rates or charges; petition; hearing; notice; procedure.

(1) Prior to the effective date of the proposed rates or charges, a petition may be filed with the commission requesting a review of the proposed rates and charges. The petition shall be signed by at least twenty-five percent of the private water company's customers. Upon receipt of a petition, the commission shall set a time, place, and date for a public hearing to consider the proposed rates or charges. The hearing shall be held within ninety days after the filing of the petition pursuant to the rules and regulations of the commission.

(2) Notice of a hearing shall be served on customers by the commission at least fifteen days prior to the day of the hearing. Notice of the hearing shall also be published by the commission at least once a week for two successive weeks in a newspaper of general circulation in each service area affected by or to be affected by the proposed rates or charges with the date of last publication at least ten days prior to the hearing.

(3) At least ten days prior to the hearing, the commission shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

(4) Any person may appear at the hearing and present testimony, evidence, exhibits, or other information and may do so in person or by counsel, or both, pursuant to the rules and regulations of the commission.

Source: Laws 1994, LB 1002, § 7.

75-1008 Commission; issue order; appeal; denial; effect.

(1) After the conclusion of any hearing held pursuant to section 75-1005 or 75-1007, the commission shall grant or deny the rates or charges that were considered at the hearing and, if other rates or charges are to be adopted, shall decide on any modifications to the rates or charges that the commission considers necessary based on the evidence adduced at the hearing.

(2) The commission shall issue a written order setting out its findings and reasoning for its decision. The commission's order may be appealed by a party to the proceeding. Such appeal shall be in accordance with section 75-136.

(3) If the hearing is held pursuant to a petition filed pursuant to section 75-1007, if the proposed rates or charges become effective before the decision of the commission, and if the decision denies the proposed rates or charges, then the proposed rates or charges shall be denied retroactively and any amounts collected under the proposed rates or charges shall be refunded by the

private water company. If the hearing is held pursuant to a petition filed pursuant to section 75-1005 and if the decision of the commission modifies the established rates or charges, then the established rates or charges shall be modified as of the date of the decision and shall not be retroactive.

Source: Laws 1994, LB 1002, § 8; Laws 2003, LB 187, § 25.

75-1009 Rate or charge; yield authorized.

(1) No rate or charge determined by the commission pursuant to the Water Service Regulation Act may yield more than a fair return on the fair value of property used and useful in rendering service to the public.

(2) The commission shall not include in the basis for establishment of the rate or charge any amounts spent by the private water company for advertising or other public relations expenses.

Source: Laws 1994, LB 1002, § 9.

75-1010 Rules and regulations.

The commission may adopt and promulgate rules and regulations necessary to carry out the Water Service Regulation Act.

Source: Laws 1994, LB 1002, § 10.

75-1011 Violation; civil penalty.

Notwithstanding section 75-156, any private water company that violates any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission shall be subject to a civil penalty of not less than fifty dollars nor more than one thousand dollars for each act of violation and for each day of violation to be recovered as provided in section 75-1012.

Source: Laws 1994, LB 1002, § 11; Laws 2008, LB755, § 4.

75-1012 Enforcement of act.

(1) Notwithstanding section 75-156, whenever it appears that a private water company has violated, is violating, or is threatening to violate any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission, the commission may institute a civil suit in the district court of Lancaster County for (a) injunctive relief to restrain the private water company from continuing the violation or threat of violation, (b) the assessment and recovery of a civil penalty as provided in section 75-1011, or (c) both injunctive relief and civil penalty.

(2) On application for injunctive relief and a finding that a private water company is violating or threatening to violate any provisions of the act or any rule, regulation, or order of the commission, the district court shall grant the injunctive relief as the facts may warrant.

(3) At the request of the commission, the county attorney shall institute and pursue a suit in the name of the state for injunctive relief or to recover the civil penalty, or both, as authorized in subsection (1) of this section.

Source: Laws 1994, LB 1002, § 12; Laws 2008, LB755, § 5.

REAL PROPERTY

CHAPTER 76
REAL PROPERTY

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ARTICLE 1

UNIFORM PROPERTY ACT

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76-101 Terms, defined.

As used in sections 76-101 to 76-123 and unless a different meaning appears from the context: (a) The term property means one or more interests either legal or equitable, possessory or nonpossessory, present or future, in land, or in things other than land, including choses in action, but excluding powers of appointment, powers of sale and powers of revocation, except when specifically mentioned; (b) the term future interest is applicable equally to property interests in land and in things other than land, and is limited to all varieties of remainders, reversions, executory interests, powers of termination (otherwise known as rights of entry for condition broken), and possibilities of reverter; (c) the term conveyance means an act by which it is intended to create one or more property interests, irrespective of whether the act is effective to create such interests, and irrespective of whether the act is intended to have inter vivos or testamentary operation; (d) the term otherwise effective conveyance means that the conveyance in question satisfies all the requirements of law other than the particular matter dealt with in the section of sections 76-101 to 76-123 in which the term is used; and (e) an intent is effectively manifested when it is manifested by the evidence of intent admissible according to the applicable rules of law with respect to the admissibility of evidence.

Source: Laws 1941, c. 153, § 2, p. 595; C.S.Supp.,1941, § 76-1001; R.S.1943, § 76-101.

Vendee under a land contract on real estate, holding a vested interest thereby, may generally assign such equitable interest to a third party assignee. *Beren Corp. v. Spader*, 198 Neb. 677, 255 N.W.2d 247 (1977).

The provisions of the Uniform Property Act supersede conflicting provisions of the law of property existing prior to the effective date of the act. *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

Joint tenancy in personal property could be created. *Crowell v. Milligan*, 157 Neb. 127, 59 N.W.2d 346 (1953).

In absence of Nebraska decision construing Uniform Property Act, federal district court was required to exercise independent judgment in construing it. *United States v. 12,800 Acres of Land in Hall County*, 69 F.Supp. 767 (D. Neb. 1947).

76-102 Sections; applicability to corporations.

The provisions of sections 76-101 to 76-123 apply to corporations unless the context indicates a more limited applicability.

Source: Laws 1941, c. 153, § 2, p. 595; C.S.Supp.,1941, § 76-1002; R.S.1943, § 76-102.

76-103 Sections; property to which applicable.

Any possessory or future interest, power of appointment or of revocation, which can be created in this state with regard to land, can also be created with regard to anything other than land, including choses in action.

Source: Laws 1941, c. 153, § 3, p. 595; C.S.Supp.,1941, § 76-1003; R.S.1943, § 76-103.

76-104 Interest transferred by effective conveyance; fee simple; special words unnecessary.

An otherwise effective conveyance of property transfers the entire interest which the conveyor has and has the power to convey, unless an intent to transfer a less interest is effectively manifested. No words of inheritance or other special words are necessary to transfer a fee simple.

Source: Laws 1941, c. 153, § 4, p. 595; C.S.Supp.,1941, § 76-1004; R.S.1943, § 76-104.

The omission of words of inheritance is of no consequence when determining if a document conveys an easement appurtenant by reason of this section. *Spilker v. First Nat. Bank & Trust Co.*, 211 Neb. 540, 319 N.W.2d 429 (1982).

Purpose clause, of and by itself, does not operate to limit the estate granted by a deed. *Sun Oil Co. v. Emery*, 183 Neb. 793, 164 N.W.2d 644 (1971).

Conveyance by deed to city for use and benefit of citizens of the city operated to convey fee simple title. *City of Gering v. Jones*, 175 Neb. 626, 122 N.W.2d 503 (1963).

Deed to State of Nebraska for highway purposes conveyed all interest of grantors. *Rumbel v. Ress*, 166 Neb. 839, 91 N.W.2d 36 (1958).

Act was enacted to modify and eliminate common law technicalities and exactions. *Gettel v. Hester*, 165 Neb. 573, 86 N.W.2d 613 (1957).

Deed executed by mortgagee in possession passed all interest of grantor in mortgage indebtedness. *Campbell v. Ohio National Life Ins. Co.*, 161 Neb. 653, 74 N.W.2d 546 (1956).

76-105 Powers of appointment, sale, and revocation; effect.

An otherwise effective exercise of power of appointment, a power of sale or a power of revocation, whether inter vivos or by a testamentary disposition, transfers or revokes the entire interest which the holder thereof has the power to transfer or to revoke unless an intent to transfer or to revoke a less interest is effectively manifested.

Source: Laws 1941, c. 153, § 5, p. 595; C.S.Supp.,1941, § 76-1005; R.S.1943, § 76-105.

76-106 Reservation of property; effect.

An otherwise effective reservation of property by the conveyor reserves the interest the conveyor had prior to the conveyance unless an intent to reserve a different interest is effectively manifested.

Source: Laws 1941, c. 153, § 6, p. 595; C.S.Supp.,1941, § 76-1006; R.S.1943, § 76-106.

Assignment of a vendee's vested equitable interest in land, acquired by land contract, creates a privity of estate between the assignee and the original vendor, but not a privity of contract between them. *Beren Corp. v. Spader*, 198 Neb. 677, 255 N.W.2d 247 (1977).

Extent of reservation of mineral rights was obscure and ambiguous, and required construction of deed. *Gettel v. Hester*, 165 Neb. 573, 86 N.W.2d 613 (1957).

Interest in oil and gas rights was reserved. *Elrod v. Heirs of Gifford*, 156 Neb. 269, 55 N.W.2d 673 (1952).

76-107 Future interest; conveyance authorized; exceptions; limitations.

(1) The conveyance of an existing future interest, whether legal or equitable, is not ineffective on the sole ground that the interest so conveyed is future or contingent, except that possibilities of reverter or rights of reentry for breach of condition subsequent shall not be alienable or devisable.

(2) Neither possibilities of reverter nor rights of reentry for breach of condition subsequent relating to any property, whether created on, before, or after July 9, 1988, when the condition has not been broken, shall be valid for a longer period than thirty years from the date of the creation of the condition or possibility of reverter or right of reentry. If such possibility of reverter or right of reentry is created to endure for a longer period than thirty years, it shall be valid for thirty years. This subsection shall not apply to personal property which has been conveyed to a library or museum for the purpose of public display.

(3) Any cause of action arising from any possibility of reverter or right of reentry for breach of condition subsequent which existed prior to July 9, 1988, shall be commenced within a period of one year following July 9, 1988.

Source: Laws 1941, c. 153, § 7, p. 596; C.S.Supp.,1941, § 76-1007; R.S.1943, § 76-107; Laws 1961, c. 367, § 1, p. 1139; Laws 1988, LB 657, § 1.

The plain language of this section shows that conditions subsequent expire either upon the attempted transfer of the possibilities of reverter or rights of reentry, or 30 years after the creation of the condition subsequent. *State v. Union Pacific RR. Co.*, 241 Neb. 675, 490 N.W.2d 461 (1992).

Creation of contingent future interests is recognized. *Ellingrod v. Trombla*, 168 Neb. 264, 95 N.W.2d 635 (1959).

76-108 Future interest; subject to claims of creditors.

The subjection to the claims of creditors of a future interest, whether legal or equitable, is not prevented or avoided on the sole ground that such interest is future or contingent.

Source: Laws 1941, c. 153, § 8, p. 596; C.S.Supp.,1941, § 76-1008; R.S.1943, § 76-108.

76-109 Property not in possession of conveyer; conveyance effective.

Any act which would be effective as a conveyance inter vivos or as a mortgage or as a testamentary disposition of property when the land or thing other than land is in the possession of the conveyer, is effective as a conveyance of the conveyer's interest therein, when the land or thing other than land is out of the conveyer's possession whether adversely held or not.

Source: Laws 1941, c. 153, § 9, p. 596; C.S.Supp.,1941, § 76-1009; R.S.1943, § 76-109.

76-110 Fee simple conditional and fee tail; abolished; effect of use.

The creation of fees simple conditional as they existed under the law of England prior to the statute de donis is not permitted. The creation of fees tail is not permitted. The use in an otherwise effective conveyance of property, of language appropriate to create such a fee simple conditional or a fee tail, creates a fee simple in the person who would have taken a fee simple conditional or a fee tail. Any future interest limited upon such an interest is a limitation upon the fee simple and its validity is determined accordingly. Nothing herein contained shall affect the operation of sections 76-111 to 76-113.

Source: Laws 1941, c. 153, § 10, p. 596; C.S.Supp.,1941, § 76-1010; R.S.1943, § 76-110.

Where an estate in fee simple is devised, an attempt by the testator to prevent alienation by attaching conditions subsequent is ineffective and void for the reason that conditions are repug-

nant to the estate created. *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

The operation of this section must be read and considered with other sections of the Uniform Property Act. *Hauschild v. Hauschild*, 176 Neb. 319, 126 N.W.2d 192 (1964). Estates in fee simple conditional and fee tail are abolished. *Ellingrod v. Trombla*, 168 Neb. 264, 95 N.W.2d 635 (1959).

76-111 Definite failure of issue, defined.

Whenever property is limited upon the death of any person without heirs or heirs of the body or issue general or special, or descendants or offspring or children or any such relative described by other terms, such limitation, unless a different intent is effectively manifested, is a limitation to take effect only when such person dies not having such relative living at the time of his death or in gestation and born alive thereafter, and is not a limitation to take effect upon the indefinite failure of such relatives; nor, unless a different intent is effectively manifested, does it mean that death without such relative, in order to be material, must occur in the lifetime of the creator of the interest.

Source: Laws 1941, c. 153, § 11, p. 596; C.S.Supp.,1941, § 76-1011; R.S.1943, § 76-111.

76-112 Life interest with limitation by remainder to heirs; rule in Shelley's Case abolished.

Whenever any person, by conveyance, takes a life interest and in the same conveyance an interest is limited by way of remainder, either immediately or mediately, to his heirs, or the heirs of his body, or his issue, or next of kin, or some of such heirs, heirs of the body, issue, or next of kin, the word heirs, heirs of the body, or next of kin, or other words of like import used in the conveyance, in the limitation therein by way of remainder, are not words of limitation carrying to such person an estate of inheritance or absolute estate in the property, but are words of purchase creating a remainder in the designated heirs, heirs of the body, issue, or next of kin.

Source: Laws 1941, c. 153, § 12, p. 596; C.S.Supp.,1941, § 76-1012; R.S.1943, § 76-112.

Will under consideration created a life estate in child of testator, and remainder in lineal descendants by right of representation. *Hauschild v. Hauschild*, 176 Neb. 319, 126 N.W.2d 192 (1964).

Rule in Shelley's Case has application where testator's death occurred prior to effective date of the act of which this section was a part. *Sandberg v. Heirs of Champlin*, 152 Neb. 161, 40 N.W.2d 411 (1950).

76-113 Conveyance to a person and the person's children; rule in Wild's Case abolished.

When an otherwise effective conveyance of property is made in favor of a person and his children, or in favor of a person and his issue, or by other words of similar import designating the person and the descendants of the person, whether the conveyance is immediate or postponed, the conveyance creates a life interest in the person designated and a remainder in his designated descendants, unless an intent to create other interests is effectively manifested.

Source: Laws 1941, c. 153, § 13, p. 597; C.S.Supp.,1941, § 76-1013; R.S.1943, § 76-113.

A devise of an interest in real estate for the use of a child of the testator during his life and upon death of the child to his lineal descendants creates a life estate in the child and a remainder in his lineal descendants. *Hauschild v. Hauschild*, 176 Neb. 319, 126 N.W.2d 192 (1964).

as a class. *Ellingrod v. Trombla*, 168 Neb. 264, 95 N.W.2d 635 (1959).

Will manifested an intention to create other interests. *Dunlap v. Lynn*, 166 Neb. 342, 89 N.W.2d 58 (1958).

A devise to a person and his descendants creates a life estate in such person and a contingent remainder in his descendants

76-114 Testamentary conveyance to the heirs or next of kin of the conveyor; doctrine of worthier title abolished.

When any property is limited, mediately or immediately, in an otherwise effective testamentary conveyance, in form or in effect, to the heirs or next of kin of the conveyor, or to a person or persons who on the death of the conveyor are some or all of his heirs or next of kin, such conveyees acquire the property by purchase and not by descent.

Source: Laws 1941, c. 153, § 14, p. 597; C.S.Supp.,1941, § 76-1014; R.S.1943, § 76-114.

76-115 Inter vivos conveyance to the heirs or next of kin of the conveyor; effect.

When any property is limited, in an otherwise effective conveyance inter vivos, in form or in effect, to the heirs or next of kin of the conveyor, which conveyance creates one or more prior interests in favor of a person or persons in existence, such conveyance operates in favor of such heirs or next of kin by purchase and not by descent.

Source: Laws 1941, c. 153, § 15, p. 597; C.S.Supp.,1941, § 76-1015; R.S.1943, § 76-115.

76-116 Future interests; indestructibility of contingent interests.

No future interest, whether legal or equitable, shall be destroyed by the mere termination, in any manner, of any or all preceding interests before the happening of the contingency to which the future interest is subject.

Source: Laws 1941, c. 153, § 16, p. 597; C.S.Supp.,1941, § 76-1016; R.S.1943, § 76-116.

76-117 Cross limitations; creation by implication.

When an otherwise effective conveyance of property is made to two or more persons as tenants in common for life or for a term of years which is terminable at their deaths, with an express remainder, whether effective or not, (a) to the survivor of such persons, or (b) upon the death of all the life tenants to another person or persons, such conveyance, unless a different intent is effectively manifested, creates cross limitations among the several tenants in common, so that the share of the one first dying passes to his cotenants to be held by them in the same manner as their original shares, and the shares of the second and others dying, in succession, are similarly treated until the time when the property is limited to pass as a whole to the remainderman.

Source: Laws 1941, c. 153, § 17, p. 597; C.S.Supp.,1941, § 76-1017; R.S.1943, § 76-117.

Where language in a will shows a different intention, this section is not applicable. *Gaughen v. Gaughen*, 172 Neb. 740, 112 N.W.2d 285 (1961).

76-118 Conveyances; identity of grantor and grantee; effect.

(1) Any person or persons owning property which he, she, or they have power to convey, may effectively convey such property by a conveyance naming himself, herself, or themselves and another person or persons, as grantees, and the conveyance has the same effect as to whether it creates a joint tenancy, or tenancy in common, or tenancy in partnership, as if it were a conveyance from a stranger who owned the property to the persons named as grantees in the

conveyance. (2) Any two or more persons owning property which they have power to convey, may effectively convey such property by a conveyance naming one, or more than one, or all such persons, as grantees, and the conveyance has the same effect, as to whether it creates a separate ownership, or a joint tenancy, or tenancy in common, or tenancy in partnership, as if it were a conveyance from a stranger who owned the property, to the persons named as grantees in the conveyance. (3) Any person mentioned in this section may be a married person, and any persons so mentioned may be persons married to each other. (4) The conveyance of all of the interest of one joint tenant to himself or herself as grantee, in which the intention to effect a severance of the joint tenancy expressly appears in the instrument, severs the joint tenancy.

Source: Laws 1941, c. 153, § 18, p. 598; C.S.Supp.,1941, § 76-1018; R.S.1943, § 76-118; Laws 1980, LB 694, § 11.

A deed which purportedly conveyed all of the interest of one joint tenant, wherein he is both grantor and grantee, is not an act which will sever the joint tenancy. *Krause v. Crossley*, 202 Neb. 806, 277 N.W.2d 242 (1979).

Common law rule as to joint tenancies was modified by this section. *White v. Ogier*, 175 Neb. 883, 125 N.W.2d 68 (1963).

Joint tenancies have been approved by the Legislature. *De-Forge v. Patrick*, 162 Neb. 568, 76 N.W.2d 733 (1956).

Owner of property can convey to himself and another and create joint tenancy. *Crowell v. Milligan*, 157 Neb. 127, 59 N.W.2d 346 (1953).

Prior to adoption of this section, four unities were requisite to creation of joint tenancy. *Anson v. Murphy*, 149 Neb. 716, 32 N.W.2d 271 (1948).

Under public policy announced by Uniform Property Act, conveyance direct by husband to wife as joint tenants with right of survivorship was effective. *United States v. 12,800 Acres of Land in Hall County*, 69 F.Supp. 767 (D. Neb. 1947).

76-119 Conveyances between husband and wife; effect.

A married person has the power to convey effectively property directly to his or her spouse in the same manner and to the same extent as if he or she were unmarried. Property so conveyed shall be subject to the rights of the grantor as spouse of the grantee in the same manner and to the same extent as property otherwise acquired by the grantee.

Source: Laws 1941, c. 153, § 19, p. 598; C.S.Supp.,1941, § 76-1019; R.S.1943, § 76-119.

76-120 Waste; damages recoverable.

When conduct claimed to constitute waste is made the basis of a claim for damages, the claimant is limited to a recovery of compensatory damages and is not entitled to multiple damages or to declare a forfeiture of the place wasted or of the interest of the defendant in the place wasted, except in accordance with covenants, agreements or conditions binding such defendants.

Source: Laws 1941, c. 153, § 20, p. 598; C.S.Supp.,1941, § 76-1020; R.S.1943, § 76-120.

76-121 Sections; interpretation.

Sections 76-101 to 76-123 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1941, c. 153, § 21, p. 598; C.S.Supp.,1941, § 76-1021; R.S.1943, § 76-121.

Uniform act is to be construed so as to effectuate its general purpose. *Ellingrod v. Trombla*, 168 Neb. 264, 95 N.W.2d 635 (1959).

76-122 Sections; conveyances not affected.

Sections 76-101 to 76-123 shall not apply to acts which occurred or to conveyances which became effective before August 24, 1941, except as provided in subsections (2) and (3) of section 76-107.

Source: Laws 1941, c. 153, § 22, p. 599; C.S.Supp.,1941, § 76-1022; R.S.1943, § 76-122; Laws 1988, LB 657, § 2.

Savings clause does not operate to withdraw from courts the power to apply Uniform Property Act to transactions which occurred before act became effective. United States v. 12,800 Acres of Land in Hall County, 69 F.Supp. 767 (D. Neb. 1947).

76-123 Act, how cited.

Sections 76-101 to 76-123 may be referred to as the Uniform Property Act.

Source: Laws 1941, c. 153, § 23, p. 599; C.S.Supp.,1941, § 76-1023; R.S.1943, § 76-123.

**ARTICLE 2
CONVEYANCES**

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REAL PROPERTY

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(a) DEFINITIONS

76-201 Real estate, defined.

The term real estate, as used in sections 76-201 to 76-281, shall be construed as coextensive in meaning with lands, tenements and hereditaments, and as embracing all chattels real, except leases for a term not exceeding one year.

Source: R.S.1866, c. 43, § 49, p. 290; R.S.1913, § 6187; C.S.1922, § 5586; C.S.1929, § 76-101; R.S.1943, § 76-201.

§ 76-201

REAL PROPERTY

School land leases are chattels real. *Beltner v. Carlson*, 153 Neb. 797, 46 N.W.2d 153 (1951).

Wife's homestead right in lands owned by husband occupied by family is real estate. *Mead v. Polly*, 119 Neb. 206, 228 N.W. 369 (1929).

Lease for ninety-nine years is a chattel real and therefore real estate. *Lindburg v. Bennett*, 117 Neb. 66, 219 N.W. 851 (1928).

Grain elevator erected on leasehold with privilege of removal is real estate so as to make amount of insurance in policy

conclusive value thereof. *Calnon v. Fidelity-Phenix Fire Ins. Co.*, 114 Neb. 194, 206 N.W. 765 (1925).

Term real estate includes lease for purpose of removing minerals. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918). A 99-year leasehold is not real estate, but is personal property and passes to residuary heirs. In re Estate of *Smatlan*, 1 Neb. App. 295, 501 N.W.2d 718 (1992).

An oil lease is a chattel real. *Shoaff v. Gage*, 163 F.Supp. 179 (D. Neb. 1958).

76-202 Purchaser, defined.

The term purchaser, as used in sections 76-201 to 76-281, shall be construed to embrace every person to whom any real estate or interest therein shall be conveyed for valuable consideration, and also any assignee of mortgage or lease, or other conditional estate.

Source: R.S.1866, c. 43, § 50, p. 291; R.S.1913, § 6188; C.S.1922, § 5587; C.S.1929, § 76-102; R.S.1943, § 76-202.

Holder of ninety-nine year lease was not purchaser of real estate from county, and lease by county board was valid. *Lindburg v. Bennett*, 117 Neb. 66, 219 N.W. 851 (1928).

Lease of school lands for purpose of removing minerals therefrom is void. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918).

Second mortgagee is a purchaser. *Dorr v. Meyer*, 51 Neb. 94, 70 N.W. 543 (1897).

76-203 Deed, defined.

The term deed, as used in sections 76-201 to 76-281, shall be construed to embrace every instrument in writing by which any real estate or interest therein is created, aliened, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and leases for one year or for a less time.

Source: R.S.1866, c. 43, § 51, p. 291; R.S.1913, § 6189; C.S.1922, § 5588; C.S.1929, § 76-103; R.S.1943, § 76-203.

A postnuptial agreement may operate as a legal conveyance of real estate in Nebraska. *Jorgensen v. Crandell*, 134 Neb. 33, 277 N.W. 785 (1938).

Assignment of real estate mortgage comes within above definition. *Mulligan v. Snavely*, 117 Neb. 765, 223 N.W. 8 (1929); *Ames v. Miller*, 65 Neb. 204, 91 N.W. 250 (1902).

Lease for a fixed and definite period is not a sale of real estate, and does not operate as deed. *Lindburg v. Bennett*, 117 Neb. 66, 219 N.W. 851 (1928).

Contract for sale of homestead was instrument which required acknowledgment. *Solt v. Anderson*, 71 Neb. 826, 99 N.W. 678 (1904).

76-204 Deed; instrument not included.

Section 76-203 shall not be construed to extend to a letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when proved or acknowledged in the manner prescribed by statute, may be recorded in the office of the register of deeds of any county in which the real estate to which such power or contract relates may be situated. Such an instrument, when so proved or acknowledged, and the record thereof, when recorded, or the transcript of such record, may be read in evidence, in the same manner and with the like effect as a conveyance recorded in such county.

Source: R.S.1866, c. 43, § 52, p. 291; Laws 1887, c. 30, § 26, p. 372; R.S.1913, § 6190; C.S.1922, § 5589; C.S.1929, § 76-104; R.S. 1943, § 76-204; Laws 1973, LB 227, § 1.

Power of attorney with reference to real estate will be construed with respect to natural import of the language. *Watkins v. Hagerty*, 104 Neb. 414, 177 N.W. 654 (1920).

A power of attorney is valid though not acknowledged, except to extent of conveying a homestead. *Morris v. Linton*, 61 Neb. 537, 85 N.W. 565 (1901).

(b) CONSTRUCTION OF INSTRUMENTS

76-205 Instruments; construction; intent of parties; duty of courts.

In the construction of every instrument creating or conveying, or authorizing or requiring the creation or conveyance of any real estate, or interest therein, it shall be the duty of the courts of justice to carry into effect the true intent of the parties, so far as such intent can be collected from the whole instrument, and so far as such intent is consistent with the rules of law.

Source: R.S.1866, c. 43, § 59, p. 292; R.S.1913, § 6195; C.S.1922, § 5594; C.S.1929, § 76-109; R.S.1943, § 76-205.

- 1. Rules of construction
- 2. Rule in Shelley's Case
- 3. Joint tenancy
- 4. Life estates
- 5. Wills
- 6. Trusts
- 7. Leases
- 8. Antenuptial contracts
- 9. Restraints on alienation
- 10. Easement
- 11. Condition subsequent
- 12. Boundaries
- 13. Deeds generally
- 14. Miscellaneous

1. Rules of construction

The true intent of the parties will be instrumental when construing instruments creating interests in real property. *Dupuy v. Western State Bank*, 221 Neb. 230, 375 N.W.2d 909 (1985).

This section created no peculiar rule of law but merely codifies what has always been the common law rule of construction. This section does not enlarge, limit, or modify any rule of substantive law. *Sterner v. Nelson*, 210 Neb. 358, 314 N.W.2d 263 (1982).

This section provides a rule of construction and does not have the effect of enlarging, limiting, or modifying any rule of substantive law that existed at the time of its passage or has thereafter been created. *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

Where intention expressed in an instrument is obscure, resort may be had to surrounding circumstances. *Gettel v. Hester*, 165 Neb. 573, 86 N.W.2d 613 (1957).

Intent statute does not have effect of changing substantive law. *Andrews v. Hall*, 156 Neb. 817, 58 N.W.2d 201 (1953).

True intent must be ascertained from whole instrument. *Elrod v. Heirs of Gifford*, 156 Neb. 269, 55 N.W.2d 673 (1952).

In the absence of anything to indicate a contrary intention, instruments executed at the same time, by the same parties, for the same purpose, and in course of the same transaction, are, in the eyes of the law, one instrument, and will be read and construed together as if they were as much one in form as they are in substance. *Blum v. Poppenhagen*, 142 Neb. 5, 5 N.W.2d 99 (1942); *Thompson v. Jost*, 108 Neb. 778, 189 N.W. 169 (1922).

This section relates only to rules of construction, and does not enlarge, limit or in any way modify any rule of substantive law. *Stuehm v. Mikulski*, 139 Neb. 374, 297 N.W. 595 (1941).

It is the duty of the court to determine from the whole instrument the true intent of the parties and to carry that intent into effect. *Maxwell v. Hamel*, 138 Neb. 49, 292 N.W. 38 (1940).

The intention of the parties to a deed must be gathered from the whole instrument itself. *Langan v. Langan*, 135 Neb. 229, 280 N.W. 903 (1938).

Instrument will be construed to create vested rather than contingent remainder, if possible. *DeWitt v. Searles*, 123 Neb. 529, 242 N.W. 370 (1932).

Duty of court is to give to each word and sentence in the conveyance such significance as will carry into effect the true intent of the parties thereto. In re *Darr's Estate*, 114 Neb. 116, 206 N.W. 2 (1925); *Moran v. Moran*, 101 Neb. 386, 163 N.W. 315 (1917); *Benedict v. Minton*, 83 Neb. 782, 120 N.W. 429 (1909); *Albin v. Parmele*, 70 Neb. 740, 98 N.W. 29 (1904); *Rupert v. Penner*, 35 Neb. 587, 53 N.W. 598 (1892).

Power of attorney with reference to real estate will be construed with respect to natural import of language thereof. *Watkins v. Hagerty*, 104 Neb. 414, 177 N.W. 654 (1920).

What this section requires to be consistent with the general rules of law is not the construction of the instrument, but the intent of the parties. *Albin v. Parmele*, 70 Neb. 740, 98 N.W. 29 (1904).

When by any reasonable interpretation, the granting clause and the habendum clause can be reconciled, effect must be given to both. *Rupert v. Penner*, 35 Neb. 587, 53 N.W. 598 (1892).

2. Rule in Shelley's Case

Where two words are used interchangeably, one of which indicates limitation and the other purchase, the one which indicates purchase must be accepted, and the one indicating limitation must be considered as descriptio personae. *Salmons v. Salmons*, 142 Neb. 66, 5 N.W.2d 123 (1942).

Though granting clause in a deed, if considered alone, would convey fee, it may be shown that by construing the whole instrument in order to give effect to expressed intention of parties that life estate only was conveyed. *Reuter v. Reuter*, 116 Neb. 428, 218 N.W. 86 (1928).

If will contains language coming within rule in Shelley's Case, the intent statute does not control. *Sutphen v. Joslyn*, 111 Neb. 777, 198 N.W. 164 (1924).

Devise for life with remainder to lawful heirs vests fee. *Myers v. Myers*, 109 Neb. 230, 190 N.W. 491 (1922).

Rule in *Shelley's Case* is not abrogated by statute requiring court to give expressed intent of parties. *Yates v. Yates*, 104 Neb. 678, 178 N.W. 262 (1920).

On rehearing, statement in original opinion that intent statute partially abrogates rule in *Shelley's Case* is withdrawn. *Moran v. Moran*, 101 Neb. 386, 163 N.W. 315 (1917), remanded on rehearing 101 Neb. 390, 163 N.W. 1071 (1917).

Use of word heirs will not defeat the emphatically expressed intent of testator, and convert what he plainly designed as a life estate into a fee. *Albin v. Parmele*, 70 Neb. 740, 98 N.W. 29 (1904).

3. Joint tenancy

Prior to passage of the Uniform Property Act, a conveyance by one spouse to another direct could not create joint tenancy. *Stuehm v. Mikulski*, 139 Neb. 374, 297 N.W. 595 (1941).

Where deed shows mutual agreement to create estate of survivorship, court must apply rule as evidenced by conveyance. *Arthur v. Arthur*, 115 Neb. 781, 215 N.W. 117 (1927).

Right to create title in real estate by joint tenancy, with right of survivorship clearly expressed, has never been abridged in this state. *Sanderson v. Everson*, 93 Neb. 606, 141 N.W. 1025 (1913).

4. Life estates

Under intent statute, devise of property to wife for her own use and benefit and at her death all property remaining to children conveyed a life estate only, with power to dispose of and use the principal only so far as might be reasonably necessary for her support. *Annable v. Ricedorff*, 140 Neb. 93, 299 N.W. 373 (1941).

Where will devised to son life use of property, without power to mortgage or sell, a mortgage executed by son was void. *Nebraska Nat. Bank v. Bayer*, 123 Neb. 391, 243 N.W. 115 (1932).

Deed conveying land to grantee for life, remainder in fee simple to the heirs begotten of the body of said grantee, creates a life estate in grantee only. *Yates v. Yates*, 104 Neb. 678, 178 N.W. 262 (1920).

It was obvious from context that word heirs was used as equivalent to children, and grantees received life estates. *Grant v. Hover*, 103 Neb. 730, 174 N.W. 317 (1919).

Devise was construed to convey a life estate to A with remainder over to his wife and children, even though the provisions of first part of will, if it stood alone, would be sufficient to devise an estate in fee simple. *Kluge v. Kluge*, 103 Neb. 534, 172 N.W. 756 (1919).

5. Wills

A patent ambiguity in a will must be removed by interpretation of the intention of the testator as found within the four corners of the will. *Gaughen v. Gaughen*, 172 Neb. 740, 112 N.W.2d 285 (1961).

Intent is determined from language of will, and does not include an entertained but unexpressed intention. *Dunlap v. Lynn*, 166 Neb. 342, 89 N.W.2d 58 (1958).

Court will place itself in the position of testator in construing will. *Bodeman v. Cary*, 152 Neb. 506, 41 N.W.2d 797 (1950).

Court must give effect to true intent of testator. *Olson v. Lisco*, 149 Neb. 314, 30 N.W.2d 910 (1948).

Statutory law designates rule for construing or interpreting wills. In re Estate of Lewis, 148 Neb. 592, 28 N.W.2d 427 (1947).

Bequest of all interest in and to the Hub Bar conveyed interest in bank deposit of the business conducted under that name. In re Estate of Zents, 148 Neb. 104, 26 N.W.2d 793 (1947).

It is the duty of the court to give effect to the true intent of the testator so far as it can be collected from the whole will, if such

intent is consistent with rules of law. *Lacy v. Murdock*, 147 Neb. 242, 22 N.W.2d 713 (1946).

Testator did not intend fee simple title to pass. *Hulse v. Tanner*, 142 Neb. 406, 6 N.W.2d 618 (1942).

In construing a will, court is required to give effect to true intent of testator, if possible. *Baldwin v. Baldwin*, 140 Neb. 823, 2 N.W.2d 23 (1942).

In the construction of a will, court is required to give effect to the true intent of the testator so far as it can be collected from the whole instrument, and in this connection, circumstances relating to the will may be considered. *Martens v. Sachs*, 138 Neb. 678, 294 N.W. 426 (1940).

In construing wills, the court must not give undue weight to a single clause but must construe instrument as a whole to ascertain true intent of testator. *Graff v. Graff*, 136 Neb. 543, 286 N.W. 788 (1939).

In construing will, court may consider circumstances relating to will to aid in determining and giving effect to testator's intent. *Lehman v. Wagner*, 136 Neb. 131, 285 N.W. 124 (1939).

Court in construing a will must first ascertain the intent and purpose of testator as disclosed by language of will and then give effect thereto if not contrary to law. *Prudential Ins. Co. v. Nuernberger*, 135 Neb. 743, 284 N.W. 266 (1939).

Intention of testator controls in construction of a will, if it is consistent with rules of law. *Woelk v. Luckhardt*, 134 Neb. 55, 277 N.W. 836 (1938).

A provision of a will which directs the sale of real estate for the payment of certain legacies operates as an equitable conversion effective at death of testator. In re Estate of Hunter, 132 Neb. 454, 272 N.W. 318 (1937).

Four warranty deeds executed by testator together with his will, were construed together in light of surrounding circumstances and showed clear intent of testator that certain sons should receive no further part of inheritance. *Blochowitz v. Blochowitz*, 130 Neb. 789, 266 N.W. 644 (1936).

The intent of testator is to be ascertained from a liberal interpretation and comprehensive view of all the provisions of the will. *Lancaster County Bank v. Marshel*, 130 Neb. 141, 264 N.W. 470 (1936).

This section applies to construction of wills. In re Estate of Zimmerman, 122 Neb. 812, 241 N.W. 553 (1932).

Rules of law in this section does not mean rules of construction in conflict with testator's intent. Court will ascertain intent and, if lawful, enforce it without regard to canons of construction. *Peters v. Northwestern Mut. Life Ins. Co.*, 119 Neb. 161, 227 N.W. 917 (1929), 67 A.L.R. 1311 (1929).

Statute is applicable alike to wills, deeds and contracts to convey. *Heiser v. Brehm*, 117 Neb. 472, 221 N.W. 97 (1928); *Reuter v. Reuter*, 116 Neb. 428, 218 N.W. 86 (1928).

Intent of testator, as gathered from will as whole, controls in construction of same if no rule of law is violated. *Reuter v. Reuter*, 116 Neb. 428, 218 N.W. 86 (1928); *Krause v. Krause*, 113 Neb. 22, 201 N.W. 670 (1924).

Cases involving construction of wills devising real estate are applicable to construction of deeds. *Arthur v. Arthur*, 115 Neb. 781, 215 N.W. 117 (1927).

Will was construed to devise to testator's wife estate without limitation, except if she died without issue, one-half of property remaining unconveyed by her passed to testator's brothers and sisters. In re Darr's Estate, 114 Neb. 116, 206 N.W. 2 (1925).

Testator's will did not vest devisee with power to devise realty by will. *Krause v. Krause*, 113 Neb. 22, 201 N.W. 670 (1924).

No particular words or conventional forms of expression are necessary to make testamentary disposition. The court will place itself in testator's position, ascertain his will and enforce it. *Weller v. Noffsinger*, 57 Neb. 455, 77 N.W. 1075 (1899).

6. Trusts

Will was construed to have created ten-year trust, child acquiring defeasible estate in trust and trust income, which inter-

est upon child's death passed to remaining children. *Hulse v. Tanner*, 142 Neb. 406, 6 N.W.2d 618 (1942).

Where owner of property gratuitously transfers it and properly manifests an intention that transferee should hold it in trust, but the trust fails, transferee holds the property upon a resulting trust for transferor or his estate, unless the transferor properly manifested an intention that no resulting trust should arise or the intended trust fails for illegality. *In re Estate of Mooney*, 131 Neb. 52, 267 N.W. 196 (1936).

Where property is devised to trustee, with direction to the trustee to use his judgment and discretion as to time of sale of property, it is contrary to intent of testator to permit involuntary partition. *Heiser v. Brehm*, 117 Neb. 472, 221 N.W. 97 (1928).

7. Leases

The purpose of rules of construction are to arrive at and give effect to the intention of the parties from a review of the entire instrument, rather than to select particular words for the purpose of interpreting a particular provision. Leases are construed from the four corners of the instrument to arrive at the true intention of the parties. *B Town, Inc. v. Albright*, 209 Neb. 819, 311 N.W.2d 908 (1981).

The intent of the parties to a lease is to be determined from the whole instrument and is controlling if consistent with rules of law. *Omaha Country Club v. Dworak*, 186 Neb. 336, 183 N.W.2d 264 (1971).

In construing ninety-nine year lease, court must give effect to intention of parties as gathered from entire instrument, if consistent with law. *Towle v. Morrell*, 129 Neb. 398, 261 N.W. 827 (1935).

Section applies to construction of lease for term of five years. *Wattles v. South Omaha Ice & Coal Co.*, 50 Neb. 251, 69 N.W. 785 (1897).

8. Antenuptial contracts

The intent of parties to an antenuptial agreement was that, upon the death of one party, the property vest absolutely in the survivor subject to the claims of creditors. *Neneman v. Rickley*, 110 Neb. 446, 194 N.W. 447 (1923).

Conditions and circumstances surrounding antenuptial contract should be considered. *Tiernan v. Tiernan*, 107 Neb. 563, 186 N.W. 369 (1922).

9. Restraints on alienation

Where the owners of an interest in real property convey the same but by agreement contained in the instrument of conveyance retain an interest in the premises such interest will support the imposition of a restriction on alienation where it is reasonably necessary to protect the interest retained. *Majerus v. Santo*, 143 Neb. 774, 10 N.W.2d 608 (1943).

A devise of real estate to a designated person and his heirs forever without power to sell, mortgage or otherwise encumber, vests a fee simple estate in the person designated, the restraints on alienation being void. *State Bank of Jansen v. Thiessen*, 137 Neb. 426, 289 N.W. 791 (1940).

Creditors of grantee are required to take notice of reservations made by grantor in deed placed of record. *McGuire v. Stimbart*, 129 Neb. 383, 261 N.W. 685 (1935).

10. Easement

Purchaser of land burdened with open visible easement is charged with notice. *Arterburn v. Beard*, 86 Neb. 733, 126 N.W. 379 (1910).

Words with appurtenances are not necessary to pass an easement appurtenant to land. *Smith v. Garbe*, 86 Neb. 91, 124 N.W. 921 (1910).

Use of roadway under naked license cannot ripen into prescriptive right. *Bone v. James*, 82 Neb. 442, 118 N.W. 83 (1908).

Where contract of conveyance by fair construction of the whole instrument gives notice of an easement permanent in its nature, such as right-of-way of railroad company, purchaser

takes title subject to such easement. *Schafroth v. Ross*, 289 F. 703 (8th Cir. 1923).

11. Condition subsequent

County substantially complied with condition subsequent imposed by deed with respect to erection and maintenance of court house. *Brooks v. Kimball County*, 127 Neb. 645, 256 N.W. 501 (1934).

When land is devised upon condition subsequent, heirs of testatrix can maintain action to recover property upon failure of devisee to comply with the condition attached to gift within a reasonable time. *Marble v. City of Tecumseh*, 103 Neb. 625, 173 N.W. 581 (1919).

12. Boundaries

Fixed monuments govern both courses and distances in field notes. *Hurn v. Alter*, 80 Neb. 183, 113 N.W. 986 (1907); *Knoll v. Randolph*, 3 Neb. Unof. 599, 92 N.W. 195 (1902).

13. Deeds generally

Each word and provision of a conveyance of oil and mineral rights must be given effect. *Bulger v. McCourt*, 179 Neb. 316, 138 N.W.2d 18 (1965).

Deed will not be construed to create an estate upon condition unless language to that effect is so clear as to leave no room for other construction. *Majerus v. Santo*, 143 Neb. 774, 10 N.W.2d 608 (1943).

Instruments executed at same time are to be construed together. *Blum v. Poppenhagen*, 142 Neb. 5, 5 N.W.2d 99 (1942).

An undelivered deed may be incorporated in a will by reference, if the terms of the will, assisted by the surrounding circumstances, are sufficient to identify the deed and to show the intention of giving effect to it. *In re Estate of Dimmitt*, 141 Neb. 413, 3 N.W.2d 752 (1942).

Deed to grantee and then to her children did not limit estate to grantee for life. *Aynes v. Bantz*, 114 Neb. 226, 206 N.W. 754 (1925).

Deed was sufficient to convey all the interest of wife in the premises. *Watkins v. Harrison*, 110 Neb. 439, 194 N.W. 435 (1923).

Upon breach of covenants in deed, right of action accrues at once. *Webb v. Wheeler*, 80 Neb. 438, 114 N.W. 636 (1908).

Deed to half unsubdivided quarter section conveys quantitative half. *Kirkpatrick v. Schaal*, 77 Neb. 661, 110 N.W. 730 (1906).

14. Miscellaneous

While intent statute does not have the effect of changing substantive law, it is declaratory of a rule of construction long adopted by the Supreme Court. *Bauer v. Bauer*, 180 Neb. 177, 141 N.W.2d 837 (1966).

Assignment of school land lease did not obligate assignee to pay irrigation taxes. *Beltner v. Carlson*, 153 Neb. 797, 46 N.W.2d 153 (1951).

Covenant against encumbrances does not run with land. *Sears v. Broady*, 66 Neb. 207, 92 N.W. 214 (1902).

Upon a conveyance subject to encumbrance, no personal obligation is imposed on grantee. *Lexington Bank v. Salling*, 66 Neb. 180, 92 N.W. 318 (1902).

Deed absolute in form may be a mortgage. *Decker v. Decker*, 64 Neb. 239, 89 N.W. 795 (1902); *Riley v. Starr*, 48 Neb. 243 67 N.W. 187 (1896).

Assumption by grantee to pay mortgage is binding. *Garneau v. Kendall*, 61 Neb. 396, 85 N.W. 291 (1901); *Martin v. Humphrey*, 58 Neb. 414, 78 N.W. 715 (1899).

Description by metes and bounds passes land, though not of acreage stated. *Pohlman v. Evangelical Lutheran Trinity Church*, 60 Neb. 364, 83 N.W. 201 (1900).

Reservation in deed cannot create title in stranger. *Burchard v. Walther*, 58 Neb. 539, 78 N.W. 1061 (1899).

76-206 Covenant for title; effective words.

Unless such intention is expressly negated by the language in the instrument, a covenant in a conveyance of real property that the grantor is seized, or lawfully seized, or words to like effect, shall be interpreted as a covenant that the grantor has good title to the very estate in quantity and quality which he purports to convey.

Source: Laws 1923, c. 111, § 1, p. 269; C.S.1929, § 76-110; R.S.1943, § 76-206.

Grantor had good title to estate in quality and quantity. Gettel v. Hester, 165 Neb. 573, 86 N.W.2d 613 (1957).

76-207 Covenants; breach; constructive eviction; acts constituting.

Covenants of quiet enjoyment and covenants of warranty in conveyances of real property may be breached by an eviction, actual or constructive, by reason of the hostile assertion of a paramount title holder. A constructive eviction occurs in the following situations: (1) Where the covenantee is kept out of possession by the paramount title holder; (2) where the covenantee surrenders possession to the paramount title holder; and (3) where the covenantee in order to retain possession is forced to and buys off the paramount title holder.

Source: Laws 1923, c. 111, § 2, p. 269; C.S.1929, § 76-111; R.S.1943, § 76-207.

Covenants of quiet enjoyment and warranty were breached by the existence of a paramount right to possession which covenantee was forced to buy off. Grand Island Hotel Corp. v. Second Island Development Co., 191 Neb. 98, 214 N.W.2d 253 (1974).

76-208 Covenants for title; who may enforce.

Unless such intention is expressly negated by the language in the instrument, all covenants for title in conveyances of real property, including covenants of seisin, right to convey, freedom from encumbrances, quiet enjoyment, and warranty, when made with the grantee, run with the land and are enforceable by any assignee thereof, immediate or remote, by a suit in his own name; *Provided, however*, that the ultimate damage occasioned by a breach of the covenant on which suit is brought has not occurred prior to the assignment to such assignee. It shall not be a defense to the covenantor when sued by an assignee that the covenantor was a stranger to title to the whole or a part of the land the covenantor purported to convey.

Source: Laws 1923, c. 111, § 3, p. 269; C.S.1929, § 76-112; R.S.1943, § 76-208.

A lessee of real estate under a written lease for twenty-five years, notice of which is recorded, is an assignee and may enforce covenants involving possessory rights contained in a prior conveyance of the real estate to his lessor. Grand Island Hotel Corp. v. Second Island Development Co., 191 Neb. 98, 214 N.W.2d 253 (1974).

(c) AFTER-ACQUIRED INTEREST; FUTURE ESTATES**76-209 Deed; after-acquired interest; effect.**

When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor to the extent of that which the deed purports to convey shall accrue to the benefit of the grantee; *Provided, however*, such after-acquired interest shall not inure to the benefit of the original grantee or his heirs or assigns, if the deed conveying said real estate was either a quitclaim or special warranty, and the original grantor

in any case shall not be estopped from acquiring said premises at judicial or tax sale, upon execution against the grantee or his assigns, or for taxes becoming due after date of his conveyance.

Source: R.S.1866, c. 43, § 56, p. 291; Laws 1875, § 1, p. 91; R.S.1913, § 6193; C.S.1922, § 5592; C.S.1929, § 76-107; R.S.1943, § 76-209.

Statute has no application where grantor transfers a less interest than he possesses. *Gettel v. Hester*, 165 Neb. 573, 86 N.W.2d 613 (1957).

Property of grantor, acquired subsequently to making of deed, passed to grantee, and filing of transcript and the issuance of an execution, did not create a lien thereon. *Trudeau v. Fischer*, 96 Neb. 275, 147 N.W. 698 (1914).

If mortgage deed purports to convey whole property, an after-acquired interest of mortgagor will accrue to title conveyed by the mortgage. *Pulver v. Connelly*, 93 Neb. 188, 139 N.W. 1014 (1913).

If grantor obtains an instrument that evidences and fortifies the estate which his deed purports to convey, such instrument inures to the benefit of the grantee. *Ford v. Axelson*, 74 Neb. 92, 103 N.W. 1039 (1905).

Title acquired by patent issued subsequent to conveyance by grantor inures to the benefit of grantee. *Lyon v. Gombert*, 63 Neb. 630, 88 N.W. 774 (1902).

An after-acquired title by a grantor in a deed of quitclaim does not inure to his grantee. *Troxell v. Stevens*, 57 Neb. 329, 77 N.W. 781 (1899); *Hagensick v. Castor*, 53 Neb. 495, 73 N.W. 932 (1898).

76-210 Estates in future; recognized.

Estates may be created to commence at a future day.

Source: R.S.1866, c. 43, § 57, p. 292; R.S.1913, § 6194; C.S.1922, § 5593; C.S.1929, § 76-108; R.S.1943, § 76-210.

(d) FORMALITIES OF EXECUTION

76-211 Deeds; execution; record.

Deeds of real estate, or any interest therein, in this state, except leases for one year or for a less time, if executed in this state, must be signed by the grantor or grantors, being of lawful age, and be acknowledged or proved and recorded as directed in sections 76-216 to 76-237.

Source: R.S.1866, c. 43, § 1, p. 280; Laws 1887, c. 61, § 1, p. 561; R.S.1913, § 6196; C.S.1922, § 5595; C.S.1929, § 76-201; Laws 1939, c. 96, § 1, p. 416; C.S.Supp.,1941, § 76-201; R.S.1943, § 76-211.

- 1. Delivery
- 2. Acknowledgment
- 3. Miscellaneous

1. Delivery

Delivery to third person with instructions not to record until death of grantor is held sufficient to pass title to property to grantees at date of such delivery, subject to their acceptance of same. *Roepke v. Nutzmann*, 95 Neb. 589, 146 N.W. 939 (1914).

Where husband and wife each execute deeds with directions to scrivener, in whose hands the deeds were deposited, not to deliver either deed except upon written order of the other, and upon death of either to place upon record the deed to the survivor, no present title passes by execution of either deed, but mutual contract may be enforced. *Dunlap v. Marnell*, 95 Neb. 535, 145 N.W. 1017 (1914).

If grantee is present and assents to delivery, title passes and act of grantor in obtaining possession of deed and destroying the same before it is recorded has no effect on title. *Svanda v. Svanda*, 86 Neb. 203, 125 N.W. 585 (1910).

Delivery is essential to render conveyance operative, but need not be delivered personally, and may be delivered to third person unconditionally for grantee. *Brown v. Westerfield*, 47 Neb. 399, 66 N.W. 439 (1896).

2. Acknowledgment

Acknowledgment is essential when conveying a homestead. *In re Estate of West*, 252 Neb. 166, 560 N.W.2d 810 (1997).

Election of surviving spouse to take under statute rather than under will must be acknowledged before a judge or clerk of court, or a notary. *Billiter v. Parriott*, 128 Neb. 238, 258 N.W. 395 (1935).

A homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife. *Storz v. Clarke*, 117 Neb. 488, 221 N.W. 101 (1928).

Between parties, unacknowledged deed of real estate, not homestead, is good. *Martin v. Martin*, 76 Neb. 335, 107 N.W. 580 (1906); *Harrison v. McWhirter*, 12 Neb. 152, 10 N.W. 545 (1881).

Acknowledgment of mortgage by agent of mortgagee is valid. *Gilbert v. Garber*, 69 Neb. 419, 95 N.W. 1030 (1903).

Office of acknowledgment is to furnish authentic evidence that instrument has been duly executed and is entitled to be recorded. *Fisk v. Osgood*, 58 Neb. 486, 78 N.W. 924 (1899); *Horbach v. Tyrrell*, 48 Neb. 514, 67 N.W. 485 (1896).

Prior to September 7, 1947, United States Commissioner was unauthorized to take acknowledgments. *Interstate S. & L. Assn. v. Strine*, 58 Neb. 133, 78 N.W. 377 (1899).

Unacknowledged mortgage is valid between parties. *Holmes v. Hull*, 50 Neb. 656, 70 N.W. 241 (1897).

Acknowledgment is essential to convey homestead. *Phillips v. Bishop*, 31 Neb. 853, 48 N.W. 1106 (1891).

Acknowledgment in foreign state must satisfy laws of that state or this. *Roode v. State*, 5 Neb. 174 (1876).

3. Miscellaneous

Easements are interests in real estate, which, to constitute constructive notice to third parties, must be recorded under this section. *Kimco Addition v. Lower Platte South N.R.D.*, 232 Neb. 289, 440 N.W.2d 456 (1989).

To be valid against subsequent purchasers, agreement creating lien on real estate must meet requirements of this section. *Marechale v. Burr*, 195 Neb. 306, 237 N.W.2d 860 (1976).

76-212 Private seals; use abolished.

The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments and contracts in writing, is abolished, and the addition of a private seal to any such instrument or contract in writing shall not affect its equity or legality in any respect.

Source: R.S.1866, c. 49, § 1, p. 376; R.S.1913, § 6251; C.S.1922, § 5650; C.S.1929, § 76-256; R.S.1943, § 76-212.

Since abolishment of private seals, all contracts are simple contracts. *Montgomery v. Dresher*, 90 Neb. 632, 134 N.W. 251 (1912).

Private seals do not affect the equity or legality of written instruments or contracts in this state. *Fitzgerald v. Union Stock Yds. Co.*, 89 Neb. 393, 131 N.W. 612 (1911).

Abolishment of seals abolished their incidents, i.e., conclusive presumption of consideration. *Luce v. Foster*, 42 Neb. 818, 60 N.W. 1027 (1894); *Richardson v. Woodruff*, 20 Neb. 132, 29 N.W. 308 (1886).

76-213 Deeds and other instruments; executed without seal; validated.

All deeds, mortgages, or other instruments in writing, for the conveyance or encumbrance of real estate, or any interest therein, which have been made and executed without the use of a private seal are declared to be legal and valid in all courts of law and equity in this state and elsewhere.

Source: R.S.1866, c. 49, § 2, p. 376; R.S.1913, § 6252; C.S.1922, § 5651; C.S.1929, § 76-257; R.S.1943, § 76-213.

76-214 Deed, memorandum of contract, or land contract; recorded; tax statement required; access.

(1) Every grantee who has a deed to real estate recorded and every purchaser of real estate who has a memorandum of contract or land contract recorded shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds and all memoranda of contract and land contracts recorded on and after January 1, 2001, the statement shall not require the social security number of the grantee or purchaser or the federal employer identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The register of deeds shall forward the statement to the county assessor. If the grantee or purchaser fails to furnish the prescribed statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county

assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, pursuant to the rules and regulations of the Tax Commissioner, forward the statement to the Tax Commissioner.

(2) Any person shall have access to the statements at the office of the Tax Commissioner, county assessor, or register of deeds if the statements are available and have not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

Source: Laws 1917, c. 224, § 1, p. 549; C.S.1922, § 5662; C.S.1929, § 76-268; R.S.1943, § 76-214; Laws 1965, c. 456, § 1, p. 1450; Laws 1965, c. 457, § 1, p. 1451; Laws 1981, LB 28, § 1; Laws 1981, LB 179, § 1; Laws 1984, LB 679, § 13; Laws 1985, LB 273, § 37; Laws 1986, LB 1027, § 200; Laws 1994, LB 902, § 13; Laws 1994, LB 1275, § 6; Laws 1995, LB 490, § 26; Laws 1995, LB 527, § 1; Laws 2000, LB 968, § 21; Laws 2007, LB334, § 12; Laws 2008, LB965, § 1; Laws 2009, LB348, § 1.

Cross References

Violation of section, penalty, see section 76-215.

The real property transactions eligible for inclusion in the sales file are those transactions for which the statement required by this section is filed. For those transactions initially eligible for inclusion in the sales file, the price to be included in the sales file is the total consideration paid as listed on the statement described in subsection (1) of this section. *Shaul v. Lang*, 263 Neb. 499, 640 N.W.2d 668 (2002).

Sales-assessment ratio study was made prior to 1965 amendment to this section. *Brandeis Inv. Co. v. State Board of Equalization & Assessment*, 181 Neb. 750, 150 N.W.2d 893 (1967).

Statement of consideration is prima facie evidence thereof but may be rebutted. *Sampson v. Sissel*, 151 Neb. 521, 38 N.W.2d 341 (1949).

Where space in deed for recital of consideration was left blank, it was a circumstance taken into consideration in determining question of estoppel. *Storz v. Clarke*, 117 Neb. 488, 221 N.W. 101 (1928).

Recitals of consideration in deeds are incompetent as evidence of value. *State v. Wright*, 105 Neb. 617, 181 N.W. 539 (1921).

76-215 Tax statement; failure to furnish; penalty.

Any person who fails to obey the provisions of section 76-214 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor exceeding five hundred dollars.

Source: Laws 1917, c. 224, § 2, p. 550; C.S.1922, § 5663; C.S.1929, § 76-269; R.S.1943, § 76-215; Laws 1965, c. 456, § 2, p. 1450; Laws 1965, c. 457, § 2, p. 1452; Laws 1994, LB 1275, § 7.

(e) ACKNOWLEDGMENT; PROOF

76-216 Deeds; acknowledgment required.

The grantor must acknowledge the instrument with an acknowledgment as defined in section 64-205.

Source: R.S.1866, c. 43, § 2, p. 280; R.S.1913, § 6197; C.S.1922, § 5596; C.S.1929, § 76-202; R.S.1943, § 76-216; Laws 1978, LB 668, § 1.

Acknowledgment must show voluntary execution. *Keeling v. Hoyt*, 31 Neb. 453, 48 N.W. 66 (1891); *Aultman & Taylor Co. v. Jenkins*, 19 Neb. 209, 27 N.W. 117 (1886).

Acknowledgment that it was their voluntary act was good. *Spitznagle v. Vanhesssch*, 13 Neb. 338, 14 N.W. 417 (1882).

Substantial compliance with statute is necessary and sufficient. *Becker v. Anderson*, 11 Neb. 493, 9 N.W. 640 (1881).

Acknowledgment is no part of deed itself. *Burbank v. Ellis*, 7 Neb. 156 (1878).

76-217 Acknowledgment; before whom taken in this state.

The acknowledgment must be made or proved, if in this state, before a judge or clerk of any court, United States Magistrate or notary public therein; but no

officer can take any such acknowledgment or proof out of his territorial jurisdiction.

Source: R.S.1866, c. 43, § 3, p. 280; R.S.1913, § 6198; C.S.1922, § 5597; C.S.1929, § 76-203; R.S.1943, § 76-217; Laws 1947, c. 244, § 1, p. 768; Laws 1972, LB 1032, § 268.

Cross References

Authority to take acknowledgments:

Deputy clerks of the district and county courts, see section 24-403.

Notaries public, see section 64-107.

Secretary of State, see section 84-507.

Notaries public, generally, see Chapter 64, article 1.

Payment to county treasurer of fees of county officers for taking acknowledgments, see section 33-153.

Certificate of an officer having authority to take acknowledgments cannot be impeached by showing that it was irregularly performed. *Bode v. Jussen*, 93 Neb. 482, 140 N.W. 768 (1913); *Morris v. Linton*, 61 Neb. 537, 85 N.W. 565 (1901).

Officer is disqualified to take acknowledgment when he is interested in transaction. *Banking House of A. Castetter v. Stewart*, 70 Neb. 815, 98 N.W. 34 (1904); *Horbach v. Tyrrell*, 48 Neb. 514, 67 N.W. 485 (1896); *Hedbloom v. Pierson*, 2 Neb. Unof. 799, 90 N.W. 218 (1902); *Chadron L. & B. Assn. v. O'Linn*, 1 Neb. Unof. 1, 95 N.W. 368 (1901).

Certificate of acknowledgment cannot be impeached by showing that officer's duty was irregularly performed. *Council Bluffs Savings Bank v. Smith*, 59 Neb. 90, 80 N.W. 270 (1899).

Prior to September 7, 1947, United States Commissioner was unauthorized to take acknowledgments. *Interstate S. & L. Assn. v. Strine*, 58 Neb. 133, 78 N.W. 377 (1899).

Acknowledgment may be taken by attorney of party in interest. *Havemeyer v. Dahn*, 48 Neb. 536, 67 N.W. 489 (1896).

Act of acknowledging officer is ministerial. *Horbach v. Tyrrell*, 48 Neb. 514, 67 N.W. 485 (1896).

Acknowledgment is act of one who has executed instrument going before some competent officer and declaring it to be his act or deed. *Aultman & Taylor Co. v. Jenkins*, 19 Neb. 209, 27 N.W. 117 (1886).

County clerk is authorized to take acknowledgments. *Davis v. Huston*, 15 Neb. 28, 16 N.W. 820 (1883).

Certificate of acknowledgment cannot be impeached except for fraud, collusion, or imposition. *Boldt v. Becker*, 1 Neb. Unof. 75, 95 N.W. 509 (1901).

76-217.01 Acknowledgment; defective seal; validity.

No deed, mortgage, affidavit, power of attorney or other instrument in writing shall be invalidated because of any defects in the wording of the seal of the notary public attached thereto.

Source: Laws 1945, c. 145, § 12, p. 494.

76-217.02 Transferred to section 64-212.

76-217.03 Transferred to section 64-213.

76-217.04 Transferred to section 64-214.

76-217.05 Transferred to section 64-215.

76-218 Acknowledgment and recording of instruments; violations; penalty.

Every officer within this state authorized to take the acknowledgment or proof of any conveyance, and every county clerk, who shall be guilty of knowingly stating an untruth, or guilty of any malfeasance or fraudulent practice in the execution of the duties prescribed for them by law, in relation to the taking or the certifying of the proof or acknowledgment, or the recording or certifying of any record of any such conveyance, mortgage or instrument in writing, or in relation to the canceling of any mortgage, shall upon conviction be adjudged guilty of a misdemeanor, and be subject to punishment by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and shall also be liable in damages to the party injured.

Source: R.S.1866, c. 43, § 46, p. 290; R.S.1913, § 6250; C.S.1922, § 5649; C.S.1929, § 76-255; R.S.1943, § 76-218.

Certification by an attorney of a false acknowledgment is a criminal offense justifying suspension or disbarment. *State ex rel. Nebraska State Bar Assn. v. Butterfield*, 169 Neb. 119, 98 N.W.2d 714 (1959).

County clerk, in issuing certificate of title to a motor vehicle, was not guilty of malfeasance under facts stated. *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950).

76-219 Acknowledgment; before whom taken in any other state or territory.

If the instrument is executed and acknowledged or proved in any other state, territory or district of the United States, it must be executed and acknowledged or proved either according to the laws of such state, territory or district or in accordance with the law of this state, and if acknowledged out of this state it must be before some court of record or clerk or officer holding the seal thereof, or before some commissioner to take the acknowledgment of deeds, appointed by the Governor of this state, or before some notary public.

Source: R.S.1866, c. 43, § 4, p. 280; Laws 1887, c. 61, § 2, p. 562; Laws 1909, c. 110, § 1, p. 433; R.S.1913, § 6199; C.S.1922, § 5598; C.S.1929, § 76-204; R.S.1943, § 76-219.

A deed of lands situated in this state, executed in another state and acknowledged there before a notary public is presumed to have been executed according to the laws of that state though not witnessed, and is entitled to be received in evidence in this state, without other proof that the grantors actually executed and delivered the deed. *Jorgensen v. Crandell*, 134 Neb. 33, 277 N.W. 785 (1938).

N.W. 645 (1896); *Schiels v. Horbach*, 49 Neb. 262, 68 N.W. 524 (1896).

Acknowledgment in foreign state must satisfy laws of that state or this. *Roode v. State*, 5 Neb. 174 (1876).

There is presumption of regularity of execution and acknowledgment in foreign state. *Dorsey v. Conrad*, 49 Neb. 443, 68

Authentication is required when officer has no seal. *Hoadley v. Stephens*, 4 Neb. 431 (1876).

76-220 Repealed. Laws 1969, c. 614, § 1.

76-221 Repealed. Laws 1969, c. 614, § 1.

76-222 Repealed. Laws 1969, c. 614, § 1.

76-223 Repealed. Laws 1969, c. 614, § 1.

76-224 Repealed. Laws 1969, c. 614, § 1.

76-225 Repealed. Laws 1969, c. 614, § 1.

76-226 Deeds; execution in foreign country; laws governing; acknowledgment.

If such deed be executed in a foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, commercial agent, or consul of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

Source: R.S.1866, c. 43, § 6, p. 281; R.S.1913, § 6202; C.S.1922, § 5601; C.S.1929, § 76-207; R.S.1943, § 76-226.

The word consul means any person invested by national government with functions of that office. *Morris v. Linton*, 61 Neb. 537, 85 N.W. 565 (1901).

76-227 Acknowledgment before army officers; validity.

The acknowledgment of legal instruments, the attestation of documents, the administration of oaths and other notarial acts, heretofore or hereafter taken

before any duly commissioned officer of the army, navy, marine corps, coast guard, or any other component part of the armed forces of the United States are hereby declared legal, valid and binding, and such instrument and documents shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affidavit, or other notarial act had been made or taken before a notary public within this state. If the signature, rank and branch of service of any such officer appear upon such instrument or document, no further proof of the authority of such officer to so act shall be required.

Source: Laws 1919, c. 169, § 1, p. 381; C.S.1922, § 5664; C.S.1929, § 76-270; Laws 1943, c. 170, § 1, p. 593; R.S.1943, § 76-227.

76-228 Proof in lieu of acknowledgment; when authorized.

If the grantor dies before acknowledgment, or if for any cause his attendance cannot be procured in order to make the same, or, having appeared, he refused to acknowledge it, proof of the execution and delivery of the deed may be made by any competent subscribing witness thereto before any officer authorized to take the acknowledgment. The witness must state, upon oath, his own place of residence, that he set his name to the deed as a witness, that he knew the grantor in such deed, and saw him sign or heard him acknowledge he had signed the same. Such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such deed.

Source: R.S.1866, c. 43, § 7, p. 281; R.S.1913, § 6203; C.S.1922, § 5602; C.S.1929, § 76-208; R.S.1943, § 76-228.

Proof of acknowledgment may be made by subscribing witness. *Podewitz v. Gering Nat. Bank*, 171 Neb. 380, 106 N.W.2d 497 (1960).

Proof of acknowledged deed made by subscribing witness entitles deed to record. *Wilson v. Wilson*, 83 Neb. 562, 120 N.W. 147 (1909).

76-229 Proof in lieu of acknowledgment; power of officer to subpoena witnesses.

The officer has power to issue the necessary subpoenas for the subscribing witnesses, residing in the same county, to appear before him for the purpose stated in section 76-228.

Source: R.S.1866, c. 43, § 8, p. 281; R.S.1913, § 6204; C.S.1922, § 5603; C.S.1929, § 76-209; R.S.1943, § 76-229.

76-230 Proof in lieu of acknowledgment; witness; disobedience to subpoena; penalty.

Every person served with a subpoena and tendered the fees of a witness who, without reasonable cause, refuses or neglects to appear, or appearing, refuses to answer upon oath touching the matters referred to in section 76-228, shall forfeit to the party injured one hundred dollars and may also be committed to prison by the officer who issued such subpoena, there to remain without bail until he or she shall submit to answer upon oath as aforesaid.

Source: R.S.1866, c. 43, § 9, p. 281; R.S.1913, § 6205; C.S.1922, § 5604; C.S.1929, § 76-210; R.S.1943, § 76-230; Laws 1991, LB 1, § 6.

76-231 Proof in lieu of acknowledgment; by handwriting; when authorized.

If all the subscribing witnesses shall be dead, or out of the state, such death or absence is first to be proved, and then the execution of the deed may be proved before such officer by proving the handwriting of the grantor and of any subscribing witness to such deed.

Source: R.S.1866, c. 43, § 10, p. 282; R.S.1913, § 6206; C.S.1922, § 5605; C.S.1929, § 76-211; R.S.1943, § 76-231.

76-232 Proof in lieu of acknowledgment; filing.

Any person interested in a deed that is not acknowledged, may, at any time before or during the proceedings before such officer, file, in the office of the register of deeds of the county where the lands lie, a copy of the deed, compared with the original by the register of deeds, which shall, for the space of thirty days thereafter, have the same effect as the recording of the deed, if such deed shall within that time be duly proved and recorded.

Source: R.S.1866, c. 43, § 11, p. 282; Laws 1887, c. 30, § 14, p. 368; R.S.1913, § 6207; C.S.1922, § 5606; C.S.1929, § 76-212; R.S.1943, § 76-232.

76-233 Proof in lieu of acknowledgment; certificate of officer.

Every officer, who shall take the acknowledgment or proof of any deed, shall endorse a certificate thereof signed by himself on the deed, and in such certificate shall truly and specifically set forth the matters hereinbefore required to be done, known or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Source: R.S.1866, c. 43, § 12, p. 282; R.S.1913, § 6208; C.S.1922, § 5607; C.S.1929, § 76-213; R.S.1943, § 76-233.

Fact of acknowledgment should appear from instrument itself and cannot be shown by parol testimony. *Solt v. Anderson*, 71 Neb. 826, 99 N.W. 678 (1904).

Mistake of notary in certificate of acknowledgment does not invalidate conveyance. *Roberts v. Robinson*, 49 Neb. 717, 68 N.W. 1035 (1896).

Certificate is impeached only by clear and satisfactory proof of falsity. *Phillips v. Bishop*, 35 Neb. 487, 53 N.W. 375 (1892).

Date of acknowledgment prevails over date of deed. *Buck v. Gage*, 27 Neb. 306, 43 N.W. 110 (1889).

Acknowledgment showing appearance and acknowledgment by mortgagee but not of mortgagor was fatally defective, and parol evidence to impeach notary's certificate of acknowledgment omitting to show acknowledgment of mortgagor was inadmissible. *Troyer v. Mundy*, 60 F.2d 818 (8th Cir. 1932).

76-234 Acknowledgment; duty of officer.

No acknowledgment of any conveyance shall be taken by any officer, unless the officer taking it shall know or have satisfactory evidence that the person making such acknowledgment is the person described in and who executed such conveyance.

Source: R.S.1866, c. 43, § 43, p. 289; R.S.1913, § 6209; C.S.1922, § 5608; C.S.1929, § 76-214; R.S.1943, § 76-234.

76-235 Deed; receipt in evidence; recording; proof.

Every deed acknowledged or proved, and certified by any of the officers named in sections 76-217, 76-219, 76-220, 76-226 and 76-227, and authorized to take acknowledgments, including the certificate specified in section 76-242, whenever such certificate is required by law, may be read in evidence without further proof, and shall be entitled to be recorded. The record of a deed duly recorded, or a transcript thereof duly certified, may also be read in evidence

with the like force and effect as the original deed, whenever by the party's oath or otherwise the original is known to be lost, or not belonging to the party wishing to use the same, nor within his control. Neither the certificate of the acknowledgment or the proof of any deed, nor the record or transcript of the record of such deed, shall be conclusive, but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of a deed shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such deed nor the record thereof shall be received in evidence until established by other competent proof.

Source: R.S.1866, c. 43, § 13, p. 282; R.S.1913, § 6210; C.S.1922, § 5609; C.S.1929, § 76-215; R.S.1943, § 76-235.

1. Acknowledgment
2. Recording
3. Miscellaneous

1. Acknowledgment

A deed of lands situated in this state, executed in another state and acknowledged there before a notary public who attaches his official seal, is presumed to have been executed in accordance with the laws of that state and, though not witnessed, is entitled to be received in evidence in this state without other proof that the grantors therein actually executed and delivered the deed. *Jorgensen v. Crandell*, 134 Neb. 33, 277 N.W. 785 (1938).

Acknowledgment of corporation deed by president, although purporting to be his individual act, was sufficient. *Powers v. Spiedel*, 84 Neb. 630, 121 N.W. 968 (1909).

Certificate of acknowledgment is not conclusive but may be rebutted by any party affected thereby. *Rouse v. Witte*, 81 Neb. 368, 116 N.W. 43 (1908).

A certificate of acknowledgment can be impeached only by clear, convincing and satisfactory proof that the certificate is false and fraudulent. *Sheridan County v. McKinney*, 79 Neb. 220, 112 N.W. 329 (1907); *McGuire v. Wilson*, 5 Neb. Unof. 540, 99 N.W. 244 (1904).

Mortgage duly acknowledged is admissible in evidence without further proof. *McKenzie v. Beaumont*, 70 Neb. 179, 97 N.W. 225 (1903).

Execution and delivery must be proved to admit in evidence unacknowledged deed. *Linton v. Cooper*, 53 Neb. 400, 73 N.W. 731 (1898).

Certificate must substantially comply with statute. *Maxwell v. Higgins*, 38 Neb. 671, 57 N.W. 388 (1894).

Certificate of authority must be in due form. *Irwin v. Welch*, 10 Neb. 479, 6 N.W. 753 (1880).

Acknowledged deed is admissible without evidence of authenticity of signatures. *Brown v. Collins*, 2 Neb. Unof. 149, 96 N.W. 173 (1901).

2. Recording

Recorded deed may be read in evidence without further proof. *Pierce v. Fontenelle*, 156 Neb. 235, 55 N.W.2d 658 (1952).

Where deed was entitled to be recorded, and it, or the record thereof, was receivable in evidence without further proof, and was only instrument that had been of record for many years covering land, such deed was defect in title, although not connected with chain of title from patentee. *Robinson v. Bresler*, 122 Neb. 461, 240 N.W. 564 (1932).

Whenever deed is lost, a certified transcript of the record of a deed duly recorded may be read in evidence with like force and effect of original deed. *Thams v. Sharp*, 49 Neb. 237, 68 N.W. 474 (1896).

It is discretionary with trial court to admit record instead of original. *Rupert v. Penner*, 35 Neb. 587, 53 N.W. 598 (1892); *Buck v. Gage*, 27 Neb. 306, 43 N.W. 110 (1889); *Delaney v. Errickson*, 10 Neb. 492, 6 N.W. 600 (1880).

Record of deed may be shown without inquiry as to the original whenever evidence indicates that the original is not in the possession of or under the control of the party offering such proof. *Staunfield v. Jeutter*, 4 Neb. Unof. 847, 96 N.W. 642 (1903).

3. Miscellaneous

Deed alone does not prove title in grantor. *Lesieur v. Custer County*, 61 Neb. 612, 85 N.W. 892 (1901).

76-236 Acknowledgment or certificate of genuineness; duty to record; failure; effect.

The certificate of the proof or acknowledgment of every deed, and the certificate of the genuineness of the signature of any officer, in the cases where such last-mentioned certificate is required, shall be recorded together with the deed so proved or acknowledged; and unless the certificates be so recorded, neither the record of such deed nor the transcript thereof shall be read or received in evidence.

Source: R.S.1866, c. 43, § 14, p. 283; R.S.1913, § 6211; C.S.1922, § 5610; C.S.1929, § 76-216; R.S.1943, § 76-236.

Cross References

Statute of limitations, see section 25-202.

Acknowledgment showing appearance and acknowledgment by mortgagee but not of mortgagor was fatally defective. *Troyer v. Mundy*, 60 F.2d 818 (8th Cir. 1932).

(f) RECORDING

76-237 Deeds; how recorded; when considered recorded.

Every deed, entitled by law to be recorded, shall be recorded in the order and as of the time when the same shall be delivered to the register of deeds for that purpose, and shall be considered recorded from the time of such delivery.

Source: R.S.1866, c. 43, § 15, p. 283; Laws 1887, c. 30, § 15, p. 368; R.S.1913, § 6212; C.S.1922, § 5611; C.S.1929, § 76-217; R.S. 1943, § 76-237.

Cross References

Recording fees, see section 33-109.

Mortgages are considered as recorded from the time of their delivery to the register of deeds for that purpose, but mere fact that a mortgage is recorded first does not necessarily give it priority over one recorded later, as between the parties, if they have agreed or intended otherwise. *Reitz v. Petersen*, 131 Neb. 706, 269 N.W. 811 (1936).

Mere fact that one mortgage is indexed and recorded ahead of another does not give the first mortgage priority, and where both are delivered by mail without instructions, they are to be considered recorded from time of delivery. *Judkins-Davies v. Skochdopole*, 122 Neb. 374, 240 N.W. 510 (1932).

Assignment of real estate mortgage is an instrument affecting the title of real estate within meaning of Recording Acts. *Mulligan v. Snavelly*, 117 Neb. 765, 223 N.W. 8 (1929).

Where a deed, properly executed and acknowledged, is filed for record, it is notice to all the world even though record book containing it is destroyed. *Deming v. Miles*, 35 Neb. 739, 53 N.W. 665 (1892).

Party filing deed is not prejudiced by negligence of register. *Perkins v. Strong*, 22 Neb. 725, 36 N.W. 292 (1888).

76-238 Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when.

(1) All deeds, mortgages, and other instruments of writing which are required to be or which under the laws of this state may be recorded, shall take effect and be in force from and after the time of delivering such instruments to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice. All such instruments are void as to all creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments are recorded prior to such instruments. However, such instruments are valid between the parties to the instrument.

(2) For purposes of this section, possession of agricultural real estate or residential real estate by a party related to the owner of record of the real estate within the third degree of consanguinity or affinity shall not serve as notice to a creditor or subsequent purchaser in any case in which such party is claiming rights in such real estate pursuant to a lease (a) entered into on or after July 16, 2004; (b) purporting to extend beyond a term of one year; and (c) which has not satisfied the requirements of section 76-211, unless the creditor or subsequent purchaser, in advance of recording a deed, mortgage, or other instrument, has received a written copy of such lease.

(3) For purposes of this section:

(a) Agricultural products includes grain and feed crops; forages and sod crops; and animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry;

(b) Agricultural real estate means land which is primarily used for the production of agricultural products, including waste land lying in or adjacent to and in common ownership with land used for the production of agricultural products;

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

(d) Residential real estate means real estate containing not more than four units designed for use for residential purposes. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units for nonresidential purposes.

Source: R.S.1866, c. 43, § 16, p. 283; Laws 1887, c. 30, § 16, p. 369; R.S.1913, § 6213; C.S.1922, § 5612; C.S.1929, § 76-218; Laws 1941, c. 154, § 1, p. 599; C.S.Supp.,1941, § 76-218; R.S.1943, § 76-238; Laws 2004, LB 155, § 6.

1. Subsequent purchaser or mortgagee
2. Actual knowledge
3. Constructive knowledge
4. Possession
5. Priority of liens
6. Delivery
7. Miscellaneous

1. Subsequent purchaser or mortgagee

A good faith purchaser of land is one who purchases for valuable consideration without notice of any suspicious circumstances which would put a prudent person on inquiry. The burden of proof is upon a litigant who alleges that he or she is a good faith purchaser to prove that he or she purchased the property for value and without notice. This burden includes proving that the litigant was without notice, actual or constructive, of another's rights or interests in the land. *Caruso v. Parkos*, 262 Neb. 961, 637 N.W.2d 351 (2002).

Instruments which may be but are not recorded are void as to subsequent bona fide purchasers who record first. *Kimco Addition v. Lower Platte South N.R.D.*, 232 Neb. 289, 440 N.W.2d 456 (1989).

This section is designed to protect a subsequent purchaser even though there was a prior conveyance or transaction concerning the property, provided the subsequent purchaser recorded his title first, and provided further that the subsequent purchaser was a bona fide purchaser without notice of any other claims to the property. *Miller v. McMillen*, 214 Neb. 244, 333 N.W.2d 887 (1983).

This section is designed to protect a subsequent bona fide purchaser without notice even though there was a prior conveyance, provided the subsequent purchaser recorded his title first. *Karmann v. Haase*, 191 Neb. 839, 218 N.W.2d 242 (1974).

A purchaser with notice, who purchases from one without notice, will be protected by the want of notice in his vendor. *Mingus v. Bell*, 148 Neb. 735, 29 N.W.2d 332 (1947).

Question as to whether mortgagee took mortgage in good faith without notice so as to render prior unrecorded deed void is properly determinable in mortgage foreclosure proceeding. *Lincoln Joint Stock Land Bank v. Barnes*, 143 Neb. 58, 8 N.W.2d 545 (1943).

An unrecorded deed is void as to mortgagees, whose mortgages are placed of record first and who are without knowledge of the unrecorded deed. *Clements v. Doak*, 140 Neb. 265, 299 N.W. 505 (1941).

Assignment of real estate mortgage comes within this section. *Mulligan v. Snively*, 117 Neb. 765, 223 N.W. 8 (1929); *Chicago, R. I. & P. Ry. Co. v. Welch*, 83 Neb. 106, 118 N.W. 1116 (1908); *Ames v. Miller*, 65 Neb. 204, 91 N.W. 250 (1902).

Where possession is taken by subsequent purchaser before recording of prior deed, he is protected, even though his deed was subsequently recorded. *Kime v. Krenek*, 94 Neb. 395, 143 N.W. 473 (1913).

Sheriff's deed to purchaser without notice will convey superior title to deed executed by mortgagor before foreclosure proceedings, but not recorded until after recording of sheriff's deed. *Richards v. Smith*, 88 Neb. 444, 129 N.W. 983 (1911).

Subsequent purchaser has burden of proof of establishing purchase without notice, actual or constructive, of prior unrecorded conveyance. *McParland v. Peters*, 87 Neb. 829, 128 N.W. 523 (1910).

Ordinary care and diligence is required of bona fide purchaser. *Lyon v. Gombert*, 63 Neb. 630, 88 N.W. 774 (1902).

If a mortgagee enters satisfaction after a mortgage has been assigned, a subsequent purchaser who acquires title without notice of the assignment will be protected. *Whitney v. Lowe*, 59 Neb. 87, 80 N.W. 266 (1899).

Subsequent mortgagee is subsequent purchaser within meaning of section. *Dorr v. Meyer*, 51 Neb. 94, 70 N.W. 543 (1897).

Holder of quitclaim deed may be bona fide purchaser. *Schott v. Dosh*, 49 Neb. 187, 68 N.W. 346 (1896).

Mortgage last executed and delivered will take precedence if first filed for record and grantee took same for value and without notice. *Burrows v. Hovland*, 40 Neb. 464, 58 N.W. 947 (1894).

2. Actual knowledge

Actual knowledge of existence of a real estate mortgage is as binding as constructive notice supplied by the duly recorded instrument. *Steeves v. Nispel*, 132 Neb. 597, 273 N.W. 50 (1937).

Actual knowledge of unrecorded lien is as binding as constructive notice. *Bradford v. Anderson*, 60 Neb. 368, 83 N.W. 173 (1900).

Purchaser takes subject to unrecorded lien, when he knows of it. *Michigan Trust Co. v. City of Red Cloud*, 3 Neb. Unof. 722, 92 N.W. 900 (1902).

3. Constructive knowledge

This section is intended to impart to a prospective purchaser notice of instruments which affect the title of land in which such purchaser is interested. *Ihde v. Kempkes*, 228 Neb. 433, 422 N.W.2d 788 (1988).

Recording gives priority only to instruments registerable in form. *Rumery v. Loy*, 61 Neb. 755, 86 N.W. 478 (1901).

Constructive notice by record of conveyance is limited to those who must trace their title through grantor. *Traphagen v. Irwin*, 18 Neb. 195, 24 N.W. 684 (1885).

4. Possession

A purchaser is charged with notice of tenant's rights when the tenant is in actual possession of the real estate. *Grand Island Hotel Corp. v. Second Island Development Co.*, 191 Neb. 98, 214 N.W.2d 253 (1974).

Possession cannot be notice of nonexistent fact. *Burt v. Baldwin*, 8 Neb. 487, 1 N.W. 457 (1879).

5. Priority of liens

The lien of a judgment does not take priority over a prior unrecorded mortgage made and delivered in good faith for a valuable consideration. *Omaha Loan and Building Assn. v. Turk*, 146 Neb. 859, 21 N.W.2d 865 (1946).

A prior unrecorded deed, if made in good faith and for a valuable consideration, will take precedence over an attachment or judgment, if recorded before deed based upon such attachment or judgment. *Naudain v. Fullenwider*, 72 Neb. 221, 100 N.W. 296 (1904).

Prior unrecorded mortgage takes precedence over deed with no consideration. *Fisk v. Osgood*, 58 Neb. 486, 78 N.W. 924 (1899).

Ordinary judgment lien is subject to prior liens, legal or equitable. *Mansfield v. Gregory*, 11 Neb. 297, 9 N.W. 87 (1881); *Harral v. Gray*, 10 Neb. 186, 4 N.W. 1040 (1880).

6. Delivery

Third parties who acquire rights in property after recording but before actual delivery of conveyance will be protected. *Barnes v. Cox*, 58 Neb. 675, 79 N.W. 550 (1899).

Deed becomes operative upon delivery. *Brown v. Hartman*, 57 Neb. 341, 77 N.W. 776 (1899).

Delivery of duly acknowledged and recorded deed is presumed. *Bowman v. Griffith*, 35 Neb. 361, 53 N.W. 140 (1892).

7. Miscellaneous

This section requires the filing of covenants and restrictions in the office of the register of deeds and it also provides that a filing is ineffective, when the statute is not followed, only as to those without notice, either actual or constructive. *How v. Baker*, 223 Neb. 100, 388 N.W.2d 462 (1986).

Recording act does not apply to taxes. *Licking v. Hays Lumber Co.*, 146 Neb. 240, 19 N.W.2d 148 (1945).

Where creditors represented by trustee in bankruptcy were each without deed, mortgage or other conveyance, mortgages were not required to be recorded, so that failure to record them more than four months before filing of petition did not give rise to illegal preference. *Stocker v. Church*, 113 Neb. 639, 204 N.W. 398 (1925).

Party obtaining decree quieting title cannot obtain benefits of recording act unless exemplified copy of decree is recorded in office of register of deeds. *McCarthy v. Benedict*, 90 Neb. 386, 133 N.W. 410 (1911).

Recording acts, not law merchant, determine rights of assignee of mortgage notes. *First Nat. Bank of Falls City v. Edgar*, 65 Neb. 340, 91 N.W. 404 (1902).

The purpose of the registry law is to furnish record evidence of land titles. *Hare v. Murphy*, 60 Neb. 135, 82 N.W. 312 (1900).

Unrecorded assignment of mortgage is not void as to creditors generally, but only as to creditors whose deeds, mortgages or other instruments should be first recorded. *Blair State Bank v. Stewart*, 57 Neb. 58, 77 N.W. 370 (1898).

Assignee of interest coupons may foreclose mortgage after release by mortgagee. *Griffith v. Salleng*, 54 Neb. 362, 74 N.W. 619 (1898).

Grantee of unrecorded deed acquires title as between parties. *CConnell v. Galligher*, 39 Neb. 793, 58 N.W. 438 (1894).

Vendor's lien is not recognized. *Edminster v. Higgins*, 6 Neb. 265 (1877).

Where bankrupt executed mortgage for full present consideration more than four months prior to bankruptcy, but mortgage was recorded within four months' period, mortgage was not voidable at suit of trustee in bankruptcy as fraudulent transfer on theory that withholding mortgage from record constituted fraud on creditors. *Rankin v. Cox*, 71 F.2d 56 (8th Cir. 1934).

76-238.01 Mortgages; interest in real estate included; debts that may be secured; priority of liens; future advances.

(1) Any interest in real property capable of being transferred may be mortgaged to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, to secure future advances necessary to protect the security, and to secure any future advances to be made at the option of the parties. At no time shall the secured principal future advances, not including sums advanced to protect the security, exceed a total amount or percentage of a total amount stated in the mortgage. If the mortgage authorizes advances by a percentage of the mortgage amount, such advances shall not exceed that authorized percentage. All such debts, obligations, and future advances shall, from the time the mortgage is filed for record as provided by law, be secured by such mortgage equally with and have the same priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate as the debts and obligations secured thereby at the time of the filing of the mortgage for record, except that (a) the mortgagor or his or her successor in title is hereby authorized to file for record, and the same shall be recorded, a notice limiting the amount of optional future advances secured by such mort-

gage to not less than the amount advanced actually at the time of such filing, and a copy of such filing shall be filed with the mortgagee, and (b) if any optional future advance shall be made by the mortgagee to the mortgagor or his or her successor in title after written notice of any mortgage, lien, or claim against such real property, or after written notice of labor commenced or material furnished or contracted to be commenced or furnished on such real property which is junior to such mortgage, then the amount of such advance shall be junior to such mortgage, lien, or claim, including a claim for materials delivered or labor performed which is ultimately filed as a construction lien and of which such written notice was given.

(2) The reduction to zero or elimination of the debt evidenced by the instruments authorized in this section shall not invalidate the operation of this section as to any future advances unless a notice or release to the contrary is filed for record as provided by law.

Source: Laws 1961, c. 368, § 1, p. 1140; Laws 1974, LB 913, § 1; Laws 1987, LB 136, § 1.

The Legislature has fixed the priority of some optional advances at the time mortgage is recorded. Larson Cement Stone Co. v. Redlim Realty Co., 179 Neb. 134, 137 N.W.2d 241 (1965).

76-239 Deed of trust, mortgage, or real estate sale contract; record; effect as notice; when expires; extension; exceptions.

(1) After the expiration of ten years from the date of maturity of any debt or other obligation secured by a deed of trust, mortgage, or real estate sale contract as stated in or ascertainable from the record of such deed of trust, mortgage, or contract and, in cases where the date of such maturity cannot be ascertained from such record, after the expiration of thirty years from the date of such deed of trust, mortgage, or contract, the record of any deed of trust, mortgage, or real estate contract that has been recorded shall cease to be notice of the existence and lien of such deed of trust, mortgage, or contract as to subsequent encumbrancers and purchasers for value whose deeds, deeds of trust, mortgages, or other instruments shall be thereafter executed and recorded. Such deed of trust, mortgage, or contract shall be conclusively presumed to have been fully paid and discharged and the record thereof shall thereupon cease to be or constitute notice of the existence or lien thereof and shall be wholly void and thereafter shall not be construed to be any part of the public records in the office of the register of deeds as against subsequent purchasers and encumbrancers for value.

(2) Prior to the termination of the record and notice pursuant to subsection (1) of this section, the owner and holder of the deed of trust, mortgage, or contract may file for record with the register of deeds an affidavit to the effect that the deed of trust, mortgage, or contract is unpaid and is still a valid and subsisting lien. Upon the filing of such affidavit the record of the deed of trust, mortgage, or contract shall continue to exist and be valid as notice of the existence of such deed of trust, mortgage, or contract and of any lien thereof, for an additional period of ten years from the date of the filing of such affidavit. The owner and holder of such deed of trust, mortgage, or contract may alternatively file for record with the register of deeds a duly executed written extension agreement thereof in which event the record of the deed of trust, mortgage, or contract shall continue to exist and be valid as notice of the existence of such deed of trust, mortgage, or contract and of any lien thereof,

for an additional period of ten years from the maturity of the deed of trust, mortgage, or contract debt as shown by the recorded extension agreement.

(3) Such periods of notice may be successively extended for additional periods. However, this section shall not be construed as to extend the time within which an action on any deed of trust, mortgage, or contract may be instituted, or in any manner to alter or amend the time within which any action on a deed of trust, mortgage, or contract may be brought under the general laws of this state. This section also shall not apply to mortgages or deeds of trust and instruments supplementary or amendatory thereto covering real estate as well as personal property, such property constituting a portion of property used in carrying on the business of a public utility or a gas or oil pipeline system, and executed to secure the payment of money. The lien of mortgages or deeds of trust and supplements and amendments thereto shall continue in force and effect as to any interest of the mortgagor in the real estate described therein, together with personal property, without the necessity of such renewal affidavit or extension agreement being made and filed, and notwithstanding that the same may have been on file for the period of time set out in this section. The mortgage or deed of trust or instruments supplementary or amendatory thereto shall disclose that the mortgagor or grantor therein is then carrying on the business of a public utility or a gas or oil pipeline system or the mortgagor or grantor has filed an affidavit to that effect for record with the register of deeds.

(4) It is the intent of the Legislature that the changes made by Laws 2005, LB 97, shall not affect or alter the status of any deed of trust, mortgage, or real estate sales contract rendered void prior to September 4, 2005.

Source: Laws 1941, c. 154, § 2, p. 600; C.S.Supp.,1941, § 76-279; R.S. 1943, § 76-239; Laws 1957, c. 138, § 2, p. 461; Laws 2005, LB 97, § 1.

Protection is afforded only to subsequent purchasers and encumbrancers. *Alexanderson v. Wessman*, 158 Neb. 614, 64 N.W.2d 306 (1954).

Protection is not afforded by this section to parties who purchase with notice. *Hadley v. Platte Valley Cattle Co.*, 143 Neb. 482, 10 N.W.2d 249 (1943).

76-239.01 Construction finance; proceeds to apply payment of lawful claims for labor and material furnished; duty of contractor.

Any person, firm or corporation lending money for the purpose of financing the construction of improvements on real property, to be secured by a mortgage filed of record, is hereby required, before the disbursement of any proceeds under such loan, to notify the borrower in writing, separate from any written application, mortgage note, or any other loan document between the lender and the borrower, that it is the responsibility of the borrower or the borrower's contractor, if disbursements are to be made to such contractor, to apply the loan proceeds to the payment of lawful claims for labor and material furnished for such improvements and that failure of the borrower or his contractor to pay all lawful claims for labor and material could result in the filing of construction liens against the property. It shall be the duty of the contractor to whom any such disbursement is made to make such application of the loan proceeds.

Source: Laws 1969, c. 612, § 1, p. 2491.

Any corporation lending money for financing construction to be secured by a mortgage of record is required to notify the borrower in writing that it is the responsibility of the borrower or his contractor to apply the loan proceeds to payment of

lawful claims for labor and materials furnished for improvements. *Westland Homes Corp. v. Hall*, 193 Neb. 237, 226 N.W.2d 622 (1975).

76-239.02 Contractor receiving loan disbursement; agent of borrower; exception.

Any such contractor receiving such loan disbursements and any funds of the borrower in addition to such loan disbursements shall be deemed to have consented to comply with the requirements of section 76-239.01 as to the application of such proceeds, and shall be deemed to be the agent of the borrower for so much of such proceeds as are necessary for the payment of such lawful claims for labor and material; *Provided*, that the foregoing provisions shall not apply where the contractor and the borrower are one and the same person. Nothing herein contained shall be construed to require the contractor to keep such proceeds in a separate account or accounts or to prorate payment of such proceeds to such lawful claims for labor and materials.

Source: Laws 1969, c. 612, § 2, p. 2491.

76-239.03 Sections shall not affect validity of mortgage rights of lender.

Nothing in sections 76-239.01 to 76-239.06 shall in any way affect the validity of the mortgage rights of the lender as provided for in section 76-238.01, or the lien rights of such lender.

Source: Laws 1969, c. 612, § 3, p. 2492.

76-239.04 Acceptance of proceeds without paying lawful claims or obtaining lien waiver; prima facie evidence of intent to deprive or defraud.

In any prosecution under sections 76-239.01 to 76-239.06 of the person, firm or corporation so receiving such proceeds, when it shall be shown in evidence that the contractor had knowledge of lawful claims for labor and material existing at the time of receipt of loan proceeds and that such person, firm or corporation has not paid such lawful claims for labor and material to the extent of the funds received by him, the fact of acceptance of such proceeds without having paid the lawful claims or obtained a lien waiver within thirty days after receipt of such proceeds shall be prima facie evidence of intent to deprive or defraud on the part of the person, firm or corporation so receiving payment.

Source: Laws 1969, c. 612, § 4, p. 2492.

76-239.05 Violations; penalty.

Any person, firm or corporation, the members of any firm, or the officers of any corporation, violating the provisions of sections 76-239.01 to 76-239.06 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

Source: Laws 1969, c. 612, § 5, p. 2492.

76-239.06 Contractor, defined.

For the purposes of sections 76-239.01 to 76-239.06, the word contractor shall include any firm, person or corporation who acts in the capacity of a

prime contractor, subcontractor or supplier for the construction of improvements on real property.

Source: Laws 1969, c. 612, § 6, p. 2492.

76-240 Repealed. Laws 1982, LB 592, § 2.

76-241 Deeds and other instruments; when not lawfully recorded.

All deeds, mortgages and other instruments of writing shall not be deemed lawfully recorded unless they have been previously acknowledged or proved in the manner prescribed by statute.

Source: R.S.1866, c. 43, § 17, p. 283; R.S.1913, § 6214; C.S.1922, § 5613; C.S.1929, § 76-219; R.S.1943, § 76-241; Laws 1973, LB 227, § 2.

Extension agreements involved were not eligible to record, but binding nevertheless on parties having actual knowledge thereof. *Steeves v. Nispel*, 132 Neb. 597, 273 N.W. 50 (1937).

Where instrument, through which person claimed lien was not acknowledged or proved in manner prescribed by recording acts, although recorded, it did not operate as constructive notice. *Dawson County State Bank v. Durland*, 114 Neb. 605, 209 N.W. 243 (1926); *Warnick v. Latta*, 44 Neb. 807, 62 N.W. 1097 (1895); *Keeling v. Hoyt*, 31 Neb. 453, 48 N.W. 66 (1891).

Assignee of junior encumbrancer is given priority over senior encumbrancer only in case his assignment is in registerable form and recorded before senior encumbrancer. *Rumery v. Loy*, 61 Neb. 755, 86 N.W. 478 (1901).

Section applies also to assignments for benefit of creditors. *Heelan v. Hoagland*, 10 Neb. 511, 7 N.W. 282 (1880).

Acknowledgment showing appearance and acknowledgment by mortgagee but not of mortgagor, was fatally defective. *Troyer v. Mundy*, 60 F.2d 818 (8th Cir. 1932).

76-242 Acknowledgment in another state; recording; what constitutes sufficient authentication.

In all cases provided for in section 76-219, if such acknowledgment or proof is taken before a notary public or other officer using an official seal, except a commissioner appointed by the Governor of this state, the instrument thus acknowledged or proved shall be entitled to be recorded without further authentication. In all other cases the deed or other instrument shall have attached thereto a certificate of the clerk of a court of record, or other proper certifying officer of the county, district or state within which the acknowledgment or proof was taken, under the seal of his office, showing that the person, whose name is subscribed to the certificate of acknowledgment, was at the date thereof such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the signature of such officer to be genuine; and that the deed or other instrument is executed and acknowledged according to the laws of such state, district or territory.

Source: R.S.1866, c. 43, § 5, p. 280; R.S.1913, § 6201; C.S.1922, § 5600; C.S.1929, § 76-206; R.S.1943, § 76-242.

The certificate of acknowledgment of a notary public in another state under his official seal is sufficient proof of the execution of a deed of lands in Nebraska for its admission in evidence in an action pending in this state. *Jorgensen v. Crandell*, 134 Neb. 33, 277 N.W. 785 (1938).

Where instrument is acknowledged before commissioner of deeds in another state, certificate of Secretary of State is necessary. *Omaha R. E. & T. Co. v. Reiter*, 47 Neb. 592, 66 N.W. 658 (1896).

No certificate of authority of notary in another state is required. *Galley v. Galley*, 14 Neb. 174, 15 N.W. 318 (1883); *Green v. Gross*, 12 Neb. 117, 10 N.W. 459 (1881).

Certificate is required when acknowledging officer of foreign state has no seal. *Irwin v. Welch*, 10 Neb. 479, 6 N.W. 753 (1880).

76-243 Deed; record; absence of seal of person taking acknowledgment; when not objectionable.

It shall be no objection to the record of a deed that no official seal is appended to the recorded acknowledgment or proof thereof if, when the acknowledgment or proof purports to have been taken by an officer having an official seal, there is a statement in the certificate of acknowledgment or proof

that the same is made under his hand and seal of office, and such statement shall be presumptive evidence that the affixed seal was attached to the original certificate.

Source: R.S.1866, c. 43, § 23, p. 285; Laws 1875, § 1, p. 90; R.S.1913, § 6218; C.S.1922, § 5617; C.S.1929, § 76-223; R.S.1943, § 76-243.

Failure of notary to write under his official signature the date when his commission will expire does not render his certificate void. *Sheridan County v. McKinney*, 79 Neb. 223, 115 N.W. 548 (1908).

76-244 Lost deed or instrument; how proved.

The copy of any record, or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may, on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record.

Source: R.S.1866, c. 43, § 24, p. 285; R.S.1913, § 6219; C.S.1922, § 5618; C.S.1929, § 76-224; R.S.1943, § 76-244.

76-245 Deeds and other instruments; where recorded.

Deeds and other instruments relating to or affecting the title of real estate in this state shall be recorded in the county in which such real estate, or any part thereof, is situated.

Source: R.S.1866, c. 43, § 21, p. 284; R.S.1913, § 6215; C.S.1922, § 5614; C.S.1929, § 76-220; R.S.1943, § 76-245.

Cross References

Recording fees, see section 33-109.

76-246 Conveyances; power of attorney; how revoked.

No instrument containing a power to convey, or in any manner to affect real estate, executed, acknowledged or proved, and certified and recorded in conformity with the requirements of sections 76-211 to 76-245, can be revoked by any act of the party or parties thereto until the instrument of revocation is executed, acknowledged or proved, and certified and filed for record with the register of deeds of the county in which the power is recorded.

Source: R.S.1866, c. 43, § 22, p. 285; Laws 1887, c. 30, § 17, p. 369; R.S.1913, § 6216; C.S.1922, § 5615; C.S.1929, § 76-221; R.S.1943, § 76-246.

76-247 Conveyances; power of attorney; copies, penalty.

A duly authenticated copy of the record of any power recorded in this state shall be entitled to record and shall operate to all intents and purposes, having the same force and effect, as the record of the original instrument. Such copy shall be duly authenticated only when there shall be attached thereto a certificate of the register of deeds under his hand and official seal, setting forth that the same is a true copy of the original record in his office, the date of the filing of the original instrument, and the volume and page where the same is recorded; *Provided*, it shall be unlawful for any register of deeds in this state to give a certified copy of any power of attorney which has been revoked and the revocation thereof filed in his office, without also stating the fact of such

revocation in his certificate; and any person violating any of the provisions of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1883, c. 64, § 1, p. 265; Laws 1887, c. 30, § 27, p. 373; R.S.1913, § 6217; C.S.1922, § 5616; C.S.1929, § 76-222; R.S. 1943, § 76-247; Laws 1977, LB 39, § 207.

76-248 Wills; recording; how, when, and where authorized.

Any will of real estate, which shall have been duly proved in the county court of any county in this state, and any such will, the proof of which shall be contested in that court and carried up by appeal or otherwise and the validity of which shall be finally established, may, with the certificate of proof annexed thereto, be recorded in the office of the register of deeds of the county or counties where the real estate lies, in the same manner and with like effect as in case of deeds.

Source: R.S.1866, c. 43, § 25, p. 285; Laws 1887, c. 30, § 18, p. 369; R.S.1913, § 6220; C.S.1922, § 5619; C.S.1929, § 76-225; R.S. 1943, § 76-248.

Cross References

Recording fees, see section 33-109.

76-248.01 Certificate of dissolution of marriage.

A certificate of dissolution of marriage executed by the clerk of the district court under section 42-372.02 may be recorded in the office of the register of deeds of the county or counties where the real estate is located. A certificate of dissolution of marriage shall not be used in lieu of a deed or other conveyance of real estate to carry out the terms of the dissolution decree or as evidence of title.

Source: Laws 2005, LB 361, § 24.

76-249 Judgment in partition; decree in equity; recording; effect.

Any exemplification of any decree or judgment in partition on final decree in equity affecting real estate may in like manner be recorded in the office of the register of deeds in any county in which real estate described therein may be situated. Such record or exemplification thereof shall be received in evidence and shall be as effective in all cases as the original exemplification would be if produced, and shall be open to the same objection.

Source: R.S.1866, c. 43, § 26, p. 285; Laws 1887, c. 30, § 19, p. 370; R.S.1913, § 6221; C.S.1922, § 5620; C.S.1929, § 76-226; R.S. 1943, § 76-249.

Cross References

Recording fees, see section 33-109.

Exemplification of decree quieting title to real estate must be recorded in office of register of deeds in order to claim benefits of recording act as against one whose instrument of title is first recorded. *McCarthy v. Benedict*, 90 Neb. 386, 133 N.W. 410 (1911).

76-250 Wills; judgment in partition; decree in equity; certificate of dissolution of marriage; recording; how indexed.

On recording any will, exemplification, decree, or certificate of dissolution of marriage, the register of deeds shall index the same in the indices of deeds, and

as nearly as may be as deeds are indexed, placing the name of the deviser, petitioner, or plaintiff, with the grantors, and the devisee, respondent, or defendant with the grantees.

Source: R.S.1866, c. 43, § 27, p. 286; Laws 1887, c. 30, § 20, p. 370; R.S.1913, § 6222; C.S.1922, § 5621; C.S.1929, § 76-227; R.S. 1943, § 76-250; Laws 2005, LB 361, § 35.

76-251 Deed intended as mortgage; recording; effect.

Every deed conveying real estate, which, by any other instrument in writing, shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage. The person for whose benefit such deed shall be made shall not derive any advantage from the recording thereof, unless every writing operating as a defeasance, or explaining its effect as a mortgage, or conditional deed, is also recorded therewith and at the same time.

Source: R.S.1866, c. 43, § 29, p. 286; R.S.1913, § 6223; C.S.1922, § 5622; C.S.1929, § 76-228; R.S.1943, § 76-251.

1. Intent
2. Defeasance
3. Evidence
4. Miscellaneous

1. Intent

Where deed absolute in form is intended as security for a debt, it will be construed as a mortgage. *Koehn v. Koehn*, 164 Neb. 169, 81 N.W.2d 900 (1957).

Absolute deed and contract of defeasance executed as part of the same transaction should be construed together, and if it appears that the instruments were intended as security, should be given effect as a mortgage. *Ashbrook v. Briner*, 137 Neb. 104, 288 N.W. 374 (1939).

When grantee under deed intended as security is in possession, grantor's equity of redemption may be defeated by parol settlement. *Stall v. Jones*, 47 Neb. 706, 66 N.W. 653 (1896).

2. Defeasance

If deed is accompanied by separate written instrument of defeasance, transaction constitutes a mortgage. *Campbell v. Ohio National Life Ins. Co.*, 161 Neb. 653, 74 N.W.2d 546 (1956).

Land contract, absolute in form, may be mortgage. *Lipp v. So. Omaha Land Syndicate*, 24 Neb. 692, 40 N.W. 129 (1888).

Grantee in deed accompanied with defeasance in writing cannot lease. *Connolly v. Giddings*, 24 Neb. 131, 37 N.W. 939 (1888).

Where defeasance is canceled, deed becomes absolute. *Wamsley v. Crook and Hall*, 3 Neb. 344 (1874).

3. Evidence

To establish absolute conveyance as instrument intended for security, testimony must be clear, convincing and satisfactory. *O'Hanlon v. Barry*, 87 Neb. 522, 127 N.W. 860 (1910); *Wilde v. Homan*, 58 Neb. 634, 79 N.W. 546 (1899).

Parol evidence may establish deed, absolute in form, as mortgage. *Morrow v. Jones*, 41 Neb. 867, 60 N.W. 369 (1894).

4. Miscellaneous

To extent that this section conflicts with Nebraska Trust Deeds Act, this section is modified by implication. *Blair Co. v. American Savings Co.*, 184 Neb. 557, 169 N.W.2d 292 (1969).

Warranty deed executed and delivered for purpose of securing an indebtedness considered a mortgage. *Hanks v. Northwestern State Bank of Hay Springs*, 143 Neb. 204, 9 N.W.2d 175 (1943).

Record of deed is constructive notice of grantee's interest in premises. *Livesey v. Brown*, 35 Neb. 111, 52 N.W. 838 (1892).

Purchaser for value without notice is protected. *Kemp v. Small*, 32 Neb. 318, 49 N.W. 169 (1891).

Land contracts under consideration were considered to be equal with mortgages. *Ehlers v. Vinal*, 253 F.Supp. 58 (D. Neb. 1966).

76-252 Release of mortgage; required; when; failure to deliver; effect; damages.

When the obligation secured by any mortgage has been satisfied, the mortgagee shall, upon receipt of a written request by the mortgagor or the mortgagor's successor in interest or designated representative or by a holder of a junior trust deed or junior mortgage, execute and deliver a release of mortgage in recordable form to the mortgagor or mortgagor's successor in interest or designated representative, as directed in the written request.

Any mortgagee who fails to deliver such a release within sixty days after receipt of such written request shall be liable to the mortgagor or the mortga-

gor's successor in interest, as the case may be, for five thousand dollars or actual damages resulting from the failure, whichever is greater. In any action against the mortgagee pursuant to this section, the court shall award, in addition to the foregoing amounts, court costs, including reasonable attorney's fees, and may further order the mortgagee to execute a release. Successor in interest of the mortgagor shall include the current owner of the property and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a mortgagee.

Source: Laws 1994, LB 1275, § 5; Laws 1995, LB 396, § 2; Laws 2002, LB 957, § 30; Laws 2003, LB 218, § 18.

76-253 Mortgage; record; certificate of discharge or satisfaction.

Any mortgage shall be discharged upon the record thereof by the register of deeds in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his legal personal representative or assignee, acknowledged or proved or certified as prescribed in sections 76-216 to 76-236, specifying that such mortgage has been paid, or otherwise satisfied and discharged.

Source: R.S.1866, c. 43, § 32, p. 287; Laws 1887, c. 30, § 22, p. 371; R.S.1913, § 6225; C.S.1922, § 5624; C.S.1929, § 76-230; R.S. 1943, § 76-253; Laws 1963, c. 430, § 1, p. 1446.

Cross References

Recording fees, see section 33-109.

A mortgagee who releases a mortgage, as to all lands therein described, to a grantee of the mortgagor without the latter's consent, cannot hold such mortgagor personally liable for the debt secured when the actual value of the lands so released exceeds or equals the indebtedness secured by such mortgage. *Petters v. Storm*, 132 Neb. 542, 272 N.W. 409 (1937).

Failure to release mortgage of record may subject the mortgagee to penalties but has no effect to keep mortgage in existence when debt has been paid. *Shriver v. Sims*, 127 Neb. 374, 255 N.W. 60 (1934).

Lien is extinguished by formal release whether paid or not. *Gadsden v. Johnson*, 65 Neb. 447, 91 N.W. 285 (1902).

Release, acknowledging full payment, but describing only part of land, is a complete release. *Gadsden v. Latey*, 42 Neb. 128, 60 N.W. 322 (1894).

Release by mortgagee after assignment is effective as to bona fide purchaser without notice. *Whipple v. Fowler*, 41 Neb. 675, 60 N.W. 15 (1894); *Montgomery v. Waite*, 1 Neb. Unof. 144, 95 N.W. 343 (1901).

76-254 Mortgage; record; certificate of discharge or satisfaction; how indexed.

Every such certificate and the proof or the acknowledgment thereof shall be indexed in the order of mortgages and recorded at full length. In the record of discharge the register of deeds shall make a reference to the book and page or computer system reference where the mortgage is recorded.

Source: R.S.1866, c. 43, § 33, p. 287; Laws 1887, c. 30, § 23, p. 271; R.S.1913, § 6226; C.S.1922, § 5625; C.S.1929, § 76-231; R.S. 1943, § 76-254; Laws 1984, LB 679, § 14.

Real estate mortgages must be indexed and recorded at full length, and abstract showing release of mortgage in index but

not of record, does not show good title of record. *Rath v. Wilgus*, 110 Neb. 810, 195 N.W. 115 (1923).

76-255 Repealed. Laws 1994, LB 1275, § 13.

76-256 Mortgage; assignment; recording not notice to mortgagor.

The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representa-

tives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Source: R.S.1866, c. 43, § 44, p. 290; R.S.1913, § 6229; C.S.1922, § 5628; C.S.1929, § 76-234; R.S.1943, § 76-256.

Recording assignment of mortgage is not notice to mortgagor so as to invalidate payment to mortgagee. *Shriver v. Sims*, 127 Neb. 374, 255 N.W. 60 (1934).

Record of assignment is constructive notice to mortgagor. *Bettle v. Tiedgen*, 85 Neb. 276, 122 N.W. 890 (1909), rehearing on 77 Neb. 795, 110 N.W. 548 (1906).

Transfer of interest coupon to third person operates as assignment pro tanto. *New England Loan & Trust Co. v. Robinson*, 56 Neb. 50, 76 N.W. 415 (1898).

Payment to third party is at mortgagor's risk, and must prove agency. *Richards v. Waller*, 49 Neb. 639, 68 N.W. 1053 (1896).

Mortgagor is protected only by paying party who holds note. *Bull v. Mitchell*, 47 Neb. 647, 66 N.W. 632 (1896).

Section has no application to holder of negotiable paper transferred before maturity. *Stark v. Olsen*, 44 Neb. 646, 63 N.W. 37 (1895); *Eggert v. Beyer*, 43 Neb. 711, 62 N.W. 57 (1895).

76-257 Deeds and other instruments; recording; duty of register of deeds to reference on instrument.

The register of deeds shall mark upon the deed or instrument, after recording the same, the book and page or computer system reference where the same is recorded.

Source: R.S.1866, c. 43, § 37, p. 287; Laws 1887, c. 30, § 24, p. 372; R.S.1913, § 6227; C.S.1922, § 5626; C.S.1929, § 76-232; R.S. 1943, § 76-257; Laws 1984, LB 679, § 15.

(g) CURATIVE ACTS

76-258 Deeds and other instruments; formal defects; recorded for more than ten years; validated.

When any instrument of writing, in any manner affecting or purporting to affect the title to real estate, has been, or may hereafter be recorded for a period of ten years in the office of the register of deeds of the county wherein such real estate is situated, and such instrument, or the record thereof, because of defect, irregularity or omission, fails to comply in any respect with any statutory requirement or requirements relating to the execution, attestation, acknowledgment, certificate of acknowledgment, recording or certificate of recording, such instrument and the record thereof shall, notwithstanding any or all of such defects, irregularities and omissions, be fully legal, valid, binding and effectual for all purposes to the same extent as though such instrument had, in the first instance, been in all respects duly executed, attested, acknowledged and recorded.

Source: Laws 1941, c. 152, § 1, p. 593; C.S.Supp.,1941, § 76-276; R.S. 1943, § 76-258.

Defects in execution of deed are cured after passage of ten-year period. *Bailey v. Karnopp*, 170 Neb. 836, 104 N.W.2d 417 (1960).

76-259 Deeds and other instruments; formal defects; what constitutes.

The defects, irregularities and omissions mentioned in section 76-258 shall include all defects and irregularities in respect to formalities of execution and recording, and all defects and irregularities in, as well as the entire lack or omission of attestation, acknowledgment, certificate of acknowledgment, or certificate of recording, and shall apply with like force to instruments whether or not the real estate involved is homestead.

Source: Laws 1941, c. 152, § 2, p. 593; C.S.Supp.,1941, § 76-277; R.S. 1943, § 76-259.

76-260 Deeds and other instruments; recorded for more than ten years; effective as notice despite formal defects.

From and after its validation by the operation of section 76-258, such instrument shall impart notice to subsequent purchasers, encumbrancers, and all other persons whomsoever so far as and to the same extent that the same is recorded, notwithstanding such defects, irregularities or omissions; and such instrument, the record thereof, or a duly authenticated copy shall be competent evidence to the same extent as such instrument would have been competent if valid in the first instance.

Source: Laws 1941, c. 152, § 3, p. 593; C.S.Supp.,1941, § 76-278; R.S. 1943, § 76-260.

76-261 Repealed. Laws 2004, LB 155, § 8.

76-262 Repealed. Laws 2004, LB 155, § 8.

76-263 Repealed. Laws 2004, LB 155, § 8.

76-264 Deeds executed in another state; omission of private seal, validated.

No deed of conveyance or other instrument affecting real estate in this state, which has been executed and acknowledged or proved in any other state, territory or district of the United States and which has been executed and acknowledged or proved in accordance with the laws of such state, territory or district, shall be held invalid because of the failure of the grantor to affix thereto his private seal, although the affixing of such private seal may be required by the laws of such state, territory or district. Every such deed of conveyance or other instrument, which has been so executed and acknowledged or proved, is declared to be legal, valid and binding, and all such deeds of conveyance or other instruments, and the record thereof in the office of the register of deeds of the county in which said real estate is situated, shall be competent evidence in the courts of this state.

Source: Laws 1917, c. 223, § 4, p. 546; C.S.1922, § 5657; C.S.1929, § 76-263; R.S.1943, § 76-264.

76-265 Repealed. Laws 2004, LB 155, § 8.

76-266 Trust deeds executed prior to 1917; failure to name beneficiary and record; presumption of authority of trustee to convey.

When any conveyance of the title to, or any interest in, or any lien on real estate shall have been made prior to July 24, 1917, to any person or corporation as trustee and no beneficiary is named therein, and no declaration of the terms of the trust shall have been made in writing and recorded in the office of the register of deeds of the county in which such real estate is located, and such person or corporation as trustee has thereafter conveyed said title or interest, or assigned or released said lien, it shall be presumed that such trustee had the power and authority to make such conveyance, assignment or lease. In all actions which may be brought after July 24, 1919, by any person claiming a right or interest in or to said real estate, or a lien thereon adverse to such conveyance, assignment or release by said trustee, the presumption that such

trustee had power and authority to make such conveyance, assignment or release shall be conclusive.

Source: Laws 1917, c. 223, § 6, p. 547; C.S.1922, § 5659; C.S.1929, § 76-265; R.S.1943, § 76-266.

If no declaration of terms of trust have been recorded, trustee holding legal title will be conclusively presumed to have had authority to enter into lease. *Bauer v. Bauer*, 136 Neb. 329, 285 N.W. 565 (1939).

Mere insertion of trustee after name of patentee does not prevent grantee from transferring to another where trust is not disclosed. *Perry v. Ritze*, 110 Neb. 286, 193 N.W. 758 (1923).

76-267 Trust deeds executed prior to 1917; failure to record; presumption of authority of trustee to convey; filing of notice by beneficiary; effect.

Where any such conveyance or lien shall have been made prior to July 24, 1917, to any person or corporation as trustee and such trustee has not conveyed, assigned or released it before said date, and no declaration of the terms of the trust has been executed and recorded in the office of the register of deeds of the county in which such real estate is located, it shall be presumed that such person or corporation, as trustee, had power and authority to convey such right or interest in said real estate or to assign or release such lien thereon, and a purchaser in good faith from such trustee shall not be bound to inquire or ascertain the terms of the trust unless the person claiming a beneficial interest therein shall, within two years after July 24, 1917, have filed in the office of the register of deeds of the county where such real estate is located, a notice verified by his affidavit describing the real estate in which he claims an interest and stating what right or interest therein he claims, and his place of residence.

Source: Laws 1917, c. 223, § 6, p. 547; C.S.1922, § 5659; C.S.1929, § 76-265; R.S.1943, § 76-267.

76-268 Trust deeds executed after 1917; failure to name beneficiary and record; presumption of authority of trustee to convey; filing of notice by beneficiary.

If any conveyance of the title to, or any right or interest in real estate, or any lien thereon, shall be made after July 24, 1917, to any person or corporation as trustee without naming any beneficiary and without any declaration of the terms of the trust having been executed and recorded in the manner prescribed by statute, in the office of the register of deeds of the county in which such real estate is located, it shall be conclusively presumed that such person or corporation as trustee, has power and authority to convey the title, right and interest in such real estate which has been conveyed to him, or to assign or release such lien without any other person joining therein, and a purchaser from such trustee shall not be bound to inquire or ascertain the terms of the trust, unless before such conveyance, assignment or release has been made by such trustee, the person claiming a beneficial interest therein shall have filed a notice as provided in section 76-267, in the office of the register of deeds of the county in which said real estate is located.

Source: Laws 1917, c. 223, § 6, p. 547; C.S.1922, § 5659; C.S.1929, § 76-265; R.S.1943, § 76-268.

76-269 Instrument recorded more than fifteen years without contest; validity.

After one year from July 24, 1917, no action shall be maintained whereby to set aside, cancel, annul, declare void or invalid any deed of conveyance, mortgage, release of mortgage, or other instrument affecting the title to any real estate, which has been recorded in the office of the register of deeds of the county or counties in this state in which such real estate is situated for more than fifteen years prior to the commencement of such action, and purporting to be executed by any executor, administrator, guardian, receiver or trustee, notwithstanding any defect in, or absence of, any record of the court granting authority to such executor, administrator, guardian, receiver or trustee to execute the same. Unless such deed of conveyance, mortgage, release of mortgage or other instrument shall have been modified or set aside by an action or proceeding commenced within one year after said date or within fifteen years from the date of recording thereof, it shall be conclusively presumed that such executor, administrator, guardian, receiver or trustee had due authority to execute the same, notwithstanding such defect in, or absence of, any record of such court. This section shall not release any such executor, administrator, guardian, receiver or trustee from any liability or responsibility to which he is subject.

Source: Laws 1917, c. 223, § 8, p. 549; C.S.1922, § 5661; Laws 1923, c. 101, § 1, p. 256; C.S.1929, § 76-267; Laws 1935, c. 149, § 1, p. 553; C.S.Supp.,1941, § 76-267; R.S.1943, § 76-269.

76-269.01 Deed of conveyance executed by a personal representative; validity.

On and after September 9, 1997, no action may be maintained to set aside any deed of conveyance executed by a personal representative of an estate prior to September 9, 1993, upon the grounds that the personal representative lacked authority conferred by the will of the decedent to convey real estate without court order or that a court order authorizing the sale of the real estate was invalid.

Source: Laws 1994, LB 188, § 2.

76-270 Grantee represented as corporation; conveyance more than ten years from recording; validity.

Where any grantee takes title to real estate in this state under a name including the word company or corporation, whether such grantee was or was not in fact a corporation, and where such grantee subsequent to the date that such title is taken conveys all of such land or part thereof, through a deed executed on behalf of such grantee by any person or persons, after ten years from the recording thereof such deed shall be as good, valid, legal and effectual as though such grantee had been at the time of receiving and conveying said land, a corporation de jure, and said deed conveying said land had been executed and acknowledged on its behalf by the officers and in the manner provided by law.

Source: Laws 1937, c. 166, § 1, p. 634; C.S.Supp.,1941, § 76-275; R.S. 1943, § 76-270; Laws 1947, c. 245, § 1, p. 769.

76-270.01 Repealed. Laws 1949, c. 31, § 19.**76-271 Affidavits to correct defects; recording; effect.**

Affidavits explaining or correcting any apparent defect in the chain of title to any real estate, may be recorded as instruments affecting real estate, and such record shall be prima facie evidence of the facts therein recited.

Source: Laws 1913, c. 75, § 1, p. 218; R.S.1913, § 6253; C.S.1922, § 5652; C.S.1929, § 76-258; R.S.1943, § 76-271.

Variances in spelling of names may be cured by affidavit.
Perry v. Ritze, 110 Neb. 286, 193 N.W. 758 (1923).

Affidavit recorded in office of register of deeds is prima facie evidence of facts stated therein. Schlake v. Healey, 108 Neb. 35, 187 N.W. 427 (1922).

76-272 Affidavits to correct defects; validity.

All such instruments now appearing of record in the chain of title to any real estate, are legalized; and they shall have the same force and effect as those herein provided for.

Source: Laws 1913, c. 75, § 2, p. 219; R.S.1913, § 6254; C.S.1922, § 5653; C.S.1929, § 76-259; R.S.1943, § 76-272.

Affidavit recorded in office of register of deeds is prima facie evidence of facts stated therein. Schlake v. Healey, 108 Neb. 35, 187 N.W. 427 (1922).

76-273 Repealed. Laws 1975, LB 279, § 75.**76-274 Merger of lien with fee; when presumed.**

Whenever an interest in the fee title to any real estate in this state and an interest in a mortgage or other lien affecting the same interest shall become vested in the same person, and such person subsequently conveys such fee title by deed, unless a contrary intent is expressed by the terms of such deed, it shall be conclusively presumed in favor of subsequent purchasers and encumbrancers for value and without notice, that such lien interest merged with the fee and was conveyed by such deed and that such lien was thereby released from the fee interest so conveyed.

Source: Laws 1935, c. 150, § 1, p. 555; C.S.Supp.,1941, § 76-273; R.S. 1943, § 76-274.

A mortgage does not merge in the fee title where there is no identity of ownership of the mortgage and the fee title; thus, there can be no merger where a lien attaches to the entire property and the interest in the fee title was that of a joint tenant. County of Keith v. Fuller, 234 Neb. 518, 452 N.W.2d 25 (1990).

Merger occurs under this section only when a person who has an interest in the fee title and an interest in a lien subsequently conveys the fee title to a third person. The action bringing about the merger is the subsequent conveyance. Whipple v. Commercial Bank of Blue Hill, 6 Neb. App. 249, 572 N.W.2d 797 (1997).

76-275 Merger of lien with fee; subsequent conveyance; presumption; action to enforce lien, when barred.

After one year from April 13, 1935, in all cases where before such date an interest in the fee title to any real estate in this state and an interest in a mortgage or other lien affecting the same interest have become vested in the same person and such person subsequently conveyed such fee title by deed, unless a contrary intent is expressed by the terms of such deed, it shall be presumed in favor of subsequent purchasers for value and without notice that such lien interest was merged with the fee and conveyed by such deed and that such lien was thereby released from the fee interest so conveyed. After April 13, 1936, no action shall be brought whereby to enforce such lien against subsequent purchasers and encumbrancers for value unless the claimant of such lien shall before that date file with the register of deeds of the county where the land is located an affidavit reciting the book and page or computer system reference

where the deed of conveyance is recorded and that the claimant did not intend to merge or convey such lien interest by such deed.

Source: Laws 1935, c. 150, § 2, p. 555; C.S.Supp.,1941, § 76-274; R.S. 1943, § 76-275; Laws 1984, LB 679, § 16.

76-275.01 Conveyance by married persons to themselves prior to August 24, 1941, as joint tenants; validity.

Unless action is brought before September 7, 1948, to set aside the deed upon that ground, all deeds of conveyance executed by any person to himself or herself and the spouse of such person or by married persons direct to themselves as joint tenants with right of survivorship, which deeds were executed and recorded prior to August 24, 1941, be and the same hereby are legalized and validated as though a married person had the power, prior to August 24, 1941, to convey property directly to his or her spouse in the same manner and to the same extent as if he or she were unmarried.

Source: Laws 1947, c. 248, § 1, p. 772.

Cross References

For authority of married persons to convey to themselves as joint tenants subsequent to August 24, 1941, see section 76-118.

76-275.02 Conveyance by married persons to themselves prior to August 24, 1941, as joint tenants; limitation of action.

After September 7, 1948, no action may be maintained to set aside any deed of conveyance mentioned in section 76-275.01, which deed was executed and recorded prior to August 24, 1941, upon the ground that the grantor or grantors therein did not have the legal power and right to make a conveyance direct to such grantee and spouse or themselves in such manner.

Source: Laws 1947, c. 248, § 2, p. 772.

76-275.03 Vacation of street or alley for more than ten years; effect of conveyance of adjoining platted lots.

After one year from May 18, 1957, when (1) all or part of an adjoining street, avenue, or alley has been duly vacated under the applicable laws that all or a portion of such vacated street, avenue, or alley reverted to the owner of the adjoining platted lot, (2) a deed or deeds executed subsequent to such vacation and covering such platted lot have been of record more than ten years, and (3) there has been filed of record no instrument purporting to establish a contrary intent, the deed or deeds to the platted lot, without describing the vacated street, avenue, or alley, shall be irrevocably deemed to constitute a conveyance of the platted lot together with the reverted portion of such vacated street, avenue, or alley.

Source: Laws 1957, c. 317, § 1, p. 1135; Laws 1963, c. 431, § 1, p. 1447.

Cross References

For other provisions for reverter to owner, see sections 14-115, 15-701, 16-611, 17-558, and 39-1725.

76-275.04 Recitals; intent.

When any instrument affecting title to real property is required by law to be recorded in any public record in order to be valid or effective or perfected either against all persons or against any person or persons or class of persons,

and when any notice or statement concerning any instrument affecting title to real property is required by law so to be recorded in order for such instrument to be so valid or effective or perfected, no reference or recital as to such instrument contained in any other recorded instrument shall be notice of it to any person not an immediate party to the instrument making the reference, or put any such person upon inquiry concerning it, unless (1) the instrument referred to, or the notice or statement thereof in the form so required by law, has been recorded as so required prior to the recording of the reference or recital, and either the reference or recital specifies the public records and place therein where the instrument, notice or statement is to be found, or the instrument, notice or statement is in the chain of record title to the real property affected within a period of twenty years prior to the recording of the reference or recital, or (2) if the reference or recital has been made before September 28, 1959, unless the instrument, statement or notice is recorded as required by law not later than one year thereafter.

Source: Laws 1959, c. 348, § 1, p. 1234.

76-275.05 Recitals; validity; requirements.

When any reference or recital is made in any recorded instrument as to any restriction, agreement, easement, mortgage or other encumbrance of any kind affecting real property, customarily created by recorded instrument or instrument of which a notice or statement provided by statute is recorded, or as to any such encumbrance in general terms, and the reference or recital does not specify the public records and place therein where the instrument creating the encumbrance or such notice or statement of it is to be found, the reference or recital shall unless a contrary intent clearly appears be construed to refer only to encumbrances, if any, of the kind therein described created by instruments included, or of which such a notice or statement is included, in the chain of record title to the real property affected within a period of twenty years prior to the recording of the reference or recital, and the fact that there are none within the period shall not be construed to indicate a contrary intent.

Source: Laws 1959, c. 348, § 2, p. 1234.

76-275.06 Plat of city or village lots; validity.

When any plat of city or village lots in this state has been filed of record on or before January 1, 1937, and has not been vacated, it shall be conclusively presumed that the person filing such plat was, on the date of filing thereof, the owner, in fee simple, of the real estate described therein, free and clear of any liens or encumbrances of any kind unless action on any claimed lien or encumbrance is brought within one year from September 28, 1959. Whenever, after September 28, 1959, any plat of city or village lots in this state has been filed of record, accompanied by an affidavit of the person so filing setting forth the liens or encumbrances, if any, against such real estate, it shall be conclusively presumed that such person was the owner thereof, in fee simple, subject only to the liens or encumbrances disclosed by such affidavit unless, within twenty-three years after the filing thereof, an action is brought on any other claimed lien or encumbrance.

Source: Laws 1959, c. 349, § 1, p. 1236.

76-275.07 Cotenancy; when presumed.

When any conveyance of a present interest in real estate is made to more than one person and the grantees are named in the disjunctive, the conveyance shall be conclusively presumed to create a cotenancy in all the named grantees.

Source: Laws 1981, LB 96, § 1.

(h) SPECIAL KINDS OF CONVEYANCES

76-276 Mortgages; mortgagor retains legal title, when; security interest in rents; effect.

In the absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereof. This section shall not limit or otherwise affect the creation, provision, assignment, granting, or enforcement of a security interest in rents arising from real estate pursuant to sections 52-1701 to 52-1708.

Source: R.S.1866, c. 43, § 85, p. 297; R.S.1913, § 6230; C.S.1922, § 5629; C.S.1929, § 76-235; R.S.1943, § 76-276; Laws 1993, LB 14, § 9.

- 1. Nature of interest conveyed
- 2. Rights of mortgagor
- 3. Rights of mortgagee
- 4. Assignment of rents
- 5. Miscellaneous

1. Nature of interest conveyed

A mortgage is a special interest in real property consisting of a security interest for the debts or obligation, and absent stipulation to the contrary, title and right to possession remain in the mortgagor. Dupuy v. Western State Bank, 221 Neb. 230, 375 N.W.2d 909 (1985).

Mortgage conveys no estate, but merely creates lien. Morrill v. Skinner, 57 Neb. 164, 77 N.W. 375 (1898); Orr v. Broad, 52 Neb. 490, 72 N.W. 850 (1897); Higginbottom v. Benson, 24 Neb. 461, 39 N.W. 418 (1888).

Mortgage is mere security in form of conditional conveyance. Barber v. Crowell, 55 Neb. 571, 75 N.W. 1109 (1898).

2. Rights of mortgagor

A mortgagee's status is that of a lienholder. Under this theory, the mortgagee is regarded as owning a security interest in real estate only and the mortgagor retains both the legal title and right of possession. 24th & Dodge Ltd. Part. v. Acceptance Ins. Co., 269 Neb. 31, 690 N.W.2d 769 (2005).

Although title and possession remain in the mortgagor, mortgagees may create a security interest in rents arising from real estate. 24th & Dodge Ltd. Part. v. Acceptance Ins. Co., 269 Neb. 31, 690 N.W.2d 769 (2005).

Mortgagor is deprived of right only by decree of foreclosure. Union Mutual Life Ins. Co. v. Lovitt, 10 Neb. 301, 4 N.W. 986 (1880).

Mortgagor can convey his title by will. Renard v. Brown, 7 Neb. 449 (1878).

3. Rights of mortgagee

Mortgagor is entitled to rents and profits of mortgaged premises until condition broken, but after default, mortgagee has equitable lien thereon which may be enforced by proper proceedings. Federal Farm Mortgage Corporation v. Ganswer, 146 Neb. 635, 20 N.W.2d 689 (1945).

Right of mortgagee to possession may be stipulated in mortgage. Pettit v. Louis, 88 Neb. 496, 129 N.W. 1005 (1911).

Mortgagee cannot demand more than is legally due. First Nat. Bank of David City v. Sargeant, 65 Neb. 594, 91 N.W. 595 (1902).

Stipulation for possession by mortgagee on default in payment is valid. Felino v. Newcomb Lumber Co., 64 Neb. 335, 89 N.W. 755 (1902).

Mortgagee cannot maintain replevin for fixtures removed from premises. Moore v. Moran, 64 Neb. 84, 89 N.W. 629 (1902).

Mortgagee in possession is entitled to collect rents and profits. Huston v. Canfield, 57 Neb. 345, 77 N.W. 763 (1899).

Mortgagee has insurable interest. Hanover Fire Ins. Co. v. Bohn, 48 Neb. 743, 67 N.W. 774 (1896).

4. Assignment of rents

Assignment of possession and rents made by mortgagor by separate instrument is enforceable. Hanks v. Northwestern State Bank of Hay Springs, 143 Neb. 204, 9 N.W.2d 175 (1943).

An assignment of possession and rents by mortgagor to mortgagee, effective upon default and given as consideration for an extension of a mortgage then in default, is not against public policy and is valid and enforceable. Pennsylvania Mut. Life Ins. Co. v. Katz, 139 Neb. 501, 297 N.W. 899 (1941).

5. Miscellaneous

Section applied to quitclaim deed which is in effect a mortgage. Helming v. Forrester, 92 Neb. 284, 138 N.W. 190 (1912).

This section does not prohibit a conveyance of legal title and right of possession to mortgagee, but states presumption in absence of express stipulation. Kirkendall v. Weatherley, 77 Neb. 421, 109 N.W. 757 (1906).

Equitable estate may be mortgaged. Arlington Mill & Elev. Co. v. Yates, 57 Neb. 286, 77 N.W. 677 (1898).

Strict foreclosure will not lie when mortgagor holds legal title. South Omaha Sav. Bank v. Levy, 1 Neb. Unof. 255, 95 N.W. 603 (1901).

76-277 Conveyances; claims and improvements upon public lands; law applicable.

The provisions of sections 76-201 to 76-281 shall apply to the conveyance of all claims and improvements upon the public lands.

Source: R.S.1866, c. 43, § 35, p. 287; R.S.1913, § 6231; C.S.1922, § 5630; C.S.1929, § 76-236; R.S.1943, § 76-277.

Cross References

For other provisions for conveyance of public lands and buildings, see Chapter 72.

76-278 United States patents and certificates; where recorded.

All certificates of the register and receiver of any United States Land Office of the entry or purchase of any tract of land, and all letters patent of land from the United States lying in this state, shall be recorded in the county in which the land lies, and where any patent as above, contains descriptions of land lying in more than one county, or otherwise, it shall be lawful to record in any county the whole of the descriptions of land situated therein without recording all descriptions contained in the patent. All maps and profiles required by the government of the United States to be filed by any railroad company in any general or district land office of the United States, for the completion of the title of such company to any right-of-way granted by the United States, shall be entitled to record in the office of the register of deeds or county clerk, as the case may be, in the same manner as plats of cities and villages, and the same effect shall be given thereto as to such plats when thus filed; *Provided*, such record shall include all the granting or conveying part or language of such patent, and the records of such certificates and patents, and all copies thereof so recorded, duly certified by the register of deeds, shall be prima facie evidence of the existence of such certificates and patents, and conclusive evidence of the existence of such record.

Source: R.S.1866, c. 43, § 45, p. 290; Laws 1883, c. 63, § 1, p. 264; Laws 1887, c. 30, § 25, p. 372; Laws 1911, c. 97, § 1, p. 362; R.S.1913, § 6246; C.S.1922, § 5645; C.S.1929, § 76-251; R.S.1943, § 76-278.

76-279 Public lands; improvements; conveyances; effect.

All deeds of quitclaim or other conveyance of all improvements upon public lands shall be as binding and effectual in law and equity between the parties, for conveying of the title of the grantor in and to the same, as in cases where the grantor has the fee simple to the premises.

Source: R.S.1866, c. 24, § 2, p. 187; R.S.1913, § 6247; C.S.1922, § 5646; C.S.1929, § 76-252; R.S.1943, § 76-279.

Sale of inchoate homestead and improvements is valid consideration for promissory note. *Paxton Cattle Co. v. First National Bank of Arapahoe*, 21 Neb. 621, 33 N.W. 271 (1887).

Note given for purchase price of improvements is valid. *Brooks v. Hiatt*, 13 Neb. 503, 14 N.W. 480 (1882); *McWilliams v. Bridges*, 7 Neb. 419 (1878).

On failure to convey preemption claim as agreed, consideration is recoverable. *Bateman v. Robinson*, 12 Neb. 508, 11 N.W. 736 (1882).

Party may recover for breaking land, irrespective of illegality of contract for conveyance of after-acquired homestead. *Simmons v. Yurann*, 11 Neb. 516, 9 N.W. 690 (1881).

A contract to convey land, the title to which one of the parties is trying to acquire under homestead law, is against public policy and void. *Anderson v. Carkins*, 135 U.S. 483 (1890), reversing *Carkins v. Anderson*, 21 Neb. 364, 32 N.W. 155 (1887).

76-280 Public lands; improvements; contracts to sell authorized.

All contracts, promises, assumpsits or undertakings, either written or verbal, which shall be made in good faith and without fraud, collusion or circumvention, for sale, purchase or payment of improvements made on the lands owned

by the government of the United States shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts.

Source: R.S.1866, c. 24, § 1, p. 186; R.S.1913, § 6248; C.S.1922, § 5647; C.S.1929, § 76-253; R.S.1943, § 76-280.

76-281 Patent issued to deceased person; effect.

Where patents for public lands have been or may be issued, in pursuance of any law of the State of Nebraska, to a person who has died, the title to the land designated therein shall inure to and become vested in the heirs, devisees or assignees of such deceased patentee as if the patent had issued to the deceased person during life.

Source: Laws 1905, c. 64, § 1, p. 321; R.S.1913, § 6249; C.S.1922, § 5648; C.S.1929, § 76-254; R.S.1943, § 76-281.

76-282 Public lands; entry by purchaser at sale by county court; rights under patent issued to original claimant.

Whenever any person referred to in the third section of the Act of Congress entitled "An act to provide for the location of certain confirmed land claims in the State of Missouri, and for other purposes," approved June 21, 1828 (11 Statutes at Large, 294 and 295), has had a private land claim which has not been located and satisfied, has died before making the entry therein authorized of public land, and his right so to do has been sold by order of the county court of the county and state of his residence, and the entry of public lands in this state has been made by the purchaser or his grantee, and letters patent of the United States have issued to the original claimant or his legal representatives, it shall be competent for the purchaser or his grantee to cause to be recorded in the book of deeds in the office of the county clerk of the county in which the land is situated, a copy of the proceedings of the county court upon which the right of the original claimant was sold as aforesaid, together with the proceedings of the several officers on such sale. Such copy shall be duly certified by said court, and the record so made in the county clerk's office shall be taken and held by all courts of this state as evidence of the transfer of the right to make such entry in the land office, and of the title of the purchaser and his grantees to the lands patented as aforesaid. A copy of the record in the county clerk's office, certified by that officer, may be read in evidence with the like force and effect as the original papers.

Source: Laws 1885, c. 66, § 1, p. 298; R.S.1913, § 6281; C.S.1922, § 5800; C.S.1929, § 76-801; R.S.1943, § 76-282.

One cannot invoke section unless he has complied with provisions thereof. Comstock v. Kerwin, 57 Neb. 1, 77 N.W. 387 (1898).

76-283 Town lots; equitable owners; failure to demand deed within three years; effect.

All persons who shall be or may become the owners of any equities of title in and to any town lot or lots or land within any incorporated town or city in this state, by virtue of which they shall be entitled to demand and receive from the corporate authorities a title in fee simple to the same, shall present their claims and make demand for the deed within three years after such entry by the town or city as a townsite; *Provided*, if any person shall neglect to comply with the

terms of this section as aforesaid, the title in and to such realty shall vest in the corporation as fully, and to all intents and purposes, as though conveyed to such town or city by deed of general warranty.

Source: Laws 1867, § 1, p. 94; R.S.1913, § 6282; C.S.1922, § 5801; C.S.1929, § 76-802; R.S.1943, § 76-283.

76-284 Town lots; section, how construed.

Section 76-283 shall be construed to apply to rights acquired previous to the entry of the land; and in no case to the rights of parties acquired under or by virtue of any tax sale.

Source: Laws 1867, § 2, p. 94; R.S.1913, § 6283; C.S.1922, § 5802; C.S.1929, § 76-803; R.S.1943, § 76-284.

76-285 Public lands; occupation as townsite; entry, when authorized.

In all cases in which any of the public land of the United States has been or shall be selected and occupied as a townsite, if the inhabitants of such townsite shall be at the time incorporated, it shall be the duty of the corporate authorities of such city or village, or if not incorporated, then of the county judge of the county in which such townsite is situated, whenever called on by any of the occupants of such town, and the money for the entry of such townsite has been furnished, to enter such townsite under the Act of Congress in such case made and provided.

Source: Laws 1907, c. 155, § 1, p. 486; R.S.1913, § 6284; C.S.1922, § 5803; C.S.1929, § 76-804; R.S.1943, § 76-285.

76-286 Public lands; entry as townsite; deeds; to whom made.

When a townsite is entered under the Act of Congress mentioned in section 76-285, deeds shall be made by the proper corporate officers or by the county judge and their successors in office to the inhabitants of such townsite, according to their respective rights or to the purchasers of lots.

Source: Laws 1907, c. 155, § 2, p. 487; R.S.1913, § 6285; C.S.1922, § 5804; C.S.1929, § 76-805; R.S.1943, § 76-286.

76-287 Public lands; occupation as townsite; deeds validated.

All deeds made prior to July 5, 1907, for such townsite, lots or lands therein situated, made by corporate officers or county judges, are declared to be valid.

Source: Laws 1907, c. 155, § 3, p. 487; R.S.1913, § 6286; C.S.1922, § 5805; C.S.1929, § 76-806; R.S.1943, § 76-287.

(i) MARKETABLE TITLE

76-288 Marketable record title; unbroken chain of title of record twenty-two years or longer; exceptions.

Any person having the legal capacity to own real estate in this state, who has an unbroken chain of title to any interest in real estate by such person and his or her immediate or remote grantors under a deed of conveyance which has been recorded for a period of twenty-two years or longer, and is in possession of such real estate, shall be deemed to have a marketable record title to such

interest, subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the Uniform Environmental Covenants Act and sections 25-207, 25-213, 40-104, and 76-288 to 76-298, instruments which have been recorded less than twenty-two years, and any encumbrances of record not barred by the statute of limitations.

Source: Laws 1947, c. 243, § 1, p. 762; Laws 2005, LB 298, § 15.

Cross References

Uniform Environmental Covenants Act, see section 76-2601.

Only those persons who possess a title which complies with Marketable Title Act are qualified to invoke its aid. *Smith v. Berberich*, 168 Neb. 142, 95 N.W.2d 325 (1959).

76-289 Unbroken chain of title; title transaction; defined.

A person shall be deemed to have the unbroken chain of title to an interest in real estate as such terms are used in sections 25-207, 25-213, 40-104, and 76-288 to 76-298 when the official public records of the county wherein such land is situated disclose a conveyance or other title transaction dated and recorded twenty-two years or more prior thereto, which conveyance or other title transaction purports to create such interest in such person or his immediate or remote grantors, with nothing appearing of record purporting to divest such person and his immediate or remote grantors of such purported interest.

Title transaction as used in sections 25-207, 25-213, 40-104, and 76-288 to 76-298, means any transaction affecting title to real estate, including title by will or descent from any person who held title of record at the date of his death, title by a decree or order of any court, title by tax deed or by trustee's, referee's, guardian's, executor's, master's in chancery, or sheriff's deed, as well as by direct conveyance.

Source: Laws 1947, c. 243, § 2, p. 763.

Grantee under ordinary quitclaim deed is not entitled to invoke protection of Marketable Title Act. *Smith v. Berberich*, 168 Neb. 142, 95 N.W.2d 325 (1959).

76-290 Marketable record title; claim; limitation.

Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of all interest, claims, and charges whatever, the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred twenty-two years or more prior thereto, whether such claim or charge be evidenced by a recorded instrument or otherwise, and all such interests, claims, and charges affecting such interest in real estate shall be barred and not enforceable at law or equity, unless any person making such claim or asserting such interest or charge shall, on or before twenty-three years from the date of recording of deed of conveyance under which title is claimed, or within one year from April 8, 1947, whichever event is the latest in point of time, file for record a notice in writing, duly verified by oath, setting forth the nature of his claim, interest or charge; and no disability nor lack of knowledge of any kind on the part of anyone shall operate to extend the time for filing such claims after the expiration of twenty-three years from the recording of such deed of conveyance or one year after April 8, 1947, whichever event is the latest in point of time.

Source: Laws 1947, c. 243, § 3, p. 763.

76-291 Claim; notice; who may file.

The notice mentioned in section 76-290 may be filed for record by the claimant of any interest therein described or by any other person acting on behalf of a claimant who is under disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such claim for record.

Source: Laws 1947, c. 243, § 4, p. 764.

76-292 Claim; requisites; recorded.

The claim referred to in sections 76-290 and 76-291 shall be filed in each county where the claimed real estate, or any part thereof, is located, and must set forth the legal description of the real estate affected by such claim together with a statement of the nature of the claim, charge or interest asserted. The description shall be set forth in particular terms and not by general inclusions.

Source: Laws 1947, c. 243, § 5, p. 764.

76-293 Notices; recording.

The register of deeds of each county shall accept all such notices which describe real estate located within the county which he serves and shall enter and record such notices in full among miscellaneous instruments and index the same.

Source: Laws 1947, c. 243, § 6, p. 764.

76-294 Possession; proof by affidavit; recording.

For the purpose of sections 25-207, 25-213, 40-104, and 76-288 to 76-298, the fact of possession of real estate referred to in section 76-288 may be shown of record by one or more affidavits which shall contain the legal description of the real estate referred to and show that the record titleholder is upon the date thereof in possession of such real estate. The register of deeds shall record such affidavit or affidavits in the miscellaneous records of his county.

No such affidavits of possession shall be filed as to any real estate before the expiration of twenty-three years from the recording of deed of conveyance under which title is claimed, or before one year after April 8, 1947, whichever event is the latest in point of time, as to any real estate as to which a claim under the provisions of section 76-292 shall have been filed.

Source: Laws 1947, c. 243, § 7, p. 764.

76-295 Statutes of limitations; not extended; applicability of sections.

Nothing contained in sections 25-207, 25-213, 40-104, and 76-288 to 76-298 shall be construed to extend the period for bringing an action or doing any act required under any existing statute of limitations, nor to affect the operation of any existing acts governing the effect of the recording or the failure to record any instrument affecting lands.

Source: Laws 1947, c. 243, § 8, p. 765.

76-296 Notices; slander of title; damages.

No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to real estate and in any action brought for the purpose of

quieting title to real estate, if the court shall find that any person has filed a claim for the purpose only of slandering title to such real estate, the court shall award the plaintiff all the costs of such action, including attorney fees to be fixed and allowed to the plaintiff by the court, and all damages that plaintiff may have sustained as the result of such notice of claim having been filed for record.

Source: Laws 1947, c. 243, § 9, p. 765.

76-297 Sections; how construed.

Sections 25-207, 25-213, 40-104, and 76-288 to 76-298 shall be construed to effect the legislative purpose of simplifying and facilitating real estate title transactions by allowing persons to deal with the record title owner as defined herein and to rely upon the record title covering a period of twenty-two years or more subsequent to the recording of deed of conveyance as set out in section 76-288, and to that end to bar all claims that affect or may affect the interest thus dealt with, the existence of which claims arises out of or depends upon any act, transaction, event, or omission occurring before the recording of such deed of conveyance, unless a notice of such claim, as provided in section 76-292, shall have been duly filed for record. The claims hereby barred shall mean any and all interests of any nature whatever, however denominated, whether such claims are asserted by a person sui juris or under disability, whether such person is or has been within or without the state, and whether such person is natural, corporate, private, or governmental.

Source: Laws 1947, c. 243, § 10(1), p. 765.

76-298 Sections; applicability.

Sections 25-207, 25-213, 40-104, and 76-288 to 76-298 shall not be (1) applied to bar (a) the rights of any lessor or his successor as reversionary of his right to possession on the expiration of any lease by reason of failure to file the notice herein required; (b) the rights of any remainderman upon the expiration of any life estate or trust created before the recording of deed of conveyance as set out in section 76-288; (c) rights founded upon any mortgage, trust deed, or contract for sale of lands which is not barred by the statute of limitations; or (d) conditions subsequent contained in any deed; nor (2) deemed to affect the right, title or interest of the State of Nebraska, or the United States, in any real estate in Nebraska.

Source: Laws 1947, c. 243, § 10(2), p. 766.

(j) FUTURE INTERESTS

76-299 Reverter or rights of entry for breach of condition subsequent; not alienable or devisable.

Possibilities of reverter or rights of entry or reentry for breach of condition subsequent are hereby declared to be future interests and shall not be alienable or devisable; and no conveyance thereof made after May 15, 1959, shall operate in favor of the grantee or persons claiming under such grantee.

Source: Laws 1959, c. 350, § 1, p. 1237.

This section does not purport to create a new estate nor to expand the existing law on the subject. This case reverses *Cast v. National Bank of Commerce T. & S. Assn.*, 185 Neb. 358, 176 N.W.2d 29 (1970). *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

After possibilities of reverter or right of entry or reentry for breach of condition subsequent created, they cannot be thereafter conveyed or devised and must terminate within thirty years. *Cast v. National Bank of Commerce T. & S. Assn.*, 185 Neb. 358, 176 N.W.2d 29 (1970).

Constitutionality of act of which this section is a part raised but not decided. *McArdle v. School Dist. of Omaha*, 179 Neb. 122, 136 N.W.2d 422 (1965).

76-2,100 Reverter or rights of entry; termination of trust; succession.

At the termination of a trust, however effected, any right of entry or reentry for breach of condition subsequent and any possibility of reverter heretofore or hereafter reserved by or to the trustee and affecting land in this state ceases and determines as to the trustee, but shall, at such termination pass to the person or persons who receive the assets of the trust.

Source: Laws 1959, c. 350, § 2, p. 1237.

This section does not purport to create a new estate nor to expand the existing law on the subject. *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

76-2,101 Reverter or rights of entry; dissolution of corporation; ceases and determines.

When a corporation is dissolved or ceases to exist, any possibility of reverter and any right of entry or reentry for breach of condition subsequent heretofore or hereafter reserved by or to the corporation and affecting land in this state ceases and determines.

Source: Laws 1959, c. 350, § 3, p. 1237.

This section does not purport to create a new estate nor to expand the existing law on the subject. *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

76-2,102 Reverter or rights of entry; limitation.

Neither possibilities of reverter nor rights of entry or reentry for breach of condition subsequent, whether heretofore or hereafter created, where the condition has not been broken shall be valid for a longer period than thirty years from the date of the creation of the condition or possibility of reverter. If such a possibility of reverter or right of entry or reentry is created to endure for a longer period than thirty years, it shall be valid for thirty years.

Source: Laws 1959, c. 350, § 4, p. 1237.

Under the facts in this case, this section did not violate the due process or the contract clause of the United States or the Nebraska Constitution or the eminent domain provisions of the latter Constitution, and is not void. *Hiddleston v. Nebraska Jewish Education Soc.*, 186 Neb. 786, 186 N.W.2d 904 (1971).

In Nebraska a reverter clause in a conveyance establishing a defeasible fee is enforceable if it is not otherwise invalid as an unreasonable restraint on alienation. *Falls City v. Missouri Pacific R.R. Co.*, 453 F.2d 771 (8th Cir. 1972).

This section does not purport to create a new estate nor to expand the existing law on the subject. *Cast v. National Bank of Commerce T. & S. Assn.*, 186 Neb. 385, 183 N.W.2d 485 (1971).

76-2,103 Reverter or rights of entry; commencement of action for breach; limitation.

If by reason of a possibility of reverter created more than thirty years prior to May 15, 1959, a reverter has come into existence prior to May 15, 1959, no person shall commence an action for the recovery of the land or any part thereof based upon such possibility of reverter, after one year from May 15, 1959.

If by reason of a breach of a condition subsequent created more than thirty years prior to May 15, 1959, a right of reentry has come into existence prior to

May 15, 1959, no person shall commence an action for the recovery of the land or any part thereof based upon such right of entry or reentry after one year from May 15, 1959, unless entry or reentry has been actually made to enforce said right before the expiration of such year.

Source: Laws 1959, c. 350, § 5, p. 1237.

76-2,104 Reverter or rights of entry; other rights; sections; applicability.

Subsections (2) and (3) of section 76-107 and sections 76-299 to 76-2,105 shall not invalidate or affect:

(1) A conveyance made for the purpose of releasing or extinguishing a possibility of reverter or right of entry or reentry;

(2) A right of entry or the transfer of a right of entry for default in payment of rent reserved in a lease or for breach of covenant contained in a lease, when such transfer is in connection with a transfer of a reversion and the rent reserved in the lease;

(3) A right of reentry or the transfer of a right of entry for default in payment of a rent granted or reserved in any deed or grant or for breach of any covenant in any deed or grant when a rent is granted or reserved, if such transfer is in connection with a transfer of a rent so granted or the transfer of a rent so reserved;

(4) Any rights of a mortgagor based upon the terms of the mortgage, any rights of a trustee or a beneficiary under a trust deed in the nature of a mortgage based upon the terms of the trust deed, or any rights of grantor under a vendor's lien reserved in a deed; or

(5) Any condition, restrictive covenant, limitation, or possibility of reverter or right of entry or reentry for breach of condition subsequent contained in any grant or easement to any railroad or other public utility for the establishment and operation of a transportation system, communication or transmission lines, or public highways.

Source: Laws 1959, c. 350, § 6, p. 1238; Laws 1988, LB 657, § 3.

Subsection (5) of this section does not apply when conditions subsequent attached to a fee simple estate restrain alienability because such conditions subsequent are void ab initio. Poppleton v. Village Realty Co., 248 Neb. 353, 535 N.W.2d 400 (1995).

76-2,105 Reverter or rights of entry; sections; severability.

If any provision of sections 76-299 to 76-2,105 or the application of any provision thereto to any property, person, or circumstance is held to be invalid, such provision as to such property, person, or circumstance shall be deemed to be excised from sections 76-299 to 76-2,105, and the invalidity thereof as to such property, persons, or circumstances shall not affect any of the other provisions of sections 76-299 to 76-2,105 or the application of such provision to property, persons, or circumstances other than those as to which it is invalid, and sections 76-299 to 76-2,105 shall be applied and shall be effective in every situation so far as its constitutionality extends.

Source: Laws 1959, c. 350, § 7, p. 1239.

(k) DUAL CONTRACTS

76-2,106 Terms, defined.

As used in sections 76-2,106 to 76-2,108, unless the context otherwise requires:

(1) Dual contracts shall mean two written contracts entered into between identical contracting persons in identical capacities concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement to make a loan commitment on such real property in reliance upon the stated inflated value; and

(2) Fraudulent instrument shall mean any paper, document, or other form in writing that is intentionally used as subterfuge or device to induce the making of a loan or the extension of credit as a part of a transaction whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another.

Source: Laws 1969, c. 610, § 1, p. 2476.

76-2,107 Dual contracts; substituting one instrument for another; fraudulent instrument; unlawful.

No person, firm, or corporation, or any agent or employee of any such firm or corporation shall, with intent to defraud (1) make or issue a dual contract for the purchase of real property, (2) substitute one instrument in writing for another and by such means cause the making of a loan or the extension of credit, with respect to transactions whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another, or (3) induce by any fraudulent instrument in writing the making of a loan or the extension of credit as a part of a transaction whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another.

Source: Laws 1969, c. 610, § 2, p. 2477.

76-2,108 Violations; penalty.

Any person violating the provisions of section 76-2,107 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than five days nor more than thirty days, or by both such a fine and imprisonment.

Source: Laws 1969, c. 610, § 3, p. 2477.

(I) JOINT TENANCY

76-2,109 Joint tenancy; no severance of real estate; exception.

There shall be no severance of an existing joint tenancy in real estate when all joint tenants execute any instrument with respect to the property held in joint tenancy, unless the intention to effect a severance expressly appears in the instrument.

Source: Laws 1979, LB 73, § 1.

(m) REAL ESTATE SUBDIVISION

76-2,110 Instruments to subdivide real estate; defective; validation; procedure.

(1) After January 1, 1995, no action shall be maintained to set aside, cancel, annul, or declare void or invalid any conveyance, in any manner purporting to subdivide real estate, which has been recorded in the office of the register of deeds of the county in which the real estate is situated for more than five years prior to the commencement of the action on the ground that the conveyance or the recording of the conveyance has failed to comply with any requirement relating to subdivision approval. Unless the conveyance is modified or set aside by an action or proceeding commenced by January 1, 1995, or five years after the date of recording of the conveyance, whichever is later, it shall be conclusively presumed that the conveyance is fully valid notwithstanding any failure to comply with any requirement relating to subdivision approval.

(2) If any conveyance, in any manner purporting to subdivide real estate, has been or is hereafter recorded in the office of register of deeds of the county in which the real estate is situated and the conveyance or the recording of the conveyance has failed to comply with any requirement relating to subdivision approval and if the conveyance has not been otherwise validated under subsection (1) of this section, any party claiming an interest in such conveyance may file an affidavit with the register of deeds asserting that written notice of the defect in approval has been received by the governmental authority having subdivision approval jurisdiction over such real estate. Upon filing such affidavit, such governmental authority shall have one hundred twenty days from the receipt of such written notice to record an objection in the office of register of deeds in the county in which the real estate is situated, or such conveyance shall be fully valid. If an objection is filed, the conveyance shall not be validated. The objection shall be in the form of a resolution adopted after public hearing. The governmental authority may waive, prospectively waive, or retroactively waive such notice or such one-hundred-twenty-day period, as to a single subdivision or any category of subdivisions.

(3) Notwithstanding the validity of any such conveyance under this section, the subdivider shall not thus be relieved of any penalty lawfully imposed by such governmental authority for the failure to otherwise comply with any requirement relating to subdivision approval. Any conveyance of real estate for the public use shall be valid only upon express approval of such governmental authority. Other than for purposes of validating a conveyance, this section shall not excuse compliance with applicable zoning or subdivision ordinances of the governmental authority having subdivision approval jurisdiction over such real estate.

Source: Laws 1980, LB 235, § 1; Laws 1994, LB 188, § 1.

(n) CONSERVATION AND PRESERVATION EASEMENTS

76-2,111 Terms, defined.

As used in the Conservation and Preservation Easements Act, unless the context otherwise requires:

(1) Conservation easement shall mean a right, whether or not stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of retaining or protecting the property in its natural, scenic, or open condition, assuring

its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use, protecting air quality, water quality, or other natural resources, or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code;

(2) Preservation easement shall mean a right, whether stated in the form of an easement, restriction, covenant, or condition in any deed, will, agreement, or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of preserving the historical, architectural, archaeological, or cultural aspects of real property, or for such other historic preservation purpose as may qualify as a charitable contribution under the Internal Revenue Code; and

(3) Holder shall mean anyone acquiring a conservation or preservation easement by purchase, exchange, gift, or devise and having the right to enforce it by its terms, which may be:

(a) Any governmental body empowered to hold an interest in real property in this state under the laws of this state or the United States having among its purposes the subject matter of the easement;

(b) In the case of a conservation easement, any charitable corporation or trust whose purposes include retaining or protecting the natural, scenic, or open condition of real property, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat, or open space use or protecting air quality, water quality, or other natural resources; or

(c) In the case of a preservation easement, any charitable corporation or trust whose purposes include the preservation of the historical, architectural, archaeological, or cultural aspects of real property.

Source: Laws 1981, LB 173, § 1; Laws 1995, LB 574, § 61.

76-2,112 Easement; creation; approval by governing body; when required.

(1) A conservation or preservation easement shall be an interest in real property, created by an instrument in which the purpose for the easement is clearly stated. The instrument shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the conservation or preservation easement is located.

(2) No conveyance of a conservation or preservation easement shall be effective until accepted by the holder.

(3) In order to minimize conflicts with land-use planning, each conservation or preservation easement shall be approved by the appropriate governing body. Such approving body shall first refer the proposed acquisition to and receive comments from the local planning commission with jurisdiction over such property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission. If the property is located partially or entirely within the boundaries or zoning jurisdiction of a city or village, approval of the governing body of such city or village shall be required. If such property is located entirely outside the boundaries and zoning jurisdiction of any city or village, approval of the county board shall be required. If the property is located in the Niobrara scenic river

corridor as defined in section 72-2006 and is not incorporated within the boundaries of a city or village, the Niobrara Council approval rather than city, village, or county approval shall be required. Approval of a proposed acquisition may be denied upon a finding by the appropriate governing body that the acquisition is not in the public interest when the easement is inconsistent with (a) a comprehensive plan for the area which had been officially adopted and was in force at the time of the conveyance, (b) any national, state, regional, or local program furthering conservation or preservation, or (c) any known proposal by a governmental body for use of the land.

(4) Notwithstanding the provisions of subsection (3) of this section, the state, or any state agency or political subdivision other than a city, village, or county, may accept an easement after first referring the proposed acquisition to and receiving comments from the local planning commission with jurisdiction over the property, which shall within sixty days of the referral provide such comments regarding the conformity of the proposed acquisition to comprehensive planning for the area. If such comments are not received within sixty days, the proposed acquisition shall be deemed approved by the local planning commission.

Source: Laws 1981, LB 173, § 2; Laws 2000, LB 1234, § 12.

76-2,113 Easement; release or transfer.

(1) A conservation or preservation easement may be released by the holder of the easement to the owner of the servient estate, except that such release shall be approved by the governing body which approved the easement, or if the holder is the state, a state agency, or political subdivision other than a city, village, or county, the release shall be approved by the state or such state agency or political subdivision. The release of an easement may be approved upon a finding by such body that the easement no longer substantially achieves the conservation or preservation purpose for which it was created.

(2) A conservation or preservation easement may be assigned or transferred to any governmental body or charitable corporation or trust authorized to secure such easement pursuant to sections 76-2,111 to 76-2,118.

Source: Laws 1981, LB 173, § 3.

76-2,114 Easement; judicial modification or termination.

Unless a conservation or preservation easement is otherwise modified or terminated according to the terms of the easement or the provisions of sections 76-2,111 to 76-2,118, the owner of the subject real property or the holder of the easement may petition the district court in which the greater part of the servient estate is located for modification or termination of the easement. The court may modify or terminate the easement pursuant to this section only if the petitioner establishes that it is no longer in the public interest to hold the easement or that the easement no longer substantially achieves the conservation or preservation purpose for which it was created. No comparative economic test shall be used to determine whether the public interest or the conservation or preservation purpose of the easement is still being served. No modification shall be permitted which is in excess of that reasonably necessary to remedy the deficiency of the easement.

Source: Laws 1981, LB 173, § 4.

76-2,115 Easement; enforceability; duration.

No duly recorded conservation or preservation easement shall be unenforceable for lack of privity of estate or of contract, for lack of benefit to a dominant estate, or on account of the easement being assignable. A conservation or preservation easement shall run with the land and shall be perpetual unless otherwise stated in the instrument creating it. A conservation or preservation easement may be enforced by proceedings at law or in equity.

Source: Laws 1981, LB 173, § 5.

76-2,116 Property subject to easement; how assessed.

Real property subject to a conservation or preservation easement shall be assessed with due regard to the restricted uses to which the property may be devoted. The conservation or preservation easement in the hands of the holder shall be subject to assessment, taxation, or exemption from taxation in accordance with general laws applicable to assessment and taxation of interests in real property.

Source: Laws 1981, LB 173, § 6.

76-2,117 Sections; effect on other rights and powers.

(1) The provisions of sections 76-2,111 to 76-2,118 do not render invalid or unenforceable any otherwise valid restriction, easement, covenant, or condition whether created before or after the enactment of sections 76-2,111 to 76-2,118.

(2) Nothing in sections 76-2,111 to 76-2,118 shall diminish the powers granted in any other law to acquire by purchase, gift, grant, eminent domain, or otherwise and to use interests in real property for public purposes.

(3) If property subject to a conservation or preservation easement is condemned for public use, that part of the easement which conflicts with the condemnation shall terminate as of the time of the condemnation. If the easement was obtained by gift or devise the owner shall be entitled to such compensation for the taking as if the property had not been subject to the easement and if the easement was obtained by purchase or exchange, the holder shall be entitled to just compensation for the taking of the easement.

(4) An entity having the power of eminent domain may, through agreement with the owner of the servient estate and the holder of the conservation or preservation easement, acquire an easement over the land for the purpose of providing utility services.

Source: Laws 1981, LB 173, § 7.

76-2,118 Act, how cited.

Sections 76-2,111 to 76-2,118 shall be known and may be cited as the Conservation and Preservation Easements Act.

Source: Laws 1981, LB 173, § 8.

(o) SOLID WASTE

76-2,119 Notation on deed; required.

A permanent notation shall be made on the deed of any property where a solid waste disposal area or solid waste processing facility is sited. The notation

shall indicate the name and address of the agency where records of operations of the area or facility are maintained and where copies of such records may be obtained.

Source: Laws 1991, LB 813, § 15.

Cross References

For definitions, see section 13-1701.

(p) DISCLOSURE STATEMENT

76-2,120 Written disclosure statement required, when; contents; delivery; liability; noncompliance; effect; State Real Estate Commission; rules and regulations.

(1) For purposes of this section:

(a) Ground lease coupled with improvements shall mean a lease for a parcel of land on which one to four residential dwelling units have been constructed;

(b) Purchaser shall mean a person who acquires, attempts to acquire, or succeeds to an interest in land;

(c) Residential real property shall mean real property which is being used primarily for residential purposes on which no fewer than one or more than four dwelling units are located; and

(d) Seller shall mean an owner of real property who sells or attempts to sell, including lease with option to purchase, residential real property, whether an individual, partnership, limited liability company, corporation, or trust. A sale of a residential dwelling which is subject to a ground lease coupled with improvements shall be a sale of residential real property for purposes of this subdivision.

(2) Each seller of residential real property located in Nebraska shall provide the purchaser with a written disclosure statement of the real property's condition. The disclosure statement shall be executed by the seller. The requirements of this section shall also apply to a sale of improvements which contain residential real property when the improvements are sold coupled with a ground lease and to any lease with the option to purchase residential real property.

(3) The disclosure statement shall include language at the beginning which states:

(a) That the statement is being completed and delivered in accordance with Nebraska law;

(b) That Nebraska law requires the seller to complete the statement;

(c) The real property's address and legal description;

(d) That the statement is a disclosure of the real property's condition as known by the seller on the date of disclosure;

(e) That the statement is not a warranty of any kind by the seller or any agent representing a principal in the transaction;

(f) That the statement should not be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain;

(g) That even though the information provided in the statement is not a warranty, the purchaser may rely on the information in deciding whether and on what terms to purchase the real property;

(h) That any agent representing a principal in the transaction may provide a copy of the statement to any other person in connection with any actual or possible sale of the real property; and

(i) That the information provided in the statement is the representation of the seller and not the representation of any agent and that the information is not intended to be part of any contract between the seller and purchaser.

(4) In addition to the requirements of subsection (3) of this section, the disclosure statement shall disclose the condition of the real property and any improvements on the real property, including:

(a) The condition of all appliances that are included in the sale and whether the appliances are in working condition;

(b) The condition of the electrical system;

(c) The condition of the heating and cooling systems;

(d) The condition of the water system;

(e) The condition of the sewer system;

(f) The condition of all improvements on the real property and any defects that materially affect the value of the real property or improvements;

(g) Any hazardous conditions, including substances, materials, and products on the real property which may be an environmental hazard;

(h) Any title conditions which affect the real property, including encroachments, easements, and zoning restrictions; and

(i) The utility connections and whether they are public, private, or community.

(5) The disclosure statement shall be completed to the best of the seller's belief and knowledge as of the date the disclosure statement is completed and signed by the seller. If any information required by the disclosure statement is unknown to the seller, the seller may indicate that fact on the disclosure statement and the seller shall be in compliance with this section. On or before the effective date of any contract which binds the purchaser to purchase the real property, the seller shall update the information on the disclosure statement whenever the seller has knowledge that information on the disclosure statement is no longer accurate.

(6) This section shall not apply to a transfer:

(a) Pursuant to a court order, a foreclosure sale, or a sale by a trustee under a power of sale in a deed of trust;

(b) By a trustee in bankruptcy;

(c) To a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(d) By a mortgagee, a beneficiary under a deed of trust, or a seller under a land contract who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust, at a sale pursuant to a court-ordered foreclosure, or by a deed in lieu of foreclosure;

(e) By a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust except when the fiduciary is also the occupant or was an occupant of one of the dwelling units being sold;

(f) From one or more co-owners to one or more other co-owners;

(g) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(h) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(i) Pursuant to a merger, consolidation, sale, or transfer of assets of a corporation pursuant to a plan of merger or consolidation filed with the Secretary of State;

(j) To or from any governmental entity;

(k) Of newly constructed residential real property which has never been occupied; or

(l) From a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions in this section. If a disclosure statement is required, and if a third-party relocation company fails to supply a disclosure statement from its most immediate seller on or before the effective date of any contract which binds the purchaser to purchase the real property, the third-party relocation company shall be liable to the prospective purchaser to the same extent as a seller under this section.

(7) The disclosure statement and any update to the statement shall be delivered by the seller or the agent of the seller to the purchaser or the agent of the purchaser on or before the effective date of any contract which binds the purchaser to purchase the real property, and the purchaser shall acknowledge in writing receipt of the disclosure statement or update.

(8) The seller shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement if the error, inaccuracy, or omission was not within the personal knowledge of the seller.

(9) A person representing a principal in the transaction shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement unless that person has knowledge of the error, inaccuracy, or omission on the part of the seller.

(10) A person licensed as a salesperson or broker pursuant to the Nebraska Real Estate License Act shall not be required to verify the accuracy or completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the property subject to the disclosure statement. This subsection does not limit the duties and obligations provided in section 76-2418 or in subsection (9) of this section with respect to a buyer's agent.

(11) A transfer of an interest in real property subject to this section may not be invalidated solely because of the failure of any person to comply with this section.

(12) If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.

(13) The State Real Estate Commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 642, § 1; Laws 2002, LB 863, § 1.

Cross References

Nebraska Real Estate License Act, see section 81-885.

Disclosure statements under this section are required for the sale of any property containing at least one and not more than four dwelling units. A seller of residential property who fails to provide a disclosure statement pursuant to this section is not strictly liable for unknown defects. *R.J. Miller, Inc. v. Harrington*, 260 Neb. 471, 618 N.W.2d 460 (2000).

A seller is not liable for any error, inaccuracy, or omission in a disclosure statement which was not within the seller's personal knowledge. Thus, violations of this section must be done knowingly. *Burgess v. Miller*, 9 Neb. App. 854, 621 N.W.2d 828 (2001).

The buyer's knowledge of undisclosed damage in a cause of action for failure to provide a disclosure statement is relevant on the extent of damages, but does not provide a total defense. *Burgess v. Miller*, 9 Neb. App. 854, 621 N.W.2d 828 (2001).

Seller violations of this section must be done knowingly. A purchaser's knowledge of undisclosed damages is relevant to damages, but does not provide a total defense. *Bohm v. DMA Partnership*, 8 Neb. App. 1069, 607 N.W.2d 212 (2000).

This section provides a purchaser with a new cause of action in addition to other common-law and statutory causes of action available to purchasers of real estate. Although a disclosure statement is not a warranty, a purchaser may rely on the information contained in the disclosure statement. Information provided in disclosure statements are representations of the seller, not the seller's agent, and such information is not intended to be part of any contract between the seller and purchaser. *Bohm v. DMA Partnership*, 8 Neb. App. 1069, 607 N.W.2d 212 (2000).

(q) REAL ESTATE CLOSING AGENTS

76-2,121 Real estate closing agents; terms, defined.

For purposes of sections 76-2,121 to 76-2,123:

(1) Federally insured financial institution shall mean an institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration;

(2) Good funds shall mean: (a) Lawful money of the United States; (b) wired funds when unconditionally held by the real estate closing agent or employee; (c) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the real estate closing agent or employee; or (d) United States treasury checks, federal reserve bank checks, federal home loan bank checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class;

(3) Real estate closing agent shall mean a person who collects and disburses funds on behalf of another in closing a real estate transaction but shall not include a seller or buyer closing a real estate transaction on his or her own behalf or a lender closing a real estate loan transaction; and

(4) Regulating entity shall mean the:

- (a) Department of Insurance;
- (b) Supreme Court;
- (c) State Real Estate Commission;
- (d) Department of Banking and Finance;
- (e) Federal Deposit Insurance Corporation;

- (f) Federal Office of Thrift Supervision;
- (g) Federal Farm Credit Administration; or
- (h) National Credit Union Administration.

Source: Laws 1994, LB 1275, § 1; Laws 1999, LB 248, § 1.

76-2,122 Real estate closing agents; requirements; exemptions; enforcement; violation; penalty.

(1) To act as a real estate closing agent, a person shall be (a) licensed or regulated by one or more regulating entities or (b) employed by a person or entity regulated by one or more regulating entities, unless employing such person to act as a real estate closing agent is otherwise prohibited by statute, rule, or regulation.

(2) A person acting as a real estate closing agent shall:

(a) Have received good funds which are available for disbursement at the time of closing a real estate transaction, except that up to five hundred dollars need not be available for disbursement from good funds;

(b) Except as provided in section 81-885.21, deposit all funds received on behalf of another person in a trust account controlled by the real estate closing agent in a federally insured financial institution, except that up to five hundred dollars may be paid by one party directly to another party without first being deposited in a trust account controlled by the real estate closing agent; and

(c) Except as provided in section 81-885.21, disburse closing funds only from the real estate closing agent's trust account in a federally insured financial institution in the form of good funds or in the form of a check drawn from the real estate closing agent's trust account.

(3) The following real estate transactions are exempt from this section:

(a) Transactions with a political subdivision which is exercising its power of condemnation or eminent domain;

(b) Lease or rental transactions; and

(c) Real estate transactions in which the closing occurs within one business day following another real estate closing and in which one party is a principal to both transactions, but only to the extent that the funds disbursed in the subsequent transaction are drawn upon funds properly received by a real estate closing agent in the prior transaction which were deposited in that real estate closing agent's trust account in a federally insured financial institution or as otherwise provided in section 81-885.21.

(4) The Attorney General or any county attorney may act to enjoin the performance of real estate closings which violate this section.

(5) A person acting as a real estate closing agent in violation of this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 1275, § 2; Laws 1995, LB 774, § 1.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2,123 Real estate closing agents; regulating entities; rules and regulations.

Each state regulating entity may adopt and promulgate rules and regulations and issue such orders as are necessary or desirable to carry out section 76-2,122. Each regulating entity may inspect, examine, and audit the books and records of real estate closing agents under its jurisdiction who conduct real estate closings. The regulating entity may require reimbursement from the real estate closing agent for the expenses of such inspection, examination, or audit.

Source: Laws 1994, LB 1275, § 3; Laws 2003, LB 217, § 46.

(r) WATER RESOURCES UPDATE NOTICE**76-2,124 Water resources update notice; Department of Natural Resources; powers and duties.**

(1) Any person transferring ownership of real property not inside the corporate limits of a municipality shall complete and provide to the transferee, at or before the closing of the transfer, a water resources update notice acknowledging (a) whether any surface water rights issued pursuant to Chapter 46, article 2, and in the name of any party other than an irrigation district, public power and irrigation district, or mutual irrigation company are attached to the real property, ownership of which is being transferred, and (b) whether there are any water wells, except water wells used solely for domestic purposes and constructed prior to September 9, 1993, on the real property, ownership of which is being transferred. If the water resources update notice discloses the existence of such surface water rights or such water wells, the transferee shall complete the water resources update notice and shall file it with the Department of Natural Resources within sixty days after recording the deed or other instrument by which the transfer of ownership of real property is made. The department shall use such notice to update ownership of surface water rights and water well registrations as required by sections 46-230 and 46-602.

(2) The department shall prescribe the form and content of the water resources update notice and shall make such forms available to title insurance companies and other persons as deemed appropriate by the department. The requirement that a water resources update notice be filed with the department or the failure to file such a notice does not affect the recording, legality, or sufficiency of a deed or other instrument evidencing the transfer of ownership of real property.

(3) The department shall not collect a fee for the filing of the water resources update notices.

Source: Laws 2001, LB 667, § 27; Laws 2002, LB 458, § 9.

(s) MASTER FORM INSTRUMENT**76-2,125 Master form instrument; use.**

A real estate mortgage or trust deed may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument which is a master form instrument for mortgages or trust deeds containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or trust deed may be recorded in the office of the register of deeds of any county. The register of deeds of such county, upon the request of any person and the payment of the required fees, shall record

such instrument. Every such instrument shall be entitled on the face thereof as a “Master form recorded by (name of person causing the instrument to be recorded)”. Such instrument need not be acknowledged to be recorded;

(2) When a master form instrument is recorded, the register of deeds shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate;

(3) Thereafter any of the provisions of the master form instrument may be incorporated by reference in any mortgage or trust deed for real estate situated within this state, if such reference in the mortgage or trust deed states that the master form instrument was recorded in the county in which the mortgage or trust deed is offered for record, the date when and the book and page or pages or recording number where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or trust deed. The recording of any mortgage or trust deed which has incorporated by reference any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been fully set forth in the mortgage or trust deed; and

(4) Whenever a mortgage or trust deed is presented for recording on which is set forth matter purporting to be a copy or reproduction of the master form instrument or of part thereof, identified by its title as provided in subdivision (1) of this section and stating the date when it was recorded and the book and page or pages or recording number where it was recorded preceded by the words “do not record” or “not to be recorded” and plainly separated from the matter to be recorded as a part of the mortgage or trust deed in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or trust deed, such matter shall not be recorded by the register of deeds to whom the instrument is presented for recording. In such case the register of deeds shall record only the mortgage or trust deed apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

Source: Laws 2001, LB 84, § 1.

ARTICLE 3

OCCUPANTS AND CLAIMANTS

Section

- 76-301. Occupant or claimant; eviction by holder of better title; reimbursement for improvements and taxes paid.
- 76-302. Occupant or claimant, defined; taxes paid, how proved.
- 76-303. Appraisers; oath; compensation.
- 76-304. Appraisers; powers and duties.
- 76-305. Appraisers; report; objections; reappraisal.
- 76-306. Decree of eviction; judgment for amount due claimant.
- 76-307. Decree of eviction; rights of better title holder.
- 76-308. Writ of possession; issuance; when.
- 76-309. Election by better title holder to accept value of unimproved land; neglect or refusal to pay; effect.
- 76-310. Failure of better title holder to make election; right of occupant.
- 76-311. Demand for reimbursement, when allowed; scope of sections.

76-301 Occupant or claimant; eviction by holder of better title; reimbursement for improvements and taxes paid.

Any person claiming title to real estate, whether in actual possession or not, for which he can show a plain and connected title, in law or equity, derived from the records of some public office, from the United States, or from this state, or anyone who has derived title from any such person by devise, descent, deed, contract or bond, shall not be evicted or turned out of possession of such real estate. His claim or title shall not be set aside or canceled by any court in any proceedings brought or commenced by any person setting up and proving an adverse and better title or claim to such real estate, until he shall be fully paid the value of all lasting and valuable improvements made upon such real estate by him or by those under whom he claims, and also for all taxes and assessments paid upon the real estate by him and the persons under whom he claims, with interest thereon at the same rate of interest as provided by law for delinquent taxes, and for all sums of money paid by him, or those under whom he claims, to redeem such real estate from any sale or sales for nonpayment of taxes previous to receiving actual notice by the commencement of suit on such adverse title or claim by which such eviction or cancellation may be had, unless the occupant or claimant shall refuse to pay the person so setting up and proving an adverse and better title the value of such real estate without improvements made thereon as aforesaid, upon the demand of the successful claimant as hereinafter provided.

Source: Laws 1883, c. 59, § 1, p. 249; R.S.1913, § 6255; C.S.1922, § 5665; C.S.1929, § 76-301; R.S.1943, § 76-301.

1. Parties protected
2. Nature of allowance
3. Miscellaneous

1. Parties protected

Where claimant has been divested of all interest by prior judicial proceedings, he cannot in subsequent action claim benefit of Occupying Claimants Act. *Hammond v. Harrington*, 150 Neb. 1, 33 N.W.2d 293 (1948).

Where party does not enter upon land in good faith under claim of ownership, he does not come within the scope of Occupying Claimants Act. *Ohme v. Thomas*, 134 Neb. 727, 279 N.W. 480 (1938).

Ownership of claimant need not be estate in fee simple, but owner, occupying under contract of purchase, may claim homestead exemption. *Doman v. Fenton*, 96 Neb. 94, 147 N.W. 209 (1914).

In suit to quiet title, defendant who had transferred all his interest in land and improvements and surrendered possession to his grantee before action was commenced, is not entitled to relief under this article. *Moreland v. Berger*, 93 Neb. 724, 141 N.W. 831 (1913).

Section includes all deeds issued under lawful public authority which purport to convey title to real estate, including tax deeds and deeds issued under tax foreclosure. *Bresee v. Parsons*, 87 Neb. 327, 127 N.W. 123 (1910); *Page v. Davis*, 26 Neb. 670, 42 N.W. 875 (1889).

Section applies to occupants claiming under homestead laws. *Wells v. Cox*, 84 Neb. 26, 120 N.W. 433 (1909).

Act is valid, and is applicable though adverse claimant had title when enacted. *Flanagan v. Mathisen*, 78 Neb. 412, 110 N.W. 1012 (1907).

Devisees of life tenant cannot recover for improvements by devisor. *Schimpf v. Rhodewald*, 62 Neb. 105, 86 N.W. 908 (1901).

Section does not protect vendee in suit by vendor for cancellation of contract. *Whiteman v. Perkins*, 56 Neb. 181, 76 N.W. 547 (1898).

Even though taxes might be barred by limitations relating to tax foreclosures, occupying claimant is entitled to reimbursement for taxes paid. *Lothrop v. Michaelson*, 44 Neb. 633, 63 N.W. 28 (1895).

Claimant to recover must have acted in good faith. *Carter v. Brown*, 35 Neb. 670, 53 N.W. 580 (1892); *Shuman v. Willetts*, 19 Neb. 705, 28 N.W. 301 (1886).

2. Nature of allowance

Value of improvements placed on land by claimant under void tax foreclosure sale cannot be recovered. *Wightman v. City of Wayne*, 148 Neb. 700, 28 N.W.2d 575 (1947).

A claimant to compensation for improvements must have held the property under color of title to warrant a recovery. *Williams v. Beckmark*, 146 Neb. 814, 21 N.W.2d 745 (1946).

Occupying claimant, holding under void tax deed, is entitled to compensation for improvements. *Bresee v. Parsons*, 87 Neb. 327, 127 N.W. 123 (1910); *Page v. Davis*, 26 Neb. 670, 42 N.W. 875 (1889).

Allowance for improvements is measured by resulting increase in value of land. *Gombert v. Lyon*, 72 Neb. 319, 100 N.W. 414 (1904).

Allowance should not be made for rents and profits accruing after decree. *Burlington & M. R.R. Co. v. Dobson*, 19 Neb. 451, 27 N.W. 442 (1886).

3. Miscellaneous

Occupying claimant has the burden of pleading and proving the amount of taxes paid in order to recover reimbursement. *Converse v. Kenyon*, 178 Neb. 151, 132 N.W.2d 334 (1965).

Vendee out of possession was not an occupying claimant. *Wlaschin v. Affleck*, 167 Neb. 403, 93 N.W.2d 186 (1958).

Occupying claimant must make seasonable application for relief. *LaBonty v. Lundgren*, 58 Neb. 648, 79 N.W. 551 (1899).

Purchase of corporation's property at tax sale after appointment of receiver is void, but tax deed issued thereunder will be canceled only on condition that grantee under tax deed be reimbursed for taxes paid and for improvements made on land. *Bricton Mfg. Co. v. Close*, 25 F.2d 794 (8th Cir. 1928).

76-302 Occupant or claimant, defined; taxes paid, how proved.

Any person in possession of or claiming any real estate under a certificate of entry or under the homestead or preemption laws of the United States, as well as the persons enumerated in section 76-301, shall be considered as having sufficient title to demand the value of improvements, and to demand the amount of all taxes and assessments paid by such claimant or those under whom he claims, under the provisions of such section. The tax certificates and the tax receipts of the county treasurer, for the purposes of this section and section 76-301, shall be conclusive evidence of the assessments, levy and payment of the taxes on such real estate, for the purpose of ascertaining the amount of the taxes paid by such occupant or claimant.

Source: Laws 1883, c. 59, § 2, p. 250; R.S.1913, § 6256; C.S.1922, § 5666; C.S.1929, § 76-302; R.S.1943, § 76-302.

Claimant, holding under tax deed, is entitled to compensation. *Bresee v. Parsons*, 87 Neb. 327, 127 N.W. 123 (1910); Page v. Davis, 26 Neb. 670, 42 N.W. 875 (1889). Provision protects homestead and preemption claimants. *Wells v. Cox*, 84 Neb. 26, 120 N.W. 433 (1909).

76-303 Appraisers; oath; compensation.

The court, rendering judgment or decree in any case provided for by sections 76-301 to 76-311 against any occupant or claimant, shall, at the request of such occupant or claimant, issue an order to the sheriff of the county wherein such real estate is situated commanding him or her to summon three disinterested freeholders of such county, whose duty it shall be to appraise such real estate and the improvements aforesaid at their cash value as provided in section 76-304. The appraisers shall take and subscribe an oath to impartially appraise the real estate and improvements, which oath shall be filed with the clerk of the court issuing such order. The order thus issued to the sheriff shall be accompanied by written instructions from the court to the appraisers, necessary to carry out the provisions of sections 76-301 and 76-302. Such appraisers shall be allowed the same fees as jurors are allowed in the district court and mileage as provided in section 81-1176 for state employees.

Source: Laws 1883, c. 59, § 3, p. 251; R.S.1913, § 6257; C.S.1922, § 5667; C.S.1929, § 76-303; R.S.1943, § 76-303; Laws 1981, LB 204, § 146.

Assessment must be made by appraisers appointed as provided by statute, and court cannot appoint referee to make the assessment. *Burlington & M. R.R. Co. v. Dobson*, 19 Neb. 451, 27 N.W. 442 (1886). Time is not made an essential element of request for appointment of appraisers and it need not be made at the same term at which the judgment is rendered. *Burlington & M. R.R. Co. v. Dobson*, 17 Neb. 455, 23 N.W. 511 (1885).

76-304 Appraisers; powers and duties.

The appraisers shall jointly proceed at once, after service of said order on them, to view the real estate in question, and to assess the value of all lasting and valuable improvements on the same, made previous to the party's receiving actual notice as aforesaid of the adverse claim. They shall also assess the net annual value of the rents and profits, which the occupant or claimant has received after having received notice of the successful claimant's title by service of process, and they shall deduct the amount thereof from the estimated value of the improvements aforesaid. They shall also assess the value of the land in

question at the time such occupant went into possession thereof, or such claimant commenced to pay the tax thereon as the case may be.

Source: Laws 1883, c. 59, § 4, p. 251; R.S.1913, § 6258; C.S.1922, § 5668; C.S.1929, § 76-304; R.S.1943, § 76-304.

Appraisers are required to make their appraisal from a view of the premises and have no authority to take testimony of witnesses. *Lothrop v. Michaelson*, 44 Neb. 633, 63 N.W. 28 (1895).

76-305 Appraisers; report; objections; reappraisal.

The appraisers shall make report in writing of their appraisal and deposit the same in a sealed envelope with the clerk of such court, within the time required by the court, and if either party shall think himself aggrieved by such appraisal he may file objections thereto at the term to which the same is returned, if returned in term time, ten days before such term adjourns, and if such report is made in vacation, or if made in term time, less than ten days before such term adjourns, then such objections may be filed on or before the second day of the term next ensuing. Upon the hearing of such objections, if the court is of the opinion that injustice has been done by such appraisal, it shall be set aside and a new appraisal ordered. New appraisers shall thereupon be summoned and like proceedings had as provided in sections 76-303 and 76-304.

Source: Laws 1883, c. 59, § 5, p. 252; R.S.1913, § 6259; C.S.1922, § 5669; C.S.1929, § 76-305; R.S.1943, § 76-305.

Court may permit filing of objections out of time. *Lothrop v. Michaelson*, 44 Neb. 633, 63 N.W. 28 (1895).

76-306 Decree of eviction; judgment for amount due claimant.

If no objections are made to the appraisal, or if made and overruled, the court shall proceed without pleadings to ascertain the amount of taxes paid by the occupant or claimant, with interest as hereinbefore provided for. If the appraisal reported to the court shall show a sum in favor of the occupant or claimant against whom such decree or judgment is rendered, the amount of taxes and interest ascertained by the court shall be added thereto, and decree entered therein in favor of such unsuccessful occupant or claimant against the said person proving a better title. Such decree shall constitute and be a lien upon such real estate, but in case the appraisal shall show a balance due the person proving a better title, the amount of such balance shall be deducted from the amount found due the occupant or unsuccessful claimant for taxes and interest, and decree be entered for the difference in favor of such occupant or claimant. If upon the whole finding there shall appear a balance due the successful claimant, judgment shall be rendered in his favor therefor.

Source: Laws 1883, c. 59, § 6, p. 252; R.S.1913, § 6260; C.S.1922, § 5670; C.S.1929, § 76-306; R.S.1943, § 76-306.

76-307 Decree of eviction; rights of better title holder.

If upon the final hearing there shall be found a balance in favor of the occupant or unsuccessful claimant, the person proving the better title may either demand of the occupant or claimant the value of the real estate without improvements, as shown by the appraisal, and tender a general warranty deed for the real estate in question to such occupant or claimant or he may pay

into court the balance so found due such occupant or claimant within such time as the court shall allow in its final decree.

Source: Laws 1883, c. 59, § 7, p. 253; R.S.1913, § 6261; C.S.1922, § 5671; C.S.1929, § 76-307; R.S.1943, § 76-307.

Unsuccessful occupant cannot be ousted until owner has made election. Troxell v. Stevens, 57 Neb. 329, 77 N.W. 781 (1899).

76-308 Writ of possession; issuance; when.

If the successful claimant shall elect to pay and does pay to the occupant or claimant the balance found due him on the final hearing, within such time as the court shall direct, then a writ of possession shall be issued in his favor against such occupant, or decree shall be entered against such unsuccessful claimant, as the case may require.

Source: Laws 1883, c. 59, § 8, p. 253; R.S.1913, § 6262; C.S.1922, § 5672; C.S.1929, § 76-308; R.S.1943, § 76-308.

76-309 Election by better title holder to accept value of unimproved land; neglect or refusal to pay; effect.

If the successful claimant shall elect to receive the value of the real estate without improvements, to be paid by the occupant or claimants, within such a time as the court shall direct, and shall tender a general warranty deed for such real estate to the occupant or claimant, and the occupant or claimant shall refuse or neglect to pay said sum of money to the successful claimant within the time allowed by the court for that purpose, then the successful claimant shall deposit with the clerk of the court the amount found due the occupant or claimant, and thereupon a writ of possession shall be issued in favor of such successful claimant, or decree shall be entered in his favor as the case shall require.

Source: Laws 1883, c. 59, § 9, p. 253; R.S.1913, § 6263; C.S.1922, § 5673; C.S.1929, § 76-309; R.S.1943, § 76-309.

76-310 Failure of better title holder to make election; right of occupant.

The occupant or claimant shall in no case be evicted from possession, or deprived of his right in the premises, except as provided in sections 76-308 and 76-309, and in case the successful claimant shall neglect to elect to take said real estate with improvements, or to convey the same to the occupant or claimant, within such time as the court shall direct, then decree shall be entered in favor of the occupant or claimant upon his payment into court the value of the real estate without improvements. Such decree shall have the effect to transfer and convey to such occupant or claimant the title and rights of the successful claimant.

Source: Laws 1883, c. 59, § 10, p. 254; R.S.1913, § 6264; C.S.1922, § 5674; C.S.1929, § 76-310; R.S.1943, § 76-310.

When party is in possession and can recover value of improvements under Occupying Claimants Act, he cannot recover value thereof in action for damages. Webb v. Wheeler, 80 Neb. 438, 114 N.W. 636 (1908).

Occupant cannot be dispossessed until he has been compensated for value of improvements. Troxell v. Stevens, 57 Neb. 329, 77 N.W. 781 (1899).

76-311 Demand for reimbursement, when allowed; scope of sections.

Sections 76-301 to 76-311 shall apply to all suits wherein any of the claims or rights herein set forth shall be demanded, and such demand for improvements

or taxes may be made upon the overruling by the court of a motion for a new trial, or in case the suit is one in equity, then such demand may be made within three days after the entry of decree; *Provided, however*, all of the provisions of said sections shall be limited and restricted to those cases where the title to the real estate in controversy is derived from some source other than that which comes from such tax titles, tax certificates, tax receipts, or the payment of taxes by any person claiming any interest in or title to such real estate, by reason of such tax deeds, tax titles, tax certificates or tax receipts.

Source: Laws 1883, c. 59, § 11, p. 254; R.S.1913, § 6265; C.S.1922, § 5675; C.S.1929, § 76-311; R.S.1943, § 76-311.

Person claiming under tax deed issued by treasurer or obtained through tax foreclosure comes within provisions of Occupying Claimants Act. *Bresee v. Parsons*, 87 Neb. 327, 127 N.W. 123 (1910); *Page v. Davis*, 26 Neb. 670, 42 N.W. 875 (1889).

Section applied to suit pending at time of enactment. *Burlington & M. R.R. Co. v. Dobson*, 17 Neb. 455, 23 N.W. 511 (1885).

This section does not control remedy in case of void tax deed. *Bricton Mfg. Co. v. Close*, 25 F.2d 794 (8th Cir. 1928).

ARTICLE 4

ESCHEAT AND ALIEN OWNERSHIP OF LAND

Cross References

Constitutional provisions:

Property rights guaranteed, see Article I, section 3, Constitution of Nebraska.

Rights of aliens may be regulated by law, see Article I, section 25, Constitution of Nebraska.

Decedents' estates, foreign personal representatives, see Chapter 30, article 25.

(a) ESCHEAT

Section

76-401. Escheats; when title vests in state.

(b) FOREIGN AND ALIEN OWNERSHIP

- 76-402. Aliens and foreign corporations; real estate; ownership prohibited.
- 76-403. Widow or heirs of aliens; right to land.
- 76-404. Oil and gas leases permitted.
- 76-405. Land acquired by devise or descent; sale within five years required.
- 76-406. Corporations; board of directors; election of aliens; restrictions.
- 76-407. Corporations; violations; penalties.
- 76-408. Forfeiture of land; duty of county attorney to enforce; procedure; costs.
- 76-409. Forfeiture of land; sale at request of heirs; title of purchaser.
- 76-410. Owners of land in 1889; sale during lifetime required.
- 76-411. Liens upon real estate; acquisition of such real estate; duty to sell within ten years.
- 76-412. Sections; not applicable to real estate of railroads, public utilities, and common carriers.
- 76-413. Sections; not applicable to manufacturing or industrial establishments or establishments for storage, sale, and distribution of petroleum products.
- 76-414. Sections; not applicable to real estate within cities and villages or within three miles of cities and villages; not applicable to manufacturing or industrial establishments.
- 76-415. Sections; not applicable to real estate acquired by aliens before 1889.

(a) ESCHEAT

76-401 Escheats; when title vests in state.

Upon the failure of heirs, the title shall vest at once in the state, without an inquest or other proceedings in the nature of office found.

Source: Laws 1875, § 2, p. 52; R.S.1913, § 6272; C.S.1922, § 5686; C.S.1929, § 76-501; R.S.1943, § 76-401.

Escheat must be established and payment made as provided in section 76-408, and under certain circumstances, section 76-409. *Wilson v. State*, 195 Neb. 228, 237 N.W.2d 835 (1976).

Prior to 1963, when the method by which nonresident aliens may take land by inheritance was provided, nonresident aliens could not inherit lands in Nebraska but were to be paid the full value therefor by the state. *Shames v. State*, 192 Neb. 614, 223 N.W.2d 481 (1974).

An escheat upon failure of heirs vests title to the escheated lands in the state on death of the owner. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

Real estate escheating to the state is not subject to inheritance tax, the tax being on succession and not reversion. In re *Estate of O'Connor*, 126 Neb. 182, 252 N.W. 826 (1934).

Decree of Nebraska county court determining decedent left no heirs and that property escheated to state was binding on federal court in subsequent action by alleged heir. *O'Connor v. Stanley*, 54 F.2d 20 (8th Cir. 1931).

The provision that no nonresident alien can inherit Nebraska land more than three miles from corporate limits of any city or town does not constitute an impermissible interference with federal power over foreign affairs. *Shames v. State of Nebraska*, 323 F.Supp. 1321 (D. Neb. 1971).

(b) FOREIGN AND ALIEN OWNERSHIP

76-402 Aliens and foreign corporations; real estate; ownership prohibited.

Aliens and corporations not incorporated under the laws of the State of Nebraska are prohibited from acquiring title to or taking or holding any land, or real estate, or any leasehold interest extending for a period for more than five years or any other greater interest less than fee in any land, or real estate in this state by descent, devise, purchase or otherwise, except as provided in sections 76-403 to 76-405.

Source: Laws 1889, c. 58, § 1, p. 483; R.S.1913, § 6273; Laws 1921, c. 142, § 1, p. 608; C.S.1922, § 5687; C.S.1929, § 76-502; Laws 1939, c. 97, § 1, p. 417; C.S.Supp.,1941, § 76-502; R.S.1943, § 76-402.

- 1. Aliens
- 2. Foreign corporations
- 3. Effect of treaty
- 4. Miscellaneous

1. Aliens

Prior to 1963, when the method by which nonresident aliens may take land by inheritance was provided, nonresident aliens could not inherit lands in Nebraska but were to be paid the full value therefor by the state. *Shames v. State*, 192 Neb. 614, 223 N.W.2d 481 (1974).

An alien heir who cannot take by purchase cannot take by descent or devise. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

Religious or charitable testamentary trust will not be permitted to fail because trustee named is incompetent to take title, being a nonresident corporation, but competent trustee will be appointed. *Stork v. Evangelical Lutheran Synod*, 129 Neb. 311, 261 N.W. 552 (1935).

Legislature has placed restrictions on the right of nonresident aliens to acquire or hold title to land in this state. *Engen v. Union State Bank of Harvard*, 121 Neb. 257, 236 N.W. 741 (1931).

This section did not operate to prevent inheritance by wife and child of citizen of United States temporarily residing abroad. *Nelson v. Nelson*, 113 Neb. 453, 203 N.W. 640 (1925).

Land devised to nonresident aliens incapable of acquiring interest therein must be regarded as intestate property and descends as provided by law, to next of kin who are capable of taking. *Metzger v. Metzger*, 108 Neb. 613, 188 N.W. 229 (1922); *State v. Toop*, 107 Neb. 391, 186 N.W. 371 (1922), which overrules decision in *State ex rel. Toop v. Thomas*, 103 Neb. 147, 170 N.W. 839 (1919), so far as it conflicts with said case.

Provision giving wife and heirs of aliens a right to hold lands by devise or descent for limited period does not apply where deceased landlord was a citizen of United States. *State v. Toop*, 107 Neb. 391, 186 N.W. 371 (1922).

Statute was sustained as constitutional. *Dougherty v. Kubat*, 67 Neb. 269, 93 N.W. 317 (1903); *Glynn v. Glynn*, 62 Neb. 872, 87 N.W. 1052 (1901).

Statute forbidding ownership by nonresident alien is not repugnant to 14th amendment to federal Constitution, and treaty is not retroactive. *Toop v. Ulysses Land Company*, 237 U.S. 580 (1915).

The provision that no nonresident alien can inherit Nebraska land more than three miles from corporate limits of any city or town does not constitute an impermissible interference with federal power over foreign affairs. *Shames v. State of Nebraska*, 323 F.Supp. 1321 (D. Neb. 1971).

2. Foreign corporations

Foreign corporation was not prohibited from acquiring interest in real estate in manner set out. In re *Estate of Sautter*, 142 Neb. 42, 5 N.W.2d 263 (1942).

Fact that American Red Cross is a foreign corporation does not preclude it from becoming beneficiary under will providing for sale of land on death of life tenant and payment of proceeds to the Red Cross. *May v. American Red Cross*, 140 Neb. 43, 299 N.W. 272 (1941).

Public policy of Nebraska is against acquisition of title to real estate by foreign corporation, whether charitable or educational, and a devise of real estate to such corporation is subject to inheritance tax. In re *Estate of Robinson*, 138 Neb. 101, 292 N.W. 48 (1940).

Title of foreign corporation to land taken in settlement of debt, secured by mortgage on part of land, can be challenged only by state. *Lord v. Shultz*, 115 Neb. 33, 211 N.W. 210 (1926).

Foreign corporations are prohibited from taking or holding lands in this state in trust for the use and benefit of another, and power to raise the question of right to take the property is not confined to state, but may be raised by the heir or next of kin in

an action to quiet title. *Gould v. Board of Home Missions*, 102 Neb. 526, 167 N.W. 776 (1918).

Under prior statute state alone could divest foreign corporations of title. *Carlow v. Aultman & Co.*, 28 Neb. 672, 44 N.W. 873 (1890).

3. Effect of treaty

Nonresident aliens had right under treaty to inherit real estate situated in United States in accordance with state law, and treaty right was not abrogated by state of war. *Goos v. Brocks*, 117 Neb. 750, 223 N.W. 13 (1929).

Under treaty with Austria-Hungary, nonresident alien was entitled to reasonable prolongation of time prescribed in treaty

to sell real estate. *Fischer v. Sklenar*, 101 Neb. 553, 163 N.W. 861 (1917).

Where treaty suspended operation of statute and allowed alien heirs a prescribed period in which to sell land, failure of heirs to sell within prescribed time vests title in those to whom land would have descended in absence of treaty. *Pierson v. Lawler*, 100 Neb. 783, 161 N.W. 419 (1917).

Title to land passed to citizen heirs, where alien heirs failed to exercise power of sale under statute as permitted by German treaty. *Miller v. Clausen*, 299 F. 723 (8th Cir. 1924).

4. Miscellaneous

Escheat must be established and payment made as provided in section 76-408, and under certain circumstances, section 76-409. *Wilson v. State*, 195 Neb. 228, 237 N.W.2d 835 (1976).

76-403 Widow or heirs of aliens; right to land.

The widow and heirs of aliens, who have prior to March 16, 1889, acquired lands in this state under the laws thereof, may hold such lands by devise or descent for a period of ten years and no longer, and if at the end of such time such lands, so acquired, have not been sold to a bona fide purchaser for value, such lands or other interest therein shall revert and escheat to the State of Nebraska. It shall be the duty of the county attorney in the counties where such lands are situated to enforce forfeitures of all such lands or other interests therein as provided by section 76-408.

Source: Laws 1889, c. 58, § 1, p. 483; R.S.1913, § 6273; Laws 1921, c. 142, § 1, p. 608; C.S.1922, § 5687; C.S.1929, § 76-502; Laws 1939, c. 97, § 1, p. 417; C.S.Supp.,1941, § 76-502; R.S.1943, § 76-403.

Cross References

For constitutional provisions, see Article I, section 25, Constitution of Nebraska.

Sections governing escheat must be construed together and effect given to each if possible. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

Nonresident alien heirs do not acquire the legal title to the land, cannot take or hold the land, and cannot enforce posses-

sion of the land. *State ex rel. Toop v. Thomas*, 103 Neb. 147, 170 N.W. 839 (1919).

76-404 Oil and gas leases permitted.

Corporations incorporated under the laws of the United States of America, or under the laws of any state of the United States of America, or any foreign corporation or any alien, doing business in this state, may acquire, own, hold, or operate leases for oil, gas, or other hydrocarbon substances, for a period as long as ten years and as long thereafter as oil, gas, or other hydrocarbon substances shall or can be produced in commercial quantities.

Source: Laws 1939, c. 97, § 1, p. 417; C.S.Supp.,1941, § 76-502; R.S. 1943, § 76-404; Laws 1955, c. 286, § 1, p. 895; Laws 1982, LB 571, § 1.

76-405 Land acquired by devise or descent; sale within five years required.

Any resident alien may acquire title to lands in this state by devise or descent only, provided such alien shall be required to sell and convey said real property within five years from the date of acquiring it, and if he shall fail to dispose of it to a bona fide purchaser for value within that time, it shall revert and escheat to the State of Nebraska.

Source: Laws 1921, c. 142, § 1, p. 608; C.S.1922, § 5687; C.S.1929, § 76-502; Laws 1939, c. 97, § 1, p. 417; C.S.Supp.,1941, § 76-502; R.S.1943, § 76-405.

Sections governing escheat must be construed together and effect given to each if possible. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

76-406 Corporations; board of directors; election of aliens; restrictions.

No corporation organized under the laws of this state and no corporation organized under the laws of any other state or country, doing business in this state, which was organized to hold or is holding real estate, except as provided in sections 76-404 and 76-412 to 76-414, shall elect aliens as members of its board of directors or board of trustees in number sufficient to constitute a majority of such board, nor elect aliens as executive officers or managers nor have a majority of its capital stock owned by aliens.

Source: Laws 1921, c. 142, § 1, p. 608; C.S.1922, § 5687; C.S.1929, § 76-502; Laws 1939, c. 97, § 1, p. 417; C.S.Supp.,1941, § 76-502; R.S.1943, § 76-406; Laws 1955, c. 286, § 2, p. 896.

76-407 Corporations; violations; penalties.

Any such corporation violating the provisions of section 76-406 shall be construed and held to be an alien and within the provisions of sections 76-401 to 76-415 applicable to alien persons. Any such domestic corporation violating the provisions of section 76-406 shall forfeit its charter and be dissolved. Any such foreign corporation violating the provisions of said section shall forfeit its right to do business in the State of Nebraska.

Source: Laws 1921, c. 142, § 1, p. 608; C.S.1922, § 5687; C.S.1929, § 76-502; Laws 1939, c. 97, § 1, p. 417; C.S.Supp.,1941, § 76-502; R.S.1943, § 76-407.

76-408 Forfeiture of land; duty of county attorney to enforce; procedure; costs.

Whenever any such lands shall revert and escheat to the State of Nebraska, as provided in sections 76-403, 76-405, and 76-411, it shall be the duty of the county attorney of the county in which such lands are situated, to proceed against such alien in the district court of the county where the land is situated for the purpose of having such forfeiture declared. The nonresident alien defendants shall be served in the manner provided for the service of a summons in a civil action, and the court shall have power to hear and determine the questions presented in such cases and to declare such lands escheated to the state. When such forfeiture shall be declared by the district court, it shall be the duty of the clerk of the court to notify the Governor of the state that the title to such lands is vested in the state by the decree of the court. The clerk of the court shall present the Director of Administrative Services with the bill of costs incurred by the county in prosecuting such case, who shall issue a warrant to the clerk of the court on the state treasury to repay the county for such costs incurred. The heirs or persons who would have been entitled to such lands shall be paid by the State of Nebraska the full value thereof, as ascertained by appraisement upon the oaths of the judge, treasurer, and clerk of the county where such lands lie, and such lands shall become subject to the law, and shall be disposed of as other lands belonging to the state; *Provided*, the expense of the appraisement shall be deducted from the appraised value of the land.

Source: Laws 1889, c. 58, § 2, p. 484; Laws 1911, c. 100, § 1, p. 365; R.S.1913, § 6274; C.S.1922, § 5688; C.S.1929, § 76-503; R.S. 1943, § 76-408; Laws 1983, LB 447, § 86.

Escheat must be established and payment made as provided in section 76-408, and under certain circumstances, section 76-409. *Wilson v. State*, 195 Neb. 228, 237 N.W.2d 835 (1976).

Prior to 1963, when the method by which nonresident aliens may take land by inheritance was provided, nonresident aliens could not inherit lands in Nebraska but were to be paid the full value therefor by the state. *Shames v. State*, 192 Neb. 614, 223 N.W.2d 481 (1974).

It is the duty of the county attorney to proceed against alien for purpose of having forfeiture declared. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

If land escheats to state, it must be by appropriate proceedings and upon full compensation. *Nelson v. Nelson*, 113 Neb. 453, 203 N.W. 640 (1925).

This section provides the method of procedure in case lands are escheated to the state. *State v. Toop*, 107 Neb. 391, 186 N.W. 371 (1922).

76-409 Forfeiture of land; sale at request of heirs; title of purchaser.

At any time before the proceedings for forfeiture provided for in section 76-408 by the county attorney shall be instituted, or at any time before final decree in any such proceedings, the widow, heirs and devisees, or either of them, of deceased nonresident aliens, may, by answer in said proceedings, or by independent action in the district court of any county in which any such lands are situated, instead of the forfeiture, have the lands sold as in partition, except that it shall not be necessary for the referee or referees to report that the land cannot be divided, but the same shall be ordered sold by the court at once, and the proceeds, after the payment of costs as in other cases of partition, shall be divided according to the respective interests of the parties the same as if there had been no escheat. The purchaser at any such sale shall acquire the same title to the lands purchased which he would have acquired if the nonresident alien had been a resident or citizen. In case there is only one party in interest, he may maintain an ex parte proceeding and have the land sold in the same manner, and the purchaser shall receive the same title as if there were several parties in interest, and after the payment of costs the proceeds of the sale shall be paid to the sole party in interest.

Source: Laws 1911, c. 100, § 1, p. 365; R.S.1913, § 6274; C.S.1922, § 5688; C.S.1929, § 76-503; R.S.1943, § 76-409.

Cross References

Petition for partition, procedure, see section 25-2170 et seq.

Escheat must be established and payment made as provided in section 76-408, and under certain circumstances, section 76-409. *Wilson v. State*, 195 Neb. 228, 237 N.W.2d 835 (1976).

76-410 Owners of land in 1889; sale during lifetime required.

Any alien who owned land in this state on March 16, 1889, may dispose of the same during his life to bona fide purchasers for value, and may take security for the purchase money with the same rights as to securities as a citizen of the United States except as hereinafter limited by section 76-411.

Source: Laws 1889, c. 58, § 3, p. 485; R.S.1913, § 6275; Laws 1921, c. 142, § 2, p. 609; C.S.1922, § 5689; C.S.1929, § 76-504; R.S.1943, § 76-410.

76-411 Liens upon real estate; acquisition of such real estate; duty to sell within ten years.

The statutes of Nebraska shall not prevent the holders, whether aliens or corporations not organized under the laws of the State of Nebraska, of liens upon real estate or any interest therein, from holding or taking valid title to the real estate subject to such liens, nor shall it prevent any such alien or corporation from enforcing any lien or judgment for any debt or liability, nor from becoming a purchaser at any sale made for the purpose of collecting or

enforcing the collection of such debt or judgment; *Provided, however*, all lands so acquired shall be sold within ten years after the title thereto shall be perfected in such alien or foreign corporation, and in default of such sale within such time, such real estate shall revert and escheat to the State of Nebraska.

Source: Laws 1889, c. 58, § 4, p. 485; R.S.1913, § 6276; Laws 1919, c. 136, § 1, p. 313; Laws 1921, c. 142, § 3, p. 609; C.S.1922, § 5690; C.S.1929, § 76-505; Laws 1931, c. 128, § 1, p. 361; C.S.Supp.,1941, § 76-505; R.S.1943, § 76-411.

Sections governing escheat must be construed together and effect given to each if possible. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

76-412 Sections; not applicable to real estate of railroads, public utilities, and common carriers.

The provisions of sections 76-402, 76-406, 76-407 and 76-411 shall not apply to the real estate necessary for the construction and operation of railroads, public utilities and common carriers.

Source: Laws 1889, c. 58, § 4, p. 485; R.S.1913, § 6276; Laws 1919, c. 136, § 1, p. 313; Laws 1921, c. 142, § 3, p. 609; C.S.1922, § 5690; C.S.1929, § 76-505; Laws 1931, c. 128, § 1, p. 361; C.S.Supp.,1941, § 76-505; R.S.1943, § 76-412.

76-413 Sections; not applicable to manufacturing or industrial establishments or establishments for storage, sale, and distribution of petroleum products.

Any alien or foreign corporation may purchase, acquire, and hold title to or be a lessor or lessee of as much real estate as shall be necessary for the purpose of (1) erecting thereon manufacturing or industrial establishments, and in addition thereto such real estate as may be required for facilities incidental to such establishments, or (2) erecting and maintaining establishments primarily operated for the storage, sale, and distribution of petroleum products, commonly known as filling stations or bulk stations.

Source: Laws 1889, c. 58, § 4, p. 485; R.S.1913, § 6276; Laws 1919, c. 136, § 1, p. 313; Laws 1921, c. 142, § 3, p. 609; C.S.1922, § 5690; C.S.1929, § 76-505; Laws 1931, c. 128, § 1, p. 361; C.S.Supp.,1941, § 76-505; R.S.1943, § 76-413; Laws 1945, c. 184, § 1, p. 573; Laws 1953, c. 264, § 1, p. 875.

76-414 Sections; not applicable to real estate within cities and villages or within three miles of cities and villages; not applicable to manufacturing or industrial establishments.

The provisions of sections 76-402 to 76-413 shall not apply to any real estate lying within the corporate limits of cities and villages, or within three miles thereof, nor to any manufacturing or industrial establishment referred to in section 76-413.

Source: Laws 1889, c. 58, § 4, p. 485; R.S.1913, § 6276; Laws 1919, c. 136, § 1, p. 313; Laws 1921, c. 142, § 3, p. 609; C.S.1922,

§ 5690; C.S.1929, § 76-505; Laws 1931, c. 128, § 1, p. 361; C.S.Supp.,1941, § 76-505; R.S.1943, § 76-414; Laws 1953, c. 264, § 2, p. 876; Laws 1957, c. 318, § 1, p. 1135.

Lands involved were not within the exception created by this section. *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960).

equal protection clause of the Fourteenth Amendment to the Constitution of the United States. *Shames v. State of Nebraska*, 323 F.Supp. 1321 (D. Neb. 1971).

This section and others referred to herein in conjunction with it do not deny equal protection of the law as guaranteed by the

76-415 Sections; not applicable to real estate acquired by aliens before 1889.

The provisions of sections 76-402 to 76-413 shall not apply to any real estate acquired by any alien prior to March 16, 1889, as long as such real property shall remain the property of such alien.

Source: Laws 1921, c. 142, § 3, p. 609; C.S.1922, § 5690; C.S.1929, § 76-505; Laws 1931, c. 128, § 1, p. 361; C.S.Supp.,1941, § 76-505; R.S.1943, § 76-415; Laws 1957, c. 318, § 2, p. 1136.

ARTICLE 5

ABSTRACTERS

Cross References

Abstract, received in evidence, when, see section 25-1292.

Cancellation of tax sales, see section 77-1856.

License Suspension Act, see section 43-3301.

(a) RESTRICTIONS ON PRACTICE

Section

- 76-501. Repealed. Laws 1985, LB 47, § 32.
- 76-502. Abstracting; district or county judges ineligible.
- 76-503. Repealed. Laws 1973, LB 517, § 2.
- 76-504. Abstracting; counties over 5,000 population; county officers ineligible; exception.
- 76-505. Violations; penalty.
- 76-506. Repealed. Laws 1985, LB 47, § 32.
- 76-507. Repealed. Laws 1985, LB 47, § 32.
- 76-508. Repealed. Laws 1985, LB 47, § 32.

(b) BOARD OF EXAMINERS

- 76-509. Transferred to section 76-538.
- 76-510. Transferred to section 76-537.
- 76-511. Transferred to section 76-540.
- 76-512. Transferred to section 76-541.
- 76-513. Transferred to section 76-549.
- 76-514. Transferred to section 76-553.
- 76-515. Transferred to section 76-550.
- 76-516. Repealed. Laws 1981, LB 545, § 52.
- 76-517. Repealed. Laws 1985, LB 47, § 32.
- 76-518. Transferred to section 76-539.
- 76-519. Transferred to section 76-542.
- 76-520. Repealed. Laws 1985, LB 47, § 32.
- 76-521. Transferred to section 76-546.
- 76-522. Transferred to section 76-545.
- 76-523. Transferred to section 76-547.
- 76-524. Transferred to section 76-548.
- 76-525. Transferred to section 76-555.
- 76-526. Transferred to section 76-551.
- 76-527. Transferred to section 76-558.
- 76-528. Transferred to section 76-554.
- 76-529. Transferred to section 76-556.

Section

(c) EXAMINATION OF ABSTRACTS

76-530. Transferred to section 76-557.

(d) CONTINUING EDUCATION

76-531. Repealed. Laws 1985, LB 47, § 32.

76-532. Transferred to section 76-544.

76-533. Repealed. Laws 1985, LB 47, § 32.

76-534. Repealed. Laws 1985, LB 47, § 32.

(e) ABSTRACTERS ACT

76-535. Act, how cited.

76-536. Legislative intent.

76-537. Terms, defined.

76-538. Compliance with act.

76-539. Business of abstracting; requirements.

76-540. Abstracters Board of Examiners; membership.

76-541. Board; officers; powers; seal; rules and regulations; conduct of business.

76-542. Registration; application; fee; qualifications; rules and regulations.

76-543. Examination; certificate of registration; issuance; reapplication procedure.

76-544. Professional development requirements; rules and regulations.

76-545. Business of abstracting; requirements; certificate of authority; authority; fee.

76-546. Temporary certificate of registration; when issued; fee; expiration.

76-547. Certificates; term; renewal; requirements; fees.

76-548. Certificates; failure to renew; notice; late renewal; fee.

76-549. Abstracters Board of Examiners Cash Fund; created; board members and director; compensation.

76-550. Register and roster of applicants and abstracters.

76-551. Disciplinary actions; grounds; unfair practices.

76-552. Disciplinary actions; procedure; appeal.

76-553. Attorney General; representation of board.

76-554. Clerical assistants; not subject to act.

76-555. Public records; access; other rights.

76-556. Abstracters; liability.

76-557. Abstracts; effect of Title Standards.

76-558. Violations; penalty; effect.

(a) RESTRICTIONS ON PRACTICE

76-501 Repealed. Laws 1985, LB 47, § 32.

76-502 Abstracting; district or county judges ineligible.

No district judge or county judge within this state shall engage in the business of abstracting nor be interested directly or indirectly in any company or corporation which is engaged in the business of abstracting while holding office. Any certification of an abstract of title by a judge in violation of this section shall be void.

Source: Laws 1935, c. 148, § 1, p. 551; C.S.Supp.,1941, § 76-601; R.S. 1943, § 76-502; Laws 1972, LB 1032, § 269; Laws 1985, LB 47, § 2.

76-503 Repealed. Laws 1973, LB 517, § 2.

76-504 Abstracting; counties over 5,000 population; county officers ineligible; exception.

No county official or deputy, clerk, or assistant to such official, except the county attorney and deputy county attorney, in counties having a population of over five thousand shall engage in the business of compiling abstracts of title to

real estate in the State of Nebraska while holding such office, and any certification of an abstract of title by any such person in violation of this section shall be void.

Any registered abstracter holding any such office on August 30, 1981, shall continue to be eligible to engage in the business of compiling abstracts of title so long as he or she continues to hold such office.

Source: Laws 1933, c. 125, § 1, p. 499; Laws 1935, c. 148, § 1, p. 551; C.S.Supp.,1941, § 76-601; R.S.1943, § 76-504; Laws 1972, LB 1032, § 270; Laws 1981, LB 409, § 6; Laws 1985, LB 47, § 3.

76-505 Violations; penalty.

A violation of section 76-502 or 76-504 shall be a Class III misdemeanor.

Source: Laws 1907, c. 98, § 1, p. 347; Laws 1911, c. 99, § 1, p. 364; R.S.1913, § 6277; C.S.1922, § 5691; C.S.1929, § 76-601; Laws 1933, c. 125, § 1, p. 499; Laws 1935, c. 148, § 1, p. 551; C.S.Supp.,1941, § 76-601; R.S.1943, § 76-505; Laws 1985, LB 47, § 4.

76-506 Repealed. Laws 1985, LB 47, § 32.

76-507 Repealed. Laws 1985, LB 47, § 32.

76-508 Repealed. Laws 1985, LB 47, § 32.

(b) BOARD OF EXAMINERS

76-509 Transferred to section 76-538.

76-510 Transferred to section 76-537.

76-511 Transferred to section 76-540.

76-512 Transferred to section 76-541.

76-513 Transferred to section 76-549.

76-514 Transferred to section 76-553.

76-515 Transferred to section 76-550.

76-516 Repealed. Laws 1981, LB 545, § 52.

76-517 Repealed. Laws 1985, LB 47, § 32.

76-518 Transferred to section 76-539.

76-519 Transferred to section 76-542.

76-520 Repealed. Laws 1985, LB 47, § 32.

76-521 Transferred to section 76-546.

76-522 Transferred to section 76-545.

76-523 Transferred to section 76-547.

- 76-524 Transferred to section 76-548.**
- 76-525 Transferred to section 76-555.**
- 76-526 Transferred to section 76-551.**
- 76-527 Transferred to section 76-558.**
- 76-528 Transferred to section 76-554.**
- 76-529 Transferred to section 76-556.**

(c) EXAMINATION OF ABSTRACTS

- 76-530 Transferred to section 76-557.**

(d) CONTINUING EDUCATION

- 76-531 Repealed. Laws 1985, LB 47, § 32.**
- 76-532 Transferred to section 76-544.**
- 76-533 Repealed. Laws 1985, LB 47, § 32.**
- 76-534 Repealed. Laws 1985, LB 47, § 32.**

(e) ABSTRACTERS ACT

76-535 Act, how cited.

Sections 76-535 to 76-558 shall be known and may be cited as the Abstracters Act.

Source: Laws 1985, LB 47, § 5.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-536 Legislative intent.

It is the intent of the Legislature to safeguard the welfare and property of citizens of this state and to insure that abstracters serving the public meet minimum standards of proficiency and competency.

Source: Laws 1985, LB 47, § 6.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-537 Terms, defined.

As used in the Abstracters Act, unless the context otherwise requires:

- (1) Abstract of title means a compilation in orderly arrangement of the materials and facts of record affecting the title to real property, issued under a certificate certifying to the matters contained in such compilation;
- (2) Board means the Abstracters Board of Examiners;
- (3) Business of abstracting means the making, compiling, and selling of abstracts of title or any part thereof or preparing written reports of title to real property;

(4) Business entity means a partnership, limited liability company, corporation, or other organizational form developed to conduct business;

(5) Certificate of authority means the authorization to engage in the business of abstracting in a county in the State of Nebraska granted to an individual or business entity;

(6) Certificate of registration means the authorization to prepare abstracts of title to real property in any county within the State of Nebraska which is granted to an individual under section 76-543;

(7) Duplicate certificate of registration means a second or subsequent certificate of registration issued in this state for an abstracter who (a) holds an operative certificate of registration and (b) is employed by more than one holder of a certificate of authority;

(8) Inactive abstracter means an abstracter whose certificate of registration is not affiliated with an individual or business entity engaged in the business of abstracting and holding a certificate of authority;

(9) Professional development means a course of educational instruction, including correspondence courses, designed to maintain and improve the ability of registered abstracters to provide services to the public;

(10) Registered abstracter means an individual, registered under the Abstracters Act, holding an operative certificate of registration who for a fee or other valuable consideration compiles or certifies abstracts of title or any part thereof to real property in any county within this state or who prepares reports of title; and

(11) Report of title means any type of summary of facts of record affecting the title to real property which does not purport to constitute an opinion as to the state of the title and which is prepared by a person other than an attorney licensed to practice law in the State of Nebraska. Report of title does not include a title insurance commitment or policy or information or opinions given by a register of deeds in response to inquiries from the public.

Source: Laws 1965, c. 453, § 2, p. 1436; R.S.1943, (1981), § 76-510; Laws 1985, LB 47, § 7; Laws 1993, LB 121, § 476; Laws 2002, LB 1071, § 1.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-538 Compliance with act.

Any individual or business entity engaged in the business of abstracting in Nebraska shall comply with the Abstracters Act.

Source: Laws 1965, c. 453, § 1, p. 1436; R.S.1943, (1981), § 76-509; Laws 1985, LB 47, § 8; Laws 1993, LB 121, § 477; Laws 2002, LB 1071, § 2.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-539 Business of abstracting; requirements.

(1) An individual or business entity shall not engage in the business of abstracting in this state unless a certificate of authority has been issued to such individual or business entity.

(2) Every individual or business entity engaged in the business of abstracting shall be or have in its employ a registered abstracter. Only a registered abstracter may certify abstracts or otherwise attest to the accuracy of abstracts or prepare reports of title. An inactive abstracter shall not, for a fee or other valuable consideration, compile or certify abstracts of title or any part thereof to real property in any county within this state, prepare reports of title, or in any way engage in the business of abstracting.

Source: Laws 1965, c. 453, § 10, p. 1440; Laws 1969, c. 615, § 9, p. 2498; R.S.1943, (1981), § 76-518; Laws 1985, LB 47, § 9; Laws 2002, LB 1071, § 3.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-540 Abstracters Board of Examiners; membership.

There is hereby created an Abstracters Board of Examiners of five members to be appointed by the Governor to carry out the purposes of and enforce the Abstracters Act. The board shall include three members who shall at all times be active registered abstracters who have engaged in the business of abstracting for at least five years, one member who shall be a lawyer experienced in the area of real estate law, and one member who shall be representative of the public.

No more than two members of the board shall be appointed from the same county, at least one member shall be appointed from a county having as its largest city a city of the first class, and at least one member shall be appointed from a county having as its largest city a city of the second class. No member of the board shall be employed by the same employer as any other member of the board.

Each member of the board shall serve for a term of five years and until a successor is appointed and qualified, except that members of the board currently serving on March 26, 1985, shall continue to serve the terms for which they were appointed. The first attorney member of the board whose term expires after March 26, 1985, shall be succeeded by the representative of the public.

Vacancies created by the death, resignation, or other disability of a board member resulting in the inability to carry out his or her duties shall be filled by appointment by the Governor and such successor shall possess the same qualifications as the member replaced and such member shall, upon qualification, serve the unexpired term of the member whom he or she succeeds. No member of the board shall be appointed to succeed himself or herself.

Source: Laws 1965, c. 453, § 3, p. 1437; Laws 1973, LB 330, § 1; R.S.1943, (1981), § 76-511; Laws 1985, LB 47, § 10.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-541 Board; officers; powers; seal; rules and regulations; conduct of business.

The board shall organize by election of a chairperson and vice-chairperson. The board shall have the power to compel the attendance of witnesses, and the chairperson and vice-chairperson shall have the power to administer oaths. The

board shall employ a director who shall keep a record of all proceedings, transactions, communications, and official acts of the board, be custodian of all records, and perform such other duties as the board may require.

The board shall adopt a seal, which may be either an engraved or ink stamp seal with the words Abstracters Board of Examiners, State of Nebraska, and such other device as the board may desire included, by which it shall authenticate the acts of the board. Copies of all records and papers in the office of the board, certified by the signature of the director and the seal of the board, shall be received in evidence in all cases equally and with like effect as the originals.

The board may adopt and promulgate such rules and regulations as it shall deem necessary for the proper administration of its powers and duties and the carrying out of the Abstracters Act. Such rules and regulations may provide that, except for hearings on the revocation of certificates issued by the board, the business of the board may be conducted while in session as a body or by correspondence. Such correspondence shall be directed to the director to be incorporated into the records of the board.

The action of the majority of the members of the board shall be deemed the action of the board.

Source: Laws 1965, c. 453, § 4, p. 1438; Laws 1971, LB 653, § 8; R.S.1943, (1981), § 76-512; Laws 1985, LB 47, § 11.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-542 Registration; application; fee; qualifications; rules and regulations.

Any individual desiring to become a registered abstracter shall file an application for registration with the board. Such applicant shall have reached the age of majority, shall not have been convicted of a felony, and shall have at least one year of verified land title-related experience satisfactory to the board. Each applicant for registration shall take the written examination prescribed by section 76-543.

Such application shall be in a form prepared by the board and shall contain the applicant’s social security number and such information as may be necessary to assist the board in determining the qualification of the applicant for registration. Each such application shall be accompanied by (1) an application fee of not less than twenty-five dollars or more than one hundred dollars and (2) an examination fee of not less than twenty-five dollars or more than one hundred dollars. The board shall establish such fees based on the administrative costs of the board.

Upon receipt of such application the board shall notify the applicant by mail whether the application has been accepted. If the application has not been accepted, the examination fee shall be returned to the applicant. If the application has been accepted, the applicant shall be notified of the time and place of the next scheduled examination.

The board shall adopt and promulgate rules and regulations necessary to establish the experience standards and administer the examination required for registered abstracters.

Source: Laws 1965, c. 453, § 11, p. 1440; Laws 1969, c. 615, § 10, p. 2498; Laws 1973, LB 330, § 3; Laws 1981, LB 409, § 8; R.S. 1943, (1981), § 76-519; Laws 1985, LB 47, § 12; Laws 1997, LB 752, § 202; Laws 2002, LB 1071, § 4.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-543 Examination; certificate of registration; issuance; reapplication procedure.

The board shall prescribe a written examination to determine the proficiency of the applicant. If the applicant passes the examination and meets the other requirements of section 76-542, the board shall issue a certificate of registration designating him or her to be a registered abstracter. If the abstracter has more than one place of employment, the abstracter shall obtain a duplicate certificate of registration for each additional place of employment. A certificate shall be prominently displayed at each place of employment of such abstracter. If an applicant fails the examination, he or she may reapply for registration by remitting the examination fee. The board shall give the examination at least twice a year.

Source: Laws 1985, LB 47, § 13; Laws 2002, LB 1071, § 5.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-544 Professional development requirements; rules and regulations.

Every two years a registered abstracter shall complete and certify to the board that he or she has successfully completed three hours of board-approved professional development credits. The board shall adopt and promulgate rules and regulations necessary for the effective delivery and approval of all programs of professional development required.

Source: Laws 1981, LB 409, § 2; R.S.1943, (1981), § 76-532; Laws 1985, LB 47, § 14; Laws 1990, LB 1153, § 57.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-545 Business of abstracting; requirements; certificate of authority; authority; fee.

Any individual or business entity desiring to engage in the business of abstracting in this state shall make application to the board for a certificate of authority. Such application shall be in a form prepared by the board and shall contain such information as may be necessary to assist the board in determining whether the applicant has complied with the Abstracters Act. Such application shall be accompanied by an application fee of not less than twenty-five dollars or more than one hundred dollars. The board shall establish such fee based on the administrative costs of the board. The applicant shall furnish proof that such applicant is or has employed a registered abstracter and shall provide the name and address of a resident agent for service of process under the act. When this section has been complied with, the board shall issue a certificate of authority in such form as it may prescribe, attesting to the same, and such certificate shall be prominently displayed in the place of business of the applicant.

Source: Laws 1965, c. 453, § 14, p. 1442; Laws 1969, c. 615, § 11, p. 2499; R.S.1943, (1981), § 76-522; Laws 1985, LB 47, § 15; Laws 2002, LB 1071, § 6.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-546 Temporary certificate of registration; when issued; fee; expiration.

The board may, upon application to it by (1) any individual succeeding to the ownership of any abstract business by any means other than by purchase or (2) any individual who, by reason of the incapacity of any registered abstracter owner of any abstract business, is required to assume the operation of such business, grant to such individual, without examination, a temporary certificate of registration. The application shall include the applicant’s social security number. Such temporary certificate shall be issued only after the applicant provides proof of land title-related experience sufficient to meet the standards established by the board. The fee for such temporary certificate of registration shall be not less than twenty-five or more than one hundred dollars. The board shall establish such fee based on the administrative costs of the board. Such certificate shall expire six months after its date or upon the expiration of sixty days after the next regularly scheduled examination which could be taken by the applicant under the rules and regulations of the board, whichever period is the longer. The board shall notify such applicant by mail of the time and place of such examination.

Source: Laws 1965, c. 453, § 13, p. 1441; Laws 1981, LB 409, § 9; R.S.1943, (1981), § 76-521; Laws 1985, LB 47, § 16; Laws 1997, LB 752, § 203.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-547 Certificates; term; renewal; requirements; fees.

(1) All certificates of authority issued pursuant to section 76-545 shall expire on April 1 of each year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a one-year period upon payment of a renewal fee of not less than twenty-five dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board.

(2) All certificates of registration, including duplicate certificates of registration, issued pursuant to section 76-543 shall expire on April 1 of each even-numbered year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a two-year period upon payment of a renewal fee of not less than twenty dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board. The board shall not renew the certificate of registration or duplicate certificate of registration for any registered abstracter who has failed to complete the professional development requirements set forth in section 76-544, unless the registered abstracter has shown good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown for not completing the professional development requirements, the board shall permit the registered abstracter to make up all outstanding hours of professional development within six months of the renewal of such certificates. If the hours are not completed in six months, such certificates shall be revoked.

(3) Thirty to sixty days prior to the expiration date of the certificates, the board shall cause a notice of expiration and application for renewal, including

a statement for the fee for each certificate, to be mailed to each of the holders of such certificates. The notice and application shall be in a form prepared by the board.

Source: Laws 1965, c. 453, § 15, p. 1442; Laws 1973, LB 330, § 4; R.S.1943, (1981), § 76-523; Laws 1985, LB 47, § 17; Laws 2002, LB 1071, § 7; Laws 2005, LB 640, § 1.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-548 Certificates; failure to renew; notice; late renewal; fee.

If a holder of a certificate of authority or certificate of registration fails to apply for renewal and to pay the fee provided, the board shall send by registered or certified mail to such holder a notice that the certificate or certificates have expired and are no longer valid authority for such individual or business entity to engage in the business of abstracting. Such notice shall be mailed not more than thirty days following the certificate expiration date. Any holder who fails to apply for renewal or pay the renewal fees prescribed in section 76-547 may file a late renewal application and shall pay, in addition to the renewal fee, ten dollars for each month or fraction thereof that the application is late beginning with April 1, except that such application shall be filed before July 1 of the year of expiration.

Source: Laws 1965, c. 453, § 16, p. 1443; Laws 1973, LB 330, § 5; R.S.1943, (1981), § 76-524; Laws 1985, LB 47, § 18.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-549 Abstracters Board of Examiners Cash Fund; created; board members and director; compensation.

All fees collected pursuant to the Abstracters Act shall be deposited in the state treasury to be credited to the Abstracters Board of Examiners Cash Fund which is hereby created. All actual and necessary expenses of the board shall be paid from such fund. No member of the board shall receive a salary. Each member of the board shall receive as compensation for each day or part thereof of actual service while attending meetings or otherwise engaged upon the business of the board fifty dollars and expenses incurred in the performance of official duties. The director shall be paid a salary to be determined by the board.

Source: Laws 1965, c. 453, § 5, p. 1438; Laws 1969, c. 615, § 6, p. 2497; Laws 1971, LB 25, § 1; Laws 1973, LB 330, § 2; Laws 1981, LB 204, § 147; R.S.1943, (1981), § 76-513; Laws 1985, LB 47, § 19.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-550 Register and roster of applicants and abstracters.

The board shall keep a register of the name of each applicant for certification, with his or her place of business and such other information as may be deemed appropriate, including a notation of the action taken by the board thereon, the date upon which the certificate of registration or certificate of

authority is issued, and the date of renewal of such certificates. The board shall maintain other records, registers, and files as may be necessary for the proper administration of its duties pursuant to the Abstracters Act. A roster showing the names and places of business of abstracters holding an operative certificate of registration shall be prepared by the director during the month of June of every year, sent to all registered abstracters, and furnished to the public on request.

Source: Laws 1965, c. 453, § 7, p. 1439; Laws 1981, LB 409, § 7; R.S.1943, (1981), § 76-515; Laws 1985, LB 47, § 20.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-551 Disciplinary actions; grounds; unfair practices.

The board shall have the power (1) to revoke a certificate of registration or certificate of authority, (2) to suspend a certificate of registration or certificate of authority for a specific period not to exceed a year, (3) to censure a registered abstracter or holder of a certificate of authority, and (4) to issue a letter of reprimand to a registered abstracter or holder of a certificate of authority.

Such disciplinary actions may be invoked after a hearing as provided in section 76-552 for a violation of the Abstracters Act, including unfair practices, upon the conviction of the holder of a certificate of a felony, or if the board finds a holder to be guilty of habitual carelessness or of fraudulent practices in the conduct of the business of abstracting.

Unfair practices which are a violation of the Abstracters Act shall include:

(a) Failure to disclose an agency relationship to or interest in any title insurance business, law firm, real estate or insurance business, or any other business or enterprise to a client in the event that the holder of the certificate of registration or the holder of the certificate of authority would receive a fee directly or indirectly from such a relationship or interest during a transaction involving real estate in which the holder is retained to provide abstracting services for such client; and

(b) Paying or allowing a rebate of fees for abstracting services, which unfair practice specifically includes rendering a statement or bill to be passed on to third parties which does not reflect the true amount charged for such services or charging an amount from which a rebate is to be paid.

The board shall also have the power after a hearing as provided in section 76-552 to revoke or suspend a certificate of authority for failure to have employed a registered abstracter or for otherwise violating the Abstracters Act.

Source: Laws 1965, c. 453, § 18, p. 1443; Laws 1969, c. 615, § 12, p. 2499; Laws 1976, LB 310, § 1; R.S.1943, (1981), § 76-526; Laws 1985, LB 47, § 21.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. State v. Rabourn, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-552 Disciplinary actions; procedure; appeal.

A verified complaint may be filed with the board charging a registered abstracter or a holder of a certificate of authority with a violation of the

Abstracters Act. The board on its own motion may also file such a complaint. If a complaint is filed, the board shall immediately notify the abstracter or holder of such certificate of the complaint. The notice shall be in writing and be sent by registered or certified mail, return receipt requested. The notice shall contain a statement of the charges and a copy of the complaint. The notice shall state the time and place of the hearing which shall be not less than twenty nor more than forty days from the date of service of such complaint. The abstracter or holder of such certificate shall be entitled to counsel at any hearing. The board shall cause a transcript of any testimony taken to be made by a reporter or stenographer.

The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1985, LB 47, § 22; Laws 1988, LB 352, § 147.

Cross References

Administrative Procedure Act, see section 84-920.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-553 Attorney General; representation of board.

The Attorney General shall render to the Abstracters Board of Examiners opinions on all questions of law relating to the interpretation of the Abstracters Act or arising in its administration and shall act as attorney for the board in all actions and proceedings brought by or against it pursuant to the Abstracters Act.

Source: Laws 1965, c. 453, § 6, p. 1439; Laws 1967, c. 481, § 1, p. 1492; Laws 1969, c. 615, § 7, p. 2497; R.S.1943, (1981), § 76-514; Laws 1985, LB 47, § 23.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-554 Clerical assistants; not subject to act.

Nothing in the Abstracters Act shall be construed as prohibiting any individual or business entity holding a valid certificate of authority from employing such clerical and stenographic assistants as may be necessary in the conduct of its business who are not registered under the Abstracters Act.

Source: Laws 1965, c. 453, § 20, p. 1446; Laws 1973, LB 330, § 6; R.S.1943, (1981), § 76-528; Laws 1985, LB 47, § 24.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-555 Public records; access; other rights.

Holders of certificates of authority and their employees in the conduct of the business of abstracting shall have access to the public records in any office of any city, county, or the state, shall be permitted to make memoranda, notations, or copies of such records, and shall be permitted to occupy reasonable space with equipment for that purpose, subject to the reasonable regulation of the custodian of such public records and during the business hours of such office,

in order to enable such certificate holders to make and prepare abstracts and to compile, post, copy, and maintain their books, records, and indices.

Source: Laws 1965, c. 453, § 17, p. 1443; R.S.1943, (1981), § 76-525; Laws 1985, LB 47, § 25.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-556 Abstracters; liability.

A registered abstracter shall show each link in the chain of title, and failure to do so shall render him or her liable to any person injured by such omission. In adding extensions to an old abstract, a registered abstracter shall not be deemed to certify to or verify accuracy of entries prior to the first date given in the certificate of extension. When a registered abstracter relies upon the numerical index alone to refer him or her to all entries upon the records affecting the title to property, such reliance shall be at his or her peril. A registered abstracter shall be liable for omission of notice of encumbrance in an abstract.

Source: Laws 1969, c. 615, § 13, p. 2501; R.S.1943, (1981), § 76-529; Laws 1985, LB 47, § 26.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-557 Abstracts; effect of Title Standards.

In the compilation or examination of an abstract of title to real estate, it shall not be considered negligence for a registered abstracter or an attorney to follow the Title Standards promulgated by the Nebraska State Bar Association.

Source: Laws 1973, LB 517, § 1; R.S.1943, (1981), § 76-530; Laws 1985, LB 47, § 27.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

76-558 Violations; penalty; effect.

Any individual or business entity engaged in the business of abstracting in this state without having complied with the Abstracters Act shall be guilty of a Class III misdemeanor. Violation of the Abstracters Act shall in no way be construed to preclude the liability of a holder of a certificate of authority, a registered abstracter, any person holding himself or herself out to be a registered abstracter or a holder of a certificate of authority, or any person illegally engaged in the business of abstracting in the State of Nebraska.

Source: Laws 1965, c. 453, § 19, p. 1445; Laws 1977, LB 39, § 208; R.S.1943, (1981), § 76-527; Laws 1985, LB 47, § 28.

“Preparing written reports of title to real property” constitutes the “business of abstracting” for purposes of the Abstracters Act only when done in exchange for a fee or other valuable

consideration. So construed, the Abstracters Act is not unconstitutionally overbroad on its face. *State v. Rabourn*, 269 Neb. 499, 693 N.W.2d 291 (2005).

ARTICLE 6

STANDARDS OF TITLE EXAMINATION ACT

Section

- 76-601. Repealed. Laws 1973, LB 517, § 2.
- 76-602. Repealed. Laws 1973, LB 517, § 2.
- 76-603. Repealed. Laws 1973, LB 517, § 2.
- 76-604. Repealed. Laws 1973, LB 517, § 2.
- 76-605. Repealed. Laws 1973, LB 517, § 2.
- 76-606. Repealed. Laws 1973, LB 517, § 2.
- 76-607. Repealed. Laws 1973, LB 517, § 2.
- 76-608. Repealed. Laws 1973, LB 517, § 2.
- 76-609. Repealed. Laws 1973, LB 517, § 2.
- 76-610. Repealed. Laws 1973, LB 517, § 2.
- 76-611. Repealed. Laws 1973, LB 517, § 2.
- 76-612. Repealed. Laws 1973, LB 517, § 2.
- 76-613. Repealed. Laws 1973, LB 517, § 2.
- 76-614. Repealed. Laws 1973, LB 517, § 2.
- 76-615. Repealed. Laws 1973, LB 517, § 2.
- 76-616. Repealed. Laws 1973, LB 517, § 2.
- 76-617. Repealed. Laws 1973, LB 517, § 2.
- 76-618. Repealed. Laws 1973, LB 517, § 2.
- 76-619. Repealed. Laws 1973, LB 517, § 2.
- 76-620. Repealed. Laws 1973, LB 517, § 2.
- 76-621. Repealed. Laws 1973, LB 517, § 2.
- 76-622. Repealed. Laws 1973, LB 517, § 2.
- 76-623. Repealed. Laws 1973, LB 517, § 2.
- 76-624. Repealed. Laws 1973, LB 517, § 2.
- 76-625. Repealed. Laws 1973, LB 517, § 2.
- 76-626. Repealed. Laws 1973, LB 517, § 2.
- 76-627. Repealed. Laws 1973, LB 517, § 2.
- 76-628. Repealed. Laws 1973, LB 517, § 2.
- 76-629. Repealed. Laws 1973, LB 517, § 2.
- 76-630. Repealed. Laws 1973, LB 517, § 2.
- 76-631. Repealed. Laws 1973, LB 517, § 2.
- 76-632. Repealed. Laws 1973, LB 517, § 2.
- 76-633. Repealed. Laws 1973, LB 517, § 2.
- 76-634. Repealed. Laws 1973, LB 517, § 2.
- 76-635. Repealed. Laws 1973, LB 517, § 2.
- 76-636. Repealed. Laws 1973, LB 517, § 2.
- 76-637. Repealed. Laws 1973, LB 517, § 2.
- 76-638. Repealed. Laws 1973, LB 517, § 2.
- 76-639. Repealed. Laws 1973, LB 517, § 2.
- 76-640. Repealed. Laws 1973, LB 517, § 2.
- 76-641. Repealed. Laws 1973, LB 517, § 2.
- 76-642. Repealed. Laws 1973, LB 517, § 2.
- 76-643. Repealed. Laws 1973, LB 517, § 2.
- 76-644. Repealed. Laws 1973, LB 517, § 2.

76-601 Repealed. Laws 1973, LB 517, § 2.

76-602 Repealed. Laws 1973, LB 517, § 2.

76-603 Repealed. Laws 1973, LB 517, § 2.

76-604 Repealed. Laws 1973, LB 517, § 2.

76-605 Repealed. Laws 1973, LB 517, § 2.

76-606 Repealed. Laws 1973, LB 517, § 2.

- 76-607 Repealed. Laws 1973, LB 517, § 2.
- 76-608 Repealed. Laws 1973, LB 517, § 2.
- 76-609 Repealed. Laws 1973, LB 517, § 2.
- 76-610 Repealed. Laws 1973, LB 517, § 2.
- 76-611 Repealed. Laws 1973, LB 517, § 2.
- 76-612 Repealed. Laws 1973, LB 517, § 2.
- 76-613 Repealed. Laws 1973, LB 517, § 2.
- 76-614 Repealed. Laws 1973, LB 517, § 2.
- 76-615 Repealed. Laws 1973, LB 517, § 2.
- 76-616 Repealed. Laws 1973, LB 517, § 2.
- 76-617 Repealed. Laws 1973, LB 517, § 2.
- 76-618 Repealed. Laws 1973, LB 517, § 2.
- 76-619 Repealed. Laws 1973, LB 517, § 2.
- 76-620 Repealed. Laws 1973, LB 517, § 2.
- 76-621 Repealed. Laws 1973, LB 517, § 2.
- 76-622 Repealed. Laws 1973, LB 517, § 2.
- 76-623 Repealed. Laws 1973, LB 517, § 2.
- 76-624 Repealed. Laws 1973, LB 517, § 2.
- 76-625 Repealed. Laws 1973, LB 517, § 2.
- 76-626 Repealed. Laws 1973, LB 517, § 2.
- 76-627 Repealed. Laws 1973, LB 517, § 2.
- 76-628 Repealed. Laws 1973, LB 517, § 2.
- 76-629 Repealed. Laws 1973, LB 517, § 2.
- 76-630 Repealed. Laws 1973, LB 517, § 2.
- 76-631 Repealed. Laws 1973, LB 517, § 2.
- 76-632 Repealed. Laws 1973, LB 517, § 2.
- 76-633 Repealed. Laws 1973, LB 517, § 2.
- 76-634 Repealed. Laws 1973, LB 517, § 2.
- 76-635 Repealed. Laws 1973, LB 517, § 2.
- 76-636 Repealed. Laws 1973, LB 517, § 2.
- 76-637 Repealed. Laws 1973, LB 517, § 2.

76-638 Repealed. Laws 1973, LB 517, § 2.

76-639 Repealed. Laws 1973, LB 517, § 2.

76-640 Repealed. Laws 1973, LB 517, § 2.

76-641 Repealed. Laws 1973, LB 517, § 2.

76-642 Repealed. Laws 1973, LB 517, § 2.

76-643 Repealed. Laws 1973, LB 517, § 2.

76-644 Repealed. Laws 1973, LB 517, § 2.

ARTICLE 7 EMINENT DOMAIN

Cross References

Condominiums, see section 76-831.

Land acquisition for highways, see sections 39-1302, 39-1320, and 39-1323.

Municipal Natural Gas System Condemnation Act, see section 19-4624.

Relocation Assistance Act, see section 76-1214 et seq.

Section

- 76-701. Terms, defined.
- 76-702. Condemner; enter upon land; inventory; furnish to condemnee.
- 76-703. Damages; ascertainment; procedure.
- 76-704. Petition of condemner.
- 76-704.01. Petition of condemner; contents.
- 76-705. Acquisition of property; damages; petition of condemnee.
- 76-706. Appointment of appraisers; qualifications; notice to condemnee.
- 76-707. Appraisers; disqualifications; vacancies; appointment.
- 76-708. Appraisers; oath.
- 76-709. Appraisers; duties.
- 76-710. Appraisers; assessment of damages; additional damages; copy of report to condemnee; failure to transmit; effect.
- 76-710.01. Damages; effect of reimbursement by federal government; severance damages; other considerations.
- 76-710.02. Land situated in irrigation district; damages payable to district.
- 76-710.03. Land devoted to agricultural purposes; acquisition to construct power transmission lines; route selected.
- 76-710.04. Economic development purpose; restriction on use of eminent domain.
- 76-711. Condemner; interest in property; deposit of awards; abandonment; appeal; interest; writ of assistance; removal of property; liability.
- 76-712. Condemnation award; certification; filing; state or federal-aid highways; failure to make deposit within sixty days; effect.
- 76-713. Condemnation award; recording; effect.
- 76-714. Condemnation; interest acquired; when effective.
- 76-715. Assessment of damages; appeal; procedure.
- 76-715.01. Assessment of damages; appeal notice; contents; filing.
- 76-716. Appeal; bond; conditions.
- 76-717. Appeal; transcript; fees; docketing; delay in acquisition of property; deposit of award, effect.
- 76-717.01. Repealed. Laws 1982, LB 592, § 2.
- 76-718. Judgment on appeal; certified copy sent to county judge.
- 76-719. Appeal from district court; procedure; money on deposit; disposition.
- 76-719.01. Deposit of award; payment of amount to condemnee; remainder; how treated; waiver of appeal, effect; judgment against condemnee for overpayment; interest.
- 76-720. Appeal; fees and costs; payment.
- 76-720.01. Appeal; allowance of fees and costs; applicable to pending cases.
- 76-721. Joinder of causes of action on appeal.

Section

- 76-722. Repealed. Laws 1983, LB 447, § 104.
- 76-723. Appraisers; fees; appeal; costs; mileage.
- 76-724. Property of minor, mentally incompetent person, married person whose spouse is under guardianship or conservatorship; authority of guardian or conservator.
- 76-725. State; lands necessary for state use; right of eminent domain; procedure.
- 76-726. Costs, expenses, fees; awarded; when.

76-701 Terms, defined.

For purposes of sections 76-701 to 76-726:

- (1) Condemner means any legal entity that by law has been granted the right to exercise the power of eminent domain and includes the state and any governmental or political subdivision thereof;
- (2) Condemnee means any person, partnership, limited liability company, corporation, or association owning or having an encumbrance on any interest in property that is sought to be acquired by a condemner or in possession of or occupying any such property;
- (3) Property means any such interest in real or personal property as the condemner is empowered by law to acquire for public use; and
- (4) County judge means the county judge of the county where condemnation proceedings provided by such sections are had.

Source: Laws 1951, c. 101, § 1, p. 452; Laws 1993, LB 121, § 478; Laws 2006, LB 924, § 1.

When a political subdivision with the power of eminent domain damages property for a public use, the property owner may seek damages in an action for tort, in an action for inverse condemnation under the provisions of sections 76-701 to 76-725, or in an action under the language of Neb. Const. Art. I, sec. 21. *Slusarski v. County of Platte*, 226 Neb. 889, 416 N.W.2d 213 (1987).

Although this action was not originally commenced under sections 76-701 to 76-725, all the parties and the court understood it to be an action for inverse condemnation. Therefore, the property owner is entitled to interest under the terms of those sections. A property owner is entitled to the same rights under sections 76-711 to 76-719.01 when property is taken outside the provisions of sections 76-701 to 76-725, R.R.S.1943, as when it is taken under the provisions of the latter sections. *Danish Venerforming & Old Peoples Home v. State*, 205 Neb. 839, 290 N.W.2d 791 (1980).

An owner of land taken by the Department of Roads through eminent domain proceedings, who has been paid and has accepted the award of damages, cannot later attack the taking by a

collateral action. *Bishop v. Department of Roads*, 205 Neb. 760, 290 N.W.2d 193 (1980).

Section 76-701 et seq., R.R.S.1943, provides no specific statute of limitations; therefore the ten-year period in section 25-202, R.R.S.1943, applies in inverse condemnation proceedings. *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977).

Nebraska Game and Parks Commission is a condemner. *Duerfeldt v. State*, 184 Neb. 242, 166 N.W.2d 737 (1969).

Mere option to purchase property is not an interest in real or personal property. *Phillips Petroleum Co. v. City of Omaha*, 171 Neb. 457, 106 N.W.2d 727 (1960).

Procedure is applicable to eminent domain proceedings by public power districts. *Jensen v. Omaha Public Power Dist.*, 159 Neb. 277, 66 N.W.2d 591 (1954).

Vacation of street is not analogous to an eminent domain proceeding. *Hanson v. City of Omaha*, 157 Neb. 403, 59 N.W.2d 622 (1953).

76-702 Condemner; enter upon land; inventory; furnish to condemnee.

After negotiations have failed, any condemner, or his representative, upon proper identification and after informing the condemnee of the contemplated action is authorized to enter upon any land for the purpose of examining and surveying same in contemplation of bringing or during the pendency of condemnation proceedings under sections 76-701 to 76-724; *Provided*, when an inventory is made of the damage to personal property by reason of examining or surveying the land by the condemner, or his representatives, a copy of the inventory shall be delivered to the condemnee.

Source: Laws 1951, c. 101, § 2, p. 452.

The authority to enter land granted condemnors under this section for "examining and surveying" prescribes activities far less intrusive than the drilling and sample gathering for geo-technical studies proposed by the plaintiff. *Burlington Northern and Santa Fe Ry. Co. v. Chaulk*, 262 Neb. 235, 631 N.W.2d 131 (2001).

Failure to attempt to agree with landowner cannot be raised by injunction. *Heppe v. State*, 162 Neb. 403, 76 N.W.2d 255 (1956).

Requirement in previous law that attempt be made to agree with owner was not changed. *Higgins v. Loup River Public Power Dist.*, 157 Neb. 652, 61 N.W.2d 213 (1953).

76-703 Damages; ascertainment; procedure.

Damages to be paid by the condemner for any property including parts of or easements across rights-of-way of a public utility or a railroad taken through the exercise of the power of eminent domain shall be ascertained and determined as provided in sections 76-704 to 76-724, except that if it is sought to condemn the property, or such part thereof as will result in a decrease in the territory or volume of service, of a public utility engaged in the rendition of existing service, such damages shall be ascertained and determined as provided in sections 19-701 to 19-707 and 70-650 or the Municipal Natural Gas System Condemnation Act, when applicable.

Source: Laws 1951, c. 101, § 3, p. 453; Laws 1961, c. 181, § 11, p. 543; Laws 2002, LB 384, § 31.

Cross References

Municipal Natural Gas System Condemnation Act, see section 19-4624.

Property of a public utility engaged in the rendition of existing service:

Cities of the metropolitan class, see section 14-376.

Cities of the primary, first, and second classes and villages, see sections 19-701 to 19-707.

76-704 Petition of condemner.

If any condemnee shall fail to agree with the condemner with respect to the acquisition of property sought by the condemner, a petition to condemn the property may be filed by the condemner in the county court of the county where the property or some part thereof is situated.

Source: Laws 1951, c. 101, § 4, p. 453.

1. Failure to agree
2. Acquisition of property

1. Failure to agree

It is essential that an attempt to agree with the owner of land shall first be made before institution of eminent domain proceedings. *Prairie View Tel. Co. v. County of Cherry*, 179 Neb. 382, 138 N.W.2d 468 (1965).

Condemner must make bona fide attempt to agree with landowner with respect to acquisition of premises. *State v. Mahloch*, 174 Neb. 190, 116 N.W.2d 305 (1962).

Failure to attempt to agree with landowner cannot be raised by injunction. *Heppe v. State*, 162 Neb. 403, 76 N.W.2d 255 (1956).

Attempt to agree with owner on value of land to be taken is mandatory and jurisdictional. *Higgins v. Loup River Public Power Dist.*, 157 Neb. 652, 61 N.W.2d 213 (1953).

2. Acquisition of property

The language of the statute recognizes that more than one condemnee may have an interest in the real estate and these interests are separate and may be different in nature and so are

to be severally treated. *Grace Land & Cattle Co. v. Tri-State G. & T. Assn., Inc.*, 191 Neb. 663, 217 N.W.2d 184 (1974).

This and subsequent sections provide uniform method of procedure to be followed in eminent domain actions. *Connor v. City of Omaha*, 185 Neb. 146, 174 N.W.2d 205 (1970).

Eminent domain proceedings are authorized for acquisition of water rights. *Hickman v. Loup River P. P. Dist.*, 173 Neb. 428, 113 N.W.2d 638 (1962).

Procedure was provided for gas company to exercise power of eminent domain. *City of Bayard v. North Central Gas Co.*, 164 Neb. 819, 83 N.W.2d 861 (1957).

Damages to real estate are computable as of date of filing of condemnation petition. *Platte Valley Public Power & Irr. Dist. v. Armstrong*, 159 Neb. 609, 68 N.W.2d 200 (1955).

Upon failure to agree, petition to condemn property may be filed by condemner. *Jensen v. Omaha Public Power Dist.*, 159 Neb. 277, 66 N.W.2d 591 (1954).

76-704.01 Petition of condemner; contents.

A petition filed pursuant to section 76-704, shall include:

- (1) A statement of the authority for the acquisition;
- (2) The nature of and necessity and purpose for which the land will be used;

- (3) The title, right, or interest in the property to be acquired;
- (4) The quantity needed to fulfill the public purpose for which taken;
- (5) Reasons for selecting the particular location or route;
- (6) Evidence of attempts to negotiate in good faith with the property owner; and
- (7) If approval of any other agency is required the condemner should set forth the approval in writing of such agency.

Source: Laws 1978, LB 917, § 6.

76-705 Acquisition of property; damages; petition of condemnee.

If any condemner shall have taken or damaged property for public use without instituting condemnation proceedings, the condemnee, in addition to any other available remedy, may file a petition with the county judge of the county where the property or some part thereof is situated to have the damages ascertained and determined.

Source: Laws 1951, c. 101, § 5, p. 453.

For purposes of valuation, the date of the taking is deemed to be the date the condemner files its petition in condemnation in the county court, or the date wherein the condemner exercises dominion over, or appropriates an interest in, a person's private property for public use, whichever occurs first. *Rose v. City of Lincoln*, 234 Neb. 67, 449 N.W.2d 522 (1989).

Section 76-701 et seq., R.R.S.1943, provides no specific statute of limitations; therefore the ten-year period in section 25-202, R.R.S.1943, applies in inverse condemnation proceedings. *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977).

Where public building commission damaged and interfered with use of private sewer connections joining city sewers, held owners entitled to sue in tort or inverse condemnation. *City of Omaha v. Matthews*, 197 Neb. 323, 248 N.W.2d 761 (1977).

The provision which permits a petition to condemn to be filed in the county court of the county where some part of the property is situated has reference to a tract some part of which lies in both counties. *Grace Land & Cattle Co. v. Tri-State G. & T. Assn., Inc.*, 191 Neb. 663, 217 N.W.2d 184 (1974).

Party seeking damages for interference with leasehold rights was precluded from bringing action by acceptance of compensation allowed by Legislature. *State v. Nickel Grain Co., Inc.*, 182 Neb. 191, 153 N.W.2d 727 (1967).

Right of owner of lot abutting on city street to institute proceedings for recovery of consequential damages raised but not decided. *Hillerege v. City of Scottsbluff*, 164 Neb. 560, 83 N.W.2d 76 (1957).

76-706 Appointment of appraisers; qualifications; notice to condemnee.

Upon filing of a petition under either section 76-704 or 76-705, the county judge or clerk magistrate, within three days by order entered of record, shall appoint three disinterested freeholders of the county, not interested in a like question, to serve as appraisers. One appraiser so appointed shall be a credentialed real property appraiser, except that if the county judge finds that no credentialed real property appraiser is a disinterested freeholder of the county, this requirement shall not apply. The county judge or clerk magistrate shall direct the sheriff to summon the appraisers so selected to convene at the office of the county judge at a time specified in the summons for the purpose of qualifying as appraisers and thereafter proceed to appraise the property sought to be condemned and to ascertain and determine the damages sustained by the condemnee. Notice of intention to acquire the property and of the time and place of meeting of the board of appraisers to have the damages assessed shall be served upon the condemnee at least ten days prior to the meeting of the board of appraisers. Service of such notice shall be made in the manner provided for service of a summons in a civil action.

Source: Laws 1951, c. 101, § 6, p. 453; Laws 1976, LB 775, § 1; Laws 1983, LB 447, § 87; Laws 1987, LB 601, § 3; Laws 1990, LB 1153, § 58; Laws 1991, LB 203, § 4; Laws 1994, LB 1107, § 4; Laws 2006, LB 778, § 8.

Validity of appointment of appraisers raised but not decided.
Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664
(1959).

76-707 Appraisers; disqualifications; vacancies; appointment.

Upon convening of the appraisers, the county judge shall interrogate the appraisers as to their qualifications and may excuse any appraiser found by the county judge to be disqualified to serve. The county judge may fill any vacancies arising through disqualification, inability to attend, or otherwise.

Source: Laws 1951, c. 101, § 7, p. 454.

76-708 Appraisers; oath.

The appraisers shall, before entering on their duties, take and subscribe an oath that they will support the Constitutions of the United States and of the State of Nebraska, and will faithfully and impartially discharge their duties as required by law.

Source: Laws 1951, c. 101, § 8, p. 454.

76-709 Appraisers; duties.

It shall be the duty of the appraisers to carefully inspect and view the property taken or sought to be taken, and also any other property of the condemnee damaged thereby. The appraisers shall hear any party interested therein in reference to the amount of damages when they are so inspecting and viewing the property.

Source: Laws 1951, c. 101, § 9, p. 454.

76-710 Appraisers; assessment of damages; additional damages; copy of report to condemnee; failure to transmit; effect.

After the inspection, view, and hearing provided for in section 76-709 have been completed, the appraisers shall assess the damages that the condemnee has sustained or will sustain by the appropriation of the property to the use of the condemner and make and file a report thereof in writing with the court. In assessing such damages in cases in which the appropriation consists of taking an easement, the assessment of damages shall include damages for fences and crops destroyed or damaged by reason of the original construction of the improvement. Damage to fencing and crops occurring after the original construction and resulting from the operation or maintenance of the improvement shall not be included in such assessment but shall be determined by agreement of the parties and paid to the owner or lessee by the condemner or its successors and assigns at the time such fencing or crops are damaged. Upon failure of the parties to agree, such damages may be determined in the same manner as provided under sections 76-701 to 76-724. A copy of the appraisers' report shall be transmitted to the condemnee.

The transmission shall be made by the court within ten days of the return of appraisers and shall be by personal delivery or the sending by ordinary mail of such copy to the condemnee, to the attorney representing the condemnee at the inspection, view, and hearing, or to the officer or representative of a corporate condemnee so present. When title or interest in a single parcel of land is held by several condemnees the transmission of such copy to any one of such owners of interest shall be considered compliance with such requirement. The court

shall record in the files of the proceedings the date, the person, his or her interest, and the manner of such transmission. Failure of transmission shall not be jurisdictional but shall extend the condemnee's time of appeal to twenty days after such transmittal is finally made.

Source: Laws 1951, c. 101, § 10, p. 454; Laws 1969, c. 616, § 1, p. 2502; Laws 1969, c. 617, § 1, p. 2503; Laws 1987, LB 601, § 4.

Transmission may be accomplished when the appraisers' report is sent to the transmittee by ordinary mail; there is no requirement that the transmittee actually receive the notice. *Houska v. City of Wahoo*, 235 Neb. 635, 456 N.W.2d 750 (1990).

Damage to fencing and crops occurring after original construction and resulting from operation or maintenance of the

improvement may be determined, in absence of agreement, in same manner as original damage. *Regier v. Nebraska P. P. Dist.*, 189 Neb. 56, 199 N.W.2d 742 (1972).

76-710.01 Damages; effect of reimbursement by federal government; severance damages; other considerations.

Where any condemner shall have taken or attempts to take property for public use, the damages for taking such property shall be determined according to the laws of this state irrespective of whether the condemner may be reimbursed for a part of such damage from the federal government and such damages shall include all compensable damages suffered by the condemnee including but not limited to reasonable severance damages and condemnee's abstracting expenses. In determining the amount of such severance damages, account shall be taken, together with other relevant factors, of the economic effect, if any, caused by the severance therefrom of the part taken or sought to be taken upon the whole of such property as a going concern as it will be and remain after the severance. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The provisions of this section shall apply to any case now or hereafter pending.

Source: Laws 1959, c. 351, § 5, p. 1242; Laws 1959, c. 352, § 1, p. 1242; Laws 1963, c. 432, § 1, p. 1448; Laws 1967, c. 482, § 1, p. 1493; Laws 1972, LB 1448, § 4.

By its plain language, this section is not limited to severance damages. *Mobeco Indus., Inc. v. City of Omaha*, 257 Neb. 365, 598 N.W.2d 445 (1999).

76-710.02 Land situated in irrigation district; damages payable to district.

Whenever lands situated in an irrigation district are acquired by any condemner through eminent domain, and such lands at the time of their acquisition by any condemner, are irrigable and are being served or are capable of being served by facilities of the district to the same extent and in the same manner as lands of like character held under private ownership were served, the condemner, as part of the compensable damages of the acquisition and at the time of such acquisition, shall make a lump-sum payment to the irrigation district in an amount sufficient to:

(1) Pay the pro rata share of the district's bonded indebtedness, if any, and the pro rata share of the district's contract indebtedness to the United States or to the State of Nebraska, if any, allocable to such lands, plus interest on such

pro rata share in the event such indebtedness is not callable in advance of maturity;

(2) Pay any deferred installments of local improvement district assessments against such lands, if any; and

(3) Produce, if invested at an annual rate of interest equivalent to that set forth in current tables issued by the Director of Banking and Finance of the State of Nebraska, a sum of money equal to the annual increase in operation and maintenance costs against remaining lands in the district resulting from the severance from the district of the lands thus acquired by the condemner. For the purposes of determining the amount of such lump-sum payment, the annual maintenance and operation assessment of the district shall be considered to be the average for the ten years, or so many years as the district has assessment experience, if less than ten years, preceding the date of acquisition.

Source: Laws 1969, c. 613, § 1, p. 2493.

76-710.03 Land devoted to agricultural purposes; acquisition to construct power transmission lines; route selected.

Whenever a condemner seeks to acquire lands or interest therein through eminent domain proceedings to construct power transmission lines through or over land devoted to agricultural purposes, such condemner shall be required to select a route along or following sections or one-half section lines unless such route cannot be followed without excessive and unreasonable costs to the condemner.

Source: Laws 1978, LB 917, § 5.

76-710.04 Economic development purpose; restriction on use of eminent domain.

(1) A condemner may not take property through the use of eminent domain under sections 76-704 to 76-724 if the taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development purpose means taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions.

(3) This section does not affect the use of eminent domain for:

(a) Public projects or private projects that make all or a major portion of the property available for use by the general public or for use as a right-of-way, aqueduct, pipeline, or similar use;

(b) Removing harmful uses of property if such uses constitute an immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad; and

(g) Taking private property based upon a finding of blighted or substandard conditions under the Community Development Law if the private property is not agricultural land or horticultural land as defined in section 77-1359.

Source: Laws 2006, LB 924, § 2.

Cross References

Community Development Law, see section 18-2101.

76-711 Condemner; interest in property; deposit of awards; abandonment; appeal; interest; writ of assistance; removal of property; liability.

The condemner shall not acquire any interest in or right to possession of the property condemned until he or she has deposited with the court for the use of the condemnee the amount of the condemnation award in effect at the time the deposit is made. The condemner shall have sixty days from the date of the award of the appraisers to deposit with the court the amount of the award or the proceeding will be considered as abandoned. When the amount of the award is deposited with the court by the condemner, the condemner shall be deemed to have accepted the award unless he or she gives notice of appeal from the award of the appraisers pursuant to section 76-715. If the proceeding is abandoned, proceedings may not again be instituted by the condemner to condemn the property within two years from the date of abandonment.

If an appeal is taken from the award of the appraisers by the condemnee and the condemnee obtains a greater amount than that allowed by the appraisers, the condemnee shall be entitled to interest from the date of the deposit at the rate provided in section 45-104.02, as such rate may from time to time be adjusted, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as provided by section 76-719.01. If an appeal is taken from the award of the appraisers by the condemner, the condemnee shall be entitled to interest from the date of deposit at the rate provided in section 45-104.02, as such rate may from time to time be adjusted, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as agreed to by the condemnee as provided by section 76-719.01.

Upon deposit of the condemnation award with the court, the condemner shall be entitled to a writ of assistance to place him or her in possession of the property condemned and the condemnee shall be liable for diminution in the value of the property caused by the condemnee's purposeful removal of real or personal property not previously agreed to in writing by the condemner and condemnee from the condemned property.

Source: Laws 1951, c. 101, § 11, p. 454; Laws 1959, c. 351, § 1, p. 1240; Laws 1961, c. 369, § 1, p. 1141; Laws 1971, LB 191, § 1; Laws 1982, LB 705, § 1; Laws 1987, LB 601, § 5; Laws 1990, LB 1153, § 59; Laws 1992, Fourth Spec. Sess., LB 1, § 12.

A new statutory interest rate will apply to a condemnation award as of the effective date of the amendment implementing the new rate. *Abboud v. Papio-Missouri River NRD*, 253 Neb. 514, 571 N.W.2d 302 (1997).

In an appeal by a condemnee, if the condemnee obtains a greater amount than that allowed by the appraisers, the condemnee shall not be entitled to interest on the amount deposited

in the county court which the condemner had offered to stipulate for withdrawal. The 1982 amendment to this section, which requires that the condemnee agree to the stipulation, is applicable only where the appeal is taken by the condemner. *Iske v. Papio Nat. Resources Dist.*, 218 Neb. 39, 352 N.W.2d 172 (1984).

"Which provision shall apply to all appeals by the condemner or condemnee pending on June 6, 1961," refers to section 76-719.01. *Iske v. Papio Nat. Resources Dist.*, 218 Neb. 39, 352 N.W.2d 172 (1984).

An owner of land taken by the Department of Roads through eminent domain proceedings, who has been paid and has accepted the award of damages, cannot later attack the taking by a collateral action. *Bishop v. Department of Roads*, 205 Neb. 760, 290 N.W.2d 193 (1980).

Where eminent domain proceeding was pending in which question of abandonment and its effect could be determined, action for declaratory judgment on claimed abandonment should have been dismissed. *Zarybnicky v. County of Gage*, 196 Neb. 210, 241 N.W.2d 834 (1976).

District court's allowance of interest held to be in compliance with this section. *Harmony Lanes v. State*, 193 Neb. 826, 229 N.W.2d 203 (1975).

Interest on award in eminent domain does not depend on pleading nor prayer for same. *Thacker v. State*, 193 Neb. 817, 229 N.W.2d 197 (1975).

When condemner has not made deposit nor entered into possession, the statute precludes payment of interest alleged to have accrued prior to entry of final judgment. *Petersen v. School Dist. of Bellevue*, 188 Neb. 354, 196 N.W.2d 510 (1972).

City may abandon eminent domain proceedings within sixty days from award of damages. *Bowley v. City of Omaha*, 181 Neb. 515, 149 N.W.2d 417 (1967).

Condemnee is not entitled to interest on amount deposited with county judge after award has become final. *Blecha v. School Dist. of Hebron*, 173 Neb. 183, 112 N.W.2d 783 (1962).

76-712 Condemnation award; certification; filing; state or federal-aid highways; failure to make deposit within sixty days; effect.

Upon deposit of the condemnation award, the court shall prepare and certify under seal a true copy thereof and shall transmit the same to the register of deeds of the county where any real estate or interest therein is condemned and to the county clerk of the county where personal property only is condemned. When real estate or personal property in two or more counties is condemned, a certified copy of the condemnation award shall be filed in each county where any property is situated. The amount of the condemnation award in all condemnation proceedings for the state highway system established by Chapter 39, article 13, or for any highway or urban extension thereof which is a part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, and qualified for federal aid thereunder, shall be deposited with the court within sixty days from the filing of the appraisers' award. In such proceedings, if the condemner fails to make such deposit within sixty days from the filing of the appraisers' award, the condemner shall be deemed to have abandoned the condemnation proceeding.

Source: Laws 1951, c. 101, § 12, p. 455; Laws 1959, c. 351, § 2, p. 1240; Laws 1961, c. 370, § 4, p. 1145; Laws 1987, LB 601, § 6.

Where eminent domain proceeding was pending in which question of abandonment and its effect could be determined, action for declaratory judgment on claimed abandonment

should have been dismissed. *Zarybnicky v. County of Gage*, 196 Neb. 210, 241 N.W.2d 834 (1976).

76-713 Condemnation award; recording; effect.

The register of deeds shall record and index the certified copy of the condemnation award in the same manner as is provided for the recording of deeds in this state. The county clerk shall file a copy of the same when only personal property is concerned in the same manner as is provided for the filing of chattel mortgages. Such recording and filing shall have like force and effect as the recording of deeds or filing of chattel mortgages.

Source: Laws 1951, c. 101, § 13, p. 455.

Where eminent domain proceeding was pending in which question of abandonment and its effect could be determined, action for declaratory judgment on claimed abandonment

should have been dismissed. *Zarybnicky v. County of Gage*, 196 Neb. 210, 241 N.W.2d 834 (1976).

76-714 Condemnation; interest acquired; when effective.

The interest in the property acquired by the condemner shall be such title, easement, right-of-way, or use as is expressly specified in or necessarily contemplated by the law granting to the condemner the right to exercise the

power of eminent domain. The condemner shall not dispossess the condemnee until the condemner is ready to devote the property to a public use, and such title or interest as the condemner seeks to acquire shall not be complete until the property is put to the public use for which taken.

Source: Laws 1951, c. 101, § 14, p. 455.

Condemnation by natural resources district limited to only property required for a present public purpose under existing present plan. *Krauter v. Lower Big Blue Nat. Resources Dist.*, 199 Neb. 431, 259 N.W.2d 472 (1977).

Where eminent domain proceeding was pending in which question of abandonment and its effect could be determined,

action for declaratory judgment on claimed abandonment should have been dismissed. *Zarybnicky v. County of Gage*, 196 Neb. 210, 241 N.W.2d 834 (1976).

76-715 Assessment of damages; appeal; procedure.

Either condemner or condemnee may appeal from the assessment of damages by the appraisers to the district court of the county where the petition to initiate proceedings was filed. Such appeal shall be taken by filing a notice of appeal with the county judge within thirty days from the date of filing of the report of appraisers as provided in section 76-710.

Source: Laws 1951, c. 101, § 15, p. 455.

A party to an eminent domain proceeding who does not file a notice of appeal as required by this section does not maintain a valid cross-appeal such that it will prevent voluntary dismissal of the other party's appeal before final submission. *Dawson v. Papio Nat. Resources Dist.*, 210 Neb. 100, 313 N.W.2d 242 (1981).

The plaintiff's burden of proving the nature and extent of damages cannot be satisfied by evidence which is speculative and conjectural. *Dawson v. Papio N.R.D.*, 206 Neb. 225, 292 N.W.2d 42 (1980).

The filing and serving of notice of appeal herein provided is jurisdictional. *Estate of Tetherow v. State*, 193 Neb. 150, 226 N.W.2d 116 (1975).

Requirements of this section are mandatory and jurisdictional. *Neumeyer v. Omaha Public Power Dist.*, 188 Neb. 516, 198 N.W.2d 80 (1972).

It is mandatory and jurisdictional that notice of appeal be filed within the time required by statute; courts have no power to extend the time directly or indirectly. *Friedman v. State*, 183 Neb. 9, 157 N.W.2d 855 (1968).

Notice of appeal must be filed within thirty days from date of filing of report of appraisers. *Weiner v. State*, 179 Neb. 297, 137 N.W.2d 852 (1965).

Condemnees properly perfected appeal from county court to district court. *Jensen v. Omaha Public Power Dist.*, 159 Neb. 277, 66 N.W.2d 591 (1954).

First step required on appeal is filing of notice. *City of Seward v. Gruntorad*, 158 Neb. 143, 62 N.W.2d 537 (1954).

76-715.01 Assessment of damages; appeal notice; contents; filing.

The party appealing from the award for assessment of damages by the appraisers in any eminent domain action shall, within thirty days of the filing of the award, file a notice of appeal with the court, specifying the parties taking the appeal and the award thereof appealed from, and shall serve a copy of the same upon all parties bound by the award or upon their attorneys of record. Service may be made by mail, and proof of such service shall be made by an affidavit of the appellant filed with the court within five days after the filing of the notice stating that such notice of appeal was duly mailed or that after diligent search the addresses of such persons or their attorneys of record are unknown.

Source: Laws 1965, c. 454, § 1, p. 1447; Laws 1987, LB 601, § 7.

Timely notice of appeal is mandatory to all parties or their specific attorneys appearing in the action being appealed. *Kracman v. Nebraska P. P. Dist.*, 197 Neb. 301, 248 N.W.2d 751 (1976).

The filing and serving of notice of appeal herein provided is jurisdictional. *Estate of Tetherow v. State*, 193 Neb. 150, 226 N.W.2d 116 (1975).

The term all parties bound by the award refers: (1) In case the condemner is the appealing party, to the condemnee or condemnees from the award in favor of whom the condemner

desires to take his appeal; or (2) in case a condemnee is the appealing party, it refers to the condemner. An appealing condemnee need not serve notice of appeal upon other condemnees. *Grace Land & Cattle Co. v. Tri-State G. & T. Assn., Inc.*, 191 Neb. 663, 217 N.W.2d 184 (1974).

Party appealing must file notice of appeal within thirty days of the filing of award and serve copy of same upon all parties bound by the award or their attorneys of record. *Neumeyer v. Omaha Public Power Dist.*, 188 Neb. 516, 198 N.W.2d 80 (1972).

Party appealing from an award of appraisers in eminent domain proceeding must file notice of appeal within thirty days. *Radil v. State*, 182 Neb. 291, 154 N.W.2d 466 (1967).

Notice was satisfied when the address used was correct but included the wrong office designation and no evidence showed

notice was not received. *City of Lincoln v. MJM, Inc.*, 9 Neb. App. 715, 618 N.W.2d 710 (2000).

76-716 Appeal; bond; conditions.

The party appealing shall also, at the time of filing of notice of appeal, enter into an undertaking, with at least one good and sufficient surety, to be approved by the county judge conditioned (1) that the appellant will prosecute such appeal to effect without unnecessary delays, and (2) that if judgment be rendered against appellant on the appeal, the appellant will satisfy whatever judgment may be rendered against him.

Source: Laws 1951, c. 101, § 16, p. 456.

Case involving this section held inapplicable in matter dealing with failure to mail copies of published notice in probate. *Fischer v. Lingle*, 195 Neb. 108, 237 N.W.2d 110 (1975).

The execution and approval of undertaking required hereby is directory only and cited cases to the contrary are overruled. *Neumeyer v. Omaha Public Power Dist.*, 188 Neb. 516, 198 N.W.2d 80 (1972).

Party appealing from award of appraisers in eminent domain proceeding is required to enter into specified undertaking. *Radil v. State*, 182 Neb. 291, 154 N.W.2d 466 (1967).

Party taking cross-appeal must file an appeal bond. *Gebhart v. Tri-State Generation & Transmission Assn.*, 181 Neb. 457, 149 N.W.2d 41 (1967).

This section provides the procedure upon appeal for determination of value of improvements on school land upon expiration of lease. *O'Neil v. Haarberg*, 179 Neb. 531, 139 N.W.2d 217 (1966).

Defective appeal bond which was filed in time conferred jurisdiction and was subject to amendment. *Jacobitz v. Bussinger*, 179 Neb. 524, 138 N.W.2d 839 (1965).

Not applicable to appeals taken before act became effective. *Rath v. Sanitary District No. One*, 156 Neb. 444, 56 N.W.2d 741 (1953).

76-717 Appeal; transcript; fees; docketing; delay in acquisition of property; deposit of award, effect.

Within thirty days after the filing of such notice of appeal, the county judge shall prepare and transmit to the clerk of the district court a duly certified transcript of all proceedings had concerning the parcel or parcels of land as to which the particular condemnee takes the appeal upon payment of the fees provided by law for preparation thereof. When notice of appeal is filed by both the condemner and the condemnee, such transcript shall be prepared only in response to the first notice of appeal. The transcript prepared in response to the second notice of appeal shall contain only a copy of such notice and the proceedings shall be docketed in the district court as a single cause of action.

The filing of the notice of appeal shall confer jurisdiction on the district court. The first party to perfect an appeal shall file a petition on appeal in the district court within fifty days after the filing of the notice of appeal. If no petition is filed, the court shall direct the first party to perfect an appeal to file a petition and impose such sanctions as are reasonable. The appeal shall be tried de novo in the district court. Such appeal shall not delay the acquisition of the property and placing of same to a public use if the condemner shall first deposit with the county judge the amount assessed by the appraisers.

Source: Laws 1951, c. 101, § 17, p. 456; Laws 1961, c. 369, § 2, p. 1142; Laws 1973, LB 226, § 29; Laws 1983, LB 270, § 1; Laws 1995, LB 222, § 1.

In a de novo trial in district court to determine a landowner's damages caused by eminent domain, evidence of damages assessed by the appraisers is not substantive evidence in the district court trial. *Rose v. City of Lincoln*, 223 Neb. 148, 388 N.W.2d 127 (1986).

The procedure for appealing from an award of the appraisers in an eminent domain proceeding was not modified by L.B.

1032, Laws 1972. *Estate of Tetherow v. State*, 193 Neb. 150, 226 N.W.2d 116 (1975).

Transcript shall be prepared and transmitted to the Clerk of the Supreme Court within thirty days after the notice of appeal and no reference is made herein to the filing of an undertaking or including it in the transcript. *Neumeyer v. Omaha Public Power Dist.*, 188 Neb. 516, 198 N.W.2d 80 (1972).

Condemnee is designated as plaintiff in district court and condemner as defendant. *Mathis v. State*, 178 Neb. 701, 135 N.W.2d 17 (1965).

Upon appeal, landowner seeking to recover damages is designated as plaintiff. *State v. Dillon*, 174 Neb. 560, 119 N.W.2d 87 (1962).

Filing of pleadings and framing of issues in district court are contemplated. *Jensen v. Omaha Public Power Dist.*, 159 Neb. 277, 66 N.W.2d 591 (1954); *Scheer v. Kansas-Nebraska Natural Gas Co.*, 158 Neb. 668, 64 N.W.2d 333 (1954).

Petition on appeal must be filed within fifty days from giving notice of appeal. *City of Seward v. Gruntorad*, 158 Neb. 143, 62 N.W.2d 537 (1954).

76-717.01 Repealed. Laws 1982, LB 592, § 2.

76-718 Judgment on appeal; certified copy sent to county judge.

After entry of final judgment in the district court on the appeal, a certified copy thereof shall be prepared and transmitted by the clerk of the district court to the county judge.

Source: Laws 1951, c. 101, § 18, p. 456; Laws 2000, LB 921, § 36.

Clerk of district court is required to certify and transmit to county judge a certified copy of final judgment rendered on appeal. *Blecha v. School Dist. of Hebron*, 173 Neb. 183, 112 N.W.2d 783 (1962).

76-719 Appeal from district court; procedure; money on deposit; disposition.

Either condemner or condemnee may appeal from the judgment of the district court to the Court of Appeals in the manner provided by law for taking an appeal in a civil action. In case an appeal is taken either to the district court or the Court of Appeals, any money deposited by the condemner shall remain in the hands of the county judge until a final judgment is rendered except as provided in section 76-719.01.

Source: Laws 1951, c. 101, § 19, p. 456; Laws 1959, c. 351, § 3, p. 1241; Laws 1991, LB 732, § 137.

76-719.01 Deposit of award; payment of amount to condemnee; remainder; how treated; waiver of appeal, effect; judgment against condemnee for overpayment; interest.

Upon stipulation of the parties in interest, the county judge shall order that the amount stipulated by the parties of the money deposited by the condemner in the county court be paid forthwith for or on account of the damages the condemnee has sustained or will sustain by the appropriation of the property to the use of the condemner. When the money remaining on deposit after stipulated payment to the condemnee is five thousand dollars or more, the county court shall place such amount in a savings account of a bank or other financial institution or in interest-bearing obligations of the federal government. The condemner may submit to the court any preferences or suggestions it may have as to the manner and place of such deposit. The amount so deposited shall be insured by the Federal Deposit Insurance Corporation or other federally chartered or guaranteed form of deposit insurance. The risk of loss of any funds so deposited shall be on the condemner. Interest accruing from such deposited funds shall be paid to the condemner.

If all the parties in interest waive the right of appeal, the county judge shall distribute the money deposited by the condemner forthwith in accordance with the award of the appraisers and as soon as deposited by the condemner. If the compensation finally awarded in respect to the property is less than the amount of the money so received by the condemnee, the court shall enter judgment against the condemnee for the amount that the condemnee has been overpaid, together with interest at the rate provided in section 45-104.02, as such rate

may from time to time be adjusted, compounded annually from the date of withdrawal.

Source: Laws 1959, c. 351, § 4, p. 1241; Laws 1961, c. 369, § 3, p. 1143; Laws 1969, c. 329, § 13, p. 1184; Laws 1978, LB 917, § 4; Laws 1985, LB 36, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 13.

If on appeal from the award of the appraisers at the county court proceedings, the compensation finally awarded is less than the amount of money previously received by the condemnee pursuant to a stipulation, the court shall enter judgment against the condemnee for the amount that the condemnee has been overpaid, together with interest at the rate provided for by section 45-104.01. *Lincoln Branch, Inc. v. City of Lincoln*, 245 Neb. 272, 512 N.W.2d 379 (1994).

Where jury's final award covering all damages sustained by reason of the taking is less than the amount awarded by appraisers and deposited in the court by condemner, the condemner is entitled to be reimbursed by the condemnee for the difference,

plus interest from the date of withdrawal by condemnee. *Clearwater Corp. v. City of Lincoln*, 207 Neb. 750, 301 N.W.2d 328 (1981).

An owner of land taken by the Department of Roads through eminent domain proceedings, who has been paid and has accepted the award of damages, cannot later attack the taking by a collateral action. *Bishop v. Department of Roads*, 205 Neb. 760, 290 N.W.2d 193 (1980).

Acceptance of payment of full amount of award is a waiver of right to appeal. *McCook Live Stock Exchange Co. v. State*, 173 Neb. 766, 115 N.W.2d 147 (1962).

76-720 Appeal; fees and costs; payment.

If an appeal is taken from the award of the appraisers by the condemnee and the amount of the final judgment is greater by fifteen percent than the amount of the award, or if appeal is taken by the condemner and the amount of the final judgment is not less than eighty-five percent of the award, or if appeal is taken by both parties and the final judgment is greater in any amount than the award, the court may in its discretion award to the condemnee a reasonable sum for the fees of his or her attorney and for fees necessarily incurred for not more than two expert witnesses. On any appeal by the condemner, the condemner shall pay all court costs on appeal. If appeal is taken by the condemnee only and the final judgment is not equal to or greater than the award of the appraisers, the court may in its discretion award to the condemner the court costs incurred by the condemner, but not attorney or expert witness fees.

If an appeal is taken to the district court and the district court finds that the condemner did not negotiate in good faith with the property owner or there was no public purpose for taking the property involved, the court shall award to the condemnee a reasonable sum for the fees of his or her attorney and the condemner shall pay all court costs on appeal.

The changes made to this section by Laws 1995, LB 222, apply to any action pending on March 30, 1995, or filed on or after such date.

Source: Laws 1951, c. 101, § 20, p. 457; Laws 1963, c. 432, § 2, p. 1449; Laws 1980, LB 680, § 1; Laws 1995, LB 222, § 2.

1. Costs on appeal
2. Fees
3. Miscellaneous

1. Costs on appeal

Appellees awarded attorney fees incurred on appeal to the Supreme Court. *City of Hastings v. Peter Ellis Farms*, 216 Neb. 550, 344 N.W.2d 640 (1984).

On appeal by new lessee for valuation of improvements on school lands, all costs on appeal are taxable to new lessee. *Holiday Mobil Homes Resorts, Inc. v. Frosh*, 180 Neb. 174, 141 N.W.2d 751 (1966); *Bauerle v. Frosh*, 180 Neb. 170, 141 N.W.2d 748 (1966).

On dismissal of appeal, costs were properly taxed to appellant. *City of Seward v. Gruntorad*, 158 Neb. 143, 62 N.W.2d 537 (1954).

2. Fees

Upon an appeal by a condemnee only, if the final judgment is not greater than the award of the appraisers in the county court proceedings, the condemnee shall be charged a reasonable sum for the fees of the condemnor's attorney and for fees necessarily incurred for not more than two expert witnesses. *Lincoln Branch, Inc. v. City of Lincoln*, 245 Neb. 272, 512 N.W.2d 379 (1994).

Request for allowance of attorney fees and costs denied. *Schneekloth v. County of Sarpy*, 214 Neb. 618, 335 N.W.2d 296 (1983).

Allowance of one thousand six hundred dollars attorney's fee and one hundred twenty-five dollars expert witness' fee where jury's verdict exceeded appraisers' award by twenty-five percent

was not inappropriate. *Ward v. Nebraska Electric G. & T. Coop., Inc.*, 195 Neb. 641, 240 N.W.2d 18 (1976).

Attorney's fee reduced because apparently based on some duplication and multiplicity of services and counsel. *Harmony Lanes v. State*, 193 Neb. 826, 229 N.W.2d 203 (1975).

Award of attorney's fee approved. *Thacker v. State*, 193 Neb. 817, 229 N.W.2d 197 (1975).

The allowance of a reasonable attorney's fee will not be reversed on appeal in the absence of a showing of an abuse of discretion by the trial court. *Y Motel, Inc. v. State*, 193 Neb. 526, 227 N.W.2d 869 (1975).

Attorney's fee not allowable for services before appeal to district court and one fee only may be allowed although assistance of necessary counsel is not prohibited. *Johnson v. Nebraska Public Power Dist.*, 187 Neb. 421, 191 N.W.2d 594 (1971).

3. Miscellaneous

Attorney fees awarded in a condemnation action are allowed and taxed as a part of costs and do not constitute a part of the final judgment on which interest is allowed. *Abboud v. Papio-Missouri River NRD*, 253 Neb. 514, 571 N.W.2d 302 (1997).

Appraisers' fees and court costs, payable by the condemner, are not "liabilities created by statute" within the meaning of section 25-206, R.R.S.1943. *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977).

Term final judgment refers only to the final amount recovered as damages, exclusive of interest. *Keller v. State*, 184 Neb. 853, 172 N.W.2d 782 (1969).

Section contemplates one fee, amount should be fixed as though services were performed by one attorney unless circumstances require services of two attorneys. *Anderson v. State*, 184 Neb. 467, 168 N.W.2d 522 (1969).

Latitude permitted by the word may in this section is directed primarily to the amount of fees to be allowed. *Iske v. Metropolitan Utilities Dist.*, 183 Neb. 34, 157 N.W.2d 887 (1968).

Reference to a reasonable fee does not mean a contingent fee. *Schimonitz v. Midwest Electric Membership Corp.*, 182 Neb. 810, 157 N.W.2d 548 (1968).

Award of attorney's fees modified. *Hughes Farms, Inc. v. Tri-State G. & T. Assn., Inc.*, 182 Neb. 791, 157 N.W.2d 384 (1968).

Attorney's fee may be allowed to condemnee under specified conditions for services of attorney in Supreme Court. *Pieper v. City of Scottsbluff*, 176 Neb. 561, 126 N.W.2d 865 (1964).

76-720.01 Appeal; allowance of fees and costs; applicable to pending cases.

The provisions of section 76-720 shall apply to any case now or hereafter pending on appeal from the award of the appraisers as provided in section 76-710.

Source: Laws 1963, c. 432, § 3, p. 1449.

76-721 Joinder of causes of action on appeal.

Assessments made for property taken and damaged by the same condemner upon and through different property belonging to the same condemnee or condemnees may be joined in one appeal, and proceeded with in the appellate court as separate counts joined in one action for damages to such property.

Source: Laws 1951, c. 101, § 21, p. 457.

76-722 Repealed. Laws 1983, LB 447, § 104.

76-723 Appraisers; fees; appeal; costs; mileage.

The appraisers shall each receive a reasonable fee for their services, to be fixed by the county judge or clerk magistrate, and the same shall be taxed as costs. The fee shall not exceed four hundred twenty-five dollars for each appraiser exclusive of mileage for each day actually employed in attendance on the board of appraisers. The condemner may appeal from the allowance of any fee so fixed to the district court. Such an appeal shall be docketed apart from and shall be considered separately and independently from the rights between the condemnee and condemner. All costs of the first appraisal shall be paid by the condemner. In addition, the appraiser shall receive mileage at the rate provided in section 81-1176 for each mile necessarily traveled.

Source: Laws 1951, c. 101, § 23, p. 457; Laws 1961, c. 371, § 1, p. 1146; Laws 1963, c. 431, § 2, p. 1447; Laws 1987, LB 601, § 8; Laws 1991, LB 303, § 1; Laws 1999, LB 102, § 1.

Appraisers' fees and court costs, payable by the condemner, are not "liabilities created by statute" within the meaning of section 25-206, R.R.S.1943. *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977).

76-724 Property of minor, mentally incompetent person, married person whose spouse is under guardianship or conservatorship; authority of guardian or conservator.

Notwithstanding any more general or special law respecting sale or conveyance of lands, real estate, real or personal property, or any interests therein now or hereafter owned by any minor, mentally incompetent person, any married person whose spouse is under guardianship or conservatorship, or any persons under conservatorship, the guardian of such minor or mentally incompetent person, such married person with the guardian of such spouse, the conservator of such persons, or any married person with the conservator of such spouse may execute deeds or other instruments for the conveyance of any lands, real or personal property, or any interests therein of such minors, mentally incompetent persons under guardianship, or such persons under conservatorship to the condemner for public purposes upon payment of just compensation by the condemner or, in the event of condemnation, may agree and settle with the condemner for all damages or claims by reason of the taking of the property and may give valid releases and discharges therefor.

Source: Laws 1951, c. 101, § 24, p. 457; Laws 1967, c. 482, § 2, p. 1494; Laws 1986, LB 1177, § 32.

76-725 State; lands necessary for state use; right of eminent domain; procedure.

The State of Nebraska may acquire, by eminent domain, lands necessary for any state use. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1913, c. 9, § 1, p. 69; R.S.1913, § 7389; Laws 1921, c. 264, § 1, p. 883; C.S.1922, § 7064; C.S.1929, § 83-1601; R.S.1943, § 83-601; Laws 1951, c. 101, § 121, p. 504; R.R.S.1943, § 83-601.

A mortgagee is a necessary party in an action to condemn real estate for public use of the state. *Northwestern Mutual Life Ins. Co. v. Nordhues*, 129 Neb. 379, 261 N.W. 687 (1935).

76-726 Costs, expenses, fees; awarded; when.

(1) The court having jurisdiction of a proceeding instituted by an agency as defined in section 76-1217 to acquire real property by condemnation shall award the owner of any right, title, or interest in such real property such sum as will, in the opinion of the court, reimburse such owner for his or her reasonable costs, disbursements, and expenses, including reasonable attorney's, appraisal, and engineering fees, actually incurred because of the condemnation proceedings if (a) the final judgment is that the agency cannot acquire the real property by condemnation or (b) the proceeding is abandoned by the agency. If a settlement is effected, the court may award to the plaintiff reasonable expenses, fees, and costs.

(2) The court having jurisdiction of a proceeding instituted by a condemnee under section 76-705 shall award the condemnee such sum as will, in the opinion of the court, reimburse the condemnee for his or her reasonable costs, disbursements, and expenses, including reasonable attorney's, appraisal, and engineering fees, actually incurred as a result of the taking of or damage to the condemnee's property if (a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected.

Source: Laws 1989, LB 254, § 30.

Subsection (1) of this section gives the county court jurisdiction to award all reasonable costs, disbursements, expenses, and fees actually incurred by a party in resisting a condemnation

proceeding after it is filed and before it is abandoned, whether or not such resistance occurs in the county court. *City of Gordon v. Ruse*, 268 Neb. 686, 687 N.W.2d 182 (2004).

Under subsection (1) of this section, a court-ordered award of costs, expenses, and attorney fees is appropriate only in connection with a proceeding initiated by an agency seeking to acquire real property by condemnation. *Simon v. City of Omaha*, 267 Neb. 718, 677 N.W.2d 129 (2004).

**ARTICLE 8
CONDOMINIUM LAW**

(a) CONDOMINIUM PROPERTY ACT

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CONDOMINIUM LAW

Section

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

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(a) CONDOMINIUM PROPERTY ACT

76-801 Act, how cited.

Sections 76-801 to 76-823 shall be known as the Condominium Property Act.

Source: Laws 1963, c. 429, § 1, p. 1435.

76-802 Terms, defined.

For purposes of the Condominium Property Act, unless the context otherwise requires:

(1) Condominium property regime shall mean a project whereby four or more apartments are separately offered or proposed to be offered for sale;

(2) Apartment shall mean an enclosed space consisting of one or more rooms occupying all or part of a floor in a building of one or more floors or stories regardless of whether it is designed for residence, for office, for the operation of any industry or business, or for any other type of independent use, if it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;

(3) Co-owner shall mean a person, firm, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof, which owns an apartment within the building;

(4) Association of co-owners shall mean all the co-owners as defined in subdivision (3) of this section, but a majority as defined in subdivision (8) of this section shall, except as otherwise provided in the act, constitute a quorum for the adoption of decisions;

(5) Board of administrators shall mean the governing board of the regime, consisting of not less than three members selected by and from the co-owners;

(6) General common elements shall mean and include:

(a) The land or leasehold interest in land on which the building stands;

(b) The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exit or communication ways;

(c) The basements, roofs, yards, and gardens except as otherwise provided or stipulated;

(d) The premises for the lodging of janitors or persons in charge of the building except as otherwise provided or stipulated;

(e) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like;

(f) The elevators, garbage incinerators, and, in general, all devices or installations existing for common use; and

(g) All other elements of the building rationally of common use or necessary to its existence, upkeep, and safety;

(7) Limited common elements shall mean and include those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(8) Majority of co-owners shall mean more than fifty percent of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of section 76-806;

(9) Master deed shall mean the deed establishing the condominium property regime;

(10) Person shall mean an individual, firm, corporation, partnership, limited liability company, association, trust, or other legal entity or any combination thereof;

(11) Property shall mean and include the land, leasehold interests in land, any building, all improvements and structures thereon, and all easements, rights, and appurtenances belonging thereto or any of them alone;

(12) To record shall mean to record in accordance with sections 76-237 to 76-257 or other applicable recording statutes;

(13) Common expense shall mean and include:

(a) All sums lawfully assessed against the apartment owner;

(b) Expense of administration, maintenance, repair, or replacement of common elements; and

(c) Expenses agreed upon as common expenses by the association of co-owners; and

(14) All pronouns used in the Condominium Property Act shall include the male, female, and neuter genders and include the singular or plural numbers, as the case may be.

For condominiums created in this state before January 1, 1984, the definitions in section 76-827 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) through (a)(6) and (a)(11) through (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 2, p. 1435; Laws 1974, LB 730, § 1; Laws 1983, LB 433, § 72; Laws 1993, LB 121, § 479; Laws 1993, LB 478, § 1; Laws 2005, LB 361, § 36.

Where resort homeowners' association purpose was to perform quasi-municipal functions, such as street and sewage system maintenance, its purpose and function are analogous to those of a condominium owners' association. *Beaver Lake Assn. v. Beaver Lake Corp.*, 200 Neb. 685, 264 N.W.2d 871 (1978).

76-803 Condominium property regime; established.

Whenever a sole owner or the co-owners of property expressly declare, through the recordation of a master deed, which shall set forth the particulars enumerated in section 76-809, their desire to submit their property to the regime established by sections 76-801 to 76-823, there shall thereby be established a condominium property regime.

Source: Laws 1963, c. 429, § 3, p. 1437; Laws 1974, LB 730, § 2.

76-804 Condominium property regime; effect of establishment.

Once the property is submitted to the condominium property regime, an apartment in any building may be individually conveyed and encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa, as if it were solely and entirely independent of the other apartments in the regime of which it forms a part, and the corresponding individual titles and interests shall be recordable as provided in section 76-211, except that the use and enjoyment of each apartment shall be subject to the following rules:

(1) Each apartment shall be devoted solely to the use assigned to it in the deed to which section 76-803 refers;

(2) No tenant of an apartment may make any noise or cause any annoyance or do any act that may disturb the peace of the other co-owners or tenants;

(3) The apartments shall not be used for purposes contrary to law, morals, or normal behavior;

(4) Each co-owner shall carry out at his or her sole expense any works of modification, repair, cleaning, safety, and improvement of his or her apartment, without disturbing the legal use and enjoyment of the rights of the other co-owners, or changing the exterior form of the facades, or painting the exterior walls, doors, or windows in colors or hues different from those of the whole, and without jeopardizing the soundness or safety of the property, reduce its value, or impair any easement or access to or use of common elements; and

(5) Every co-owner or tenant shall strictly comply with the administration provisions set forth in the deed or in the bylaws referred to in section 76-815. Violations of these rules shall be grounds for an action for damages or grounds for an action for injunctive relief by the co-owner or tenant aggrieved.

For condominiums created in this state before January 1, 1984, the provisions on resale of apartments or units, violations which effect a right of action, and separate titles for each apartment or unit in sections 76-829, 76-884, and 76-891.01 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 4, p. 1437; Laws 1974, LB 730, § 3; Laws 1983, LB 433, § 73; Laws 1993, LB 478, § 2.

76-805 Apartment; form of ownership.

Any apartment may be held and owned by more than one person as joint tenants, as tenants in common, or in any other real estate tenancy relationship recognized under the laws of this state.

Source: Laws 1963, c. 429, § 5, p. 1438.

76-806 Apartment; ownership rights; value; computation.

An apartment owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole.

Such percentage shall be expressed at the time the condominium property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the regime, except as provided in section 76-812.01.

The said basic value, which shall be fixed for the sole purpose of sections 76-801 to 76-823 and irrespectively of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his apartment in all types of acts and contracts.

Source: Laws 1963, c. 429, § 6, p. 1438; Laws 1974, LB 730, § 4.

76-807 Common elements; not subject to partition or liens; treatment; rules against perpetuities and unreasonable restraints on alienation; not applicable.

The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void. The rules of property known as the rule against perpetuities and the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of the Condominium Property Act or the bylaws of the association of co-owners adopted pursuant to the provisions of such act. The common elements, both general and limited, shall not, in whole or in part, be separately conveyed, mortgaged, or foreclosed nor may liens of any description be applicable to such elements, or parts of such elements, alone. A valid lien for authorized labor and materials shall lie against the apartment of any co-owner affected but not against the common elements. For condominiums created in this state before January 1, 1984, the construction and validity of the master deed and bylaws provided in section 76-840 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 7, p. 1439; Laws 1974, LB 730, § 5; Laws 1983, LB 433, § 74; Laws 1993, LB 478, § 3.

76-808 Co-owner; use of common elements.

Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

Source: Laws 1963, c. 429, § 8, p. 1439.

76-809 Master deed; contents; execution; recording.

The master deed creating and establishing the condominium property regime shall be executed by the owner or owners of the property making up the regime and shall be recorded in the office of the register of deeds in the county where such property is located. The master deed shall express the following particulars:

- (1) The description of the land or leasehold interest in land and any building, expressing their respective areas;
- (2) The general description and number of each apartment, expressing its area and location and any other data necessary for its identification;

(3) The description of the general common elements of the building, and, in proper cases, of the limited common elements restricted to a given number of apartments, expressing which are those apartments;

(4) Value of the property and of each apartment and, according to these basic values, the percentage appertaining to the co-owners in the expenses, including taxes, of and rights in the elements held in common; and

(5) The covenants, conditions, and restrictions relating to the regime, which shall run with the property and bind all co-owners, tenants of such owners, employees, and any other persons who use the property, including the persons who acquire the interest of any co-owner through foreclosure, enforcement of any lien, or otherwise. The master deed creating and establishing or amending the condominium property regime shall not be construed as constituting the subdivision of real estate as defined by law, resolution, or ordinance. For condominiums created in this state before January 1, 1984, the applicability of local ordinances, regulations, and building codes provided in section 76-830 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 9, p. 1439; Laws 1974, LB 730, § 6; Laws 1983, LB 433, § 75; Laws 1993, LB 478, § 4.

76-810 Master deed; plans attached; boundaries.

(1) There shall be attached to the master deed, at the time it is filed for record, a full and exact copy of the plans of any building, which copy of plans shall be entered of record along with the master deed. Said plans shall show graphically all particulars of any building including, but not limited to, the dimensions, area and location of each apartment therein and the dimensions, area and location of common elements affording access to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible and shall be described in detail in words and figures. Said plans shall be certified to by an engineer or architect authorized and licensed to practice his profession in this state.

(2) In interpreting the plans or other instruments affecting the property or apartment, the boundaries of the property or apartment constructed or reconstructed in substantial accordance with the plans shall be conclusively presumed to be the actual boundaries rather than the description expressed in the plans, regardless of the settling or lateral movement of the property.

Source: Laws 1963, c. 429, § 10, p. 1440; Laws 1974, LB 730, § 7.

76-811 Apartments; conveyance; legal description.

Each apartment in a building shall be designated, on the plans referred to in section 76-810, by letter or number or other appropriate designation, and any conveyance or other instrument affecting title to the apartment which describes the apartment by using the letter or number followed by the words in Condominium Property Regime shall be deemed to contain a good and sufficient description for all purposes. Any conveyance of an individual apartment shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited, appertaining to the apart-

ment without specifically or particularly referring to same. For condominiums created in this state before January 1, 1984, the provisions on the description of the apartments or units in section 76-841 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 11, p. 1440; Laws 1983, LB 433, § 76; Laws 1993, LB 478, § 5.

76-812 Disposition of property; vote of co-owners required; effect.

Unless otherwise provided in the master deed or bylaws, the co-owners may, by affirmative vote of at least three-fourths, elect to sell or otherwise dispose of the property, or to waive the condominium property regime; *Provided*, that the individual apartments are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors. Upon waiver of the regime, the co-owners shall own the property as tenants in common in accordance with their interests as determined by section 76-806.

Any such action shall be binding upon all co-owners and it shall thereupon be the duty of every co-owner to execute and deliver such instruments and to perform all acts as may be necessary.

Source: Laws 1963, c. 429, § 12, p. 1441.

76-812.01 Condominium property; divided; added to; deleted; procedure; recomputed basic value.

Unless otherwise provided in the master deed or bylaws, land, buildings, apartments, improvements, structures, easements, rights or obligations, in whole or in part, may be divided, added to or deleted from a condominium property regime by approval of at least three-fourths of the co-owners. Upon approval of such divisions, additions or deletions in writing, an amended and revised master deed and attached plans shall be filed for record and the basic values referred to in sections 76-806 and 76-809 shall be recomputed and filed for record as required.

Source: Laws 1974, LB 730, § 8.

76-813 Merger; no bar to subsequent constitution into another condominium property.

The merger provided for in section 76-812 shall in no way bar the subsequent constitution of the property into another condominium property regime whenever so desired and upon observance of the provisions of sections 76-801 to 76-823.

Source: Laws 1963, c. 429, § 13, p. 1441.

76-814 Administration; bylaws; attach to deed.

The administration of every building constituted into condominium property shall be governed by bylaws which shall be inserted in or appended to and recorded with the master deed.

Source: Laws 1963, c. 429, § 14, p. 1441.

76-815 Bylaws; contents.

The bylaws must necessarily provide for at least the following:

- (1) Form of administration, including the number and method of selecting the board of administrators, and specifying the powers, manner of removal, and, where proper, the compensation thereof;
- (2) Method of calling meetings of the association of co-owners; that a majority of co-owners is required to adopt decisions; who is to preside over the meeting and who will keep the minute book wherein the resolutions shall be recorded;
- (3) Care, upkeep and surveillance of the building and its general or limited common elements and services;
- (4) Manner of collecting from the co-owners for the payment of the common expenses; and
- (5) Designation and dismissal of the personnel necessary for the works and the general or limited common services of the building.

The sole owner of the building, or, if there be more than one, the co-owners representing two-thirds of the total value of the building, may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. No such modification may be operative until it is embodied in a recorded instrument which shall be recorded in the same office and in the same manner as was the master deed and original bylaws of the condominium property regime involved.

Source: Laws 1963, c. 429, § 15, p. 1441.

76-816 Board of administrators; records; examination.

The board of administrators, or other form of administration specified in the bylaws, shall keep or cause to be kept a book with a detailed account, in chronological order, of the receipts and expenditures affecting the condominium property regime and its administration and specifying the maintenance and repair expenses of the common elements and all other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by any co-owner or any prospective purchaser at convenient hours on working days that shall be set and announced for general knowledge. Any prospective purchaser must be designated as such by a co-owner in writing. For condominiums created in this state before January 1, 1984, the provision on the records of the administrative body or association in section 76-876 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 16, p. 1442; Laws 1974, LB 730, § 9; Laws 1983, LB 433, § 77; Laws 1993, LB 478, § 6.

76-817 Expenses; pay pro rata share; failure or refusal; lien; waiver; effect.

The co-owners of the apartments are bound to pay pro rata, in the percentages computed according to section 76-806, toward the expenses of administration and of maintenance and repair of the general common elements and, in

the proper case, of the limited common elements, of the building, and toward any other expense lawfully agreed upon.

If any co-owner fails or refuses to make any payment of such common expenses when due, the amount thereof shall constitute a lien on the interest of the co-owner in the property and, upon the recording thereof, shall be a lien in preference over all other liens and encumbrances except assessments, liens, and charges for taxes past due and unpaid on the apartment and duly recorded mortgage and lien instruments.

No co-owner may exempt himself or herself from paying toward such expenses by waiver of the use or enjoyment of the common elements or by abandonment of the apartment belonging to him or her. For condominiums created in this state before January 1, 1984, the provisions on the liens for assessments in section 76-874 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 17, p. 1443; Laws 1983, LB 433, § 78; Laws 1993, LB 478, § 7.

76-818 Sale of apartment; expenses; deducted from sale.

Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro rata share in the expenses to which section 76-817 refers shall first be paid out of the sales price or by the acquirer in preference over any other assessments or charges of whatever nature except the following:

- (1) Assessments, liens, and charges for taxes past due and unpaid on the apartment; and
- (2) Payments due under duly recorded mortgage and lien instruments.

Source: Laws 1963, c. 429, § 18, p. 1443.

76-819 Purchaser; seller; debts owing; liability; tort and contract liability.

The purchaser of an apartment shall be jointly and severally liable with the seller for the amounts owing by the latter under section 76-817 up to the time of the conveyance, without prejudice to the purchaser's right to recover from the other party the amounts paid by him or her as such joint debtor. Co-owners shall not be individually liable for damages arising from the use of common elements. Any tort liability arising from the use of common elements shall be a common expense and shall be borne by all co-owners in proportion to the basic values referred to in sections 76-806 and 76-809. For condominiums created in this state before January 1, 1984, the provisions on tort and contract liability in section 76-869 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 19, p. 1443; Laws 1974, LB 730, § 10; Laws 1983, LB 433, § 79; Laws 1993, LB 478, § 8.

76-820 Insurance; requirements; deficiency in insurance coverage.

The association of co-owners shall insure the property and the association against risk, including tort liability, without prejudice to the right of each co-owner to insure himself or herself or his or her apartment or the contents thereof, on his or her own account and for his or her own benefit. Any policy shall be issued in the name of the board of administrators or as provided in the bylaws, in trust for the benefit of each co-owner in accordance with the percentage interest of each as stated in the master deed. The limits of coverage shall be established by resolution of the board of administrators. Premiums for such insurance shall be included in the common expenses. Any deficiency in insurance coverage shall be borne by all co-owners in proportion to the basic values referred to in sections 76-806 and 76-809, except as provided in section 76-820.01. For condominiums created in this state before January 1, 1984, the powers of the association or administrative body provided in subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 shall apply, to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 20, p. 1444; Laws 1974, LB 730, § 11; Laws 1983, LB 433, § 80; Laws 1993, LB 478, § 9.

76-820.01 Insurance proceeds insufficient to reconstruct buildings; co-owners liable; property owned by co-owners; effect.

Unless otherwise provided in the master deed or bylaws, if the insurance proceeds are insufficient to reconstruct the building or buildings, or other property, damage to or destruction of the building or buildings or other property caused by fire or other disaster shall be promptly repaired and restored by the board of administrators, using proceeds of insurance for that purpose, and the co-owners directly affected by the damage shall be liable for assessment for any deficiency. Such deficiency shall be borne by such co-owners in proportion to the value of their respective apartments as reflected by the basic values referred to in sections 76-806 and 76-809, except that if three-fourths or more of the building or buildings constituting the entire condominium property regime are destroyed or substantially damaged and if the co-owners, by a vote of at least three-fourths of such co-owners, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the board of administrators shall record, with the register of deeds, a notice setting forth such facts, and upon the recording of such notice:

- (1) The property shall be deemed to be owned in common by the co-owners;
- (2) The undivided interest in the property owned in common which shall appertain to each co-owner shall be the percentage of undivided interest previously owned by such owner in the common elements;
- (3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and
- (4) The property shall be subject to an action for partition at the suit of any co-owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, shall be considered as one fund and shall be divided among all the co-owners in a percentage equal to the percentages and basic values of each co-owner in the property as referred to in

sections 76-806 and 76-809, after first paying out of the respective shares of the co-owners, to the extent sufficient for such purpose, all liens on the undivided interest in the property owned by each co-owner.

Source: Laws 1974, LB 730, § 12.

76-821 Repealed. Laws 1974, LB 730, § 15.

76-822 Repealed. Laws 1974, LB 730, § 15.

76-823 Taxes and assessments; how assessed and collected.

Taxes, assessments, and other charges of this state, of any political subdivision, of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or buildings or property as a whole. No forfeiture or sale of the building or buildings or property as a whole for delinquent taxes, assessments, or charges shall ever divest or in anywise affect the title to an individual apartment so long as taxes, assessments, and charges on the individual apartment are currently paid. The common elements, both general and limited, shall not be separately taxed or foreclosed for tax purposes. The value of the common elements shall be determined by the assessor and apportioned for taxes against the several apartments in proportion to the basic values referred to in sections 76-806 and 76-809. Restrictions on alienation of the common elements shall be given weight by the assessor in determining valuations. For condominiums created in this state before January 1, 1984, the provisions on the separate taxation of each apartment in section 76-829 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

Source: Laws 1963, c. 429, § 23, p. 1445; Laws 1974, LB 730, § 13; Laws 1983, LB 433, § 81; Laws 1993, LB 478, § 10.

(b) APPLICABILITY OF LAW

76-824 Existing condominium property regimes; amendments to Condominium Property Act; effect.

Existing condominium property regimes, by approval of the co-owners, may choose to adopt, in whole or in part, amendments to the Condominium Property Act when effective or may choose to continue in existence pursuant to the terms of the act in effect on the date of filing of the master deed.

Source: Laws 1974, LB 730, § 14.

76-824.01 Applicability of sections.

For condominiums created in this state before January 1, 1984, sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 shall apply to the extent necessary in construing the provisions of such sections which apply to events and circumstances which occur after January 1,

1984, notwithstanding any provisions to the contrary in sections 76-801 to 76-824.

Source: Laws 1983, LB 433, § 82; Laws 1993, LB 478, § 11.

(c) NEBRASKA CONDOMINIUM ACT

GENERAL PROVISIONS

76-825 Act, how cited.

Sections 76-825 to 76-894 shall be known and may be cited as the Nebraska Condominium Act.

Source: Laws 1983, LB 433, § 1; Laws 1984, LB 1105, § 2; Laws 1993, LB 478, § 12.

76-826 Sections, applicability.

(a) The Nebraska Condominium Act shall apply to all condominiums created within this state after January 1, 1984. Sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860, to the extent necessary in construing any of those sections, apply to all condominiums created in this state before January 1, 1984; but those sections apply only with respect to events and circumstances occurring after January 1, 1984, and do not invalidate existing provisions of the master deed, bylaws, or plans of those condominiums.

(b) The provisions of sections 76-801 to 76-824 do not apply to condominiums created after January 1, 1984, and do not invalidate any amendment to the master deed, bylaws, and plans of any condominium created before January 1, 1984, if the amendment would be permitted by the Nebraska Condominium Act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by sections 76-801 to 76-824. If the amendment grants to any person any rights, powers, or privileges permitted by the Nebraska Condominium Act, all correlative obligations, liabilities, and restrictions in the act also apply to that person.

(c) The Nebraska Condominium Act shall not apply to condominiums or units located outside this state, but the public-offering statement provisions contained in sections 76-879 to 76-883 apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection (b) of section 76-878.

Source: Laws 1983, LB 433, § 2; Laws 1993, LB 478, § 13.

76-827 Terms, defined.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in the Nebraska Condominium Act:

(1) Affiliate of a declarant means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is a general partner, member, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting

interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant (i) is a general partner, member, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than thirty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) Allocated interests means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) Association or unit owners association means the unit owners association organized under section 76-859.

(4) Common elements means all portions of a condominium other than the units.

(5) Common expenses means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) Common expense liability means the liability for common expenses allocated to each unit pursuant to section 76-844.

(7) Condominium means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(8) Conversion building means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(9) Declarant means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his, her, or its interest in a unit not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

(10) Declaration means any instruments, however denominated, that create a condominium, and any amendments to those instruments.

(11) Development rights means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a condominium; (ii) create units, common elements, or limited common elements within a condominium; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a condominium.

(12) Dispose or disposition means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(13) Executive board means the body, regardless of name, designated in the declaration to act on behalf of the association.

(14) Identifying number means a symbol or address that identifies only one unit in a condominium.

(15) Leasehold condominium means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(16) Limited common element means a portion of the common elements allocated by the declaration or by operation of subsection (2) or (4) of section 76-839 for the exclusive use of one or more but fewer than all of the units.

(17) Master association means an organization described in section 76-857, whether or not it is also an association described in section 76-859.

(18) Offering means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(19) Person means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. In the case of a land trust, however, person means the beneficiary of the trust rather than the trust or the trustee.

(20) Purchaser means any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest including renewal options of less than twenty years, or (ii) as security for an obligation.

(21) Real estate means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(22) Residential purposes means use for dwelling or recreational purposes, or both.

(23) Special declarant rights means rights reserved for the benefit of a declarant to (i) complete improvements indicated on plats and plans filed with the declaration as provided in section 76-846; (ii) exercise any development right pursuant to section 76-847; (iii) maintain sales offices, management offices, signs advertising the condominium, and models pursuant to section 76-852; (iv) use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium pursuant to section 76-853; (v) make the condominium part of a larger condominium or a planned community pursuant to section 76-858; (vi) make the condominium subject to a master association pursuant to section 76-857; or (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control pursuant to subsection (d) of section 76-861.

(24) Unit means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to subdivision (a)(5) of section 76-842.

(25) Unit owner means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

Source: Laws 1983, LB 433, § 3; Laws 1993, LB 121, § 480.

76-828 Sections; variance, evasion, and waiver; prohibited.

Except as expressly provided in sections 76-825 to 76-894, provisions of sections 76-825 to 76-894 may not be varied by agreement, and rights conferred by sections 76-825 to 76-894 may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of sections 76-825 to 76-894 or the declaration.

Source: Laws 1983, LB 433, § 4.

76-829 Unit; separate treatment; taxation.

(a) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(b) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

Source: Laws 1983, LB 433, § 5.

76-830 Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of sections 76-825 to 76-894 invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

Source: Laws 1983, LB 433, § 6.

76-831 Unit; eminent domain; conditions.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his or her unit and its interest, in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (1) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree shall be recorded in every county in which any portion of the condominium is located.

Source: Laws 1983, LB 433, § 7.

76-832 Supplemental, general provisions of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of sections 76-825 to 76-894, except to the extent inconsistent with sections 76-825 to 76-894.

Source: Laws 1983, LB 433, § 8.

76-833 Construction against implicit repeal.

Sections 76-825 to 76-894 being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Source: Laws 1983, LB 433, § 9.

76-834 Uniformity of application and construction.

Sections 76-825 to 76-894 shall be applied and construed so as to effectuate their general purpose to make uniform the law with respect to the subject of sections 76-825 to 76-894 among states enacting such sections.

Source: Laws 1983, LB 433, § 10.

76-835 Severability.

If any provision of sections 76-825 to 76-894 or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of sections 76-825 to 76-894 which can be given

effect without the invalid provisions or applications, and to this end the provisions of sections 76-825 to 76-894 are severable.

Source: Laws 1983, LB 433, § 11.

76-835.01 Unconscionable agreement or term of contract.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) The commercial setting of the negotiations;

(2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(3) The effect and purpose of the contract or clause; and

(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

Source: Laws 1993, LB 478, § 14.

76-836 Obligation of good faith.

Every contract governed by sections 76-825 to 76-894 imposes an obligation of good faith in its performance.

Source: Laws 1983, LB 433, § 12.

76-837 Remedies; how administered and enforced.

(a) The remedies provided by sections 76-825 to 76-894 shall be administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential or special damages may not be awarded except as specifically provided in sections 76-825 to 76-894 or by other rule of law.

(b) Any right or obligation declared by sections 76-825 to 76-894 is enforceable by judicial proceeding.

Source: Laws 1983, LB 433, § 13.

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

76-838 Creation of condominium; procedure; additional units.

(a) A condominium may be created pursuant to sections 76-825 to 76-894 only by recording a declaration executed in the same manner as a deed. The

declaration must be recorded in every county in which any portion of the condominium is located.

(b) An amendment to a declaration adding units to a condominium that would increase the voting rights of the declarant within the association shall not be effective for that purpose until the foundation of each building containing additional units has been substantially completed.

Source: Laws 1983, LB 433, § 14; Laws 1984, LB 1105, § 3.

76-839 Common elements; unit boundaries.

Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of paragraph (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Source: Laws 1983, LB 433, § 15.

76-840 Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to subdivision (a)(1) of section 76-860.

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with sections 76-825 to 76-894.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with sections 76-825 to 76-894. Whether a substantial failure impairs marketability is not affected by sections 76-825 to 76-894.

Source: Laws 1983, LB 433, § 16.

76-841 Legal description of unit; requirements.

A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description

of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

Source: Laws 1983, LB 433, § 17.

76-842 Declaration; contents.

(a) The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word condominium or be followed by the words a condominium, and the name of the association;

(2) the name of every county in which any part of the condominium is situated;

(3) a legally sufficient description of the real estate included in the condominium;

(4) a statement of the anticipated number of units which the declarant reserves the right to create, subject to an amendment of the declaration to add more units pursuant to sections 76-825 to 76-894;

(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) a description of any limited common elements, other than those specified in subdivision (b)(8) of section 76-846;

(7) a general description of any development rights and other special declarant rights defined in subsection (23) of section 76-827 reserved by the declarant;

(8) an allocation to each unit of the allocated interests in the manner described in section 76-844;

(9) any restrictions on use, occupancy, and alienation of the units; and

(10) all matters required by sections 76-843 to 76-846, 76-852, and 76-853, and subsection (d) of section 76-861.

(b) The declaration may contain any other matters the declarant deems appropriate.

Source: Laws 1983, LB 433, § 18.

76-843 Leasehold condominiums; requirements.

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(1) where the lease is recorded or a statement of where the complete lease may be inspected;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights pursuant to the lease;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his or her successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his or her share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with subsection (a) of section 76-831 as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Source: Laws 1983, LB 433, § 19.

76-844 Allocation of common elements, expenses, and votes; how made.

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by sections 76-825 to 76-894, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary

transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

Source: Laws 1983, LB 433, § 20.

76-845 Limited common elements; allocation; how made.

(a) Except for the limited common elements described in subdivisions (2) and (4) of section 76-839, the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provided, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration. The allocations shall be made by amendments to the declaration.

Source: Laws 1983, LB 433, § 21.

76-846 Plats and plans; requirements.

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by sections 76-825 to 76-894 if all the information required by this section is contained in either a plat or plan.

(b) Each plat must show:

(1) the name and a survey or general schematic map of the entire condominium;

(2) the extent of any existing encroachments by or upon any portion of the condominium;

(3) to the extent feasible, a legally sufficient description or drawing of all easements serving or burdening any portion of the condominium;

(4) the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

(5) the location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

(6) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as leasehold real estate;

(7) the distance between noncontiguous parcels of real estate comprising the condominium; and

(8) the location and dimensions of limited common elements, including porches, balconies, and patios, other than parking spaces and the other limited common elements described in subdivisions (2) and (4) of section 76-839.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either Must Be Built or Need Not Be Built.

(d) To the extent not shown or projected on the plats, plans of the units must show or project:

(1) the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(2) any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) any units in which the declarant has reserved the right to create additional units or common elements pursuant to subsection (c) of section 76-847, identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d) of this section, or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any plat or plan required by sections 76-825 to 76-894 must be prepared by a registered surveyor, an architect, or a professional engineer.

Source: Laws 1983, LB 433, § 22; Laws 1997, LB 622, § 113.

76-847 Exercise of development rights.

(a) To exercise any development right reserved under sections 76-825 to 76-894, the declarant shall prepare, execute, and record an amendment to the declaration pursuant to section 76-854 and comply with section 76-846. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by section 76-845 regarding limited common elements.

(b) Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by sections 76-825 to 76-894, as the case may be and the plats and plans include all matters required by section 76-846.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain as provided in section 76-831.

(2) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the

units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides that all or a portion of the real estate is subject to the development right of withdrawal:

(1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Source: Laws 1983, LB 433, § 23.

76-848 Alteration of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make any improvements or alterations to his or her unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association; and

(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

Source: Laws 1983, LB 433, § 24.

76-849 Relocation of boundaries between units; procedure.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines within thirty days that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, and contains words of conveyance between them.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

Source: Laws 1983, LB 433, § 25; Laws 1984, LB 1105, § 4.

76-850 Subdivision of units; procedure.

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association

shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

Source: Laws 1983, LB 433, § 26.

76-851 Easement for encroachment.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his or her willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

Source: Laws 1983, LB 433, § 27.

76-852 Use for sales purposes; restrictions.

A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if declarant ceases to be a unit owner, he or she ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law, and to local ordinances.

Source: Laws 1983, LB 433, § 28.

76-853 Easement through common elements.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under sections 76-825 to 76-894 or reserved in the declaration.

Source: Laws 1983, LB 433, § 29.

76-854 Amendment to declaration; procedure.

(a) Except in cases of amendments that may be executed by (1) a declarant under subsection (f) of section 76-846 or under section 76-847, (2) the association under section 76-831 or 76-850, subsection (d) of section 76-843, subsection (c) of section 76-845, or subsection (a) of section 76-849, or (3) certain unit owners under subsection (b) of section 76-845, subsection (a) of section 76-849, subsection (b) of section 76-850, or subsection (b) of section 76-855, and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies. The declaration may specify a

smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of the Nebraska Condominium Act, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted in the absence of the unanimous consent of the unit owners.

(e) Amendments to the declaration required by the act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Source: Laws 1983, LB 433, § 30; Laws 1984, LB 1105, § 5; Laws 1993, LB 478, § 15.

76-855 Termination of condominium; distribution of proceeds; foreclosure of lien; effect.

(a) Except in the case of a taking of all units by eminent domain as provided in section 76-831, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b) of this section. If any

real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (h) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of that occupancy, each unit owner and his or her successors in interest remain liable for all assessments and other obligations imposed on unit owners by sections 76-825 to 76-894 or the declaration.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit.

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(h) The respective interests of unit owners referred to in subsections (e), (f), and (g) of this section are as follows:

(1) Except as provided in paragraph (2) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty days after distribution by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(i) Except as provided in subsection (j) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, and the parties foreclosing the lien or encumbrance have not assented to or are not joining the declaration establishing such condominium, such parties may upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

Source: Laws 1983, LB 433, § 31.

76-856 Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to section 76-871.

Source: Laws 1983, LB 433, § 32.

76-857 Corporation, unincorporated association, master association, executive board; powers authorized.

(a) If the declaration for a condominium provides that any of the powers described in section 76-860 are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association, which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of sections 76-825 to 76-894 applicable to unit owners associations apply to any such corporation or unincorporated association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in section 76-859, it may exercise the powers set forth in subdivision (a)(2) of section 76-860 only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners association set forth in sections 76-861, 76-866 to 76-868, and 76-870 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of sections 76-825 to 76-894.

(e) Notwithstanding the provisions of subsection (f) of section 76-861 with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 76-859, the articles of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

Source: Laws 1983, LB 433, § 33; Laws 1984, LB 1105, § 6.

76-858 Merger or consolidation of condominiums; procedure.

(a) Any two or more condominiums, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (a) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium must be equal to the percentages of allocated

interests allocated to that unit by the declaration of the preexisting condominium.

Source: Laws 1983, LB 433, § 34.

MANAGEMENT OF CONDOMINIUM

76-859 Unit owners association; organization.

A unit owners association must be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 76-855 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

Source: Laws 1983, LB 433, § 35.

76-860 Unit owners association; powers.

(a) Except as provided in subsection (b) of this section and subject to the provisions of the declaration, the association, even if unincorporated, may:

- (1) Adopt and amend bylaws and rules and regulations;
- (2) Adopt and amend budgets for revenue, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to section 76-870;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 76-839, and for services provided to unit owners;
- (11) Impose charges for late payment of assessments and, after notice and opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations for the association;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale statements required by section 76-884, or statements of unpaid assessments;

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Source: Laws 1983, LB 433, § 36; Laws 1984, LB 1105, § 7.

76-861 Executive board; members and officers; powers and duties.

(a) Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of sections 76-825 to 76-894, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to amend the declaration pursuant to section 76-854, to terminate the condominium pursuant to section 76-855, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members pursuant to subsection (f) of this section, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Within thirty days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all votes in the association or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him or her, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of ninety percent of the units which may be created to unit owners other than a declarant; or (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as de-

scribed in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Successor boards following declarant control may not discriminate nor act arbitrarily with respect to units still owned by a declarant or a successor declarant.

(e) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

Source: Laws 1983, LB 433, § 37.

76-862 Transfer of special declarant right; procedure; transferor; successor; liabilities.

(a) No special declarant right as defined in subsection (23) of section 76-827 created or reserved under sections 76-825 to 76-894 may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by sections 76-825 to 76-894. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant defined in subsection (1) of section 76-827, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by sections 76-825 to 76-894 or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant or only to any rights reserved in the declaration pursuant to section 76-852 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure sale, tax sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings of all units and other real estate in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights, and

(2) The period of declarant control as provided in subsection (d) of section 76-861 terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by sections 76-825 to 76-894 or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4) of this subsection who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by sections 76-825 to 76-894 or the declaration:

(i) On a declarant which relates to his or her exercise or nonexercise of special declarant rights; or

(ii) On his or her transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any obligation by any previous declarant or his or her appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs pursuant to section 76-852, if he or she is not an affiliate of a declarant, may not exercise any other special declarant rights and is not subject to any liability or obligation as a declarant, except the obligation to provide a public-offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to

another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, such successor may not exercise any of those rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of subsection (d) of section 76-861 for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under subsection (d) of section 76-861.

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under sections 76-825 to 76-894 or the declaration.

Source: Laws 1983, LB 433, § 38; Laws 1984, LB 1105, § 8.

76-863 Termination of contracts and leases of declarant.

If entered into before the executive board elected by the unit owners pursuant to subsection (f) of section 76-861 takes office, (i) any management contract, service contract, employment contract, or lease of recreational or parking areas or facilities or (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant may be terminated without penalty at any time after the executive board elected by the unit owners pursuant to subsection (f) of section 76-861 takes office upon not less than one hundred eighty days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. This section shall not apply to easements or licenses for the benefit of other property.

Source: Laws 1983, LB 433, § 39; Laws 1984, LB 1105, § 9.

76-864 Bylaws of association; contents.

(a) The bylaws of the association must provide for:

- (1) The number of members of the executive board and the titles of the officers of the association;
- (2) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers, duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
- (6) The method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

Source: Laws 1983, LB 433, § 40.

76-865 Upkeep of condominium; duties.

(a) Except to the extent provided by the declaration, subsection (b) of this section, or subsection (h) of section 76-871, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his or her unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit owner has under sections 76-825 to 76-894, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

Source: Laws 1983, LB 433, § 41.

76-866 Association; meetings.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than fifty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

Source: Laws 1983, LB 433, § 42; Laws 1984, LB 1105, § 10.

76-867 Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

Source: Laws 1983, LB 433, § 43.

76-868 Voting; proxies.

(a) If only one of the multiple owners of a unit is present at a meeting of the association, he or she is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that

unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the units.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units; (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 76-866, of all meetings at which lessees may be entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

Source: Laws 1983, LB 433, § 44.

76-869 Tort and contract liability.

(a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (i) For all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 76-875.

(b) The declarant shall not be liable for any action, loss, or cost pursuant to this section if at the time the loss occurred, insurance required by section 76-871 was in place.

Source: Laws 1983, LB 433, § 45.

76-870 Conveyance or encumbrance of common elements; procedure.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

Source: Laws 1983, LB 433, § 46; Laws 1984, LB 1105, § 11.

76-871 Insurance; requirements.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the property including the common elements insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) In the case of a building containing units having horizontal boundaries described in the declaration, the insurance maintained under subdivision (a)(1) of this section, to the extent reasonably available, shall include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) of this section, is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsection (a) of this section must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner or member of his or her household;

(3) No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subdivisions (a)(1) and (b) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his or her own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety

statute or ordinance, or (iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under subsection (a) of section 76-831, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 76-855 governs the distribution of insurance proceeds if the condominium is terminated.

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

Source: Laws 1983, LB 433, § 47.

76-872 Surplus funds; distribution.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Source: Laws 1983, LB 433, § 48.

76-873 Assessment for common expenses.

(a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually. After one-third of the members of the executive board are elected by unit owners other than the declarant, assessments shall be based on a budget adopted at least annually by the association.

(b) Except for assessment under subsections (c), (d), and (e) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsection (a) of section 76-844. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent per year.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(3) The costs of insurance may at the discretion of the association be assessed in proportion to risk and, if reasonably determined, the costs of utilities not separately metered must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association pursuant to subsection (a) of section 76-875 may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his or her unit.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

Source: Laws 1983, LB 433, § 49.

76-874 Lien for assessments and fines.

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages are recorded. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (a)(10), (a)(11), and (a)(12) of section 76-860 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(e) This section does not prohibit actions to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(g) The association upon written request shall furnish to a unit owner a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

Source: Laws 1983, LB 433, § 50; Laws 1984, LB 1105, § 12.

76-875 Liens affecting the condominium.

(a) Except as provided in subsection (b) of this section, a judgment for money against the association, if the transcript is properly filed, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 76-870, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his or her unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

Source: Laws 1983, LB 433, § 51.

76-876 Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with section 76-884. All financial and other records of the association shall be made reasonably available for examination by any unit owner and his or her authorized agents.

Source: Laws 1983, LB 433, § 52.

76-877 Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to

assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Source: Laws 1983, LB 433, § 53.

PROTECTION OF CONDOMINIUM PURCHASERS

76-878 Applicability; waiver.

(a) Sections 76-878 to 76-894 apply to all units subject to sections 76-825 to 76-894, except as provided in subsection (b) of this section or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) Neither a public-offering statement nor a resale statement need be prepared or delivered in the case of:

- (1) a gratuitous or testamentary disposition of a unit;
- (2) a disposition pursuant to court order;
- (3) a disposition by a government or governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition to a person in the business of selling real estate who intends to offer those units to a purchaser;
- (6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;
- (7) a condominium composed of not more than twenty-five units which is not subject to any development rights to add units, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate; or
- (8) any condominium composed of units not intended for residential use.

Source: Laws 1983, LB 433, § 54; Laws 1984, LB 1105, § 13.

76-879 Public-offering statement; requirements.

(a) Except as provided in section 76-878 or subsection (b) of this section, a declarant, prior to the offering of any interest in a unit to the public, shall prepare a public-offering statement conforming to the requirements of sections 76-825 to 76-894.

(b) A declarant may transfer responsibility for preparation of all or a part of the public-offering statement to a successor declarant pursuant to section 76-862 or to a person in the business of selling real estate who intends to offer units in the condominium. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a) of this section.

(c) Any declarant or other person in the business of selling real estate who offers a unit to a purchaser shall deliver a public-offering statement in the manner prescribed in subsection (a) of section 76-883. The person responsible for preparing all or a part of the public-offering statement is liable for any materially false or intentionally misleading statement set forth therein or any failure to make disclosures required by sections 76-825 to 76-894 with respect to that portion of the public-offering statement which he or she prepared. If a declarant did not prepare any part of a public-offering statement that he or she delivers, he or she is not liable for its contents unless he or she had actual

knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission. Nothing in sections 76-825 to 76-894 shall prohibit a condominium purchaser from waiving the preparation and delivery of a public-offering statement.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public-offering statement is required under the laws of this state, a single public-offering statement conforming to the requirements of sections 76-825 to 76-894 as those requirements relate to all real estate regimes in which the unit is located may be prepared and delivered in lieu of providing two or more public-offering statements.

Source: Laws 1983, LB 433, § 55; Laws 1984, LB 1105, § 14.

76-880 Public-offering statement; general provisions.

(a) A public-offering statement must contain or fully and accurately disclose:

- (1) the name and principal address of the declarant and of the condominium;
- (2) a general description of the condominium and the amenities the declarant anticipates including, to the extent possible, the types and number and the declarant's anticipated schedule of commencement and completion;
- (3) the anticipated number of units in the condominium;
- (4) a statement that copies of the declaration other than the plats and plans and any other recorded covenants, conditions, restrictions and reservations affecting the condominium, the bylaws, and any rules or regulations of the association, and copies of any contracts or leases that will or may be subject to cancellation by the association under section 76-863 are available for inspection at the principal office of the declarant or association;
- (5) the amount of the current monthly assessment and the current operating budget, if any;
- (6) a statement that the declarant may be paying expenses that may later be paid by the association;
- (7) any initial or special fee due from the purchaser at closing;
- (8) a statement that a copy of any insurance policy provided for the benefit of the unit owners is available from the association upon request; and
- (9) any current fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium.

(b) If a declarant fails to provide a public-offering statement to a purchaser before conveying a unit, such purchaser may recover any actual damages sustained.

(c) A declarant shall amend the public-offering statement by an addendum not later than each January 1 it is in use to report any material change in the information required by this section.

Source: Laws 1983, LB 433, § 56; Laws 1984, LB 1105, § 15.

76-881 Public-offering statement; conversion building; information required.

(a) The public-offering statement of a condominium containing any conversion building must contain, in addition to the information required by section 76-880:

(1) a brief statement by an architect or a professional engineer describing the apparent condition of the structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a statement by the declarant of the age of each item reported on in paragraph (1) of this subsection or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building codes or other municipal regulations of which the declarant is actually aware.

(b) This section applies only to buildings containing units that may be occupied for residential use.

Source: Laws 1983, LB 433, § 57; Laws 1984, LB 1105, § 16; Laws 1997, LB 622, § 114.

76-882 Public-offering statement filed with Securities and Exchange Commission; effect.

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public-offering statement of the Nebraska Condominium Act if he or she delivers to the purchaser a copy of the public-offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the Securities Act of Nebraska.

Source: Laws 1983, LB 433, § 58; Laws 2002, LB 857, § 5.

Cross References

Securities Act of Nebraska, see section 8-1123.

76-883 Delivery of public-offering statement; purchaser's rights.

(a) A person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 shall provide a purchaser of a unit with a copy of the public-offering statement and all amendments thereto before conveyance of that unit and not later than the date of any contract of sale. Unless a purchaser is given the public-offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public-offering statement.

(b) After receiving the public-offering statement and all amendments, a purchaser has the right to have an independent inspection of the building's structure and mechanical systems conducted at the purchaser's expense.

(c) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, he or she may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by mail postage prepaid to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(d) If a person required to deliver a public-offering statement pursuant to subsection (c) of section 76-879 fails to provide a purchaser to whom a unit is conveyed with that public-offering statement and all amendments thereto as

required by subsection (a) of this section, the purchaser is entitled to receive damages and other relief from that person.

Source: Laws 1983, LB 433, § 59; Laws 1984, LB 1105, § 17; Laws 1993, LB 478, § 16; Laws 2006, LB 924, § 3.

76-884 Resale of unit; information required.

(a) Except in the case of a sale where delivery of a public-offering statement is required or unless exempt under subsection (b) of section 76-878, the unit owner and any other person in the business of selling real estate who offers a unit to a purchaser shall furnish to a purchaser before conveyance a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association, and the following information:

(1) a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(2) any other fees payable by unit owners;

(3) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(4) the current operating budget of the association, if any;

(5) a statement that a copy of any insurance policy provided for the benefit of unit owners is available from the association upon request; and

(6) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) The association, within ten days after a request by a unit owner, shall furnish in writing the information necessary to enable the unit owner to comply with this section. A unit owner providing information pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the information prepared by the association. The unit owner or any other person in the business of selling real estate who offers a unit to a purchaser is not liable to a purchaser for the failure or delay of the association to provide such information in a timely manner.

Source: Laws 1983, LB 433, § 60; Laws 1984, LB 1105, § 18.

76-885 Sale or conveyance of unit; release of liens.

(a) In the case of a sale of a unit where delivery of a public-offering statement is required pursuant to subsection (c) of section 76-879, a seller shall, before conveying a unit, record or furnish to the purchaser, releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association the declarant shall have that real estate released from: (1) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens on that real estate unless the public-offering

statement describes certain real estate which may be conveyed subject to liens in specified amounts.

Source: Laws 1983, LB 433, § 61.

76-886 Conversion buildings; rights of tenants.

(a) A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his or her own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public-offering statement, if any, no later than sixty days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than sixty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For sixty days after delivery or mailing of the notice described in subsection (a), the person required to give the notice may offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If such an offer is made and the tenant fails to purchase the unit during the sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following thirty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) of this section to purchase that unit if the deed states that the seller has complied with subsection (b) of this section, but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b) of this section.

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated the notice shall constitute a notice to vacate.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(f) Any tenant may waive any provision of this section by a written instrument executed after the date of notice.

Source: Laws 1983, LB 433, § 62.

76-887 Express warranties; creation.

Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) any written affirmation of fact or written promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) any written description of the physical characteristics of the condominium or model of amenities, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description;

(c) any written description of the quantity or extent of the real estate comprising the condominium, included in the plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) a provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful at the time of conveyance.

A statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

Source: Laws 1983, LB 433, § 63; Laws 1984, LB 1105, § 19.

76-888 Implied warranties of quality.

A declarant and any person in the business of selling real estate for his or her own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

Source: Laws 1983, LB 433, § 64; Laws 1984, LB 1105, § 20.

76-889 Repealed. Laws 1984, LB 1105, § 23.

76-890 Warranties; statute of limitations.

(a) A judicial proceeding for breach of any obligation arising under section 76-887 or 76-888 must be commenced within four years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument executed by the purchaser.

(b) Subject to subsection (c) of this section, a cause of action for breach of warranty, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If a warranty explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

Source: Laws 1983, LB 433, § 66; Laws 1984, LB 1105, § 21.

76-891 Repealed. Laws 1993, LB 478, § 18.

76-891.01 Effect of violations on rights of action; attorney’s fees.

If a declarant or any other person subject to the Nebraska Condominium Act fails to comply with any provision of the act or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award costs and reasonable attorney’s fees.

Source: Laws 1993, LB 478, § 17.

76-892 Labeling of promotional material.

Promotional material may be displayed or delivered to prospective purchasers which display amenities provided they are labeled: (a) Must Be Built or (b) Need Not Be Built.

Source: Laws 1983, LB 433, § 68.

76-893 Declarant; liability for repair and restoration.

The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 76-847 to 76-850, 76-852, and 76-853.

Source: Laws 1983, LB 433, § 69.

76-894 Conveyance of unit; when authorized.

In the case of a sale of a unit where delivery of a public-offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an architect, a surveyor, or a professional engineer, or by issuance of a certificate of occupancy authorized by law.

Source: Laws 1983, LB 433, § 70; Laws 1997, LB 622, § 115.

ARTICLE 9

DOCUMENTARY STAMP TAX

Section

- 76-901. Tax on grantor; rate.
- 76-902. Tax; exemptions.
- 76-903. Design; collection of tax; refund; procedure; disbursement.
- 76-904. Deeds; filing without stamps; prohibited; removal of stamps from deed; prohibited.
- 76-905. Register of deeds; recording deed with insufficient tax paid; penalty.
- 76-906. Rules and regulations.
- 76-907. Sections; operative date.
- 76-908. Documentary stamp tax; refund; procedure.

76-901 Tax on grantor; rate.

There is hereby imposed a tax on the grantor executing the deed as defined in section 76-203 upon the transfer of a beneficial interest in or legal title to real estate at the rate of two dollars and twenty-five cents for each one thousand dollars value or fraction thereof. For purposes of sections 76-901 to 76-908, value means (1) in the case of any deed, not a gift, the amount of the full actual consideration thereof, paid or to be paid, including the amount of any lien or liens assumed, and (2) in the case of a gift or any deed with nominal consideration or without stated consideration, the current market value of the property transferred. Such tax shall be evidenced by stamps to be attached to the deed. All deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is exempt under section 76-902.

Source: Laws 1965, c. 463, § 1, p. 1472; Laws 1969, c. 618, § 1, p. 2505; Laws 1983, LB 194, § 1; Laws 1985, LB 236, § 1; Laws 1992, LB 1192, § 9; Laws 2005, LB 40, § 6.

76-902 Tax; exemptions.

The tax imposed by section 76-901 shall not apply to:

- (1) Deeds recorded prior to November 18, 1965;
- (2) Deeds to property transferred by or to the United States of America, the State of Nebraska, or any of their agencies or political subdivisions;
- (3) Deeds which secure or release a debt or other obligation;
- (4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;
- (5)(a) Deeds between husband and wife, or parent and child, without actual consideration therefor, and (b) deeds to or from a family corporation, partnership, or limited liability company when all the shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members;
- (6) Tax deeds;
- (7) Deeds of partition;
- (8) Deeds made pursuant to mergers, consolidations, sales, or transfers of the assets of corporations pursuant to plans of merger or consolidation filed with the office of Secretary of State. A copy of such plan filed with the Secretary of

State shall be presented to the register of deeds before such exemption is granted;

(9) Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

(10) Cemetery deeds;

(11) Mineral deeds;

(12) Deeds executed pursuant to court decrees;

(13) Land contracts;

(14) Deeds which release a reversionary interest, a condition subsequent or precedent, a restriction, or any other contingent interest;

(15) Deeds of distribution executed by a personal representative conveying to devisees or heirs property passing by testate or intestate succession;

(16) Deeds transferring property located within the boundaries of an Indian reservation if the grantor or grantee is a reservation Indian;

(17) Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue;

(18) Deeds transferring property from a trustee to a beneficiary of a trust;

(19) Deeds which convey property held in the name of any partnership or limited liability company not subject to subdivision (5) of this section to any partner in the partnership or member of the limited liability company or to his or her spouse;

(20) Leases;

(21) Easements; or

(22) Deeds which transfer title from a trustee to a beneficiary pursuant to a power of sale exercised by a trustee under a trust deed.

Source: Laws 1965, c. 463, § 2, p. 1473; Laws 1969, c. 619, § 1, p. 2506; Laws 1969, c. 620, § 1, p. 2507; Laws 1971, LB 825, § 1; Laws 1974, LB 610, § 1; Laws 1978, LB 815, § 1; Laws 1980, LB 650, § 1; Laws 1983, LB 194, § 2; Laws 1984, LB 795, § 1; Laws 1984, LB 1105, § 23; Laws 1991, LB 193, § 1; Laws 1993, LB 121, § 481; Laws 2001, LB 516, § 5.

76-903 Design; collection of tax; refund; procedure; disbursement.

The Tax Commissioner shall design such stamps in such denominations as in his or her judgment will be the most advantageous to all persons concerned. When any deed subject to the tax imposed by section 76-901 is offered for recordation, the register of deeds shall ascertain and compute the amount of the tax due thereon and shall collect such amount as a prerequisite to acceptance of the deed for recordation. If a dispute arises concerning the taxability of the transfer, the register of deeds shall not record the deed until the disputed tax is paid. If a disputed tax has been paid, the taxpayer may file for a refund

pursuant to section 76-908. The taxpayer may also seek a declaratory ruling pursuant to rules and regulations adopted and promulgated by the Department of Revenue. From each two dollars and twenty-five cents of tax collected pursuant to section 76-901, the register of deeds shall retain fifty cents to be placed in the county general fund and shall remit the balance to the State Treasurer who shall credit one dollar and twenty cents of such amount to the Affordable Housing Trust Fund, twenty-five cents of such amount to the Homeless Shelter Assistance Trust Fund, and thirty cents of such amount to the Behavioral Health Services Fund.

Source: Laws 1965, c. 463, § 3, p. 1473; Laws 1969, c. 618, § 2, p. 2505; Laws 1983, LB 194, § 3; Laws 1985, LB 236, § 2; Laws 1992, LB 1192, § 10; Laws 1997, LB 864, § 16; Laws 2001, LB 516, § 6; Laws 2001, Spec. Sess., LB 3, § 5; Laws 2005, LB 40, § 7.

76-904 Deeds; filing without stamps; prohibited; removal of stamps from deed; prohibited.

The register of deeds shall accept no deeds, instruments, or writings for conveyance of any lands, tenements, or other realty sold unless the stamps as are provided for in section 76-901 are attached and canceled. The stamps shall not be subsequently removed from the deed.

Source: Laws 1965, c. 463, § 4, p. 1474.

76-905 Register of deeds; recording deed with insufficient tax paid; penalty.

Any register of deeds who shall record any deed upon which a tax is imposed by the provisions of sections 76-901 to 76-907 without collecting the proper amount of tax as required by the provisions of sections 76-901 to 76-907 as is indicated in the declaration appended to such deed shall, upon conviction thereof, be fined the sum of fifty dollars.

Source: Laws 1965, c. 463, § 5, p. 1474.

76-906 Rules and regulations.

The Tax Commissioner shall prescribe such rules and regulations as he may deem necessary to carry out the purposes of sections 76-901 to 76-907.

Source: Laws 1965, c. 463, § 6, p. 1474.

76-907 Sections; operative date.

Sections 76-901 to 76-907 shall become operative on January 1, 1966, or immediately upon the repeal of the federal stamp act on deeds of conveyance of real estate whichever is later. If the repeal of the stamp tax levied by the federal government is conditional upon the levy of a comparable tax by the state, then sections 76-901 to 76-907 shall become operative on the first day of the third month following the adoption of such a law by the federal government. The month in which the federal act is adopted shall be counted as the first month in determining the operative date of sections 76-901 to 76-907.

Source: Laws 1965, c. 463, § 7, p. 1474.

76-908 Documentary stamp tax; refund; procedure.

Any person paying the documentary stamp tax imposed by section 76-901 may claim a refund if the payment of such tax was (1) the result of a

misunderstanding or honest mistake of the taxpayer, (2) the result of a clerical error on the part of the register of deeds or the taxpayer, or (3) invalid for any reason. Within two years after payment of such tax, the taxpayer shall file in the office of the register of deeds of the county in which the tax was paid a written claim on a form prescribed by the Tax Commissioner and evidence in support thereof, stating the reason for the claim. The register of deeds shall, within thirty days after such filing, make a recommendation of approval or denial and forward the recommendation together with a copy of the claim and evidence filed to the Tax Commissioner. Within thirty days after the forwarding of such recommendation the Tax Commissioner shall, upon consideration of the recommendation of the register of deeds and the claim and evidence filed by the taxpayer, render his or her decision approving or rejecting the claim for a refund in whole or in part. A copy of the decision of the Tax Commissioner shall be forwarded to the register of deeds and to the last-known address of the taxpayer by certified mail within ten days after the decision is rendered. Upon approval by the Tax Commissioner of a refund for all or a portion of the documentary stamp tax paid, the register of deeds is authorized to make such refund from the currently collected documentary stamp tax funds presently in the office of the register of deeds. A taxpayer denied a refund under this section, in whole or in part, may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 179, § 2; Laws 1988, LB 352, § 148.

Cross References

Administrative Procedure Act, see section 84-920.

**ARTICLE 10
TRUST DEEDS**

Cross References

Farm Homestead Protection Act, see section 76-1901 et seq.

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76-1001 Terms, defined.

As used in sections 76-1001 to 76-1018, unless the context otherwise requires:

(1) Beneficiary shall mean the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest;

(2) Trustor shall mean the person conveying real property by a trust deed as security for the performance of an obligation;

(3) Trust deed shall mean a deed executed in conformity with sections 76-1001 to 76-1018 and conveying real property to a trustee in a trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary;

(4) Trustee shall mean a person to whom title to real property is conveyed by trust deed, or his successor in interest;

(5) Real property shall mean any estate or interest in land, including all buildings, fixtures and improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, used or enjoyed with said land, or any part thereof; and

(6) Trust property shall mean the real property conveyed by the trust deed.

Source: Laws 1965, c. 451, § 1, p. 1423.

76-1002 Transfers in trust; real property; purpose.

(1) Transfers in trust of real property may be made to secure (a) existing debts or obligations created simultaneously with the execution of the trust deed, (b) future advances necessary to protect the security, (c) any future advances to be made at the option of the parties, or (d) the performance of an obligation of any other person named in the trust deed to a beneficiary.

(2) Future advances necessary to protect the security shall include, but not be limited to, advances for payment of real property taxes, special assessments, prior liens, hazard insurance premiums, maintenance charges imposed under a condominium declaration or other covenant, and costs of repair, maintenance, or improvements.

(3)(a) Except as provided in subdivision (b) of this subsection, all items identified in subsection (1) of this section are equally secured by the trust deed from the time of filing the trust deed as provided by law and have the same priority as the trust deed over the rights of all other persons who acquire any rights in or liens upon the trust property subsequent to the time the trust deed was filed.

(b)(i) The trustor or his or her successor in title may limit the amount of optional future advances secured by the trust deed under subdivision (a) of this subsection by filing a notice for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated. A copy of such notice shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed. The amount of such secured optional

future advances shall be limited to not less than the amount actually advanced at the time of receipt of such notice by the beneficiary.

(ii) If any optional future advance is made by the beneficiary to the trustor or his or her successor in title after receiving written notice of the filing for record of any trust deed, mortgage, lien, or claim against such trust property, then the amount of such optional future advance shall be junior to such trust deed, mortgage, lien, or claim. The notice under this subdivision shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed.

(iii) Subdivisions (b)(i) and (ii) of this subsection shall not limit or determine the priority of optional future advances as against construction liens governed by section 52-139.

(4) The reduction to zero or elimination of the obligation evidenced by any of the transfers in trust authorized by this section shall not invalidate the operation of this section as to any future advances unless a notice or release to the contrary is filed for record as provided by law. All right, title, interest, and claim in and to the trust property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed in like manner as if acquired before execution of the trust deed.

Source: Laws 1965, c. 451, § 2, p. 1424; Laws 1984, LB 679, § 17; Laws 1988, LB 984, § 1; Laws 1999, LB 277, § 1; Laws 2002, LB 876, § 80; Laws 2002, LB 957, § 31.

76-1003 Trustee; qualification.

(1) The trustee of a trust deed shall be:

(a) A member of the Nebraska State Bar Association or a licensed real estate broker of Nebraska;

(b) Any bank, building and loan association, savings and loan association, or credit union authorized to do business in Nebraska under the laws of Nebraska or the United States or an agency of the United States Department of Agriculture involved in lending;

(c) Any corporation authorized to conduct a trust business in Nebraska under the laws of Nebraska or the United States; or

(d) Any title insurer authorized to do business in Nebraska under the laws of Nebraska.

(2) The trustee of a trust deed shall not be the beneficiary named in the trust deed unless the beneficiary is qualified to be a trustee under subdivision (1)(b) or (c) of this section.

Source: Laws 1965, c. 451, § 3, p. 1424; Laws 1991, LB 235, § 58; Laws 1992, LB 641, § 4; Laws 1999, LB 682, § 1.

76-1004 Successor trustee; appointment by beneficiary; effect; substitution of trustee; notice; recording; form.

(1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated a substitution of trustee. From the

time the substitution is filed for record, the new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(2) The substitution shall identify the trust deed by stating the names of the original parties thereto, the date of recordation, the full legal description of the realty affected, and the book and page or computer system reference where the trust deed is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by regular United States mail with postage prepaid, been mailed to the last-known address of the trustee being replaced or an affidavit of personal service of a copy thereof or of publication of notice thereof, which notice shall be published one time in a newspaper having general circulation in any county in which the trust property or some part thereof is situated.

(4) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be stated and conclusive evidence of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.

(5) On and after April 3, 1997, no recorded substitution filed for record shall be required to contain or have attached to it an affidavit pursuant to subsection (3) of this section, and any recorded substitution filed for record without containing or having attached to it an affidavit pursuant to such subsection prior to April 3, 1997, shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.

(6) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by as trustor, in which is named beneficiary and as trustee, and filed for record, 20, and recorded in book, page (or computer system reference), Records of County, Nebraska. The trust property affected is legally described as follows:

.....
.....
.....
.....

Signature

Source: Laws 1965, c. 451, § 4, p. 1424; Laws 1984, LB 679, § 18; Laws 1989, LB 334, § 1; Laws 1993, LB 547, § 1; Laws 1995, LB 288, § 2; Laws 1997, LB 284, § 1; Laws 2004, LB 813, § 28.

76-1005 Power of sale conferred on trustee.

A power of sale may be conferred upon the trustee which the trustee may exercise and under which the trust property may be sold in the manner

provided in the Nebraska Trust Deeds Act after a breach of an obligation for which the trust property is conveyed as security, or at the option of the beneficiary a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale shall be expressly provided for in the trust deed.

Source: Laws 1965, c. 451, § 5, p. 1426; Laws 1984, LB 679, § 19; Laws 1993, LB 547, § 2.

Although the Nebraska Trust Deeds Act does not provide a remedy for a defective trustee's sale, the trustor can sue in equity to set the sale aside. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

Defects in a trustee's sale conducted under a power of sale in a trust deed fall into one of three categories: (1) Those that render the sale void, (2) those that render the sale voidable, and (3) those that are inconsequential. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

When a defect renders a trustee's sale voidable, bare legal title passes to the sale purchaser. An injured party can have the sale

set aside only so long as legal title has not moved to a bona fide purchaser. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

When a trustee's sale is void, no title passes, and adversely affected parties may have the sale set aside even though the property has passed into the hands of a bona fide purchaser. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

When the party seeking to set aside a trustee's sale establishes only an inconsequential defect, equity will not set aside the sale. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

76-1006 Sale of trust property; notice of default.

The power of sale conferred in the Nebraska Trust Deeds Act upon the trustee shall not be exercised until:

(1) The trustee or the attorney for the trustee shall first file for record in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated a notice of default identifying the trust deed by stating the name of the trustor named therein and giving the book and page or computer system reference where the same is recorded and a description of the trust property, containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of such breach and of his or her election to sell or cause to be sold such property to satisfy the obligation;

(2) If the trust property is used in farming operations carried on by the trustor, not in any incorporated city or village, the notice of default also sets forth:

(a) A statement that the default may be cured within two months of the filing for record of the notice of default and the obligation and trust deed may be thereby reinstated as provided in section 76-1012;

(b) A statement of the amount of the entire unpaid principal sum secured by the trust deed, the amount of interest accrued thereon to and including the date the notice of default is signed by the trustee or the trustee's attorney, and the dollar amount of the per diem interest accruing from and after such date; and

(c) A statement of the amount of the unpaid principal which would not then be due had no default occurred; and

(3) After the lapse of not less than one month, or two months if the notice of default is subject to subdivision (2) of this section, the trustee or the attorney for the trustee shall give notice of sale as provided in section 76-1007.

Source: Laws 1965, c. 451, § 6, p. 1426; Laws 1971, LB 645, § 1; Laws 1984, LB 679, § 20; Laws 1986, Third Spec. Sess., LB 3, § 17; Laws 2004, LB 999, § 44; Laws 2006, LB 876, § 52.

The phrase "the nature of such breach" as used in subsection (1) of this section requires the notice of default to describe the

event that has triggered the use of the power of sale in the trust deed. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

76-1007 Sale of trust property; notice; contents; time; place of sale.

(1) The trustee or the attorney for the trustee shall give written notice of the time and place of sale particularly describing the property to be sold by publication of such notice, at least five times, once a week for five consecutive weeks, the last publication to be at least ten days but not more than thirty days prior to the sale, in some newspaper having a general circulation in each county in which the property to be sold, or some part thereof, is situated.

(2) The sale shall be held at the time and place designated in the notice of sale which shall be between the hours of nine a.m. and five p.m. and at the premises or at the courthouse of the county in which the property to be sold, or some part thereof, is situated.

(3) The notice of sale shall be sufficient if made in substantially the following form:

Notice of Trustee’s Sale

The following described property will be sold at public auction to the highest bidder at the door of the county courthouse in, County of, Nebraska, on, 20

(Name of Trustee)

Source: Laws 1965, c. 451, § 7, p. 1426; Laws 2004, LB 813, § 29; Laws 2006, LB 876, § 53.

76-1008 Notice of default and sale; request for copies; mailing of notice; publication of notice of default; when.

(1) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed may, at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default thereunder, file for record in the office of the register of deeds of any county in which any part or parcel of the trust property is situated a duly acknowledged request for a copy of any such notice of default and notice of sale. The request shall set forth the name and address of the person or persons requesting copies of such notices and shall identify the trust deed by stating the names of the original parties thereto, the date of filing for record thereof, and the book and page or computer system reference where the same is recorded and shall be in substantially the following form:

Request is hereby made that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record, 20, and recorded in book, page, (or computer system reference) Records of County, Nebraska, executed by as trustor, in which is named as beneficiary and as trustee, be mailed to(insert name).....at(insert address).....

Signature

(2) Not later than ten days after recordation of such notice of default, the trustee or beneficiary or the attorney for the trustee or beneficiary shall mail, by registered or certified mail with postage prepaid, a copy of such notice with the recording date shown thereon, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the

filing for record of the notice of default, directed to the address designated in such request. At least twenty days before the date of sale, the trustee or the attorney for the trustee shall mail, by registered or certified mail with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in such request.

(3) Each trust deed shall contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to each person who is a party thereto at the address of such person set forth therein, and a copy of any notice of default and of any notice of sale shall be mailed to each such person at the same time and in the same manner required as though a separate request therefor had been filed by each of such persons as provided in this section.

(4) If no address of the trustor is set forth in the trust deed and if no request for notice by such trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property or some part thereof is situated, such publication to commence not later than ten days after the filing for record of the notice of default.

(5) No request for a copy of any notice filed for record pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to trust property or be deemed notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title, or interest in or lien or claim upon the trust property.

Source: Laws 1965, c. 451, § 8, p. 1427; Laws 1984, LB 679, § 21; Laws 1986, LB 999, § 5; Laws 1986, Third Spec. Sess., LB 3, § 18; Laws 2004, LB 813, § 30; Laws 2006, LB 876, § 54.

76-1009 Sale of trust property; public auction; bids; postponement of sale.

On the date and at the time and place designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The attorney for the trustee may conduct the sale. Any person, including the beneficiary, may bid at the sale. Every bid shall be deemed an irrevocable offer. If the purchaser refuses to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee may again sell the property at any time to the highest bidder, except that notice of the sale shall be given again in the same manner as the original notice of sale was required to be given. The party refusing to pay shall be liable for any loss occasioned thereby, and the trustee may also, in his or her discretion, thereafter reject any other bid of such person.

The person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the property from time to time until it is completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day

designated in the notice of sale in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1965, c. 451, § 9, p. 1428; Laws 2004, LB 999, § 45.

Portions of this section are sound rules not only for auctions of trust property, but also for judicial sales. Commercial Fed. Sav. & Loan v. ABA Corp., 230 Neb. 317, 431 N.W.2d 613 (1988).

76-1010 Sale of trust property; bid; payment; delivery of deed; recitals; effect; rights of trustor; terminated, when.

(1) The purchaser at the sale shall forthwith pay the price bid, and upon receipt of payment, the trustee shall execute and deliver his or her deed to such purchaser. The trustee's deed may contain recitals of compliance with the requirements of the Nebraska Trust Deeds Act relating to the exercise of the power of sale and sale of the property described therein, including recitals concerning any mailing, personal delivery, and publication of the notice of default, any mailing and the publication and posting of notice of sale, and the conduct of sale. Such recitals shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and his or her successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed. All right, title, interest, and claim of the trustor and his or her successors in interest, and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed, shall be deemed to be terminated as of the time the trustee or the attorney for the trustee accepts the highest bid at the time of the sale.

Source: Laws 1965, c. 451, § 10, p. 1429; Laws 2004, LB 999, § 46.

The term "forthwith" as used in subsection (1) of this section requires the purchaser at a trustee's sale to pay the amount of its bid within a reasonable time under the circumstances of the case. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

This section allows for an affirmative defense whereby bona fide purchasers and encumbrancers for value and without no-

tice can use the recitals in the trustee's deed to defeat any claim that the trustee's sale did not comply with the requirements of the Nebraska Trust Deeds Act relating to the exercise of the power of sale and sale of the property described therein. *Gilroy v. Ryberg*, 266 Neb. 617, 667 N.W.2d 544 (2003).

76-1011 Sale of trust property; proceeds of sale; disposition.

The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's fees actually incurred not to exceed the amount which may be provided for in the trust deed, second, to payment of the obligation secured by the trust deed, third, to the payment of junior trust deeds, mortgages, or other lienholders, and the balance, if any, to the person or persons legally entitled thereto.

Source: Laws 1965, c. 451, § 11, p. 1430; Laws 1984, LB 679, § 22.

Under this section of the Nebraska Trust Deeds Act, a fee "actually incurred" means a fee that is based on services rendered. Under this section of the Nebraska Trust Deeds Act, a trustee has a duty to disburse proceeds to junior lienholders

according to priority and, therefore, holds sale proceeds in trust for distribution to lienholders whose interests are junior to the interest of the beneficiary designated in the deed of trust.

Arizona Motor Speedway v. Hoppe, 244 Neb. 316, 506 N.W.2d 699 (1993).

76-1012 Trust deed; default; reinstatement; recorded notice of default; cancellation; costs and expenses.

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, the trustor or his or her successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed, at any time within one month, or within two months if the notice of default is subject to subdivision (2) of section 76-1006, of the filing for record of notice of default under such trust deed, if the power of sale is to be exercised, may pay to the beneficiary or his or her successor in interest the entire amount then due under the terms of such trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's fees actually incurred not exceeding in the aggregate fifty dollars or one-half of one percent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred. If the default is cured and the trust deed reinstated in the manner provided in this section, the beneficiary, or his or her assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him or her a request to the trustee that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of default under such trust deed, and any beneficiary under a trust deed, or his or her assignee, who, for a period of thirty days after such demand, refuses to request the trustee to execute and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of recorded notice of default under a trust deed shall, when acknowledged, be entitled to be recorded and shall be sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record, 20, and recorded in book, page, (or computer system reference) Records of County, Nebraska, which notice of default refers to the trust deed executed by as trustor, in which is named as beneficiary and as trustee, and filed for record, 20, and recorded in book, page, (or computer system reference) Records of County, Nebraska.

Signature of trustee or attorney for trustee

(2) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, in the event the trustor or his or her successor in interest or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed makes payment of the entire amount then due under the terms of such trust deed and the obligation secured thereby at any time subsequent to the breach or default and prior to the sale of the trust property under section 76-1010, the beneficiary shall be allowed to collect the costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, including the trustee's fees, costs, and expenses actually incurred, not to exceed the amount provided in the trust deed or the obligation secured thereby.

Source: Laws 1965, c. 451, § 12, p. 1430; Laws 1969, c. 621, § 1, p. 2509; Laws 1986, LB 999, § 6; Laws 1986, Third Spec. Sess., LB 3, § 19; Laws 2004, LB 813, § 31; Laws 2004, LB 999, § 47; Laws 2006, LB 876, § 55.

76-1013 Sale of trust property; deficiency; action; judgment; amount.

At any time within three months after any sale of property under a trust deed, as hereinabove provided, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in such action the complaint shall set forth the entire amount of the indebtedness which was secured by such trust deed and the amount for which such property was sold and the fair market value thereof at the date of sale, together with interest on such indebtedness from the date of sale, the costs and expenses of exercising the power of sale and of the sale. Before rendering judgment, the court shall find the fair market value at the date of sale of the property sold. The court shall not render judgment for more than the amount by which the amount of the indebtedness with interest and the costs and expenses of sale, including trustee's fees, exceeds the fair market value of the property or interest therein sold as of the date of the sale, and in no event shall the amount of said judgment, exclusive of interest from the date of sale, exceed the difference between the amount for which the property was sold and the entire amount of the indebtedness secured thereby, including said costs and expenses of sale.

Source: Laws 1965, c. 451, § 13, p. 1431.

The phrase "sale of property under a trust deed" contained in this section clearly refers to the exercise of the power of sale conferred by the trust deed upon the trustee pursuant to the statutory authority contained in section 76-1005. *Bank of Papillion v. Nguyen*, 252 Neb. 926, 567 N.W.2d 166 (1997).

The amount of a deficiency judgment is limited to the difference between the total indebtedness and the greater of the sale price or the fair market value. If the trial court finds no deficiency, the underlying obligation is satisfied. *Pantano v. Maryland Plaza Partnership*, 244 Neb. 499, 507 N.W.2d 484 (1993).

In determining the amount of deficiency under the Nebraska Trust Deeds Act, it is appropriate for a trial court to consider a tax lien in determining the fair market value of the property. *Douglas Cty. Bank & Trust v. Stamper*, 244 Neb. 226, 505 N.W.2d 693 (1993).

The obligation secured by a deed of trust, not the title to the security, determines applicability of the 3-month statute of limitations. *Sports Courts of Omaha v. Meginnis*, 242 Neb. 768, 497 N.W.2d 38 (1993).

76-1014 Repealed. Laws 1994, LB 1275, § 13.

76-1014.01 Trust deed; reconveyance required; when; failure to deliver; effect; damages.

When the obligation secured by any trust deed has been satisfied, the beneficiary shall, upon receipt of a written request by the trustor or the trustor's successor in interest or designated representative or by the holder of a junior trust deed or junior mortgage, deliver to the trustor or trustor's successor in interest or designated representative a reconveyance in recordable form duly executed by the trustee. The reconveyance may designate the grantee therein as the person or persons entitled thereto. The beneficiary under such trust deed shall, upon receipt of a written request, deliver to the trustor or his or her successor in interest, as directed in the written request, the trust deed and the note or other evidence of the obligation so satisfied. If a trustee fails or refuses to execute a reconveyance required by the beneficiary, the beneficiary shall appoint a successor trustee that will execute a reconveyance.

Any beneficiary who fails to deliver such a reconveyance within sixty days after receipt of such written request shall be liable to the trustor or his or her successor in interest, as the case may be, for five thousand dollars or actual damages resulting from such failure, whichever is greater. In any action against the beneficiary or trustee pursuant to this section, the court shall award, in addition to the foregoing amounts, court costs, including reasonable attorney's fees, and may further order the trustee to reconvey the property. Successor in interest of the trustor shall include the current owner of the property and shall also include the person issuing a payoff check in accordance with the terms of a payoff letter from a beneficiary.

Source: Laws 1994, LB 1275, § 9; Laws 1995, LB 396, § 3; Laws 2002, LB 957, § 32; Laws 2003, LB 218, § 19.

76-1015 Sale of trust property; limitation of action.

The trustee's sale of property under a trust deed shall be made within the period prescribed in section 25-205 for the commencement of an action on the obligation secured by the trust deed unless the beneficiary elects to foreclose a trust deed in the manner provided for by law for the foreclosure of mortgages on real estate as provided in section 76-1005, in which case the statute of limitations for the commencement of such action shall be the same as the statute of limitations for mortgages pursuant to section 25-202.

Source: Laws 1965, c. 451, § 15, p. 1432; Laws 1997, LB 284, § 2.

76-1016 Trust deed; transfer of debt secured by; effect.

The transfer of any debt secured by a trust deed shall operate as a transfer of the security therefor.

Source: Laws 1965, c. 451, § 16, p. 1432.

76-1017 Trust deed; instruments entitled to be recorded; assignment of beneficial interest.

Any trust deed, substitution of trustee, assignment of a beneficial interest under a trust deed, notice of default, trustee's deed, reconveyance of the trust property and any instrument by which any trust deed is subordinated or waived as to priority, when acknowledged as provided by law, shall be entitled to be recorded, and shall, from the time of filing the same with the register of deeds for record, impart notice of the contents thereof, to all persons, including subsequent purchasers and encumbrancers for value, except that the recording of an assignment of a beneficial interest in the trust deed shall not in itself be

deemed notice of such assignment to the trustor, his heirs or personal representatives, so as to invalidate any payment made by them, or any of them, to the person holding the note, bond or other instrument evidencing the obligation by the trust deed.

Source: Laws 1965, c. 451, § 17, p. 1433.

76-1018 Act, how cited.

Sections 76-1001 to 76-1018 shall be known and may be cited as Nebraska Trust Deeds Act.

Source: Laws 1965, c. 451, § 17, p. 1433; Laws 1994, LB 1275, § 8.

The Nebraska Trust Deeds Act results in a fiduciary relationship between the trustee and the creditors secured by a deed of trust. *Arizona Motor Speedway v. Hoppe*, 244 Neb. 316, 506 N.W.2d 699 (1993).

The Nebraska Trust Deeds Act provides a specific statutory plan to obtain performance of an obligation, prescribes a distinct procedure to dispose of security for performance of an

obligation, and, generally, authorizes a form of financing quite apart from other methods recognized under Nebraska law. *Sports Courts of Omaha v. Meginnis*, 242 Neb. 768, 497 N.W.2d 38 (1993).

Nebraska Trust Deeds Act did not violate Article III, section 14, Constitution of Nebraska. *Blair Co. v. American Savings Co.*, 184 Neb. 557, 169 N.W.2d 292 (1969).

ARTICLE 11

SECURITY INTERESTS

Section

- 76-1101. Corporations; real and personal property; Secretary of State; filed with; effect.
- 76-1102. Corporations; personal property; Secretary of State; financing statement; filed with; effect.
- 76-1103. Secretary of State; duties; fee.
- 76-1104. Prior mortgages of corporation; validity.

76-1101 Corporations; real and personal property; Secretary of State; filed with; effect.

Any mortgage of real property or of both real property and goods, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad, or by any corporation including public corporations engaged in the furnishing of electric or telephone service shall be recorded in the office of the register of deeds of the county where such property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording and on fixtures thereafter acquired subject to the mortgage or security agreement from the time of acquisition; and if the mortgage or security agreement includes goods, a copy of the mortgage or security agreement or a financing statement describing the goods by item or type shall be filed with the Secretary of State and shall be effective from the time provided in the Uniform Commercial Code, but the security interest in the goods and in goods thereafter acquired subject to the mortgage or security agreement shall be effective without refileing as long as the mortgage or security agreement remains in effect, and this lien shall be enforceable in accordance with the laws of this state governing mortgages of real estate.

Source: Laws 1965, c. 452, § 1, p. 1434.

76-1102 Corporations; personal property; Secretary of State; financing statement; filed with; effect.

A security interest in goods alone created by a corporation which is a railroad, or by any corporation including public corporations engaged in the furnishing of electric or telephone service shall be perfected by filing a financing statement in the office of the Secretary of State and shall in all respects except as to place of filing be governed by the Uniform Commercial Code. This is a statute providing for central filing of security interests in property within the meaning of article 9, Uniform Commercial Code.

Source: Laws 1965, c. 452, § 2, p. 1434; Laws 1999, LB 550, § 42.

76-1103 Secretary of State; duties; fee.

The Secretary of State shall maintain a separate file for mortgages, security agreements and financing statements on which the debtor is a corporation which is a railroad, or by any corporation including public corporations engaged in the furnishing of electric or telephone service and the uniform fee for filing, indexing, and furnishing filing data for such financing statements shall be one dollar per page, but the total fee shall not be less than five dollars nor more than one hundred dollars.

Source: Laws 1965, c. 452, § 3, p. 1434.

76-1104 Prior mortgages of corporation; validity.

Nothing in sections 76-1101 to 76-1104 or in the Uniform Commercial Code shall impair the validity or effectiveness against third parties of any mortgage of real property, or of both real property and goods, including fixtures alone, heretofore made by a corporation which is a railroad, or by any corporation including public corporations engaged in the furnishing of electric or telephone service if such mortgage or security interest was recorded or filed or perfected in accordance with the law of this state prior to the effective date of the Uniform Commercial Code, and such law shall govern the continued effectiveness and enforcement of such mortgages and security interests with respect to all property covered thereby whether acquired by such corporation before or after such date.

Source: Laws 1965, c. 452, § 4, p. 1435.

Cross References

Effective date of the Uniform Commercial Code, see section 10-101.

ARTICLE 12 RELOCATION ASSISTANCE

Section	
76-1201.	Repealed. Laws 1989, LB 254, § 33.
76-1202.	Repealed. Laws 1989, LB 254, § 33.
76-1203.	Repealed. Laws 1989, LB 254, § 33.
76-1203.01.	Repealed. Laws 1989, LB 254, § 33.
76-1204.	Repealed. Laws 1989, LB 254, § 33.
76-1205.	Repealed. Laws 1989, LB 254, § 33.
76-1206.	Repealed. Laws 1989, LB 254, § 33.
76-1206.01.	Repealed. Laws 1989, LB 254, § 33.
76-1207.	Repealed. Laws 1989, LB 254, § 33.
76-1208.	Repealed. Laws 1989, LB 254, § 33.
76-1209.	Repealed. Laws 1989, LB 254, § 33.
76-1210.	Repealed. Laws 1989, LB 254, § 33.

§ 76-1201

REAL PROPERTY

Section

- 76-1211. Repealed. Laws 1989, LB 254, § 33.
- 76-1212. Repealed. Laws 1989, LB 254, § 33.
- 76-1213. Repealed. Laws 1989, LB 254, § 33.
- 76-1214. Act, how cited.
- 76-1215. Intent and purpose.
- 76-1216. Definitions, where found.
- 76-1217. Agency, defined.
- 76-1218. Appraisal, defined.
- 76-1219. Business, defined.
- 76-1220. Comparable replacement dwelling, defined.
- 76-1221. Displaced person, defined.
- 76-1222. Displacing agency, defined.
- 76-1223. Farm operation, defined.
- 76-1224. Lead agency, defined.
- 76-1225. Mortgage, defined.
- 76-1226. Person, defined.
- 76-1227. Publicly financed project, defined.
- 76-1228. Payment to displaced person; amount.
- 76-1229. Displacement from dwelling; expense and dislocation allowance; schedule.
- 76-1230. Displacement from business or farm; fixed payment; criteria.
- 76-1231. Owner; displacement from dwelling; additional payment; amount.
- 76-1232. Owner; displacement from dwelling; additional payment; requirements.
- 76-1233. Renter; displacement from dwelling; additional payment; requirements; use.
- 76-1234. Comparable replacement housing; required; head of displacing agency; powers.
- 76-1235. Payments; how treated.
- 76-1236. Other payments; effect on payment under act.
- 76-1237. Publicly financed projects; planning requirements.
- 76-1238. Relocation assistance advisory services; available; when; requirements.
- 76-1239. Contracts for services authorized.
- 76-1240. Rules and regulations.
- 76-1241. Appeal; act, how construed.
- 76-1242. Appropriations; use.

76-1201 Repealed. Laws 1989, LB 254, § 33.

76-1202 Repealed. Laws 1989, LB 254, § 33.

76-1203 Repealed. Laws 1989, LB 254, § 33.

76-1203.01 Repealed. Laws 1989, LB 254, § 33.

76-1204 Repealed. Laws 1989, LB 254, § 33.

76-1205 Repealed. Laws 1989, LB 254, § 33.

76-1206 Repealed. Laws 1989, LB 254, § 33.

76-1206.01 Repealed. Laws 1989, LB 254, § 33.

76-1207 Repealed. Laws 1989, LB 254, § 33.

76-1208 Repealed. Laws 1989, LB 254, § 33.

76-1209 Repealed. Laws 1989, LB 254, § 33.

76-1210 Repealed. Laws 1989, LB 254, § 33.

76-1211 Repealed. Laws 1989, LB 254, § 33.

76-1212 Repealed. Laws 1989, LB 254, § 33.

76-1213 Repealed. Laws 1989, LB 254, § 33.

76-1214 Act, how cited.

Sections 76-1214 to 76-1242 shall be known and may be cited as the Relocation Assistance Act.

Source: Laws 1989, LB 254, § 1.

76-1215 Intent and purpose.

The intent and purpose of the Relocation Assistance Act is to establish uniform policies and procedures for the fair and equitable treatment of persons displaced as a result of publicly financed projects in order that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

Source: Laws 1989, LB 254, § 2.

76-1216 Definitions, where found.

For purposes of the Relocation Assistance Act, the definitions found in sections 76-1217 to 76-1227 shall apply.

Source: Laws 1989, LB 254, § 3.

76-1217 Agency, defined.

Agency shall mean (1) any department, agency, or instrumentality of (a) the State of Nebraska, (b) any political subdivision of the State of Nebraska, (c) any combination of states which includes the State of Nebraska, (d) any combination of political subdivisions, either of the State of Nebraska alone or of the State of Nebraska and any other state or states acting in combination, and (2) any person who has the authority to acquire property by eminent domain under state law.

Source: Laws 1989, LB 254, § 4.

76-1218 Appraisal, defined.

Appraisal shall mean a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date supported by the presentation and analysis of relevant market information.

Source: Laws 1989, LB 254, § 5.

76-1219 Business, defined.

Business shall mean any lawful activity, except a farm operation, conducted primarily (1) for the purchase, sale, lease, or rental of personal or real property or for the manufacture, processing, or marketing of products, commodities, or any other personal property, (2) for the sale of services to the public, (3) by a nonprofit organization, or (4) solely for the purposes of sections 76-1228 to 76-1230, for the erection and maintenance of outdoor advertising displays, whether or not such displays are located on the premises on which any of the other activities defined as business are conducted.

Source: Laws 1989, LB 254, § 6.

76-1220 Comparable replacement dwelling, defined.

Comparable replacement dwelling shall mean any dwelling that is (1) decent, safe, and sanitary, (2) adequate in size to accommodate the occupants, (3) within the financial means of the displaced person, (4) functionally equivalent to the dwelling that the displaced person is required to leave, (5) in an area not subject to unreasonable adverse environmental conditions, and (6) in a location not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

Source: Laws 1989, LB 254, § 7.

76-1221 Displaced person, defined.

(1) Displaced person shall mean:

(a) Any person who, on or after April 2, 1989, moves from or moves his or her personal property from real property as a result of the acquisition of or a written notice of the intent to acquire all or part of such real property for a publicly financed project;

(b) Any person who, as a result of a publicly financed project, moves from or moves his or her personal property from real property on which such person is a residential tenant, conducts a small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended, conducts a farm operation, or conducts a business, as a direct result of rehabilitation, demolition, or other displacing activity when such displacement is permanent; or

(c) Solely for purposes of sections 76-1228, 76-1229, and 76-1238, any person who moves from or moves his or her personal property from real property as a direct result of (i) written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation or (ii) the rehabilitation, demolition, or other displacing activity of other real property on which such person conducts a business or a farm operation, when such displacement is permanent.

(2) Displaced person shall not include (a) a person who either is in unlawful occupancy of any property subject to the Relocation Assistance Act or occupied such property for the purpose of obtaining assistance under the act or (b) in any case in which the displacing agency acquires property for a publicly financed project, any person who occupies such property on a rental basis after the property has been acquired by the displacing agency or for a period subject to termination when the property is needed for the project.

Source: Laws 1989, LB 254, § 8.

76-1222 Displacing agency, defined.

Displacing agency shall mean (1) any agency carrying out a publicly financed project which causes an individual to become a displaced person and (2) any person lacking the power of eminent domain who carries out a publicly financed project when that project causes an individual to be a displaced person.

Source: Laws 1989, LB 254, § 9.

76-1223 Farm operation, defined.

Farm operation shall mean any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Source: Laws 1989, LB 254, § 10.

76-1224 Lead agency, defined.

Lead agency shall mean the Nebraska Department of Roads.

Source: Laws 1989, LB 254, § 11.

76-1225 Mortgage, defined.

Mortgage shall mean any of such classes of liens as are commonly given to secure advances on or the unpaid purchase price of real property under the laws of the state, together with the credit instruments, if any, secured thereby.

Source: Laws 1989, LB 254, § 12.

76-1226 Person, defined.

Person shall mean any individual, partnership, limited liability company, corporation, or association.

Source: Laws 1989, LB 254, § 13; Laws 1993, LB 121, § 482.

76-1227 Publicly financed project, defined.

Publicly financed project shall mean any project undertaken by an agency in which any part of the cost is to be paid (1) from funds derived from federal, state, or local taxes of any type, (2) by revenue or general obligation bonds issued by the agency, or (3) from funds derived by the agency from the sale of products or services in a proprietary capacity. Publicly financed project shall not mean a project in which the federal funds involved are in the form of a federal guarantee or insurance.

Source: Laws 1989, LB 254, § 14.

76-1228 Payment to displaced person; amount.

Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of (1) actual reasonable expenses in moving himself or herself and his or her family, business, farm operation, or other personal property, (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency, (3) actual reasonable expenses in searching for a replacement business or farm, and (4) actual reasonable expenses necessary to reestablish at its new site a displaced farm, nonprofit organization, or small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970, Public Law 91-646, as amended, but not to exceed ten thousand dollars.

Source: Laws 1989, LB 254, § 15.

76-1229 Displacement from dwelling; expense and dislocation allowance; schedule.

Any displaced person eligible for payments under section 76-1228 who is displaced from a dwelling and who elects to accept the payments authorized by this section in lieu of the payments authorized by section 76-1228 may receive an expense and dislocation allowance which shall be determined according to a schedule established by the head of the lead agency. In establishing the schedule authorized by this section, the head of the lead agency shall take into consideration the reasonable expenses associated with relocation and the regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended.

Source: Laws 1989, LB 254, § 16.

76-1230 Displacement from business or farm; fixed payment; criteria.

Any displaced person eligible for payments under section 76-1228 who is displaced from the person's place of business or farm operation and who is eligible for payments under this section according to criteria established by the head of the lead agency may elect to accept the payment authorized by this section in lieu of the payment authorized by section 76-1228. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall be at least one thousand dollars but not more than twenty thousand dollars. In establishing the criteria authorized by this section, the head of the lead agency shall take into consideration the reasonable expenses associated with the relocation of a business or farm operation and the regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this section.

Source: Laws 1989, LB 254, § 17.

76-1231 Owner; displacement from dwelling; additional payment; amount.

In addition to payments otherwise authorized by the Relocation Assistance Act, the head of the displacing agency shall make an additional payment not to exceed twenty-two thousand five hundred dollars to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for at least one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which, when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling;

(2) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for at least one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling;

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling but not including prepaid expenses; and

(4) The amount, if any, which will compensate such displaced person for the increase in property taxes resulting from the relocation for a period of three years.

Source: Laws 1989, LB 254, § 18.

76-1232 Owner; displacement from dwelling; additional payment; requirements.

The additional payment authorized by section 76-1231 shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under subdivision (2)(c) of section 76-1238 is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of such date.

Source: Laws 1989, LB 254, § 19.

76-1233 Renter; displacement from dwelling; additional payment; requirements; use.

(1) In addition to amounts otherwise authorized by the Relocation Assistance Act, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 76-1231 which dwelling was actually and lawfully occupied by such displaced person for at least ninety days immediately prior to (a) the initiation of negotiations for acquisition of such dwelling or (b) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe by rules and regulations which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed forty-two months a comparable replacement dwelling, but the payment shall not exceed five thousand two hundred fifty dollars. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(2) Any person eligible for a payment under subsection (1) of this section may elect to apply such payment to a downpayment on and other incidental expenses pursuant to the purchase of a decent, safe, and sanitary replacement dwelling. Such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (1) of this section, except that in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least ninety days but not more than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 76-1231 had the person owned and occupied the displacement dwelling one hundred eighty days immediately prior to the initiation of such negotiations.

Source: Laws 1989, LB 254, § 20.

76-1234 Comparable replacement housing; required; head of displacing agency; powers.

No person shall be required to move from his or her dwelling as a result of any publicly financed project unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person. If a publicly financed project cannot proceed on a timely basis because comparable replacement dwellings are not available and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by the use of funds authorized for such project. The head of the displacing agency may exceed the maximum amounts which may be paid under sections 76-1231 to 76-1233 on a case-by-case basis for good cause as determined in accordance with rules and regulations adopted and promulgated by the head of the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended.

Source: Laws 1989, LB 254, § 21.

76-1235 Payments; how treated.

No payment received by a displaced person pursuant to the Relocation Assistance Act shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of the state's income tax laws or other tax laws. Except in the case of payments received in conjunction with a low-income housing assistance program, such payments shall not be considered as income or resources of any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Source: Laws 1989, LB 254, § 22.

76-1236 Other payments; effect on payment under act.

No payment or assistance under the Relocation Assistance Act shall be required to be made to any person or included as a program or project cost if such person receives a payment required by federal, state, or local law which is

determined by the head of the displacing agency to have substantially the same purpose and effect as would the payment authorized by the act.

Source: Laws 1989, LB 254, § 23.

76-1237 Publicly financed projects; planning requirements.

Publicly financed projects shall be planned in a manner that (1) recognizes, at an early stage in the planning of such project and before the commencement of any action which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite project advancement and completion.

Source: Laws 1989, LB 254, § 24.

76-1238 Relocation assistance advisory services; available; when; requirements.

(1) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (2) of this section are made available to all persons displaced by such agency. If the agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result of the activity, the agency head may make available to such person such advisory services.

(2) Each relocation assistance advisory program required by this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance;

(b) Provide current and continuing information on the availability, sale prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(c) Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling except in the case of (i) a major disaster as defined in section 102(2) of the Federal Disaster Relief Act of 1974, (ii) a national emergency declared by the President, or (iii) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of the dwelling by such person constitutes a substantial danger to the health or safety of such person;

(d) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(e) Supply (i) information concerning other programs which might assist displaced persons and (ii) technical assistance to such persons in applying for assistance under such programs; and

(f) Provide other advisory services to displaced persons in order to minimize the hardships of adjusting to relocation.

(3) The head of a displacing agency shall coordinate the relocation assistance activities performed by such agency with other federal, state, or local governmental activities in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(4) Notwithstanding section 76-1221, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis after the property is acquired by the displacing agency or for a period subject to termination when the property is needed for the project shall be eligible for advisory services to the extent determined by the displacing agency in accordance with rules and regulations adopted and promulgated by the head of the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended.

Source: Laws 1989, LB 254, § 25.

76-1239 Contracts for services authorized.

In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any person for services in connection with such programs or may carry out its functions through any federal, state, or local agency having an established organization for conducting relocation assistance programs.

Source: Laws 1989, LB 254, § 26.

76-1240 Rules and regulations.

The head of the lead agency shall adopt and promulgate, with the active participation of the heads of other state agencies responsible for funding relocation and acquisition actions and in coordination with local governments, such rules and regulations as may be necessary to carry out the Relocation Assistance Act.

Source: Laws 1989, LB 254, § 27.

76-1241 Appeal; act, how construed.

Any person aggrieved by a determination as to eligibility for a payment authorized by the Relocation Assistance Act or as to the amount of the payment may appeal the determination. The appeal shall be in accordance with the Administrative Procedure Act. Nothing in the Relocation Assistance Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damage not in existence immediately prior to April 2, 1989.

Source: Laws 1989, LB 254, § 28.

Cross References

Administrative Procedure Act, see section 84-920.

76-1242 Appropriations; use.

Any funds which have been appropriated by or to any agency for the acquisition of real property or any interest in real property for a particular

program or project shall also be available for expenditure to carry out the Relocation Assistance Act as applied to such program or project.

Source: Laws 1989, LB 254, § 29.

ARTICLE 13

RETIREMENT COMMUNITIES AND SUBDIVISIONS

Section

- 76-1301. Declaration of purpose.
- 76-1302. Terms, defined.
- 76-1303. State Real Estate Commission; administer sections; advisory group.
- 76-1304. Application of sections; exceptions.
- 76-1305. Offering or disposition; requirements; right to cancel; escrow.
- 76-1306. Registration; record; contents; fee.
- 76-1307. Public-offering statement; contents.
- 76-1308. Statement of record; examination by agency.
- 76-1309. Effective date of registration; statement of record; suspension; when; hearing; when.
- 76-1310. Annual report; contents.
- 76-1311. Rules and regulations; investigations.
- 76-1312. Agency; powers.
- 76-1313. Developer or association; representatives on governing body; separate advisory committee; selection; powers.
- 76-1314. Agency order; appeal.
- 76-1315. Prohibited acts; violations; penalty; injunction; cease and desist order.

76-1301 Declaration of purpose.

The Legislature finds that in order to insure the economic security of Nebraskans of retirement age it is necessary to require those persons who develop retirement subdivisions and communities to make a full and periodic disclosure of their fiscal condition.

The Legislature also finds it to be in the best interest of the tenants of a retirement subdivision or community, as well as in the best tradition of participatory democracy, that such tenants have a voice in the affairs of the subdivision or community through representation on the board of directors or an advisory committee to the board, when the retirement subdivision or community is owned and managed by a nonprofit entity.

Source: Laws 1972, LB 1311, § 1; Laws 1990, LB 978, § 1; Laws 2003, LB 61, § 1.

76-1302 Terms, defined.

For the purposes of sections 76-1301 to 76-1315, unless the context otherwise requires:

- (1) Retirement subdivision shall mean any land which is divided or proposed to be divided into ten or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan when such subdivision is advertised or represented as a retirement subdivision or as a subdivision primarily for retirees or elderly persons, or when there is a minimum age limit tending to attract persons who are nearing retirement age;
- (2) Retirement community shall mean any complex or proposed complex of more than ten units, whether contained in one or more buildings or whether constructed on separate lots, offered for sale or lease as part of a common promotional plan when such community is advertised or represented as a

retirement community or as a community primarily for retirees or elderly persons, or when there is a minimum age limit tending to attract persons who are nearing retirement age;

(3) Unit shall mean any apartment or structure intended primarily as a residence and consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, including a single residence dwelling;

(4) Common promotional plan shall include an offer for sale or lease of lots or units in a retirement subdivision or community by a single developer, or a group of developers acting in concert when such lots or units are contiguous, or are known, designated, or advertised as a common entity or by a common name;

(5) Person shall mean an individual, unincorporated organization, partnership, limited liability company, association, corporation, trust, or estate;

(6) Developer shall mean any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a retirement subdivision or any units in a retirement community;

(7) Agent shall mean any person who represents or acts for or on behalf of a developer in selling or leasing or offering to sell or lease any lot or lots in a retirement subdivision or any units in a retirement community, but shall not include an attorney at law whose representation of a developer consists solely of rendering legal services;

(8) State shall mean the State of Nebraska;

(9) Purchaser shall mean a person who acquires by deed, lease, or other contract the use and occupancy of any lot or unit in a retirement subdivision or community;

(10) Offer shall include any inducement, solicitation, or attempt to encourage a person to acquire a lot or unit in a retirement subdivision or community;

(11) Disposition shall include sale, lease, assignment, award by lottery, or any other transaction by which a person acquires the use or occupancy of a lot or unit in a retirement subdivision or community;

(12) Agency shall mean the State Real Estate Commission;

(13) Lease shall mean a contract for the use and occupancy of real estate primarily as a residence when the contract term is for more than one year or is for life and when the lessee is required to pay an entrance fee;

(14) Managing agent shall mean a person who undertakes for any compensation the duties, responsibilities, or obligations of the management of a retirement subdivision or community;

(15) Audited financial statements shall mean balance sheet, income statement, retained earnings statement, cash-flow statement, and related notes, audited by an independent certified public accountant in accordance with generally accepted auditing standards;

(16) Prospective financial statements shall mean a financial forecast as defined by the American Institute of Certified Public Accountants of the revenue, expenses, working capital needs, and other financial requirements for the retirement subdivision or community for the development period and three fiscal years after the date of initial occupancy;

(17) Actuarial forecast shall mean an analysis which is performed by a qualified actuary in accordance with generally accepted actuarial principles and practices and which includes a statement of actuarial opinion, a pricing analysis, a cash-flow projection, and a statement of applicable actuarial methodology, formulas, and assumptions;

(18) Entrance fee shall mean an initial or deferred transfer to the developer of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a purchaser or resident of a retirement subdivision or community if the amount is more than reasonably necessary to cover a damage deposit and an advance of the first and last month's rent; and

(19) Association shall mean the person responsible to a purchaser, either directly or indirectly or through a managing agent, for the management of a retirement subdivision or community, including collecting from purchasers any periodic payments for maintenance of common areas or debt payments. A developer may be an association.

Source: Laws 1972, LB 1311, § 2; Laws 1993, LB 121, § 483; Laws 2003, LB 61, § 2.

76-1303 State Real Estate Commission; administer sections; advisory group.

(1) The provisions of sections 76-1301 to 76-1315 shall be administered by the State Real Estate Commission.

(2) All rules, regulations and administrative procedures adopted by the agency pursuant to sections 76-1301 to 76-1315 shall be promulgated with the advice and counsel of a representative group of administrative personnel of those retirement communities and subdivisions affected by such rules, regulations and administrative practices.

Source: Laws 1972, LB 1311, § 3.

76-1304 Application of sections; exceptions.

Unless the method of disposition is adopted for the purpose of evasion of the provisions of sections 76-1301 to 76-1315, such provisions shall not apply to offers or dispositions of any lot or unit in a retirement subdivision or community by a purchaser for his or her own account in a single or isolated transaction, nor shall such provisions apply to the following:

(1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(3) The sale or lease of real estate under or pursuant to court order;

(4) The disposition in any manner whatsoever of any unit of public housing under the administrative jurisdiction of a local public housing authority;

(5) Offers or dispositions of securities currently registered with the Director of Banking and Finance and under the provisions of the Securities Act of Nebraska; and

(6) Health care facilities licensed by the Department of Health and Human Services under the Health Care Facility Licensure Act.

Source: Laws 1972, LB 1311, § 4; Laws 1988, LB 693, § 17; Laws 1996, LB 1044, § 793; Laws 2000, LB 819, § 148; Laws 2003, LB 61, § 3; Laws 2007, LB296, § 700.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Securities Act of Nebraska, see section 8-1123.

76-1305 Offering or disposition; requirements; right to cancel; escrow.

Unless the retirement subdivision or community lands or the transaction is exempt by section 76-1304:

(1) No person may offer or dispose of any lot or unit in any retirement subdivision or community located in this state, nor offer or dispose in this state of any lot or unit in any retirement subdivision or community located outside this state prior to the time such subdivision or community is registered in the manner prescribed by sections 76-1301 to 76-1315;

(2) No person may dispose of any lot or unit in any retirement subdivision or community unless a current public-offering statement is delivered to the prospective purchaser and the prospective purchaser is afforded a reasonable opportunity, under no circumstances less than forty-eight hours, to examine the public-offering statement prior to the disposition;

(3) A purchaser shall have the right to cancel a contract for disposition within three business days after the date the contract is executed or within three business days after the delivery to the purchaser of the public-offering statement, whichever is later. The right to cancel may not be waived and any attempt to obtain such a waiver is unlawful and shall be considered a violation of sections 76-1301 to 76-1315. A purchaser may cancel the contract by hand delivering or mailing, postage prepaid, a written statement of cancellation to the developer. The cancellation shall be deemed effective upon mailing. Upon cancellation, the developer shall refund to the purchaser within thirty days after receipt of the cancellation notice all payments and other consideration given by the purchaser reduced by the proportion of any benefits the purchaser has actually received by agreement with the developer prior to the effective date of the cancellation. A developer and purchaser shall agree in writing on a specific value for each benefit received by the purchaser for purposes of this section; and

(4) If in any retirement subdivision or community a purchaser's lot or unit remains subject to any debts or liabilities of the developer or association in connection with the initial construction of the improvements to the retirement subdivision or community, the developer shall hold all payments from purchasers in escrow at a state or federally regulated financial institution located in this state until such time, not to exceed twenty-four months, that the public improvements serving the retirement subdivision or community are substantially completed and secured financing has been obtained by the developer or association (a) in an amount adequate to complete the improvements to the retirement subdivision or community as represented in the statement of record and (b) under such terms as are consistent with the budget stated in the public-offering statement.

Source: Laws 1972, LB 1311, § 5; Laws 2003, LB 61, § 4.

76-1306 Registration; record; contents; fee.

(1) A retirement subdivision or community may be registered by filing with the agency a statement of record containing the following documents and information:

(a) An acknowledgment that the developer shall be amenable to process issued by any court of this state in any noncriminal proceeding arising under the provisions of sections 76-1301 to 76-1315 against the developer;

(b) A legal description of the lands offered for registration as a retirement subdivision or community, together with a map showing the subdivision proposed or made, and the dimensions of the lots, parcels, units, or interests and the relation of such lands to existing streets, roads, and other improvements;

(c) The states or jurisdictions, including the federal government, in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the retirement subdivision or community lands by the regulatory authorities in each jurisdiction or by any court;

(d) The developer's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(e) The name, address, and principal occupation for the last five years of every director and officer of the developer or person occupying a similar status, performing similar functions, or having an interest in the retirement subdivision or community lands and the extent and nature of his or her interest in the developer or the retirement subdivision or community lands as of a specified date within thirty days of the filing of the application;

(f) A statement, in a form acceptable to the agency, of the condition of the title to the retirement subdivision or community lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the developer, or by other evidence of title acceptable to the agency;

(g) Copies of the instruments which will be delivered to a purchaser to evidence his or her interest in the retirement subdivision or community lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the retirement subdivision or community lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(i) If there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances affecting the retirement subdivision or community lands;

(k) A statement of the zoning and other governmental regulations affecting the use of the retirement subdivision or community lands and also of any existing taxes and existing or proposed special taxes or assessments which affect such lands;

(l) The proposed public-offering statement;

(m) Current audited financial statements of the developer and, if different, of any association. If the developer or association has been in existence for less than one year at the date of application it may provide prospective financial statements, compiled by a certified public accountant under generally accepted accounting standards, unless an examined statement is required under subdivision (1)(n) of this section;

(n) Upon initial registration or an amendment expanding a retirement subdivision or community, prospective financial statements examined by a certified public accountant in accordance with generally accepted standards for an examination of a forecast. Examined prospective financial statements shall not be required of a developer of a retirement subdivision or community if (i) all payments by purchasers are held in escrow at a state or federally regulated financial institution located within this state until closing of the disposition, (ii) all public improvements serving the units or lots are completed prior to disposition, and (iii) the interests in a unit or lot of a purchaser who is not in default on the contract for disposition will upon disposition be free of or not subject to disturbance by any encumbrances incurred by the developer or association for purchase or improvement of the retirement subdivision or community;

(o) Upon initial registration or an amendment expanding a retirement subdivision or community which offers a promise to provide nursing or health-related services to purchasers in the future pursuant to contracts effective for the life of the purchaser or a period in excess of one year in consideration for an entrance fee, an actuarial forecast in a form satisfactory to the agency, which identifies the qualifications of the actuary or actuaries preparing the forecast;

(p) Information concerning any adjudication of bankruptcy against the developer, the association, the managing agent, or any principal owning more than ten percent of the interests in the retirement subdivision or community, developer, association, or managing agent at the time of filing; and

(q) Any other information which the agency by its rules requires for the protection of purchasers.

(2) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the agency a fee, not in excess of two hundred dollars, in accordance with a schedule to be fixed by the regulations of the agency, which fees may be used by the agency to defray part of the cost of rendering services under sections 76-1301 to 76-1315.

(3) The filing with the agency of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (2) of this section.

(4) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the agency may prescribe and copies thereof shall be furnished to anyone requesting them at such reasonable charge as the agency may prescribe.

(5) If the developer registers additional retirement subdivision or community lands, he or she may consolidate the subsequent registration with any earlier registration offering such lands for disposition under the same promotional plan.

(6) The developer, association, and managing agent shall immediately report to the agency any additional liens, adjudication of bankruptcy against the developer, the association, the managing agent, or any principal owning more than ten percent of the interests in the retirement subdivision or community, developer, association, or managing agent, and any action or development which materially changes the condition of the title to the retirement subdivision or community lands or to the disclosures in the statement of record, including the public-offering statement.

(7) Nothing in sections 76-1301 to 76-1315 shall require retirement subdivisions or community lands in existence on August 31, 2003, to prepare audited financial statements from the date of their inception, but such audited financial statements for the most recent fiscal year ending before August 31, 2003, shall be filed as otherwise required by the terms of sections 76-1301 to 76-1315.

Source: Laws 1972, LB 1311, § 6; Laws 1983, LB 447, § 88; Laws 2003, LB 61, § 5.

76-1307 Public-offering statement; contents.

(1) A public-offering statement shall disclose fully and accurately the physical characteristics of the retirement subdivision or community. The proposed public-offering statement submitted to the agency shall be in a form prescribed by its rules and shall as a minimum include the following:

- (a) The name and principal address of the developer;
- (b) A general description of the retirement subdivision or community stating the total number of lots, parcels, units, or interests in the offering;
- (c) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting such lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect such lands;
- (d) A statement of the use for which the property is offered;
- (e) Information concerning improvements, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in the retirement subdivision or community;
- (f) A statement that audited financial statements or prospective financial statements, or both if applicable, for the developer and any association are on file with the agency;
- (g) A statement, if applicable, of the association's ability to incur debt secured by a lot or unit after it has been disposed of to a purchaser;
- (h) A statement, if applicable, of any affiliation of the association or developer with a for-profit or nonprofit organization and the nature of the affiliation and the extent to which the affiliate organization is responsible for the financial and contractual obligations of the association;
- (i) A statement, if applicable, of the policy of the association with regard to any health or financial conditions upon which the association may require a purchaser to relinquish occupancy of a lot or unit;

(j) If a purchaser will be required to pay a periodic payment that is subject to change by the association for the purpose of expenses and liabilities of the association, a detailed current budget or projected budget of the expenses and liabilities of the association, the assumptions upon which the budget or expected budget is based, including the number of units or lots assumed under the budget to be paying such periodic payments, and if any secured debt, the effect on monthly payments if less than the assumed number of units or lots are disposed of to purchasers;

(k) A description of the insurance coverage or a statement that there is no insurance coverage provided for the benefit of the retirement subdivision or community;

(l) A statement describing the purchaser's cancellation rights; and

(m) Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

(2) The public-offering statement shall not be used for any promotional purposes before registration of the retirement subdivision or community and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the retirement subdivision or community lands or disposition thereof. No portion of the public-offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires or permits it.

(3) The agency may require the developer to alter or amend the proposed public-offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the plan of disposition or development of the retirement subdivision or community may be made after registration without notifying the agency and without making an appropriate amendment to the public-offering statement. A public-offering statement is not current unless all amendments are incorporated.

Source: Laws 1972, LB 1311, § 7; Laws 2003, LB 61, § 6.

76-1308 Statement of record; examination by agency.

Upon receipt of a statement of record in proper form, the agency shall forthwith initiate an examination to determine that:

(1) The developer can convey or cause to be conveyed the interest in a retirement subdivision or community offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) Such developer and managing agent have not, or if not an individual, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country and have not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(4) The public-offering statement and other requirements of sections 76-1301 to 76-1315 have been satisfied.

Source: Laws 1972, LB 1311, § 8; Laws 2003, LB 61, § 7.

76-1309 Effective date of registration; statement of record; suspension; when; hearing; when.

(1) Except as provided in subsection (3) of this section, the effective date of the registration of the retirement subdivision or community shall be the sixtieth day after the filing of the statement of record or such earlier date as the agency may determine, having due regard to the public interest and the protection of purchasers. If any amendment is filed prior to the effective date, the statement of record shall be deemed to have been filed when such amendment was filed.

(2) If it appears to the agency that the statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material aspect, the agency shall notify the developer prior to the date the registration would otherwise be effective. Such notification shall serve to suspend the effective date of the filing until the sixtieth day after the developer files such additional information as the agency shall require. If the developer fails to provide additional information as required by the agency within ninety days after receiving notice, the agency may deny the registration.

(3) Any developer, upon notice of suspension as identified in subsection (2) of this section or denial of registration, may within twenty days after the date of such notice file a request for hearing, and such hearing shall be held within forty-five days after the receipt of such request and in accordance with the rules and regulations promulgated by the agency.

Source: Laws 1972, LB 1311, § 9; Laws 2003, LB 61, § 8.

76-1310 Annual report; contents.

Within thirty days after each annual anniversary date of an order registering a retirement subdivision or community, the developer or managing agent of such lands shall file a report in the form prescribed by the rules of the agency. The report shall include current audited financial statements, a current public offering statement, any amendments to the statement of record, and information concerning any adjudication of bankruptcy against the developer, the association, the managing agent, or any principal owning more than ten percent of the interest in the retirement subdivision or community, developer, association, or managing agent at the time of filing.

Source: Laws 1972, LB 1311, § 10; Laws 2003, LB 61, § 9.

76-1311 Rules and regulations; investigations.

The agency shall adopt, amend, or repeal such rules and regulations as are necessary for the enforcement of the provisions of sections 76-1301 to 76-1315, in accordance with the Administrative Procedure Act, regarding the adoption of such rules and regulations. The agency shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the agency in investigating such real estate and the proposed sale thereof shall be

borne by the developer and the agency shall require a deposit sufficient to cover such expenses prior to incurring the same.

Source: Laws 1972, LB 1311, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

76-1312 Agency; powers.

(1) The agency may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate the provisions of sections 76-1301 to 76-1315 or any rule or order under the provisions of sections 76-1301 to 76-1315, or to aid in the enforcement of the provisions of sections 76-1301 to 76-1315 or in the prescribing of rules and forms under the provisions of sections 76-1301 to 76-1315; and

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the agency determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under sections 76-1301 to 76-1315, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

Source: Laws 1972, LB 1311, § 12.

76-1313 Developer or association; representatives on governing body; separate advisory committee; selection; powers.

(1) When the developer or association of a Nebraska retirement subdivision or community is incorporated or has a certificate of authority to transact business under Nebraska statutes as a nonprofit corporation and such corporation governs the management of only one retirement subdivision or community, then:

(a) The purchasers of lands or units in the retirement subdivision or community shall annually have the opportunity to democratically select and designate at least one individual to represent the purchasers and to act as a member of the governing body of the corporation. A representative shall have the right to be present at all meetings, including committee meetings and executive sessions, of the governing body, to speak and to express opinions, and to vote on any of the business to come before the governing body. A representative shall be deemed to have been duly installed and to have his or her term commence upon election;

(b) The election shall be conducted in total by the purchasers described in subdivision (1) (a) of this section pursuant to rules adopted by them in open session; and

(c) The developer and association shall in no way attempt to interfere with, influence, or abridge the right of the purchasers to organize and conduct the election or the results of the election.

(2) When the developer or association of a Nebraska retirement subdivision or community is incorporated or has a certificate of authority to transact business under Nebraska statutes as a nonprofit corporation and such corporation governs the management of more than one retirement subdivision or community, then it may comply with subsection (1) of this section or comply with the following requirements:

(a) The corporation shall establish for each of its retirement subdivisions and communities a separate advisory committee composed of at least two purchasers of lands or units in that retirement subdivision or community;

(b) The purchasers in each retirement subdivision and community shall annually have the opportunity to democratically select and designate at least two individuals to represent the purchasers on that retirement subdivision's or community's advisory committee;

(c) The election for each retirement subdivision and community shall be conducted entirely by the purchasers in that particular retirement subdivision or community pursuant to rules adopted by them in an open meeting;

(d) The developer and any association shall in no way attempt to interfere with, influence, or abridge the right of the purchasers to organize and conduct the election or the results of the election;

(e) The corporation's governing body shall meet formally with each advisory committee at least once annually to provide the advisory committee an opportunity to speak and express opinions and obtain information relating to the financial condition and operation of the retirement community or subdivision; and

(f) An advisory committee shall be provided upon written request minutes of the governing body's meetings and of any financial statements of the corporation.

Source: Laws 1972, LB 1311, § 13; Laws 1990, LB 978, § 2; Laws 2003, LB 61, § 10.

76-1314 Agency order; appeal.

An order of the agency which has become final may be appealed in accordance with the Administrative Procedure Act.

Source: Laws 1972, LB 1311, § 14; Laws 2003, LB 61, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

76-1315 Prohibited acts; violations; penalty; injunction; cease and desist order.

(1) A developer, agent, managing agent, or association, or any other person subject to sections 76-1301 to 76-1315, shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, or letter, or over any radio or television station, or in any other way, an advertisement,

announcement, or statement of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading. A developer, agent, managing agent, or association shall not file with the agency or make, publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which contains representations which are untrue, deceptive, or misleading.

(2) If the developer, agent, managing agent, association, or other person subject to sections 76-1301 to 76-1315 violates any provision thereof, any person or class of persons damaged or otherwise adversely affected by the violation shall have a claim for appropriate relief, which may be brought in the county where the cause of action or part of the cause of action arose. The court may render any contract entered into in this state in violation of sections 76-1301 to 76-1315 void and unenforceable and any money paid under such contract, together with interest at the legal rate for judgments, may be recovered from the date of such payment or such violation, whichever is later. The court may also award such person or class of persons reasonable attorney's fees.

(3) Any developer, agent, or managing agent subject to sections 76-1301 to 76-1315 who offers or disposes of a unit or lot in a retirement subdivision or community without having complied with such sections or who violates any provision of such sections shall be guilty of a Class I misdemeanor.

(4) Whenever, in the judgment of the agency, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of sections 76-1301 to 76-1315, the Attorney General may maintain an action in the name of the State of Nebraska in the district court of Lancaster County to abate and temporarily and permanently enjoin such acts and practices, to enforce compliance with the provisions of sections 76-1301 to 76-1315, or to seek a civil penalty of not more than ten thousand dollars for each violation, with each day of continued violation to constitute a separate offense. The plaintiff shall not be required to give any bond and court costs shall not be adjudged against the plaintiff.

(5) The director of the agency, with the consent of the agency, shall have the power to issue a cease and desist order upon determination that sections 76-1301 to 76-1315 have been or are about to be violated.

Source: Laws 1972, LB 1311, § 15; Laws 1977, LB 39, § 209; Laws 2003, LB 61, § 12.

ARTICLE 14

LANDLORD AND TENANT

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§ 76-1401

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(a) UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

76-1401 Act, how cited.

Sections 76-1401 to 76-1449 shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Source: Laws 1974, LB 293, § 1; Laws 1991, LB 324, § 1.

Procedures authorized by section 76-1401 et seq. provide a public housing tenant with all the required elements of due process prior to eviction, and a public housing tenant is not entitled to a prior grievance procedure where the eviction is

based upon the tenant's creation or maintenance of a threat to the health or safety of other tenants or public housing authority employees. *Housing Auth. of City of Lincoln v. Wolfe*, 212 Neb. 657, 324 N.W.2d 891 (1982).

76-1402 Purposes; rules of construction.

(1) The Uniform Residential Landlord and Tenant Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of the act are:

(a) To simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(b) To encourage landlord and tenant to maintain and improve the quality of housing; and

(c) To make uniform the law among those states which enact it.

Source: Laws 1974, LB 293, § 2; Laws 2001, LB 7, § 1.

76-1403 Supplementary principles of law applicable.

Unless displaced by the provisions of the Uniform Residential Landlord and Tenant Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the act's provisions.

Source: Laws 1974, LB 293, § 3; Laws 2001, LB 7, § 2.

76-1404 Construction against implicit repeal.

The Uniform Residential Landlord and Tenant Act being a general act intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Source: Laws 1974, LB 293, § 4; Laws 2001, LB 7, § 3.

76-1405 Remedies; administration and enforcement; duty to mitigate damages.

(1) The remedies provided by the Uniform Residential Landlord and Tenant Act shall be so administered that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) Any right or obligation declared by the Uniform Residential Landlord and Tenant Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Source: Laws 1974, LB 293, § 5; Laws 2001, LB 7, § 4.

76-1406 Settlement; authorized.

A claim or right arising under the Uniform Residential Landlord and Tenant Act or on a rental agreement may be settled by agreement.

Source: Laws 1974, LB 293, § 6; Laws 2001, LB 7, § 5.

76-1407 Jurisdiction; territorial application.

The Uniform Residential Landlord and Tenant Act applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

Source: Laws 1974, LB 293, § 7; Laws 2001, LB 7, § 6.

76-1408 Exclusions from application of sections.

Unless created to avoid the application of the Uniform Residential Landlord and Tenant Act, the following arrangements are not governed by the act:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his or her interest.

(3) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization.

(4) Transient occupancy in a hotel or motel.

(5) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

(6) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative.

(7) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

(8) A lease of improved or unimproved residential land for a term of five years or more.

Source: Laws 1974, LB 293, § 8; Laws 2001, LB 7, § 7.

76-1409 Courts; jurisdiction.

The district or county court of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by the Uniform Residential Landlord and Tenant Act or with respect to any claim arising from a transaction subject to the act for a dwelling unit located within its jurisdictional boundaries.

Source: Laws 1974, LB 293, § 9; Laws 1983, LB 447, § 89; Laws 1984, LB 13, § 84; Laws 2001, LB 7, § 8.

76-1410 Terms, defined.

Subject to additional definitions contained in the Uniform Residential Landlord and Tenant Act and unless the context otherwise requires:

(1) Action includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) Building and housing codes include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit. Minimum housing code shall be limited to those laws, resolutions, or ordi-

nances or regulations, or portions thereof, dealing specifically with health and minimum standards of fitness for habitation.

(3) Dwelling unit means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(4) Good faith means honesty in fact in the conduct of the transaction concerned.

(5) Landlord means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 76-1417.

(6) Organization includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) Owner means one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property, or (b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises; and the term includes a mortgagee in possession.

(8) Person includes an individual, limited liability company, or organization.

(9) Premises means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(10) Rent means all payments to be made to the landlord under the rental agreement.

(11) Rental agreement means all agreements, written or oral, between a landlord and tenant, and valid rules and regulations adopted under section 76-1422 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) Roomer means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

(13) Single-family residence means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(14) Tenant means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Source: Laws 1974, LB 293, § 10; Laws 1993, LB 121, § 484.

76-1411 Obligation of good faith.

Every duty under the Uniform Residential Landlord and Tenant Act and every act which must be performed as a condition precedent to the exercise of a

right or remedy under the act imposes an obligation of good faith in its performance or enforcement.

Source: Laws 1974, LB 293, § 11; Laws 2001, LB 7, § 9.

76-1412 Unconscionability.

(1) If the court, as a matter of law, finds that a rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Source: Laws 1974, LB 293, § 12.

76-1413 Notice.

(1) A person has notice of a fact if (a) he has actual knowledge of it, (b) he has received a notice or notification of it, or (c) from all facts and circumstances known to him at the time in question he has reason to know that it exists. A person knows or has knowledge of a fact if he has actual knowledge of it.

(2) A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when (a) it comes to his attention, (b) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication, or (c) in the case of the tenant, it is delivered in hand to the tenant or mailed to him at the place held out by him as the place for receipt of the communication, or in the absence of such designation, to his last-known place of residence.

(3) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

Source: Laws 1974, LB 293, § 13.

76-1414 Terms and conditions of rental agreement.

(1) The landlord and tenant may include in a rental agreement terms and conditions not prohibited by the Uniform Residential Landlord and Tenant Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

(3) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of

each month. Unless otherwise agreed, rent shall be uniformly apportionable from day to day.

(4) Unless the rental agreement fixes a definite term, the tenancy shall be week to week in case of a roomer who pays weekly rent, and in all other cases month to month.

Source: Laws 1974, LB 293, § 14; Laws 2001, LB 7, § 10.

Ambiguities in a lease should be construed against the person preparing the lease. *D & R Realty v. Bender*, 230 Neb. 301, 431 N.W.2d 920 (1988).

Where a substantial portion of leased premises is destroyed or rendered incapable of being used by a lessee, the lessee is

entitled to an apportionment of the rental to be paid, in the absence of an expressed assumption of the risk of such destruction. *D & R Realty v. Bender*, 230 Neb. 301, 431 N.W.2d 920 (1988).

76-1415 Prohibited provisions in rental agreements.

(1) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under the Uniform Residential Landlord and Tenant Act;

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(c) Agrees to pay the landlord’s or tenant’s attorney’s fees; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising due to active and actionable negligence of the landlord or to indemnify the landlord for that liability arising due to active and actionable negligence or the costs connected therewith.

(2) A provision prohibited by subsection (1) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him or her to be prohibited, the tenant may recover actual damages sustained by him or her and reasonable attorney’s fees.

Source: Laws 1974, LB 293, § 15; Laws 2001, LB 7, § 11.

The Uniform Residential Landlord and Tenant Act applies only to residential leases and does not prohibit exculpatory clauses or limitations on the landlord’s liability in commercial

leases. *Bedrosky v. Hiner*, 230 Neb. 200, 430 N.W.2d 535 (1988).

76-1416 Security deposits; prepaid rent.

(1) A landlord may not demand or receive security, however denominated, in an amount or value in excess of one month’s periodic rent, except that a pet deposit not in excess of one-fourth of one month’s periodic rent may be demanded or received when appropriate, but this subsection shall not be applicable to housing agencies organized or existing under the Nebraska Housing Agency Act.

(2) Upon termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied to the payment of rent and the amount of damages which the landlord has suffered by reason of the tenant’s noncompliance with the rental agreement or section 76-1421. The balance, if any, and a written itemization shall be delivered or mailed to the tenant within fourteen days after demand and designation of the location where payment may be made or mailed.

(3) If the landlord fails to comply with subsection (2) of this section, the tenant may recover the property and money due him or her and reasonable attorney’s fees.

(4) This section does not preclude the landlord or tenant from recovering other damages to which he or she may be entitled under the Uniform Residential Landlord and Tenant Act.

(5) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

Source: Laws 1974, LB 293, § 16; Laws 1999, LB 105, § 99; Laws 2001, LB 7, § 12.

Cross References

Nebraska Housing Agency Act, see section 71-1572.

The 14-day limitation language in subsection (2) of this section refers to the time allowed the landlord to return the deposit, not the time in which a demand must be made by the vacating tenant. *Hilliard v. Robertson*, 253 Neb. 232, 570 N.W.2d 180 (1997).

Under subsection (3) of this section, in order to recover a deposit plus an attorney fee, tenant must establish that landlord did not comply with a demand for return of the security deposit. *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989).

76-1417 Disclosure.

(1) The landlord or any person authorized to enter into a rental agreement on his or her behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) The person authorized to manage the premises; and

(b) An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

(2) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) of this section becomes an agent of each person who is a landlord for the purpose of:

(a) Service of process and receiving and receipting for notices and demands; and

(b) Performing the obligations of the landlord under the Uniform Residential Landlord and Tenant Act and under the rental agreement and expending or making available for the purpose all rent collected from the premises.

Source: Laws 1974, LB 293, § 17; Laws 2001, LB 7, § 13.

76-1418 Landlord to supply possession of dwelling unit.

At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and section 76-1419. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in subsection (3) of section 76-1437. If the landlord makes reasonable efforts to obtain possession of the premises, he shall not be liable for an action under this section.

Source: Laws 1974, LB 293, § 18.

76-1419 Landlord to maintain fit premises.

(1) The landlord shall:

(a) Substantially comply, after written or actual notice, with the requirements of the applicable minimum housing codes materially affecting health and safety;

(b) Make all repairs and do whatever is necessary, after written or actual notice, to put and keep the premises in a fit and habitable condition;

(c) Keep all common areas of the premises in a clean and safe condition;

(d) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him or her;

(e) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal from the appropriate receptacle; and

(f) Supply running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If there exists a minimum housing code applicable to the premises, the landlord's maximum duty under this section shall be determined by subdivision (1)(a) of this section. The obligations imposed by this section are not intended to change existing tort law in the state.

(2) The landlord and tenant of a single-family residence may agree that the tenant perform the landlord's duties specified in subdivisions (1)(e) and (1)(f) of this section and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is in writing, for good consideration, entered into in good faith and not for the purpose of evading the obligations of the landlord.

(3) The landlord and tenant of a dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration; and

(b) The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(4) Notwithstanding any provision of the Uniform Residential Landlord and Tenant Act, a landlord may employ a tenant to perform the obligations of the landlord.

Source: Laws 1974, LB 293, § 19; Laws 2001, LB 7, § 14.

This section of the Uniform Residential Landlord Tenant Act does not change existing tort law. *Tighe v. Cedar Lawn, Inc.*, 11 Neb. App. 250, 649 N.W.2d 520 (2002).

76-1420 Limitation of liability.

(1) Unless otherwise agreed, a landlord, who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and the Uniform Residential Landlord and Tenant Act as to events occurring subsequent to written notice to the tenant of the conveyance, but the landlord remains liable

to the tenant for any property and money to which the tenant is entitled under section 76-1416, except that assignment of any security deposits or prepaid rents to a bona fide purchaser with written notice to the tenant shall serve to relieve the conveying landlord of any further liability under section 76-1416.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and the Uniform Residential Landlord and Tenant Act as to events occurring after written notice to the tenant of the termination of his or her management.

Source: Laws 1974, LB 293, § 20; Laws 2001, LB 7, § 15.

76-1421 Tenant to maintain dwelling unit.

The tenant shall:

(1) Comply with all obligations primarily imposed upon tenants by applicable minimum standards of building and housing codes materially affecting health or safety;

(2) Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit, and upon termination of the tenancy place the dwelling unit in as clean condition, excepting ordinary wear and tear, as when the tenancy commenced;

(3) Dispose from his dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner;

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances including elevators in the premises;

(6) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so;

(7) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(8) Abide by all bylaws, covenants, rules or regulations of any applicable condominium regime, cooperative housing agreement, or neighborhood association not inconsistent with landlord's rights or duties.

Source: Laws 1974, LB 293, § 21.

76-1422 Rules and regulations.

A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. It is enforceable as provided in section 76-1431 against the tenant only if:

(1) Its purpose is to promote the appearance, convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) It is reasonably related to the purpose for which it is adopted;

(3) It applies to all tenants in the premises in a fair manner;

(4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(5) It is not for the purpose of evading the obligations of the landlord; and

(6) The tenant has notice of it at the time he enters into the rental agreement.

A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of his bargain.

Source: Laws 1974, LB 293, § 22.

76-1423 Access.

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least one day's notice of his intent to enter and enter only at reasonable times.

(4) The landlord has no other right of access except by court order, and as permitted by subsection (2) of section 76-1432, or if the tenant has abandoned or surrendered the premises.

Source: Laws 1974, LB 293, § 23.

76-1424 Tenant to use and occupy.

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven days no later than the first day of the extended absence.

Source: Laws 1974, LB 293, § 24.

76-1425 Noncompliance by landlord.

(1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 76-1419 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least fourteen

days' written notice specifying the breach and the date of termination of the rental agreement. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his or her family, or other person on the premises with his or her consent.

(2) Except as provided in the Uniform Residential Landlord and Tenant Act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 76-1419. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees. If the landlord's noncompliance is caused by conditions or circumstances beyond his or her control, the tenant may not recover consequential damages, but retains remedies provided in section 76-1427.

(3) The remedy provided in subsection (2) of this section is in addition to any right of the tenant arising under subsection (1) of this section.

(4) If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section 76-1416.

Source: Laws 1974, LB 293, § 25; Laws 2001, LB 7, § 16.

76-1426 Failure to deliver possession.

If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section 76-1418, rent abates until possession is delivered and the tenant shall:

(1) Upon at least five days' written notice to the landlord terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

(2) Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against any person wrongfully in possession or wrongfully withholding possession and recover the damages sustained by him.

If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than three months' periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable attorney's fees.

Source: Laws 1974, LB 293, § 26.

76-1427 Wrongful failure to supply heat, water, hot water, or essential services.

(1) If contrary to the rental agreement or section 76-1419 the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) Procure reasonable amounts of hot water, running water, heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

In addition to the remedy provided in subdivisions (a) and (c), if the failure to supply is deliberate, the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under this subsection reasonable attorney's fees.

(2) If the tenant proceeds under this section, he may not proceed under section 76-1425 as to that breach.

(3) The rights under this section do not arise until the tenant has given written notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his consent. This section is not intended to cover circumstances beyond the landlord's control.

Source: Laws 1974, LB 293, § 27.

76-1428 Landlord's noncompliance as defense to action for possession.

(1) In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for any amount which he or she may recover under the rental agreement or the Uniform Residential Landlord and Tenant Act. In that event, the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover reasonable attorney's fees.

(2) In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) of this section but the tenant is not required to pay any rent into court.

Source: Laws 1974, LB 293, § 28; Laws 2001, LB 7, § 17.

76-1429 Fire or casualty damage.

(1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) Immediately vacate the premises and notify the landlord in writing within fourteen days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) If the rental agreement is terminated the landlord shall return all prepaid rent and security recoverable under section 76-1416. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty. Notwithstanding the provisions of this section, the tenant is responsible for damage caused by his negligence.

Source: Laws 1974, LB 293, § 29.

76-1430 Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.

If the landlord unlawfully removes or excludes the tenant from the premises or willfully and wrongfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent as liquidated damages, and a reasonable attorney's fee. If the rental agreement is terminated the landlord shall return all prepaid rent and security recoverable under section 76-1416.

Source: Laws 1974, LB 293, § 30.

76-1431 Noncompliance; failure to pay rent; effect.

(1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a noncompliance with section 76-1421 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement or any separate agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and his or her intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) Except as provided in the Uniform Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or section 76-1421. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

Source: Laws 1974, LB 293, § 31; Laws 2001, LB 7, § 18.

76-1432 Remedies for absence, nonuse, and abandonment.

(1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days as required in section 76-1424 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(2) During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall take immediate possession and shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of

the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. Total absence from the premises without notice to landlord for one full rental period or thirty days, whichever is less, shall constitute abandonment.

Source: Laws 1974, LB 293, § 32.

Abandonment of leased premises occurs when a tenant, with the intention to terminate contractual rights to exclusive possession or control of leased premises, voluntarily relinquishes or vacates the leased premises. *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989).

In the absence of a tenant's explicit abandonment of residential premises, legitimation of a landlord's self-help recovery of the leased premises during the first thirty days of the tenant's

absence may depend on unequivocal but circumstantial proof of the tenant's abandonment. *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989).

Subsection (3) of this section does not abrogate or displace common law concerning abandonment of real estate leased for residential purposes. *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989).

76-1433 Waiver of landlord's right to terminate.

Acceptance of rent with knowledge of a default by tenant or acceptance of performance by the tenant that varies from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord constitutes a waiver of his right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Source: Laws 1974, LB 293, § 33.

76-1434 Landlord liens; distraint of property; prohibited.

(1) A lien or security interest on behalf of the landlord in the tenant's household goods is not enforceable.

(2) Distraint for rent is abolished.

Source: Laws 1974, LB 293, § 34.

76-1435 Remedy for termination.

If the rental agreement is terminated, the landlord is entitled to possession and may have a claim for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in subsection (3) of section 76-1431.

Source: Laws 1974, LB 293, § 35.

76-1436 Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in the Uniform Residential Landlord and Tenant Act.

Source: Laws 1974, LB 293, § 36; Laws 2001, LB 7, § 19.

76-1437 Periodic tenancy; holdover remedies.

(1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven days prior to the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

(3) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover an amount not more than three months' periodic rent or threefold the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, subsection (4) of section 76-1414 applies.

Source: Laws 1974, LB 293, § 37.

An action to recover possession of real property from a tenant who remains in possession without the landlord's consent after a lease has expired or been terminated under this section is an action for the possession of real property and is therefore subject to the 10-year statute of limitations for the possession of real property as provided in section 25-202. A cause of action to

recover possession of real property from a tenant under this section accrues at the point the lease expires or is terminated and the tenant remains in possession of the property without the consent of the landlord. *Blankenau v. Landess*, 261 Neb. 906, 626 N.W.2d 588 (2001).

76-1438 Landlord and tenant remedies for abuse of access or entry.

(1) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees.

(2) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

Source: Laws 1974, LB 293, § 38.

76-1439 Retaliatory conduct prohibited.

(1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

(a) The tenant has complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety; or

(b) The tenant has organized or become a member of a tenants' union or similar organization.

(2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in section 76-1430 and has a defense in action against him for possession. Nothing in this section shall be construed as prohibiting reasonable rent increases or changes in services notwithstanding the occurrence of acts specified in subsection (1).

(3) Notwithstanding subsections (1) and (2), a landlord may bring an action for possession if:

(a) The violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent;

(b) The tenant is in default in rent; or

(c) Compliance with the applicable minimum building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

The maintenance of the action does not release the landlord from liability under subsection (2) of section 76-1425.

Source: Laws 1974, LB 293, § 39.

76-1440 Action for possession.

An action for possession of any premises subject to the Uniform Residential Landlord and Tenant Act shall be commenced in the manner described by sections 76-1440 to 76-1447.

Source: Laws 1974, LB 293, § 40; Laws 1991, LB 324, § 2.

76-1441 Complaint for restitution; filing; contents.

The person seeking possession shall file a complaint for restitution with the clerk of the district or county court. The complaint shall contain (a) the facts, with particularity, on which he or she seeks to recover; (b) a reasonably accurate description of the premises; and (c) the requisite compliance with the notice provisions of the Uniform Residential Landlord and Tenant Act. The complaint may notify the tenant that personal property remains on the premises and that it may be disposed of pursuant to section 69-2308. The complaint may also contain other causes of action relating to the tenancy, but such causes of action shall be answered and tried separately, if requested by either party in writing.

Source: Laws 1974, LB 293, § 41; Laws 1984, LB 13, § 85; Laws 1995, LB 175, § 2; Laws 2002, LB 876, § 81.

76-1442 Summons; contents; issuance; service; when; affidavit of service.

The summons shall be issued and directed, with a copy of the complaint attached thereto, and shall state the cause of the complaint, the time and place of trial of the action for possession, answer day for other causes of action, and notice that if the defendant fails to appear judgment shall be entered against him or her. The summons may be served and returned as in other cases or by any person, except that the summons shall be served within three days, excluding nonjudicial days, from the date of issuance and shall be returnable within five days, excluding nonjudicial days, from the date of issuance. The person making the service shall file with the court an affidavit stating with particularity the manner in which he or she made the service. If diligent efforts have been made to serve the summons in the manner provided in sections 25-505.01 to 25-516.01 but such efforts were unsuccessful, the summons may be served in the manner provided in section 76-1442.01.

Source: Laws 1974, LB 293, § 42; Laws 1976, LB 858, § 1; Laws 1991, LB 324, § 3; Laws 1995, LB 52, § 1; Laws 2002, LB 876, § 82; Laws 2003, LB 760, § 18.

76-1442.01 Summons; alternative method of service; affidavit; contents.

When authorized by section 76-1442, service of a summons issued under such section may be made by leaving a copy of the summons at the defendant's last-known address and mailing a copy by first-class mail to such address. The

plaintiff shall file an affidavit with the court showing that an attempt was made to serve the summons in the manner provided in sections 25-505.01 to 25-516.01, the reasons why such service was unsuccessful, and that service was made by posting the summons at the last-known address of the defendant and mailing a copy by first-class mail to the defendant.

Source: Laws 1991, LB 324, § 4.

76-1443 Continuance; when.

No continuance shall be granted unless extraordinary cause be shown to the court, and then not unless the defendant applying therefor shall deposit with the clerk of the court payment of any rents that have accrued, or give an undertaking with sufficient surety therefor, and, in addition, deposit with the clerk such rental payments as accrue during the pendency of the suit.

Source: Laws 1974, LB 293, § 43.

76-1444 Default of defendant.

If the defendant shall not appear in response to the summons, and it shall have been properly served, the court shall try the cause as though he were present.

Source: Laws 1974, LB 293, § 44.

76-1445 Defendant may appear and answer.

On or before the day fixed for his appearance, the defendant may appear and answer and assert any legal or equitable defense, setoff, or counterclaim.

Source: Laws 1974, LB 293, § 45.

76-1446 Trial; judgment; limitation; writ of restitution; issuance.

Trial of the action for possession shall be held not less than ten nor more than fourteen days after the issuance of the summons. The action shall be tried by the court without a jury. If the plaintiff serves the summons in the manner provided in section 76-1442.01, the action shall proceed as other actions for possession except that a money judgment shall not be granted for the plaintiff. If judgment is rendered against the defendant for the restitution of the premises, the court shall declare the forfeiture of the rental agreement, and shall, at the request of the plaintiff or his or her attorney, issue a writ of restitution, directing the constable or sheriff to restore possession of the premises to the plaintiff on a specified date not more than ten days after issuance of the writ of restitution. The plaintiff shall comply with the Disposition of Personal Property Landlord and Tenant Act in the removal of personal property remaining on the premises at the time possession of the premises is restored.

Source: Laws 1974, LB 293, § 46; Laws 1976, LB 858, § 2; Laws 1995, LB 52, § 2; Laws 1995, LB 175, § 3.

Cross References

Disposition of Personal Property Landlord and Tenant Act, see section 69-2301.

76-1447 Appeal; effect.

If either party feels aggrieved by the judgment, he may appeal as in other civil actions. An appeal by the defendant shall stay the execution of any writ of

restitution, so long as the defendant deposits with the clerk of the district court the amount of judgment and costs, or gives an appeal bond with surety therefor, and thereafter pays into court, on a monthly basis, an amount equal to the monthly rent called for by the rental agreement at the time the complaint was filed.

Source: Laws 1974, LB 293, § 47.

76-1448 Act; applicability.

The Uniform Residential Landlord and Tenant Act applies to rental agreements entered into or extended or renewed after July 1, 1975.

Source: Laws 1974, LB 293, § 49; Laws 2001, LB 7, § 20.

76-1449 Transactions entered into before effective date; effect.

Transactions entered into before July 12, 1974, and not extended or renewed after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted prior to July 12, 1974.

Source: Laws 1974, LB 293, § 50.

(b) MOBILE HOME LANDLORD AND TENANT ACT

76-1450 Act, how cited.

Sections 76-1450 to 76-14,111 shall be known and may be cited as the Mobile Home Landlord and Tenant Act.

Source: Laws 1984, LB 916, § 1.

76-1451 Purposes; construction.

(1) The Mobile Home Landlord and Tenant Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of the Mobile Home Landlord and Tenant Act are:

(a) To simplify, clarify, and establish the law governing the rental of mobile home spaces and the rights and obligations of landlord and tenant; and

(b) To encourage landlord and tenant to maintain and improve the quality of mobile home living.

Source: Laws 1984, LB 916, § 2.

76-1452 Supplementary principles of law applicable.

Unless displaced by the provisions of the Mobile Home Landlord and Tenant Act, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement the provisions of the act.

Source: Laws 1984, LB 916, § 3.

76-1453 Remedies; administration and enforcement; duty to mitigate damages.

(1) The remedies provided by the Mobile Home Landlord and Tenant Act shall be so administered that the aggrieved party may recover appropriate damages. The aggrieved party shall have a duty to mitigate damages.

(2) Any right or obligation declared by the Mobile Home Landlord and Tenant Act shall be enforceable by action unless the provision declaring it specifies a different and limited effect.

Source: Laws 1984, LB 916, § 4.

76-1454 Settlement of claim or right.

A claim or right arising under the Mobile Home Landlord and Tenant Act or under a rental agreement may be settled by agreement.

Source: Laws 1984, LB 916, § 5.

76-1455 Public housing; not subject to act.

The Mobile Home Landlord and Tenant Act shall not apply to an occupancy in or operation of public housing as authorized, provided, or conducted pursuant to any federal law or regulation with which the act might conflict.

Source: Laws 1984, LB 916, § 6.

76-1456 Jurisdiction and service of process.

The district or county court of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by the Mobile Home Landlord and Tenant Act or with respect to any claim arising from a transaction subject to the act for a dwelling unit located within its jurisdictional boundaries. Service outside this state may be made in the manner provided in section 25-540.

Source: Laws 1984, LB 916, § 7; Laws 1986, LB 750, § 4.

76-1457 Definitions, where found.

As used in the Mobile Home Landlord and Tenant Act, unless the context otherwise requires, the definitions found in sections 76-1458 to 76-1471 shall apply.

Source: Laws 1984, LB 916, § 8.

76-1458 Business, defined.

Business shall mean a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more persons having a joint or common interest, or any other legal or commercial entity which is a landlord, owner, manager, or deemed to be an agent pursuant to section 76-1480.

Source: Laws 1984, LB 916, § 9; Laws 1993, LB 121, § 485.

76-1459 Dwelling unit, defined.

Dwelling unit shall mean a mobile home or the part of a mobile home that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household but shall not include any real property used to accommodate a mobile home.

Source: Laws 1984, LB 916, § 10.

76-1460 Good faith, defined.

Good faith shall mean honesty in fact in the conduct of the transaction concerned.

Source: Laws 1984, LB 916, § 11.

76-1461 Housing code, defined.

Housing code shall include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any mobile home park, mobile home space, or dwelling unit. Minimum housing code shall be limited to those laws, resolutions, ordinances, or regulations, or portions thereof, dealing specifically with health and minimum standards of fitness for habitation.

Source: Laws 1984, LB 916, § 12.

76-1462 Landlord, defined.

Landlord shall mean the mobile home park owner and any agent authorized to act on the owner's behalf in matters relating to tenancy in the park and shall include the manager of a mobile home park who fails to disclose as required by sections 76-1479 to 76-1482.

Source: Laws 1984, LB 916, § 13.

76-1463 Mobile home, defined.

Mobile home shall mean a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit, and shall include a manufactured home as defined in section 71-4603.

Source: Laws 1984, LB 916, § 14; Laws 1985, LB 313, § 25.

76-1464 Mobile home park, defined.

Mobile home park shall mean a parcel or contiguous parcels of land which have been so designated and improved that the parcel or parcels contain two or more mobile home lots available to the general public for the placement thereon of mobile homes for occupancy. The term mobile home park shall not be construed to include mobile homes, buildings, tents, or other structures temporarily maintained by any individual, corporation, company, or other entity on its own premises and used exclusively to house its own labor force, and shall not include real property which is rented or held out for rent for seasonal recreational purposes only and which is not intended for year-round occupancy.

Source: Laws 1984, LB 916, § 15.

76-1465 Mobile home space, defined.

Mobile home space shall mean a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

Source: Laws 1984, LB 916, § 16.

76-1466 Owner, defined.

Owner shall mean one or more persons, jointly or severally, in whom are vested (a) all or a part of the legal title to property or (b) all or part of the beneficial ownership and a right to present use and enjoyment of a mobile home park, and shall include a mortgagee in possession.

Source: Laws 1984, LB 916, § 17.

76-1467 Rent, defined.

Rent shall mean a payment to be made to a landlord pursuant to a rental agreement.

Source: Laws 1984, LB 916, § 18.

76-1468 Rental agreement, defined.

Rental agreement shall mean any agreement, written or implied by law, and any rules and regulations adopted pursuant to section 76-1494 which constitute the terms and conditions concerning the use and occupancy of a mobile home space.

Source: Laws 1984, LB 916, § 19.

76-1469 Rental deposit, defined.

Rental deposit shall mean a deposit of money to secure performance of a mobile home space rental agreement other than a deposit which is exclusively an advance payment of rent.

Source: Laws 1984, LB 916, § 20.

76-1470 Sublessee, defined.

Sublessee shall mean any person who rents or leases a mobile home from a tenant, but shall not include a person who rents or leases a space in a mobile home park. A tenant-sublessee relationship shall be governed by the Uniform Residential Landlord and Tenant Act.

Source: Laws 1984, LB 916, § 21.

Cross References

Uniform Residential Landlord and Tenant Act, see section 76-1401.

76-1471 Tenant, defined.

Tenant shall mean an owner of a mobile home who leases or rents space in a mobile home park, but shall not include a person who rents or leases a mobile home.

Source: Laws 1984, LB 916, § 22.

76-1472 Obligation of good faith.

Every duty under the Mobile Home Landlord and Tenant Act and every act which must be performed as a condition precedent to the exercise of a right or remedy under the act shall impose an obligation of good faith in its performance or enforcement.

Source: Laws 1984, LB 916, § 23.

76-1473 Unconscionability.

(1) If a court, as a matter of law, finds that a rental agreement or any provision of a rental agreement was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If a court, as a matter of law, finds that a settlement in which a party waives or agrees to forego a claim or right under the Mobile Home Landlord and Tenant Act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid any unconscionable result.

(3) If unconscionability is put into issue by a party or by a court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Source: Laws 1984, LB 916, § 24.

76-1474 Notice.

(1) A person shall be deemed to have notice of a fact if the person (a) has actual knowledge of it, (b) has received a notice or notification of it, or (c) from all facts and circumstances known to him or her at the time in question has reason to know that it exists.

(2) A person notifies or gives a notice or notification to another by taking steps reasonably calculated to inform the other whether or not the other actually comes to know of it. A person receives a notice or notification when (a) it comes to the person's attention, (b) in the case of the landlord, it is delivered in hand or mailed by United States mail to the landlord's place of business at which the rental agreement was made or at any place held out by the landlord as the place for receipt of a communication or delivered to any individual who is deemed to be an agent pursuant to section 76-1480, or (c) in the case of the tenant, it is delivered in hand to the tenant or mailed by United States mail to the tenant at the place held out by the tenant as the place for receipt of a communication or, in the absence of such designation, to the tenant's last-known place of residence.

(3) Notice, knowledge, or a notice or notification received by an organization shall be effective for a particular transaction from the time it is brought to the attention of the individual conducting the transaction and in any event from the time it would have been brought to the person's attention if the organization had exercised reasonable diligence.

Source: Laws 1984, LB 916, § 25.

76-1475 Terms and conditions of rental agreement.

(1) A landlord and tenant may include in a rental agreement terms and conditions not prohibited by the Mobile Home Landlord and Tenant Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) A rental agreement may require a tenant to maintain liability insurance which names the landlord as an insured with respect to the mobile home space rented by the tenant. For purposes of this subsection, liability insurance shall mean insurance that protects the landlord from negligence on the part of the tenant and any invitees or guests of the tenant.

(3) The tenant shall pay as rent the amount stated in the rental agreement. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the mobile home space.

(4) Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, periodic rent shall be payable at the beginning of any term of one month or less and thereafter in equal monthly installments and rent shall be uniformly apportionable from day to day.

(5) Rental agreements shall be from month to month unless otherwise specified in writing. A rental agreement may be canceled by at least thirty days' written notice given by either party. A landlord may not cancel a rental agreement solely for the purpose of making the tenant's mobile home space available for another mobile home unless otherwise agreed in writing. If the written rental agreement requires the removal by the tenant of the mobile home at the expiration of the lease period at the landlord's option, the landlord shall give the tenant thirty days' notice before exercising such option.

Source: Laws 1984, LB 916, § 26.

76-1476 Mobile home space improvements; ownership; duty of tenant.

Unless otherwise agreed in writing between the landlord and tenant, any improvement, other than a natural lawn, purchased and installed by a tenant on a mobile home space shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy. A tenant shall leave the mobile home space in substantially the same or better condition than upon taking possession.

Source: Laws 1984, LB 916, § 27.

76-1477 Prohibited provisions in oral rental agreements.

(1) Unless otherwise agreed in writing between the landlord and tenant, an oral rental agreement may not provide that the tenant or landlord:

(a) Agrees to waive or to forego rights or remedies under the Mobile Home Landlord and Tenant Act;

(b) Agrees to pay the other party's attorney's fees;

(c) Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the related costs; or

(d) Agrees to a designated agent for the sale of the tenant's mobile home.

(2) A provision prohibited by subsection (1) of this section included in a rental agreement shall be unenforceable. If a landlord or tenant knowingly uses

a rental agreement containing provisions known to be prohibited, the other party may recover actual damages sustained, reasonable attorney's fees, and court costs.

Source: Laws 1984, LB 916, § 28.

76-1478 Receipt of rent free of obligation; prohibited.

A rental agreement, assignment, conveyance, trust deed, or security instrument may not permit the receipt of rent free of the obligation to comply with section 76-1492.

Source: Laws 1984, LB 916, § 29.

76-1479 Disclosure.

A landlord may offer a tenant the opportunity to sign a written rental agreement for a mobile home space. The landlord or any person authorized to enter into a rental agreement on his or her behalf shall disclose to the tenant in writing at or before entering into the rental agreement the name and address of:

- (1) The person authorized to manage the mobile home park; and
- (2) The owner of the mobile home park or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

The information required to be furnished by this section shall be kept current and refurbished to the tenant at the tenant's request. Upon termination of a landlord's interest in a mobile home park, the provisions of this section relating to disclosure and any written rental agreements in effect at the time of the termination shall extend to and be enforceable against any successor landlord, owner, or manager.

Source: Laws 1984, LB 916, § 30.

76-1480 Failure to disclose; effect.

A person who fails to disclose as required by section 76-1479 shall be deemed an agent of the landlord for the purpose of:

- (1) Service of process and receiving and receipting for notices and demands; and
- (2) Performing the obligations of the landlord under the Mobile Home Landlord and Tenant Act and rental agreement.

Source: Laws 1984, LB 916, § 31.

76-1481 Written rental agreement; delivery.

If there is a written rental agreement, the landlord shall tender and deliver a signed copy of the rental agreement to the tenant and the tenant shall sign and deliver to the landlord one fully executed copy of the rental agreement. Failure to comply with this section shall be deemed a material noncompliance with the rental agreement by the landlord or the tenant, as the case may be.

Source: Laws 1984, LB 916, § 32.

76-1482 Explanation of utility charges and services; required; when.

The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall provide a written explanation of utility rates, charges, and services to the prospective tenant before the rental agreement is signed unless the utility charges are to be paid by the tenant directly to the utility company.

Source: Laws 1984, LB 916, § 33.

76-1483 Rental deposit; limitation.

A landlord shall not demand or receive as rental deposit an amount or value in excess of one month's periodic rent.

Source: Laws 1984, LB 916, § 34.

76-1484 Rental deposit; how handled.

All rental deposits shall be held by the landlord for the tenant. Rental deposits may be held in a trust account, which may be a common trust account and which may be an interest-bearing account. Any interest earned on a rental deposit shall be the property of the landlord.

Source: Laws 1984, LB 916, § 35.

76-1485 Rental deposit; return; withholdings.

(1) A landlord shall, within thirty days from the date of termination of the tenancy or receipt in writing of the tenant's mailing address or delivery instructions, whichever is later, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding all or any portion of the rental deposit. The landlord may withhold from the rental deposit only such amounts as are reasonable:

(a) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement; and

(b) To restore the mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

(2) In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Source: Laws 1984, LB 916, § 36.

76-1486 Rental deposit; failure to provide written statement; effect; reversion to landlord; when.

A landlord who fails to provide a written statement as required by section 76-1485 shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided to the landlord within one year from the termination of the tenancy, the rental deposit shall revert to the landlord and the tenant shall be deemed to have forfeited all rights to the rental deposit.

Source: Laws 1984, LB 916, § 37.

76-1487 Termination of landlord's interest in park; deposit; how treated.

Upon termination of a landlord's interest in a mobile home park, the landlord or his or her agent shall, within a reasonable time, (1) transfer the rental

deposit, or any remainder after any lawful deductions, to the landlord's successor in interest and notify the tenant in writing of the transfer and of the transferee's name and address or (2) return the deposit, or any remainder after any lawful deductions, to the tenant. The notice shall state the amount of rental deposit being transferred or assumed and shall be given by mail or personal service.

Source: Laws 1984, LB 916, § 38.

76-1488 Landlord's successor in interest; rights and obligations.

Upon the termination of a landlord's interest in a mobile home park and compliance with section 76-1487, the landlord shall be relieved of any further liability with respect to the rental deposit. The landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the amount stated in the notice required by subdivision (1) of section 76-1487 within twenty days after receipt of the notice, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice.

Source: Laws 1984, LB 916, § 39.

76-1489 Rental deposit; bad faith retention; damages.

The bad faith retention of all or any portion of a rental deposit by a landlord in violation of sections 76-1483 to 76-1488 shall subject the landlord to liquidated damages in an amount not to exceed one and one-half months' rent and reasonable attorney's fees.

Source: Laws 1984, LB 916, § 40.

76-1490 Rent increase; written notice.

Each tenant shall be notified in writing of any rent increase by actual notice or by United States mail at least sixty days prior to the effective date of the increase.

Source: Laws 1984, LB 916, § 41.

76-1491 Landlord deliver possession of mobile home space.

At the commencement of the term of tenancy, the landlord shall deliver possession of the mobile home space to the tenant in compliance with the rental agreement and section 76-1492. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in section 76-14,105.

Source: Laws 1984, LB 916, § 42.

76-1492 Landlord; duties; powers.

(1) A landlord shall:

(a) Make all repairs and do whatever is necessary to put and keep the mobile home park in a fit and habitable condition;

(b) Keep all common areas of the mobile home park in a clean and safe condition;

(c) Maintain in good and safe working order and condition all facilities supplied or required to be supplied by the landlord;

(d) Provide for the removal of garbage, rubbish, and other waste from the mobile home park; and

(e) Furnish outlets for provided utilities.

(2) A landlord shall not impose any condition connected with the rental or occupancy of a mobile home space which requires the tenant's exclusive use of a seller of fuel, furnishings, goods, services, or mobile homes unless such condition is necessary to protect the health, safety, aesthetic value, or welfare of mobile home tenants in the park. A landlord may impose reasonable requirements designed to standardize methods of utility connection and hookup. If any such conditions are imposed which result in charges for the goods or services, the charges shall not exceed the actual cost incurred in providing the tenant with the goods or services.

Source: Laws 1984, LB 916, § 43.

76-1493 Tenant; duties.

A tenant shall maintain his or her mobile home space in as good a condition as when the tenant took possession and shall:

(1) Comply with all obligations primarily imposed upon tenants by applicable provisions of city, county, and state housing codes materially affecting health and safety;

(2) Keep the mobile home space that the tenant occupies and uses reasonably clean and safe;

(3) Dispose from the tenant's mobile home space all rubbish, garbage, and other waste in a clean and safe manner;

(4) Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the mobile home park or knowingly permit any guest or invitee to do so; and

(5) Conduct himself or herself and require any guests or invitees to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the mobile home park.

Source: Laws 1984, LB 916, § 44.

76-1494 Landlord; rules and regulations.

A landlord may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the mobile home park. The rules and regulations shall be enforceable against the tenant only if they are written and if:

(1) Their purpose is to promote the convenience, safety, or welfare of the tenants in the mobile home park, preserve the landlord's property from abuse, make a fair distribution of services and facilities held out for the tenants generally, or facilitate reasonable mobile home park management;

(2) They are reasonably related to the purpose for which adopted;

(3) They apply to all tenants in the mobile home park in a fair manner;

(4) They are sufficiently explicit in prohibition, direction, or limitation of the tenant's conduct to fairly inform him or her of what must or must not be done to comply;

(5) They are not for the purpose of evading the obligations of the landlord; and

(6) The prospective tenant is given a copy of any existing rules and regulations before entering into the rental agreement.

Notice of all additions, changes, deletions, or amendments to the rules and regulations shall be given to all mobile home tenants sixty days before they become effective. The landlord may change, add, delete, or amend the rules and regulations without sixty days' notice only with the written consent of at least one adult resident from a minimum of sixty percent of the households in the mobile home park. Adult resident shall mean a resident who has achieved the age of majority as defined in section 43-2101. Any rule or condition of occupancy which does not conform to the requirements of the Mobile Home Landlord and Tenant Act shall be unenforceable. A rule or regulation adopted after the tenant enters into the rental agreement shall be enforceable against the tenant only if it does not conflict with or contradict the tenant's rental agreement. Nothing in this section shall prohibit a landlord from adopting rules and regulations applicable to new tenants only and not to persons who are tenants prior to the effective date of the rules and regulations.

Source: Laws 1984, LB 916, § 45; Laws 1988, LB 790, § 32.

76-1495 Landlord; prohibited acts.

A landlord may not:

(1) Deny rental on the basis of race, color, religion, sex, or national origin;

(2) Require any person, as a precondition to renting, leasing, or otherwise occupying or removing from a mobile home space in a mobile home park, to pay an entrance or exit fee of any kind unless for services actually rendered or pursuant to a written agreement. A landlord may restrict the movement of mobile homes to reasonable hours and may require that all work in connection with the removal or installation of a mobile home, including, but not limited to, the hookup or disconnection of utilities, be done in a good and workmanlike manner;

(3) Deny any resident of a mobile home park the right to sell that person's mobile home at a price of his or her own choosing. The tenant shall, prior to selling the mobile home, give notice to the landlord, including, but not limited to, the name of the prospective purchaser. Unless otherwise agreed in writing, the landlord may reserve the right to approve or disapprove the prospective purchaser of the mobile home as a tenant within ten days after receiving notice of the intended sale. Any disapproval shall be in writing and shall be delivered to such tenant pursuant to section 76-1474. The landlord shall not unreasonably refuse or restrict the sale by a tenant of a mobile home located in his or her mobile home park, but the landlord may consider the size, ages, and composition of the prospective purchaser's family in determining if the mobile home purchaser may leave the home in the park. The landlord may also, in order to upgrade the quality of the mobile home park, prescribe reasonable requirements governing the age, physical appearance, size, or quality of the mobile home. In the event of a sale to a third party or mutual termination of the rental agreement, the landlord may within ten days after receiving written notice of the pending sale or mutual termination require that any mobile home that is no longer appropriate for the mobile home park or that is in disrepair be repaired to the landlord's satisfaction or removed from the park within sixty days. The

landlord shall specify in writing the reasons for disapproval of the mobile home;

(4) Exact a commission or fee with respect to the price realized by the tenant selling the mobile home, unless the park owner or operator has acted as agent for the mobile home owner pursuant to a written agreement; or

(5) Require a tenant to furnish permanent improvements which cannot be removed by the tenant without damage to the mobile home or mobile home space at the expiration of the rental agreement.

Source: Laws 1984, LB 916, § 46.

76-1496 Landlord; access.

(1) A landlord shall not have the right of access to a mobile home owned by a tenant unless such access is necessary to prevent substantial damage to the mobile home space or is in response to an emergency situation.

(2) A landlord may at reasonable times enter onto a mobile home space in order to inspect the mobile home space, make necessary or agreed repairs or improvements, supply necessary or agreed services, or exhibit the mobile home space to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

Source: Laws 1984, LB 916, § 47.

76-1497 Tenant; authority to rent to another.

A tenant may rent the mobile home to another only upon written agreement with the mobile home park management. The landlord may require a guarantee from the tenant for the sublessee's mobile home space rent.

Source: Laws 1984, LB 916, § 48.

76-1498 Noncompliance by landlord; tenant's rights.

(1) If there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section 76-1492 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied or if reasonable steps to remedy the breach have not been taken in fourteen days. The rental agreement shall terminate and the mobile home space shall be vacated as provided in the notice subject to the following:

(a) If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach or takes reasonable steps to remedy it prior to the date specified in the notice, the rental agreement will not terminate; and

(b) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person in the mobile home park with the tenant's consent.

(2) A tenant may recover damages and obtain injunctive relief for any material noncompliance by the landlord with the rental agreement or section 76-1492.

(3) The remedy provided in subsection (2) of this section shall be in addition to any right of the tenant arising under subsection (1) of this section.

(4) If the rental agreement is terminated, the landlord shall return any prepaid rent and any rental deposit, less any allowable deductions, recoverable by the tenant under section 76-1485.

Source: Laws 1984, LB 916, § 49.

76-1499 Landlord; failure to deliver possession; remedies.

If a landlord fails to deliver physical possession of the mobile home space to the tenant as provided in section 76-1491, rent shall abate until possession is delivered and the tenant may:

(1) Upon written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all deposits; or

(2) Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the mobile home space against the landlord and recover the damages sustained by the tenant. If the failure by the landlord to deliver possession of the mobile home space is willful, the tenant may recover reasonable attorney's fees and court costs.

If the landlord delivers physical possession to the tenant but fails to comply with section 76-1492 at the time of delivery, rent shall not abate. The tenant may also proceed with the remedies provided in section 76-1498.

Source: Laws 1984, LB 916, § 50.

76-14,100 Landlord; removal or exclusion of tenant; failure to supply services; tenant; remedies.

If a landlord unlawfully removes or excludes a tenant from a mobile home park or willfully diminishes services to a tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, the tenant may recover possession, require the restoration of essential services, or terminate the rental agreement and, in any case, recover an amount not to exceed one and one-half months' periodic rent as liquidated damages and reasonable attorney's fees. If the rental agreement is terminated, the landlord shall return any prepaid rent and any rental deposit recoverable by the tenant under section 76-1485.

Source: Laws 1984, LB 916, § 51.

76-14,101 Noncompliance by tenant; landlord's rights.

(1) If there is a noncompliance with section 76-1493 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice. Only in the event the breach is remediable by repairs or the payment of damages and the tenant adequately remedies the breach or takes reasonable steps to remedy it prior to the date specified in the notice, the rental agreement shall not terminate.

(2) If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of nonpayment and of the landlord's

intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) A landlord may recover damages, obtain injunctive relief, or recover possession of the mobile home space by an action in forcible detainer for any material noncompliance by the tenant with the rental agreement or section 76-1493.

(4) The remedy provided in subsection (3) of this section shall be in addition to any right of a landlord arising under subsection (1) of this section.

Source: Laws 1984, LB 916, § 52.

76-14,102 Noncompliance by tenant affecting health and safety; landlord's rights.

If there is noncompliance by a tenant with section 76-1493 materially affecting health and safety or any condition which is ordered to be changed by the State Fire Marshal, the State Electrical Board, the Department of Health and Human Services, or any other regulatory body with jurisdiction over either the park or the mobile home space that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach or take reasonable steps to remedy it within that period of time, the landlord may enter the mobile home space, cause the work to be done in a skillful manner, and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value as additional rent on the next date when periodic rent is due or, if the rental agreement has been terminated, for immediate payment. If the landlord is assessed any fine, cost, or charge as a result of the tenant's failure to comply with an order issued by the State Fire Marshal, the State Electrical Board, the Department of Health and Human Services, or any other regulatory body with jurisdiction over either the park or the mobile home space, the landlord may require the tenant to pay such fine, cost, or charge.

Source: Laws 1984, LB 916, § 53; Laws 1996, LB 1044, § 794; Laws 2007, LB296, § 701.

76-14,103 Failure to enforce rights; effect on subsequent enforcement.

Failure to enforce any portion of the rental agreement or to enforce any violation of the rules or regulations shall not constitute a waiver of the right to enforce the agreement against a subsequent violation.

Source: Laws 1984, LB 916, § 54.

76-14,104 Termination of tenancy; action for possession and damages.

(1) A landlord may terminate a tenancy only by means of the procedures provided in the Mobile Home Landlord and Tenant Act.

(2) If a tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and recover actual damages. If the tenant's holdover is willful and in bad faith, the landlord in addition may recover an

amount not to exceed one and one-half months' periodic rent as liquidated damages and reasonable attorney's fees.

Source: Laws 1984, LB 916, § 55.

76-14,105 Violation of access rights; remedies.

(1) If a tenant refuses to allow reasonable lawful access to the mobile home space, the landlord may terminate the rental agreement and recover actual damages.

(2) If a landlord makes an unlawful entry or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

Source: Laws 1984, LB 916, § 56.

76-14,106 Retaliatory conduct prohibited; remedies; landlord action for possession; when.

(1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, bringing or threatening to bring an action for possession, or failing to renew a rental agreement after any of the following:

(a) A tenant has complained in good faith to a government agency charged with responsibility for enforcement of any code of a violation applicable to the mobile home park materially affecting health and safety;

(b) A tenant has complained to the landlord of a violation of section 76-1492;

(c) A tenant has organized or become a member of a tenants' union or similar organization; or

(d) A tenant has exercised any of the rights or remedies provided by the Mobile Home Landlord and Tenant Act or otherwise available at law.

(2) If a landlord acts in violation of subsection (1) of this section, the tenant shall be entitled to the remedies provided in section 76-1498 and shall have a defense in an action for possession.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may bring an action for possession if:

(a) The violation of any applicable housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent; or

(b) The tenant is in default in rent five days after rent is due unless otherwise agreed to by the landlord and tenant.

The maintenance of the action shall not release the landlord from liability under subsection (2) of section 76-1498.

Source: Laws 1984, LB 916, § 57.

76-14,107 Landlord, manager; relieved of liability; when.

(1) A landlord, who conveys a mobile home park in a good faith sale to a bona fide purchaser shall be relieved of liability under the rental agreement and

the Mobile Home Landlord and Tenant Act as to events occurring subsequent to written notice to the tenant of the conveyance.

(2) A manager of a mobile home park shall be relieved of liability under the rental agreement and the Mobile Home Landlord and Tenant Act as to events occurring after written notice to the tenant of the termination of his or her management, except that such notice shall not terminate any agreement or legal liability arising prior to the notice.

Source: Laws 1984, LB 916, § 58.

76-14,108 Death of tenant; effect.

(1) If a tenant who is not the sole owner of a mobile home dies during the term of a rental agreement, the surviving joint tenant or tenant in common in the mobile home shall have all rights, privileges, and liabilities the same as the deceased tenant had.

(2) If a tenant who is the sole owner of a mobile home dies during the term of a rental agreement, the tenant's heirs or legal representative, or the landlord, may cancel the tenant's lease by giving thirty days' notice to the other, and the heirs or legal representative shall have the same rights, privileges, and liabilities as the tenant had.

Source: Laws 1984, LB 916, § 59.

76-14,109 Removal of abandoned mobile home; conditions.

If a tenant abandons a mobile home on a mobile home space, the mobile home may not be removed from the mobile home space by the tenant or his or her agent without a signed written authorization from the landlord granting clearance for removal, showing all money due and owing paid in full, or an agreement reached with the legal owner and the landlord. A mobile home shall be considered to be abandoned if the tenant has defaulted in rent and has, by absence of at least thirty days or by words or actions, reasonably indicated an intention not to continue the tenancy.

Nothing in this section shall prohibit a landlord from removing an abandoned mobile home from the mobile space and placing it in storage at the owner's expense or from utilizing any other legal remedy.

Source: Laws 1984, LB 916, § 60; Laws 1985, LB 313, § 26.

76-14,110 Landlord; assessment contract authorized.

Nothing in the Mobile Home Landlord and Tenant Act shall prohibit a landlord from contracting with tenants in order to provide services or facilities on an assessment basis.

Source: Laws 1984, LB 916, § 61.

76-14,111 Applicability of act.

The Mobile Home Landlord and Tenant Act shall apply to rental agreements entered into, extended, or renewed after January 1, 1985.

Source: Laws 1984, LB 916, § 62.

ARTICLE 15

AGRICULTURAL LANDS, SPECIAL PROVISIONS

(a) CORPORATIONS HOLDING AGRICULTURAL LANDS

Section

- 76-1501. Repealed. Laws 1983, LB 587, § 1.
- 76-1502. Repealed. Laws 1983, LB 587, § 1.
- 76-1503. Repealed. Laws 1983, LB 587, § 1.
- 76-1504. Repealed. Laws 1983, LB 587, § 1.
- 76-1505. Repealed. Laws 1983, LB 587, § 1.
- 76-1506. Repealed. Laws 1983, LB 587, § 1.

(b) TRUSTS HOLDING AGRICULTURAL LANDS

- 76-1507. Definitions, sections found.
- 76-1508. Agricultural land, defined.
- 76-1509. Farming, defined.
- 76-1510. Fiduciary capacity, defined.
- 76-1511. Trust, defined.
- 76-1512. Family trust, defined.
- 76-1513. Authorized trust, defined.
- 76-1514. Testamentary trust, defined.
- 76-1515. Agricultural land; restrictions on ownership; exceptions.
- 76-1516. Violations; penalty; injunction; Attorney General, county attorney, duties.
- 76-1517. County assessor, duties.

(c) EXECUTION UPON AGRICULTURAL LAND

- 76-1518. Repealed. Laws 1986, Third Spec. Sess., LB 3, § 21.
- 76-1519. Repealed. Laws 1986, Third Spec. Sess., LB 3, § 21.

(d) REPORTS ON FARMING OR RANCHING

- 76-1520. Interest in real estate used for farming or ranching; reports required.
- 76-1521. Reports; form; contents; Secretary of State; duties.
- 76-1522. Failure to report; false report; effect; Secretary of State; duties; reinstatement; fee.
- 76-1523. Secretary of State; duties; corporate trustee; fine; when.
- 76-1524. Secretary of State; Attorney General; powers.

(a) CORPORATIONS HOLDING AGRICULTURAL LANDS

- 76-1501 Repealed. Laws 1983, LB 587, § 1.**
- 76-1502 Repealed. Laws 1983, LB 587, § 1.**
- 76-1503 Repealed. Laws 1983, LB 587, § 1.**
- 76-1504 Repealed. Laws 1983, LB 587, § 1.**
- 76-1505 Repealed. Laws 1983, LB 587, § 1.**
- 76-1506 Repealed. Laws 1983, LB 587, § 1.**

(b) TRUSTS HOLDING AGRICULTURAL LANDS

76-1507 Definitions, sections found.

For purposes of sections 76-1507 to 76-1517, unless the context otherwise requires, the definitions found in sections 76-1508 to 76-1514 shall be used.

Source: Laws 1981, LB 9, § 1.

76-1508 Agricultural land, defined.

Agricultural land shall mean land suitable for use in farming.

Source: Laws 1981, LB 9, § 2.

76-1509 Farming, defined.

Farming shall mean the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, and grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod, and farming shall not include a contract under which a processor or distributor of farm products or supplies provides spraying, harvesting, or other farm services.

Source: Laws 1981, LB 9, § 3.

76-1510 Fiduciary capacity, defined.

Fiduciary capacity shall mean an undertaking to act as executor, administrator, personal representative, guardian, conservator, or receiver.

Source: Laws 1981, LB 9, § 4.

76-1511 Trust, defined.

Trust shall mean a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in section 76-1510. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney in fact, and in any similar capacity.

Source: Laws 1981, LB 9, § 5.

76-1512 Family trust, defined.

Family trust shall mean a trust:

(1) In which a majority interest in the trust is held by and the majority of the beneficiaries are persons related to each other as spouse, parent, grandparent, lineal descendants of grandparents or their spouses and other legal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related; and

(2) In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in section 76-1511, or persons acting in a fiduciary capacity, or nonprofit corporation.

Source: Laws 1981, LB 9, § 6.

76-1513 Authorized trust, defined.

Authorized trust shall mean a trust other than a family trust in which:

(1) The beneficiaries do not exceed twenty-five in number;

(2) The beneficiaries are all natural persons, who are not acting as a trustee or in a similar capacity for a trust as defined in section 76-1511, or persons acting in a fiduciary capacity, or nonprofit corporation; and

(3) Its income is not exempt from taxation under the laws of either the United States or the State of Nebraska, except that its income may be exempt from taxation under sections 501(c)(3) and 509(a)(3) of the Internal Revenue Code.

Source: Laws 1981, LB 9, § 7.

76-1514 Testamentary trust, defined.

Testamentary trust shall mean a trust created by devising or bequeathing property in trust in a will as such terms are used in the Nebraska Probate Code.

Source: Laws 1981, LB 9, § 8.

Cross References

Nebraska Probate Code, see section 30-2201.

76-1515 Agricultural land; restrictions on ownership; exceptions.

No trust, other than a family trust, authorized trust, or testamentary trust, shall either directly or indirectly acquire or otherwise obtain or lease any agricultural land in this state, except that the restrictions set forth in this section shall not apply to the following:

- (1) A bona fide encumbrance taken for purposes of security;
- (2) Agricultural land acquired by a trust for research or experimental purposes, if the commercial sales from such agricultural land are incidental to the research or experimental objectives of the trust, and agricultural land acquired for the purpose of testing, developing, or producing seeds, animals, or plants for sale or resale to farmers or for purposes incidental to such purposes. Commercial sales are incidental to the research or experimental objectives of the trust when they are less than twenty-five percent of the gross sales of the primary product of the research;
- (3) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust, or testamentary trust;
- (4) Agricultural land held or leased by a trust on August 30, 1981, as long as the trust holding or leasing such land on such date continues to hold or lease such agricultural land;
- (5) Agricultural land acquired by a trust for immediate use in nonfarming purposes; and
- (6) Any property held by the State of Nebraska.

Source: Laws 1981, LB 9, § 9.

76-1516 Violations; penalty; injunction; Attorney General, county attorney, duties.

Any trust, other than a family trust, authorized trust, or testamentary trust, violating sections 76-1507 to 76-1517 shall upon conviction, be punished by a fine of not more than fifty thousand dollars and shall divest itself of any land acquired in violation of sections 76-1507 to 76-1517 within one year after conviction. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The Attorney General or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of sections 76-1507 to 76-1517.

Source: Laws 1981, LB 9, § 10.

76-1517 County assessor, duties.

The county assessor shall forward to the Secretary of State, by October 1 of each year, the name and address of every trust owning agricultural land in the county as shown by the assessment rolls of the county.

Source: Laws 1981, LB 9, § 11.

(c) EXECUTION UPON AGRICULTURAL LAND

76-1518 Repealed. Laws 1986, Third Spec. Sess., LB 3, § 21.

76-1519 Repealed. Laws 1986, Third Spec. Sess., LB 3, § 21.

(d) REPORTS ON FARMING OR RANCHING

76-1520 Interest in real estate used for farming or ranching; reports required.

(1) A person serving as the president, a general partner, any other officer, or an authorized representative of a corporation, limited partnership, limited liability partnership, or limited liability company or a corporate trustee of a trust shall report to the Secretary of State:

(a) Any interest in real estate held by the corporation, limited partnership, limited liability partnership, limited liability company, or trust used for farming or ranching in this state as defined under Article XII, section 8, of the Constitution of Nebraska;

(b) Any activity or enterprise performed, conducted, or engaged in by the corporation, limited partnership, limited liability partnership, limited liability company, or trust defined as farming or ranching in this state under Article XII, section 8, of the Constitution of Nebraska; and

(c) Whether the corporation, limited partnership, limited liability partnership, limited liability company, or trust contracts with others engaged in farming or ranching for the care or production of agricultural commodities, including livestock.

(2) The reports required by this section shall be open to the public.

(3) For purposes of sections 76-1520 to 76-1524, interest in real estate used for farming or ranching includes legal, beneficial, and other interests, including interests held by a corporation, limited partnership, limited liability partnership, limited liability company, or trust in a general partnership holding real estate used for farming or ranching, but does not include an interest in real estate used for farming or ranching acquired by a corporation, limited partnership, limited liability partnership, limited liability company, or trust by process of law in the collection of debts or by any procedures for the creation or enforcement of a lien, encumbrance, or claim on the real estate, whether created by mortgage or otherwise.

Source: Laws 1998, LB 1193, § 1.

76-1521 Reports; form; contents; Secretary of State; duties.

(1) The report required by section 76-1520 shall be on a form provided by the Secretary of State. The Secretary of State may incorporate the form with other forms required to be filed by entities identified in subsection (1) of section

76-1520. If there has been no change in the information contained in the previous report filed by the reporting entity, the reporting entity may so indicate in a space provided on the reporting form for that purpose.

(2) The Secretary of State shall include a list of exemptions to the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska and a means by which persons filing the form may indicate, if applicable, which exemptions apply to the reporting entity. The reporting entity may include or attach a statement indicating the basis upon which the reporting entity claims exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska.

(3) The Secretary of State shall annually prepare a report indicating the total number of entities reporting under sections 76-1520 to 76-1524, the number of entities reporting as a corporation, as a limited partnership, as a limited liability partnership, as a limited liability company, and as a trust and the basis upon which the reporting entities claim exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska. The Secretary of State shall deliver the report to the Clerk of the Legislature on or before January 1 each year.

Source: Laws 1998, LB 1193, § 2.

76-1522 Failure to report; false report; effect; Secretary of State; duties; reinstatement; fee.

(1) Failure to report the information required by section 76-1520 or the filing of false information shall be cause for dissolution or cancellation of registration of the corporation, limited partnership, limited liability partnership, or limited liability company or revocation of authority to transact business in this state in the manner provided in this section.

(2) If the Secretary of State has reason to believe a corporation, limited partnership, limited liability partnership, or limited liability company required to report pursuant to section 76-1520 has failed to report, or has filed a false or incomplete report, the Secretary of State shall send to the registered agent of such entity by certified mail a notice stating that if the defect is not corrected within sixty days after receipt of notice the entity shall be dissolved or its registration shall be canceled.

(3) If the Secretary of State determines that the entity has not corrected the defect upon the expiration of sixty days after notice of failure to report, false reporting, or incomplete reporting, the entity shall be dissolved or its registration canceled. Notice of such cancellation shall be sent by certified mail to the registered agent of the entity.

(4) A business entity dissolved or canceled pursuant to this section may have its existence reinstated at any time by submitting a report as required by sections 76-1520 to 76-1524 correcting the defect for which it was dissolved and paying a reinstatement fee of one hundred dollars to the Secretary of State. Any fees received pursuant to this section shall be remitted to the State Treasurer for credit to the Corporation Cash Fund.

Source: Laws 1998, LB 1193, § 3.

76-1523 Secretary of State; duties; corporate trustee; fine; when.

(1) The Secretary of State shall use reports generated under section 76-1517 to assist in the identification of trusts engaged in farming or ranching activity as defined in Article XII, section 8, of the Constitution of Nebraska.

(2) Any corporate trustee failing to report the information required by section 76-1520 or filing false information shall be punished by a fine of not more than five hundred dollars.

(3) Any fines received pursuant to this section shall be remitted to the State Treasurer for credit to the temporary school fund.

Source: Laws 1998, LB 1193, § 4.

76-1524 Secretary of State; Attorney General; powers.

The Secretary of State and the Attorney General, for the enforcement of both sections 76-1520 to 76-1524 and Article XII, section 8, of the Constitution of Nebraska, shall have the authority to subpoena witnesses, compel their attendance, examine them under oath, and require the production of documents, records, or tangible things deemed relevant to the proper performance of their duties. Service of any subpoena shall be made in the manner prescribed by the rules of civil procedure.

Source: Laws 1998, LB 1193, § 5.

ARTICLE 16

NEBRASKA MORTGAGE FINANCE FUND ACT

Section	
76-1601.	Repealed. Laws 1983, LB 626, § 79.
76-1602.	Repealed. Laws 1983, LB 626, § 79.
76-1603.	Repealed. Laws 1983, LB 626, § 79.
76-1603.01.	Repealed. Laws 1983, LB 626, § 79.
76-1604.	Repealed. Laws 1983, LB 626, § 79.
76-1605.	Repealed. Laws 1983, LB 626, § 79.
76-1606.	Repealed. Laws 1983, LB 626, § 79.
76-1607.	Repealed. Laws 1983, LB 626, § 79.
76-1608.	Repealed. Laws 1983, LB 626, § 79.
76-1609.	Repealed. Laws 1983, LB 626, § 79.
76-1610.	Repealed. Laws 1983, LB 626, § 79.
76-1611.	Repealed. Laws 1983, LB 626, § 79.
76-1612.	Repealed. Laws 1983, LB 626, § 79.
76-1613.	Repealed. Laws 1983, LB 626, § 79.
76-1614.	Repealed. Laws 1983, LB 626, § 79.
76-1615.	Repealed. Laws 1983, LB 626, § 79.
76-1616.	Repealed. Laws 1983, LB 626, § 79.
76-1617.	Repealed. Laws 1983, LB 626, § 79.
76-1618.	Repealed. Laws 1983, LB 626, § 79.
76-1619.	Repealed. Laws 1983, LB 626, § 79.
76-1620.	Repealed. Laws 1983, LB 626, § 79.
76-1621.	Repealed. Laws 1983, LB 626, § 79.
76-1622.	Repealed. Laws 1983, LB 626, § 79.
76-1622.01.	Repealed. Laws 1983, LB 626, § 79.
76-1622.02.	Repealed. Laws 1983, LB 626, § 79.
76-1622.03.	Repealed. Laws 1983, LB 626, § 79.
76-1622.04.	Repealed. Laws 1983, LB 626, § 79.
76-1622.05.	Repealed. Laws 1983, LB 626, § 79.
76-1623.	Repealed. Laws 1983, LB 626, § 79.
76-1623.01.	Repealed. Laws 1983, LB 626, § 79.
76-1624.	Repealed. Laws 1983, LB 626, § 79.
76-1625.	Repealed. Laws 1983, LB 626, § 79.

Section	
76-1626.	Repealed. Laws 1983, LB 626, § 79.
76-1627.	Repealed. Laws 1983, LB 626, § 79.
76-1628.	Repealed. Laws 1983, LB 626, § 79.
76-1629.	Repealed. Laws 1983, LB 626, § 79.
76-1630.	Repealed. Laws 1983, LB 626, § 79.
76-1631.	Repealed. Laws 1983, LB 626, § 79.
76-1632.	Repealed. Laws 1983, LB 626, § 79.
76-1633.	Repealed. Laws 1983, LB 626, § 79.
76-1634.	Repealed. Laws 1983, LB 626, § 79.
76-1635.	Repealed. Laws 1983, LB 626, § 79.
76-1636.	Repealed. Laws 1983, LB 626, § 79.
76-1637.	Repealed. Laws 1983, LB 626, § 79.
76-1638.	Repealed. Laws 1983, LB 626, § 79.
76-1639.	Repealed. Laws 1983, LB 626, § 79.
76-1640.	Repealed. Laws 1983, LB 626, § 79.
76-1641.	Repealed. Laws 1983, LB 626, § 79.
76-1642.	Repealed. Laws 1983, LB 626, § 79.
76-1643.	Repealed. Laws 1983, LB 626, § 79.
76-1644.	Repealed. Laws 1983, LB 626, § 79.
76-1645.	Repealed. Laws 1983, LB 626, § 79.
76-1646.	Repealed. Laws 1983, LB 626, § 79.
76-1647.	Repealed. Laws 1983, LB 626, § 79.
76-1648.	Repealed. Laws 1983, LB 626, § 79.
76-1649.	Repealed. Laws 1983, LB 626, § 79.
76-1650.	Repealed. Laws 1983, LB 626, § 79.
76-1651.	Repealed. Laws 1983, LB 626, § 79.

76-1601 Repealed. Laws 1983, LB 626, § 79.

76-1602 Repealed. Laws 1983, LB 626, § 79.

76-1603 Repealed. Laws 1983, LB 626, § 79.

76-1603.01 Repealed. Laws 1983, LB 626, § 79.

76-1604 Repealed. Laws 1983, LB 626, § 79.

76-1605 Repealed. Laws 1983, LB 626, § 79.

76-1606 Repealed. Laws 1983, LB 626, § 79.

76-1607 Repealed. Laws 1983, LB 626, § 79.

76-1608 Repealed. Laws 1983, LB 626, § 79.

76-1609 Repealed. Laws 1983, LB 626, § 79.

76-1610 Repealed. Laws 1983, LB 626, § 79.

76-1611 Repealed. Laws 1983, LB 626, § 79.

76-1612 Repealed. Laws 1983, LB 626, § 79.

76-1613 Repealed. Laws 1983, LB 626, § 79.

76-1614 Repealed. Laws 1983, LB 626, § 79.

76-1615 Repealed. Laws 1983, LB 626, § 79.

76-1616 Repealed. Laws 1983, LB 626, § 79.

- 76-1617 Repealed. Laws 1983, LB 626, § 79.
- 76-1618 Repealed. Laws 1983, LB 626, § 79.
- 76-1619 Repealed. Laws 1983, LB 626, § 79.
- 76-1620 Repealed. Laws 1983, LB 626, § 79.
- 76-1621 Repealed. Laws 1983, LB 626, § 79.
- 76-1622 Repealed. Laws 1983, LB 626, § 79.
- 76-1622.01 Repealed. Laws 1983, LB 626, § 79.
- 76-1622.02 Repealed. Laws 1983, LB 626, § 79.
- 76-1622.03 Repealed. Laws 1983, LB 626, § 79.
- 76-1622.04 Repealed. Laws 1983, LB 626, § 79.
- 76-1622.05 Repealed. Laws 1983, LB 626, § 79.
- 76-1623 Repealed. Laws 1983, LB 626, § 79.
- 76-1623.01 Repealed. Laws 1983, LB 626, § 79.
- 76-1624 Repealed. Laws 1983, LB 626, § 79.
- 76-1625 Repealed. Laws 1983, LB 626, § 79.
- 76-1626 Repealed. Laws 1983, LB 626, § 79.
- 76-1627 Repealed. Laws 1983, LB 626, § 79.
- 76-1628 Repealed. Laws 1983, LB 626, § 79.
- 76-1629 Repealed. Laws 1983, LB 626, § 79.
- 76-1630 Repealed. Laws 1983, LB 626, § 79.
- 76-1631 Repealed. Laws 1983, LB 626, § 79.
- 76-1632 Repealed. Laws 1983, LB 626, § 79.
- 76-1633 Repealed. Laws 1983, LB 626, § 79.
- 76-1634 Repealed. Laws 1983, LB 626, § 79.
- 76-1635 Repealed. Laws 1983, LB 626, § 79.
- 76-1636 Repealed. Laws 1983, LB 626, § 79.
- 76-1637 Repealed. Laws 1983, LB 626, § 79.
- 76-1638 Repealed. Laws 1983, LB 626, § 79.
- 76-1639 Repealed. Laws 1983, LB 626, § 79.
- 76-1640 Repealed. Laws 1983, LB 626, § 79.
- 76-1641 Repealed. Laws 1983, LB 626, § 79.

76-1642 Repealed. Laws 1983, LB 626, § 79.

76-1643 Repealed. Laws 1983, LB 626, § 79.

76-1644 Repealed. Laws 1983, LB 626, § 79.

76-1645 Repealed. Laws 1983, LB 626, § 79.

76-1646 Repealed. Laws 1983, LB 626, § 79.

76-1647 Repealed. Laws 1983, LB 626, § 79.

76-1648 Repealed. Laws 1983, LB 626, § 79.

76-1649 Repealed. Laws 1983, LB 626, § 79.

76-1650 Repealed. Laws 1983, LB 626, § 79.

76-1651 Repealed. Laws 1983, LB 626, § 79.

ARTICLE 17

NEBRASKA TIME-SHARE ACT

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76-1701.	Act, how cited.
76-1702.	Terms, defined.
76-1703.	Time-share estate; status with respect to real property interests.
76-1704.	Time-share estate; title; separate estate.
76-1705.	Time-share program; discriminatory ordinance or regulation; prohibited.
76-1706.	Time-share intervals in units.
76-1707.	Instruments for time-share estates; contents.
76-1708.	Time-share estate program; instruments; management and operation provisions; enumerated.
76-1709.	Time-share estate program; instruments; developer-control period.
76-1710.	Instruments for time-share use; contents.
76-1711.	Time-share use program; instruments; management and operation provisions; enumerated.
76-1712.	Partition.
76-1713.	Public-offering statement; general provisions; enumerated.
76-1714.	Public-offering statement; exchange-of-occupancy rights; disclosure provisions.
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76-1721.	Liens.
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76-1723.	Statutes of limitations.
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76-1726.	Commission; notice of suspension; conditions; cease and desist order; revocation order.
76-1727.	Time-share interval; offer or sale; restrictions.
76-1728.	Acquisition agent; register information; bond.
76-1729.	Sales agent; register information; bond.
76-1730.	Managing agent; register information; bond.
76-1731.	Bonds; consolidation.
76-1732.	Exchange agent; file information.

§ 76-1701

REAL PROPERTY

Section

76-1733.	Acquisition agent; sales agent; maintain records.
76-1734.	Application for registration; contents; fees; certificate of registration; report; investigation.
76-1735.	Commission; regulation of public-offering statement.
76-1736.	Receipt of application; effectiveness of registration.
76-1737.	Developer; amend or supplement registration.
76-1737.01.	Developer; time-share interval; duties; violation.
76-1738.	Registration; exemptions; exception.
76-1739.	Financing of time-share programs; records; requirements.
76-1740.	Rights under foreclosure.
76-1741.	Lienholder; rights.

76-1701 Act, how cited.

Sections 76-1701 to 76-1741 shall be known and may be cited as the Nebraska Time-Share Act.

Source: Laws 1980, LB 945, § 1; Laws 2001, LB 68, § 1.

76-1702 Terms, defined.

For purposes of the Nebraska Time-Share Act, unless the context otherwise requires:

(1) Acquisition agent means a person who by means of telephone, mail, advertisement, inducement, solicitation, or otherwise attempts directly to encourage any person to attend a sales presentation for a time-share program;

(2) Commission means the State Real Estate Commission;

(3) Developer means in the case of any given property, any person or entity which is in the business of creating or which is in the business of selling its own time-share intervals in any time-share program, but does not include a person acting solely as a sales agent;

(4) Development, project, or property means all of the real property subject to a project instrument and containing more than one unit;

(5) Exchange agent means a person who exchanges or offers to exchange time-share intervals in an exchange program with other time-share intervals;

(6) Managing agent means a person who undertakes the duties, responsibilities, and obligations of the management of a time-share program;

(7) Offering means any offer to sell, solicitation, inducement, or advertisement whether by radio, television, newspaper, magazine, mail, or any other means of communication, whereby a person is given an opportunity to acquire a time-share interval;

(8) Person means one or more natural persons, corporations, partnerships, limited liability companies, associations, trusts, other entities, or any combination thereof;

(9) Project instrument means one or more recordable documents applicable to the whole project by whatever name denominated, containing restrictions or covenants regulating the use, occupancy, or disposition of an entire project, including any amendments to the document, but excluding any law, ordinance, or governmental regulation;

(10) Public-offering statement means that statement required by sections 76-1713 and 76-1714;

(11) Purchaser means any person other than a developer or lender who acquires an interest in a time-share interval;

(12) Sales agent means a person, licensed by the commission as a real estate broker or salesperson, who sells or offers to sell time-share intervals in a time-share program to a purchaser;

(13) Time-share estate means an ownership or leasehold estate in property devoted to a time-share fee or a time-share lease;

(14) Time-share instrument means any document by whatever name denominated creating or regulating time-share programs, but excluding any law, ordinance, or governmental regulation;

(15) Time-share interval means a time-share estate or a time-share use;

(16) Time-share program means any arrangement for time-share intervals in a time-share project whereby the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of three years in duration;

(17) Time-share project means any real property that is subject to a time-share program;

(18) Time-share use means any contractual right of exclusive occupancy which does not fall within the definition of a time-share estate, including, without limitation, a vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation bond; and

(19) Unit means the real property or real property improvement in a project which is divided into time-share intervals.

Source: Laws 1980, LB 945, § 2; Laws 1993, LB 121, § 486; Laws 2001, LB 68, § 2.

76-1703 Time-share estate; status with respect to real property interests.

(1) A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years, if a leasehold, except as expressly modified by the Nebraska Time-Share Act.

(2) A document transferring or encumbering a time-share estate in real property shall not be rejected for recordation because of the nature or duration of the estate or interest.

Source: Laws 1980, LB 945, § 3; Laws 2001, LB 68, § 3.

76-1704 Time-share estate; title; separate estate.

Each time-share estate constitutes for purposes of title a separate estate or interest in property except for real property tax purposes.

Source: Laws 1980, LB 945, § 4.

76-1705 Time-share program; discriminatory ordinance or regulation; prohibited.

A zoning, subdivision, or other ordinance or regulation shall not discriminate against the creation of time-share intervals or impose any requirement upon a

time-share program which it would not impose upon a similar development under a different form of ownership.

Source: Laws 1980, LB 945, § 5.

76-1706 Time-share intervals in units.

A time-share program may be created in any unit unless expressly prohibited by the project instruments.

Source: Laws 1980, LB 945, § 6.

76-1707 Instruments for time-share estates; contents.

Project instruments and time-share instruments creating time-share estates shall contain the following:

- (1) The name of the county in which the property is situated;
- (2) The legal description, street address, or other description sufficient to identify the property;
- (3) Identification of time periods by letter, name, number, or combination thereof;
- (4) Identification of time-share estates and when applicable the method whereby additional time-share estates may be created;
- (5) The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and when applicable, to each unit in a project that is not subject to the time-share program;
- (6) Any restrictions on the use, occupancy, alteration, or alienation of time-share intervals;
- (7) The ownership interest if any in personal property and provisions for care and replacement; and
- (8) Any other matters the developer deems appropriate.

Source: Laws 1980, LB 945, § 7.

76-1708 Time-share estate program; instruments; management and operation provisions; enumerated.

The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units, which shall include, but not be limited to, provisions for the following:

- (1) Creation of an association of time-share estate owners;
- (2) Adoption of bylaws for organizing and operating the association;
- (3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;
- (4) Employment and termination of employment of the managing agent for the association;
- (5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;
- (6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;

(7) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units;

(8) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by owners, their guests, and other users;

(9) Methods for providing compensating-use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation except for unavailability as a result of acts of nature;

(10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units. An owner shall be given notice and the opportunity to refute or explain the charges against him or her in person or in writing to the governing body of the association before a decision to impose discipline is rendered except in the case of delinquent payment of assessments, in which case an owner's rights and privileges for use of the accommodations and facilities of the time-share program, including the owner's guests, lessees, and third parties receiving use rights through a nonaffiliated exchange program, may be suspended by no less than thirty days' written notice after the date the assessment is due to the owner, stating the total amount of any delinquency which then exists, including any accrued interest or late charges permitted to be imposed under the terms of the time-share program. The notice shall clearly state that the owner and those claiming under the owner will not be permitted to use the owner's time-share period or to make a reservation in the time-share program's reservation system, or that any confirmed reservation may be canceled as applicable, until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist. Suspension of a third party receiving use rights through an affiliated exchange program shall only be suspended upon additional notice to the affiliated exchange program within a reasonable time that protects the third party's rights to make alternate reservations;

(11) Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share program and the units; and

(12) Maintenance of a list of the names and mailing addresses of all current time-share estate owners in the time-share program and procedures to have the association promptly mail materials to all persons on such list upon a written request by a time-share estate owner if the purpose of the request is to advance legitimate association business, including proxy solicitation. The association may require the actual costs of performing the mailing to be paid in advance by the person requesting the mailing.

Source: Laws 1980, LB 945, § 8; Laws 2001, LB 68, § 4; Laws 2004, LB 845, § 1.

76-1709 Time-share estate program; instruments; developer-control period.

(1) The time-share instruments for a time-share estate program may provide for a period of time, known as the developer-control period, during which the

developer or a managing agent selected by the developer shall manage the time-share program and the units in the time-share program.

(2) If the time-share instruments for a time-share estate program provide for the establishment of a developer-control period, they shall include, but not be limited to, provisions for the following:

- (a) Termination of the developer-control period by action of the association;
- (b) Termination of contracts for goods and services for the time-share program or for units in the time-share program entered into during the developer-control period; and
- (c) A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program.

Source: Laws 1980, LB 945, § 9.

76-1710 Instruments for time-share use; contents.

Project instruments and time-share instruments creating time-share uses shall contain the following:

- (1) Identification by name of the time-share project and street address where the time-share project is situated;
- (2) Identification of the time periods, type of units, and the units that are in the time-share program and the length of time that the units are committed to the time-share program;
- (3) In case of a time-share project, identification of which units are in the time-share program and the method whereby any other units may be added, deleted, or substituted; and
- (4) Any other matters that the developer deems appropriate.

Source: Laws 1980, LB 945, § 10.

76-1711 Time-share use program; instruments; management and operation provisions; enumerated.

The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair, and furnishing of units which shall include, but not be limited to, provisions for the following:

- (1) Standards and procedures for upkeep, repair, and interior furnishing of units and for providing of maid, cleaning, linen, and similar services to the units during use periods;
- (2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;
- (3) Payment of the costs and expenses of operating the time-share program and owning and maintaining the units;
- (4) Selection of a managing agent to act on behalf of the developer;
- (5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;
- (6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved, first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;

(9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests, and other users;

(10) Methods for providing compensating-use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation except for unavailability as a result of acts of nature;

(11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owner shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered except in the case of delinquent payment of assessments, in which case an owner's rights and privileges for use of the accommodations and facilities of the time-share program, including the owner's guests, lessees, and third parties receiving use rights through a nonaffiliated exchange program, may be suspended by no less than thirty days' written notice after the date the assessment is due to the owner, stating the total amount of any delinquency which then exists, including any accrued interest or late charges permitted to be imposed under the terms of the time-share program. The notice shall clearly state that the owner and those claiming under the owner will not be permitted to use the owner's time-share period or to make a reservation in the time-share program's reservation system, or that any confirmed reservation may be canceled as applicable, until the total amount of such delinquency is satisfied in full or until the owner produces satisfactory evidence that the delinquency does not exist. Suspension of a third party receiving use rights through an affiliated exchange program shall only be suspended upon additional notice to the affiliated exchange program within a reasonable time that protects the third party's rights to make alternate reservations; and

(12) Maintenance of a list of the names and mailing addresses of all current time-share use owners in the time-share program and procedures to have a prompt mailing of materials to all persons on such list upon a written request by a time-share use owner if the purpose of the request is to advance legitimate business affecting such time-share use owners, including proxy solicitation. The managing agent may require the actual costs of performing the mailing to be paid in advance by the person requesting the mailing.

Source: Laws 1980, LB 945, § 11; Laws 2001, LB 68, § 5; Laws 2004, LB 845, § 2.

76-1712 Partition.

No action for partition of a unit may be maintained except as permitted by the time-share instrument.

Source: Laws 1980, LB 945, § 12.

76-1713 Public-offering statement; general provisions; enumerated.

A public-offering statement shall be provided to each purchaser of a time-share interval at the time of purchase and shall fully and accurately disclose:

(1) The name of the developer and the principal address of the developer and the time-share intervals offered in the statement;

(2) A general description of the units including, without limitation, the developer's schedule of commencement and completion of all buildings, units, and amenities or if completed that they have been completed;

(3) As to all units offered by the developer in the same time-share project: (a) The types and number of units; (b) identification of units that are subject to time-share intervals; and (c) the estimated number of units that may become subject to time-share intervals;

(4) A brief description of the project;

(5) If applicable, any current budget and a projected budget for the time-share intervals for one year after the date of the first transfer to a purchaser. The budget shall include, without limitation: (a) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement; (b) the projected common expense liability if any by category of expenditures for the time-share intervals; (c) the projected common expense liability for all time-share intervals; and (d) a statement of any services not reflected in the budget that the developer provides or expenses that it pays;

(6) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(7) A description of any liens, defects, or encumbrances on or affecting the title to the time-share intervals;

(8) A description of any financing offered by the developer;

(9) A statement that within three business days after receipt of the public-offering statement a purchaser may cancel any contract for purchase of a time-share interval from a developer;

(10) A statement of any pending suits material to the time-share intervals of which a developer has actual knowledge;

(11) Any restraints on alienation of any number or portion of any time-share intervals;

(12) A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of time-share interval owners;

(13) Any current or expected fees or charges to be paid by time-share interval owners for the use of any facilities related to the property;

(14) The extent to which financial arrangements have been provided for completion of all promised improvements; and

(15) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

Source: Laws 1980, LB 945, § 13; Laws 2001, LB 68, § 6.

76-1714 Public-offering statement; exchange-of-occupancy rights; disclosure provisions.

If the owners of time-share intervals are to be permitted or required to become members of or to participate in any program for the exchange-of-occupancy rights among themselves or with the owners of time-share intervals of other time-share projects, or both, the public-offering statement or a supplement delivered therewith shall fully and accurately disclose:

(1) The identity of the person operating the exchange program and whether that person is an affiliate of the developer;

(2) A general description of the procedures to qualify for and effectuate exchanges, including any stated or practiced priorities and restrictions, and the extent to which changes thereof may be made, whether membership or participation in the exchange program, or both, are voluntary or mandatory, and a statement of the disposition, if any, of the unused exchange time-share interval of the exchange agent;

(3) The expenses, or ranges of expenses, to the time-share interval owners of membership in the exchange program including the expenses, if any, of exchanging as of a date not more than one year before the public-offering statement is delivered to the purchaser, and the person to whom those expenses are payable;

(4) Whether and how any of the expenses specified in subdivision (3) of this section may be altered and, if any of them are to be fixed on a case-by-case basis, the manner in which they are to be fixed in each case;

(5) With respect to the owners of time-share intervals in the exchange program, the geographical location of each time-share project and the minimum duration of time-share intervals and number of time-share interval owners in the exchange program at each project during a calendar year ending not more than fifteen months before the public-offering statement is delivered to the purchaser;

(6) The percentage of exchanges properly applied for by members of participants in the exchange program that were fulfilled during a calendar year ending not more than fifteen months before the date the public-offering statement is delivered to the purchaser, together with a statement of the criteria used to determine whether an exchange was properly applied for and fulfilled;

(7) The number of persons applying for an exchange as a percentage of the number of members in the exchange program as a whole during the calendar year ending not more than fifteen months before the public-offering statement is delivered to the purchaser; and

(8) In those cases in which the exchange agent is not an affiliate of the developer, the exchange agent shall provide the developer with all of the information contained in subdivisions (2) to (7) of this section which it shall certify as being true, accurate, and complete in all particulars. The developer shall include the certified information in the public-offering statement as replacement for the developer's disclosures required by this section.

Source: Laws 1980, LB 945, § 14.

76-1715 Escrow of deposits; surety bond.

(1) Any deposit made in connection with the purchase or reservation of a time-share interval from a developer shall be placed in escrow, in an account

designated solely for that purpose, in an institution whose accounts are insured by a governmental agency or instrumentality, until (a) delivered to the developer at the expiration of the time for rescission or any later time specified in any contract or sale, (b) delivered to the developer because of the purchaser's default under a contract to purchase the time-share interval, or (c) refunded to the purchaser. The developer shall register such escrow bank account with the commission and authorize the commission to examine the account.

(2) The escrow account shall be held in this state, except that the escrow account may be held in another state where the time-share project is located if (a) the account is designated solely for that purpose and is insured by a governmental agency or instrumentality, (b) the escrow agent is subject to the personal jurisdiction and venue of the district court in Nebraska located in the county of the purchaser's residence or principal office, and (c) the commission is authorized to examine the account.

(3) In lieu of placing deposits in an escrow account, the commission may accept from the developer a surety bond, issued by a company authorized and licensed to do business in this state, in an amount equal to fifty thousand dollars to cover any default by the developer to refund a deposit made in connection with a purchase or reservation of a time-share interval.

Source: Laws 1980, LB 945, § 15; Laws 2001, LB 68, § 7.

76-1716 Mutual right of cancellation.

(1) Before transfer of a time-share interval and no later than the date of any sales contract, the developer shall provide the intended transferee with a copy of the public-offering statement and any amendments and supplements thereto. The contract shall be voidable by the purchaser until he or she has received the public-offering statement and for three business days thereafter. Cancellation shall be without penalty, and all payments made by the purchaser before cancellation shall be refunded within thirty days after receipt of the notice of cancellation as provided in subsection (3) of this section.

(2) Up to three business days after the receipt by the purchaser of the public-offering statement, the developer may cancel the contract of purchase without penalty to either party. The developer shall return all payments made and the purchaser shall return all materials received in good condition, reasonable wear and tear excepted. If such materials are not returned, the developer may deduct the cost of the same and return the balance to the purchaser.

(3) If either party elects to cancel a contract pursuant to subsection (1) or (2) of this section, he or she may do so by hand-delivering notice thereof to the other party or by mailing notice thereof by prepaid United States mail to the other party or to his or her agent for service of process.

Source: Laws 1980, LB 945, § 16; Laws 2001, LB 68, § 8.

76-1717 Other filings not required; not treated as a security.

(1) Any time-share program registered with the commission in which a public-offering statement has been prepared does not require registration under any other state statute.

(2) Any time-share program that fails to restrict the price at which an owner may sell or exchange his or her time-share interval shall not by virtue of such failure cause the time-share interval to become a security under the Securities

Act of Nebraska nor shall an exchange agent offering such a time-share interval for exchange be construed to be offering a security under such act.

Source: Laws 1980, LB 945, § 17.

Cross References

Securities Act of Nebraska, see section 8-1123.

76-1718 Public-offering statement; not required; when.

The developer shall not be required to prepare and distribute a public-offering statement if the developer has registered and there has been issued a public-offering statement or similar disclosure document which is provided to purchasers under the following:

- (1) The Securities and Exchange Act of 1933;
- (2) The federal Interstate Land Sales Full Disclosure Act in which the time-share program is made a part of the subdivision that is being registered; or
- (3) Any federal act or act of the state where the time-share project is located which requires a federal or state public-offering statement or similar disclosure document to be prepared and provided to purchasers.

Source: Laws 1980, LB 945, § 18; Laws 2001, LB 68, § 9.

76-1719 Public-offering statement; cases in which not required.

A public-offering statement need not be prepared or delivered in the case of:

- (1) Any transfer of a time-share interval by any time-share interval owner other than the developer or his or her agent;
- (2) Any disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure;
- (5) A disposition of a time-share interval in a time-share project situated wholly outside this state if all solicitations, negotiations, offerings, and contacts took place wholly outside this state and the contract was executed wholly outside this state;
- (6) A gratuitous transfer of a time-share interval; or
- (7) Group reservations made for fifteen or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations, when deposits are made and held for more than three years in advance.

Source: Laws 1980, LB 945, § 19; Laws 2001, LB 68, § 10.

76-1720 Public-offering statement; material change; amend or supplement.

The developer shall amend or supplement the public-offering statement to report any material change in the information required by sections 76-1713 and 76-1714. As to any exchange program, the developer shall use the current written materials that are supplied to it for distribution to the time-share interval owners as it is received.

Source: Laws 1980, LB 945, § 20.

76-1721 Liens.

(1) Unless the purchaser expressly agrees to take subject to or assume a lien prior to transferring a time-share interval other than by deed in lieu of foreclosure, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interval, or shall provide a surety bond or insurance against the lien.

(2) Unless a time-share interval owner or his or her predecessor in title agree otherwise with the lienor, if a lien other than an underlying mortgage or deed of trust becomes effective against more than one time-share interval in a time-share project, any time-share interval owner is entitled to a release of his or her time-share interval from the lien upon payment of the amount of the lien attributable to his or her time-share interval. The amount of the payment shall be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering that time-share interval. After payment, the managing entity shall not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien.

Source: Laws 1980, LB 945, § 21.

76-1722 Effect of violation on rights of action; attorney's fees; violations; penalties; enforcement.

(1) If a developer or any other person subject to the Nebraska Time-Share Act violates any provision thereof or any provision of the project instruments, any person or class of persons damaged or otherwise adversely affected by the violation shall have a claim for appropriate relief, which may be brought in the county where the cause of action or part of the cause of action arose. The court may render any contract entered into in this state in violation of the act void and unenforceable and any money paid under such contract, together with interest at the rate of six percent per annum, may be recovered from the date of such payment or such violation, whichever is later. The court may also award such person or class of persons reasonable attorney's fees.

(2)(a) Any developer or any other person subject to the act who offers or disposes of a time-share interval without having complied with the act or who violates any provision of the act shall be guilty of a Class I misdemeanor.

(b) Any person acting as a sales agent without having first obtained a real estate broker or salesperson license shall be guilty of a Class II misdemeanor.

(3) Whenever, in the judgment of the commission, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the act, the Attorney General may maintain an action in the name of the State of Nebraska, in the district court of the county wherein such violation or threatened violation occurred, to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with the provisions of the act. The plaintiff shall not be required to give any bond nor shall any court costs be adjudged against the plaintiff.

(4) The commission by and through its director may prefer a complaint for violation of the act.

Source: Laws 1980, LB 945, § 22; Laws 2001, LB 68, § 11.

76-1723 Statutes of limitations.

A judicial proceeding in which the accuracy of the public-offering statement or validity of any contract of purchase is in issue or in which a rescission of the contract or damages is sought shall be commenced within four years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond the period of limitation except that, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period for bringing a judicial proceeding will continue for a period of four years for each breach, but the parties may agree in writing to reduce the period of limitation to not less than two years.

Source: Laws 1980, LB 945, § 23.

76-1724 Financial records.

The person or entity responsible for making or collecting common expense assessments or maintenance assessments shall keep detailed financial records. All financial and other records shall be made reasonably available for examination by any time-share interval owner and his or her authorized agents.

Source: Laws 1980, LB 945, § 24.

76-1725 Commission; powers.

(1) The commission may adopt, amend, and repeal rules and regulations and issue orders consistent with, and in furtherance of the objectives of the Nebraska Time-Share Act. The commission may prescribe forms and procedures for submitting information to the commission.

(2) The commission may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in other jurisdictions in furtherance of the objectives of the act.

(3) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.

(4) The commission may initiate private investigations within or outside this state.

Source: Laws 1980, LB 945, § 25; Laws 2001, LB 68, § 12.

76-1726 Commission; notice of suspension; conditions; cease and desist order; revocation order.

(1) The commission, after notice and hearing, may issue a notice of suspension if any of the following conditions exist:

(a) Any representation in any document or information filed with the commission is false or misleading;

(b) Any developer or agent of the developer has engaged or is engaging in any unlawful act or practice;

(c) Any developer or agent of the developer has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a time-share program;

(d) Any developer or agent of the developer has concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-share intervals in the time-share program;

(e) Any developer or agent of the developer has failed to perform any stipulation or agreement made to induce the commission to issue an order relating to the time-share program; or

(f) Any developer or agent of the developer has otherwise violated any provision of the Nebraska Time-Share Act or the commission's rules and regulations or orders.

(2) The commission may issue a cease and desist order if the developer has not registered the time-share program as required by the act.

(3) The commission, after notice and hearing, may issue an order revoking the registration of a time-share program upon determination that a developer or agent of the developer has failed to comply with a notice of suspension issued by the commission affecting the time-share program.

Source: Laws 1980, LB 945, § 26; Laws 2001, LB 68, § 13.

76-1727 Time-share interval; offer or sale; restrictions.

A developer shall not offer or dispose of a time-share interval:

(1) If the time-share program is not registered with the commission and not otherwise exempted under section 76-1738, except that a developer may accept a reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers and is refundable at any time at the purchaser's option. In all cases, a reservation shall require a subsequent affirmative act by the purchaser by a separate instrument to create a binding obligation;

(2) While an order revoking or suspending the registration of the time-share program is in effect; or

(3) If the developer has not designated a duly licensed Nebraska real estate broker who accepts responsibility for the developer's actions in this state.

Source: Laws 1980, LB 945, § 27; Laws 2001, LB 68, § 14.

76-1728 Acquisition agent; register information; bond.

An acquisition agent, including the developer if it is also the acquisition agent, shall register with the commission the time-share program or programs that it is providing prospective purchasers for, its principal office address and telephone number, and designate who its responsible managing employee is. The acquisition agent shall furnish evidence that a bond of five thousand dollars has been placed with a surety company or a cash bond with the commission to cover any violations of any solicitation ordinances, zoning ordinances, building codes, or other regulations governing the use of the premise or premises in which the time-share program is promoted.

Source: Laws 1980, LB 945, § 28.

76-1729 Sales agent; register information; bond.

A sales agent, including the developer if it is also the sales agent, shall register with the commission the time-share program or programs that it is selling, its principal office address and telephone number, and designate who

its responsible managing employee is and any special escrow accounts set up for the deposit and collection of purchasers' funds. The sales agent shall furnish evidence that a bond of five thousand dollars has been placed with a surety company or a cash bond with the commission to cover any defalcations of the sales agent.

Source: Laws 1980, LB 945, § 29.

76-1730 Managing agent; register information; bond.

A managing agent, including the developer if it is also the managing agent, shall register with the commission the time-share program or programs that it is managing, its principal office address and telephone number, and designate who its responsible managing employee is. The managing agent shall furnish evidence that a bond of five thousand dollars has been placed with a surety company or a cash bond with the commission to cover any default of the managing agent of his or her duties and responsibilities.

Source: Laws 1980, LB 945, § 30.

76-1731 Bonds; consolidation.

If the acquisition agent, sales agent, and management agent are under the control of, subsidiary of, or affiliate of the developer or any other person, the bonds required by sections 76-1728 to 76-1730 may be consolidated and reduced to ten thousand dollars if there is a disclosure of the affiliation and the disclosures required by sections 76-1728 to 76-1730.

Source: Laws 1980, LB 945, § 31.

76-1732 Exchange agent; file information.

An exchange agent, including the developer who is also the exchange agent, shall file a statement with the commission containing a list of time-share programs for which it is offering exchange services, its principal office address and telephone number, a designation of its responsible managing employee or person with whom any contact is to be made, and the information required in subdivisions (1) through (7) of section 76-1714. Such statement may omit any information which the exchange agent certifies in writing to the developer and which the developer includes in the public-offering statement.

Source: Laws 1980, LB 945, § 32; Laws 2001, LB 68, § 15.

76-1733 Acquisition agent; sales agent; maintain records.

The acquisition agent and sales agent shall each maintain their respective records of any independent contractors employed by them, their addresses, and commissions paid for the immediately preceding two calendar years.

Source: Laws 1980, LB 945, § 33.

76-1734 Application for registration; contents; fees; certificate of registration; report; investigation.

(1) An application for registration shall contain the public-offering statement, a brief description of the property, copies of time-share instruments, a certified, audited financial statement fully and fairly disclosing the current financial condition of the developer, and any documents referred to therein and such other information as may be required by the commission. In lieu of a certified,

audited financial statement of the developer, the commission may accept a current audited consolidated financial statement which includes the financial condition of the developer and is accompanied by a statement from the developer's parent organization, in a form approved by the commission, that guarantees the developer's performance on any obligation under the Nebraska Time-Share Act or as contracted by the developer.

(2) Such application shall be accompanied by a filing fee of two hundred dollars plus five dollars for each twenty-five time-share intervals or portions thereof. If the application is approved, the commission shall issue a certificate of registration to the applicant. After issuance of a certificate, an annual fee of fifty dollars plus five dollars for each twenty-five time-share intervals or fraction thereof computed on the number of time-share intervals in the original application shall be due and payable on or before January 1 of each year. The annual fee for each time-share program shall not exceed one thousand five hundred dollars. Failure to remit annual fees when due shall automatically cancel the certificate, but otherwise such certificate shall remain in full force and effect if the commission determines from satisfactory investigation that such certificate should be renewed.

(3) Before issuing the renewal certificate each year, the certificate holder shall furnish to the commission, on or before January 1 of each year, an annual report of all purchases and reservations made by the developer or its agents to any person with a residence, primary place of business, or mailing address in this state and any other information requested by the commission. The annual report shall (a) include the amount of any deposit required to be made in connection with the purchase or reservation of a time-share interval from the developer and (b) cover the twelve-month period ending October 31 immediately preceding the annual report.

(4) The commission shall thoroughly investigate all matters relating to the application and may require a personal inspection of the real estate by a person or persons designated by it. All expenses incurred by the commission in investigating such real estate and the proposed sale thereof in this state shall be borne by the applicant and the commission shall require a deposit sufficient to cover such expenses prior to incurring such expenses.

Source: Laws 1980, LB 945, § 34; Laws 2001, LB 68, § 16; Laws 2004, LB 845, § 3.

76-1735 Commission; regulation of public-offering statement.

(1) The commission at any time may require a developer to alter or supplement the form or substance of a public-offering statement to assure adequate and accurate disclosure to prospective purchasers.

(2) The public-offering statement may not be used for any promotional purposes before registration and afterwards only if it is used in its entirety. No person shall advertise or represent that the commission has approved or recommended the time-share program, the disclosure statement, or any of the documents contained in the application for registration.

(3) No developer or sales agent shall in any manner refer to the commission or any member or employee thereof in selling, offering for sale, or advertising or otherwise promoting the sale of time-share intervals, nor make any representation whatsoever that such development has been inspected or approved or

otherwise passed upon by the commission or any other state official, department, or employee.

Source: Laws 1980, LB 945, § 35.

76-1736 Receipt of application; effectiveness of registration.

(1) Except as provided in subsection (2) of this section, the effective date of the registration, or any amendment thereto, shall be the sixtieth day after the filing thereof or such earlier date as the commission may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such registration is filed prior to the effective date, the registration shall be deemed to have been filed when such amendment was filed.

(2) If it appears to the commission that the application for registration, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the commission shall notify the developer prior to the date the registration would otherwise be effective. Such notification shall serve to suspend the effective date of the filing until the sixtieth day after the developer files such additional information as the commission shall require. If the developer fails to provide additional information as required by the commission within ninety days after receiving notice, the commission may deny the application or amendment. Any developer, upon receipt of such notice of suspension may request a hearing, and such hearing shall be held within forty-five days after receipt of such request.

(3) If an application or amendment is denied by the commission, the developer shall submit a new application for registration or amendment and any filing fees pursuant to section 76-1734.

Source: Laws 1980, LB 945, § 36; Laws 2001, LB 68, § 17.

76-1737 Developer; amend or supplement registration.

A developer shall amend or supplement its registration to report any material change in the information required by section 76-1734.

Source: Laws 1980, LB 945, § 37.

76-1737.01 Developer; time-share interval; duties; violation.

Notwithstanding any obligations placed upon other persons pursuant to the Nebraska Time-Share Act, the developer shall supervise, manage, and control all aspects of the offering of a time-share interval, including, but not limited to, promotion, advertising, contracting, and closing. Any violation of this section which occurs during such offering shall be a violation by the developer as well as by the person actually committing such violation.

Source: Laws 2001, LB 68, § 19.

76-1738 Registration; exemptions; exception.

No registration with the commission shall be required in the case of:

- (1) Any transfer of a time-share interval by any time-share interval owner other than the developer or his or her agent;
- (2) Any disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition of a time-share interval in a time-share project situated wholly outside this state if all solicitations, negotiations, offerings, and contacts took place wholly outside this state and the contract was executed wholly outside this state;

(6) A gratuitous transfer of a time-share interval;

(7) Group reservations made for fifteen or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations when deposits are made and held for more than three years in advance; or

(8) Any offering, other than through an individual while located in this state, of a time-share interval for a time-share project situated wholly outside this state if the offer states that the time-share interval is in compliance with the law of the jurisdiction in which the time-share interval is located.

A reservation pursuant to section 76-1727 may be taken as a result of an exempt offering if the time-share program is registered prior to entering into any binding agreement with a purchaser, unless otherwise provided by the Nebraska Time-Share Act. For the purposes of subdivision (5) of this section and the act, an exempt offer is an offering.

Source: Laws 1980, LB 945, § 38; Laws 2001, LB 68, § 18.

76-1739 Financing of time-share programs; records; requirements.

In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance. Any transfer of the developer's interest in the time-share program to any third person shall be subject to the obligations of the developer.

Source: Laws 1980, LB 945, § 39.

76-1740 Rights under foreclosure.

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder a nondisturbance clause, subordination agreement, or partial release of the lien as the time-share intervals are sold. In the alternative, the developer may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by (1) posting a bond, equal to fifty percent of the amount owed to the lienholder, (2) making an assignment of receivables equal to one hundred twenty-five percent of the principal amounts due from purchasers, (3) pledging collateral security equal to one hundred percent of the amount owed to the lienholder, or (4) entering into any other financing plan or escrow agreement acceptable to the lienholder.

Source: Laws 1980, LB 945, § 40.

76-1741 Lienholder; rights.

The lienholder in any time-share program shall have the following rights:

(1) A lienholder shall have his or her lien rights preserved as against any purchaser of time-share intervals claiming that the time-share instrument is invalid, void, or voidable thirty days after written notice by certified mail or

personal delivery has been given by the developer to the purchaser. Such notice shall state that developer has assigned the receivables to the lienholder and that purchaser has thirty days within which to object and specify the invalidity or defect contained within such instrument; and

(2) Any purchaser who fails to indicate the invalidity, void, or voidableness as provided in subdivision (1) of this section waives or is estopped to raise the issue in any subsequent action for enforcement of the collection of the receivable by the lienholder.

Source: Laws 1980, LB 945, § 41.

ARTICLE 18

NEBRASKA DEVELOPMENT FINANCE FUND ACT

Section

76-1801. Repealed. Laws 1983, LB 626, § 79.
 76-1802. Repealed. Laws 1983, LB 626, § 79.
 76-1803. Repealed. Laws 1983, LB 626, § 79.
 76-1804. Repealed. Laws 1983, LB 626, § 79.
 76-1805. Repealed. Laws 1983, LB 626, § 79.
 76-1806. Repealed. Laws 1983, LB 626, § 79.
 76-1807. Repealed. Laws 1983, LB 626, § 79.
 76-1808. Repealed. Laws 1983, LB 626, § 79.
 76-1809. Repealed. Laws 1983, LB 626, § 79.
 76-1810. Repealed. Laws 1983, LB 626, § 79.
 76-1811. Repealed. Laws 1983, LB 626, § 79.
 76-1812. Repealed. Laws 1983, LB 626, § 79.
 76-1813. Repealed. Laws 1983, LB 626, § 79.
 76-1814. Repealed. Laws 1983, LB 626, § 79.
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 76-1836. Repealed. Laws 1983, LB 626, § 79.
 76-1837. Repealed. Laws 1983, LB 626, § 79.
 76-1838. Repealed. Laws 1983, LB 626, § 79.
 76-1839. Repealed. Laws 1983, LB 626, § 79.
 76-1840. Repealed. Laws 1983, LB 626, § 79.
 76-1841. Repealed. Laws 1983, LB 626, § 79.

76-1801 Repealed. Laws 1983, LB 626, § 79.

76-1802 Repealed. Laws 1983, LB 626, § 79.

- 76-1803 Repealed. Laws 1983, LB 626, § 79.
- 76-1804 Repealed. Laws 1983, LB 626, § 79.
- 76-1805 Repealed. Laws 1983, LB 626, § 79.
- 76-1806 Repealed. Laws 1983, LB 626, § 79.
- 76-1807 Repealed. Laws 1983, LB 626, § 79.
- 76-1808 Repealed. Laws 1983, LB 626, § 79.
- 76-1809 Repealed. Laws 1983, LB 626, § 79.
- 76-1810 Repealed. Laws 1983, LB 626, § 79.
- 76-1811 Repealed. Laws 1983, LB 626, § 79.
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- 76-1814 Repealed. Laws 1983, LB 626, § 79.
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- 76-1822 Repealed. Laws 1983, LB 626, § 79.
- 76-1823 Repealed. Laws 1983, LB 626, § 79.
- 76-1824 Repealed. Laws 1983, LB 626, § 79.
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- 76-1826 Repealed. Laws 1983, LB 626, § 79.
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- 76-1828 Repealed. Laws 1983, LB 626, § 79.
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- 76-1830 Repealed. Laws 1983, LB 626, § 79.
- 76-1831 Repealed. Laws 1983, LB 626, § 79.
- 76-1832 Repealed. Laws 1983, LB 626, § 79.
- 76-1833 Repealed. Laws 1983, LB 626, § 79.

76-1834 Repealed. Laws 1983, LB 626, § 79.

76-1835 Repealed. Laws 1983, LB 626, § 79.

76-1836 Repealed. Laws 1983, LB 626, § 79.

76-1837 Repealed. Laws 1983, LB 626, § 79.

76-1838 Repealed. Laws 1983, LB 626, § 79.

76-1839 Repealed. Laws 1983, LB 626, § 79.

76-1840 Repealed. Laws 1983, LB 626, § 79.

76-1841 Repealed. Laws 1983, LB 626, § 79.

ARTICLE 19

FARM HOMESTEAD PROTECTION ACT

Section

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76-1901 Act, how cited.

Sections 76-1901 to 76-1916 shall be known and may be cited as the Farm Homestead Protection Act.

Source: Laws 1986, Third Spec. Sess., LB 3, § 1.

76-1902 Terms, defined.

As used in the Farm Homestead Protection Act, unless the context otherwise requires:

(1) Designation of homestead shall mean a sworn written statement by an individual mortgagor, trustor, or judgment debtor which describes his or her homestead, executed on or after November 21, 1986. Such statement shall include a legal description of the homestead. If only a portion of the homestead will be encumbered by the mortgage, trust deed, or judgment lien with respect to which a designation is made, then such portion so encumbered shall also be identified by proper legal description. If the homestead or the encumbered portion of the homestead is not separately described in its entirety in the mortgage or trust deed with respect to which a designation is made, or cannot

be accurately described as a fractional part of a section, the designation shall be accompanied by a survey which includes a metes and bounds description with reference to established datum. The survey and description shall be prepared by and bear the signature and seal of a registered land surveyor. The designation shall include statements by the individual mortgagor, trustor, or judgment debtor that (a) he or she resides in a dwelling house located upon the homestead, (b) all appurtenances to such dwelling and an adequate supply of potable water and an adequate system of sewage disposal exist upon the homestead, (c) both the water supply and sewage disposal system are located entirely upon the homestead and neither will require access to or an easement across any part of the nondesignated agricultural land encumbered by such mortgage or trust deed, (d) both the homestead and the nonhomestead real estate encumbered by such mortgage or trust deed have existing legal access to a public roadway, and (e) provide a complete listing of all structures and other improvements situated on the portion of the homestead so encumbered, together with a representation that such structures and improvements are within the homestead boundary and do not encroach upon any of the nonhomestead real estate encumbered by such mortgage or trust deed;

(2) Agricultural land shall mean a parcel of land larger than twenty acres not located in any incorporated city or village which is owned by an individual and used in farming operations carried on by the owner at any time within the preceding three-year period for the production of farm products as defined in section 9-102, Uniform Commercial Code. Agricultural land shall include wasteland lying within or contiguous to and in common individual ownership with land used in farming operations for the production of farm products;

(3) Homestead shall mean a parcel of agricultural land encumbered in whole or in part by the lien of a mortgage, trust deed, or judgment, for which a designation of homestead has been made pursuant to the Farm Homestead Protection Act, and which possesses all of the attributes legally requisite to its selection by the mortgagor, trustor, or judgment debtor as his or her homestead under Chapter 40, except that the value limitation of section 40-101 shall not be construed to limit or impede any such designation;

(4) Protected real estate shall mean agricultural land which is encumbered by the lien of a judgment entered or a mortgage or trust deed executed on or after November 21, 1986, which lien is of a first and paramount priority over any other lien except a tax lien; and

(5) Redemptive homestead shall mean that portion of any protected real estate for which an owner has made a designation of homestead as provided in the Farm Homestead Protection Act.

Source: Laws 1986, Third Spec. Sess., LB 3, § 2; Laws 1999, LB 550, § 43.

76-1903 Mortgage foreclosure; notice of right to cure; contents; cure of default; effect.

(1) In any action for the foreclosure of a mortgage upon protected real estate, if the mortgaged premises are used in farming operations carried on by the mortgagor, the mortgagee shall, before the commencement of such action, send to the mortgagor written notice of right to cure.

(2) The notice of right to cure shall set forth:

(a) A statement identifying the mortgage instrument by stating the name of the mortgagor named therein and giving the book and page or computer system reference where the same is recorded, a brief description of the mortgaged premises, and a statement that a breach of an obligation contained in or secured by the mortgage has occurred, setting forth the nature of such breach and of the mortgagee's election to enforce the mortgage against the mortgaged premises;

(b) A statement that the mortgagor, his or her successor in interest in the mortgaged premises or any part thereof, or any other person having a subordinate lien or encumbrance of record thereon may, at any time within two months of the sending of the notice of right to cure, render to the mortgagee or his or her successor in interest full performance and payment of the entire amount then due under the terms of the mortgage and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and mortgage, including reasonable attorney's fees not exceeding one-half of one percent of the unpaid principal balance then due, and any reinstatement fee provided for under the terms of the mortgage or the obligation thereby secured, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default previously existing;

(c) A statement of the amount of the entire unpaid principal sum secured by the mortgage, the amount of interest accrued thereon to and including the date of notice, and the dollar amount of the per diem interest accruing from and after such date; and

(d) A statement of the amount of the unpaid principal which would not then be due had no default occurred.

(3) A copy of the notice of right to cure sent to the mortgagor shall be appended as an exhibit to the foreclosure petition filed with the court. The right to cure provided by this section shall expire two months from the date the notice of right to cure is sent to the mortgagor.

(4) If the default is cured prior to the expiration of the two-month period, any action previously commenced shall be dismissed and the mortgage and the obligation thereby secured shall be reinstated and shall be and remain in force and effect the same as if no default or acceleration had occurred.

Source: Laws 1986, Third Spec. Sess., LB 3, § 3.

76-1904 Mortgage or trust deed; designation of homestead; waiver or disclaimer; reservation of right to designate.

(1) In any mortgage or trust deed executed on or after November 21, 1986, upon agricultural land, the mortgagor or trustor may make a designation of homestead in the body of such mortgage or trust deed.

(2) In any mortgage or trust deed executed on or after November 21, 1986, upon agricultural land, if no (a) designation of homestead is made pursuant to subsection (1) of this section or (b) waiver or disclaimer given in accordance with subsection (3) of this section, such mortgage or trust deed shall be construed as affording to the mortgagor or trustor a reservation of right to defer his or her designation of homestead until such time as a decree of foreclosure is entered upon such mortgage or trust deed or a trustee's notice of default is filed for record pursuant to section 76-1006.

(3)(a) On or after November 21, 1986, prior to the execution of any mortgage or trust deed upon agricultural land, the mortgagor or trustor may disclaim in writing his or her right to make a designation of homestead. The disclaimer shall contain a statement by the mortgagor or trustor that no part of his or her homestead is presently or in the future will be situated upon the real estate described in the mortgage or trust deed and that the mortgagor or trustor understands that if he or she establishes a homestead on any part of the real estate during the time the mortgage or trust deed remains unsatisfied and a lien upon the real estate, there shall be no right to make a designation of homestead in the event of a foreclosure or trustee's sale upon such mortgage or trust deed. Such written disclaimer shall be set forth as a preface to the mortgage or trust deed and shall be filed for record as a part of the mortgage or trust deed in the office of the register of deeds. Failure by the mortgagee or trustee to file a written disclaimer as provided in this subdivision shall nullify any purported disclaimer by the mortgagor or trustor of his or her right to make a designation of homestead.

(b) On and after November 21, 1986, prior to the execution of any mortgage or trust deed upon agricultural land, the mortgagor or trustor may waive by written acknowledgment his or her right to make a designation of homestead. The written acknowledgment shall contain a statement that the mortgagor or trustor understands that he or she has the right to make a designation of homestead in the mortgage or trust deed and the execution of such acknowledgment constitutes the waiver of rights otherwise available for the purpose of affording the mortgagor or trustor the opportunity to retain his or her homestead in the event of a default upon such mortgage or trust deed. Such written acknowledgment shall be set forth as a preface to the mortgage or trust deed and shall be filed for record as a part of the mortgage or trust deed in the office of the register of deeds. Failure by the mortgagee or trustee to file a written acknowledgment as provided in this subdivision shall nullify any purported waiver by the mortgagor or trustor of his or her right to make a designation of homestead.

Source: Laws 1986, Third Spec. Sess., LB 3, § 4.

76-1905 Priority of liens.

For so long as any mortgage or trust deed described in section 76-1904 remains a lien upon the real estate, the designation of homestead, the reservation of the right to make a designation of homestead, or a waiver or disclaimer of the right to make a designation of homestead made in accordance with section 76-1904 shall be binding upon the parties to such instrument and their successors in interest and upon any other interest in the real estate which is junior in priority to the priority of the lien created by such mortgage or trust deed. Except as provided in sections 76-1912 and 76-1913, no designation of homestead shall have any force or effect if any mortgage or trust deed executed or a judgment rendered prior to November 21, 1986, remains a lien upon the real estate and is senior in priority to the instrument in which a designation of homestead, reservation of the right to make a designation of homestead, or a waiver or disclaimer of the right to make a designation of homestead is made.

Source: Laws 1986, Third Spec. Sess., LB 3, § 5.

76-1906 Redemption of redemptive homestead; when allowed.

(1) In an action against protected real estate for the foreclosure of any mortgage or trust deed described in section 76-1904 with respect to which no waiver or disclaimer of the right to make a designation of homestead has been made or is otherwise binding in accordance with section 76-1905, if any part of the homestead of the mortgagor or trustor is included in a decree directing a sale of the mortgaged premises or trust property, the mortgagor or trustor may request redemption of his or her redemptive homestead. Such request shall be made in a petition signed and sworn to by the mortgagor or trustor and filed in the foreclosure action not later than twenty days after entry of the decree of foreclosure.

(2) In any proceeding against protected real estate involving the exercise of a power of sale by a trustee under a trust deed described in section 76-1904 with respect to which no waiver or disclaimer of the right to make a designation of homestead has been made or is otherwise binding in accordance with section 76-1905, if any part of the homestead of the trustor is included in the notice of default filed in accordance with section 76-1006, the trustor may request redemption of his or her redemptive homestead. Such request shall be made in a petition signed and sworn to by the trustor and filed in the district court of the county where the trust property is located not later than two months following recordation of the notice of default.

(3) If protected real estate of a judgment debtor is subject to the lien of a judgment entered on or after November 21, 1986, and if no waiver or disclaimer of the right to make a designation of homestead is binding in accordance with section 76-1905, the judgment debtor may request redemption of his or her redemptive homestead. Such request shall be made in a petition signed and sworn to by the judgment debtor and filed in the district court of the county where the redemptive homestead is located not later than the date of the last publication of the notice required by section 25-1529.

Source: Laws 1986, Third Spec. Sess., LB 3, § 6; Laws 1999, LB 43, § 27.

76-1907 Petition; contents.

A petition filed pursuant to section 76-1906 shall:

(1) Set forth a designation of the homestead which shall, with respect to the redemptive homestead, be limited by the boundaries of any designation made pursuant to section 76-1904 in any mortgage or trust deed having priority under section 76-1905; and

(2) Include a written appraisal report prepared and signed by a credentialed real property appraiser setting forth the appraiser's opinion of value and basis for such opinion of the current market value of each of the following: (a) The protected real estate as a whole; (b) the redemptive homestead if sold separately from the balance of the protected real estate; and (c) the balance of the protected real estate if sold separately from the redemptive homestead.

Source: Laws 1986, Third Spec. Sess., LB 3, § 7; Laws 1990, LB 1153, § 60; Laws 1991, LB 203, § 5; Laws 1994, LB 1107, § 5; Laws 2006, LB 778, § 9.

76-1908 Confirmation of redemption.

If after trial as an action in equity the court finds: (1) That the petition provided for in section 76-1906 is filed in good faith and not for delay; (2) that

the statements contained in the petition are true; and (3) that the requested redemption will not unreasonably affect the market value of the protected real estate exclusive of the redemptive homestead, then the court shall confirm the redemption.

Source: Laws 1986, Third Spec. Sess., LB 3, § 8; Laws 2006, LB 778, § 10.

76-1909 Redemption; payment by petitioner; failure to pay; effect; petitioner's equity; use; when allowed.

(1) Except as provided in subsection (2) of this section, an order confirming a requested homestead redemption shall direct the petitioner to pay into the court not later than ten days from the entry of such order a cash amount equal to the current market value of the redemptive homestead as found and determined by the court in its confirmation order. If the petitioner fails to make such payment, the court shall, upon its own motion or the motion of any party to the action, vacate the confirmation order, and all of the protected real estate shall then be subject to sale as provided by law, free of any redemptive or other right of the petitioner otherwise existing under the Farm Homestead Protection Act. The filing of a petition requesting redemption on the basis of the payment of a cash amount equal to the current market value of the redemptive homestead shall not constitute a waiver of any stay in effect or available to the petitioner under section 25-1506.

(2) Redemption based upon the petitioner's equity in the protected real estate shall be permitted when requested in the prayer of the petition and when the court specifically finds and determines in its confirmation order that the sum of all liens upon the protected real estate is equal to eighty-five percent or less of the current market value of that portion of the protected real estate exclusive of the redemptive homestead. If the court finds that the petitioner has sufficient equity as required by this subsection, the payment otherwise required by subsection (1) of this section shall be waived by the court in its order confirming the redemption. The filing of a petition requesting redemption on the basis of the petitioner's equity in the protected real estate as provided in this subsection shall constitute a waiver of any stay in effect or available to the petitioner under section 25-1506.

Source: Laws 1986, Third Spec. Sess., LB 3, § 9; Laws 2006, LB 778, § 11.

76-1910 Filing of petition; effect; petitioner's rights.

(1) The filing of a petition as provided in section 76-1906 shall not delay or preclude the holder of a mortgage, trust deed, or judgment lien, referred to in such section, from causing a sale as otherwise permitted by law of that portion of the protected real estate exclusive of the redemptive homestead described in the petition.

(2) Upon (a) payment of the market value of the redemptive homestead as provided in subsection (1) of section 76-1909 or (b) confirmation of a requested redemption on the basis of the petitioner's equity in the protected real estate pursuant to subsection (2) of section 76-1909, the petitioner shall be entitled to retain his or her interest in the redemptive homestead free of the lien of the mortgage or trust deed or the judgment lien, against which the petition for

redemption was filed, and free of any other lien held therein by any party to the action.

Source: Laws 1986, Third Spec. Sess., LB 3, § 10; Laws 2006, LB 778, § 12.

76-1911 Prior lien; validity.

No action on any petition filed in accordance with section 76-1906 nor any order of confirmation entered thereon shall at any time affect or impair any prior lien upon agricultural land under any mortgage or trust deed executed or judgment rendered prior to November 21, 1986, and no redemptive right created by the Farm Homestead Protection Act shall exist with respect to any such mortgage, trust deed, or judgment.

Source: Laws 1986, Third Spec. Sess., LB 3, § 11.

76-1912 Mortgage foreclosure; two sales; procedure.

(1) In an action for the foreclosure of a mortgage upon agricultural land which was recorded prior to November 21, 1986, or a mortgage recorded on or after November 21, 1986, in which the right to designate a homestead has been waived or disclaimed pursuant to section 76-1904, if any part of the homestead of the mortgagor is included in a decree directing a sale of the mortgaged premises, upon request of the mortgagor, the mortgaged premises shall be offered in separate sales. The first sale shall be en masse and, immediately thereafter, at the same location, the premises shall again be sold. At the second sale, the mortgaged premises shall be sold in two separate parcels with the homestead designated in the mortgagor's request being the last parcel to be sold. The sheriff or other person authorized by the court to sell the mortgaged premises shall make return of both sales. The court shall confirm, subject to the provisions of section 25-1531, the sale upon which the greater amount is realized, except that if in the second sale by parcels the mortgagor bids for his or her designated homestead, and if, by virtue of the price bid by the mortgagor for such homestead, the aggregate amount realized in the second sale equals or exceeds the amount realized from the first sale en masse or the amount of the decree, whichever is less, then the court shall confirm the sale by parcels and the mortgagor shall be the purchaser of his or her designated homestead.

(2) The mortgagor's request shall be signed and acknowledged by the mortgagor and filed with the clerk of the court within twenty days after entry of the decree of foreclosure.

(3) The mortgagor's request shall include his or her designation of homestead.

Source: Laws 1986, Third Spec. Sess., LB 3, § 12; Laws 1999, LB 43, § 28.

76-1913 Trust deed; notice of default; two sales; procedure.

(1) If any part of the homestead of the trustor is included in a description of agricultural land set forth in a notice of default under a trust deed recorded prior to November 21, 1986, or a trust deed recorded on or after November 21, 1986, in which the trustor has waived or disclaimed the right to designate a homestead pursuant to section 76-1904, upon request by the trustor, such property shall be offered in two separate sales in the manner set forth in section

76-1009. The first sale shall be en masse and, immediately thereafter, at the same location, the property shall again be sold. In the second sale, the property shall be sold in separate parcels with the homestead designated in the trustor's request being the last parcel to be sold. The property shall be sold to the highest bidder or bidders at the sale producing the greatest aggregate price, except that if at the second sale by parcels the trustor bids for his or her designated homestead, and if, by virtue of the price bid by the trustor for such homestead, the aggregate price realized in the second sale equals or exceeds the price realized from the first sale en masse or the amount sufficient to satisfy the cost and expenses described in section 76-1011 and the obligation secured by the trust deed and all other indebtedness secured by subordinate liens and encumbrances, whichever is less, then the trustor shall be the purchaser of the homestead parcel and entitled to a trustee's deed thereto and the balance of the property shall be sold to the highest bidder therefor at the second sale by parcels.

(2) The trustor's request shall identify the trust deed by giving the book and page or computer system reference where the same is recorded and shall be signed and acknowledged by the trustor and filed for record in the office of the register of deeds of each county where the trust property or some part or parcel thereof is situated within two months of the filing for record of the notice of default.

(3) The trustor's request shall include his or her designation of homestead.

Source: Laws 1986, Third Spec. Sess., LB 3, § 13.

76-1914 Act, how construed.

The Farm Homestead Protection Act shall not be construed to impair any right of a judgment debtor to claim and receive the dollar amount of the exemption afforded to the holder of the homestead under section 40-101.

Source: Laws 1986, Third Spec. Sess., LB 3, § 14.

76-1915 Successor in interest; rights; when available.

The rights afforded to a mortgagor or trustor under the Farm Homestead Protection Act shall be available for the protection of the homestead of his or her successor in interest in the mortgaged premises or trust property only if the successor has entered into an agreement signed and acknowledged by the mortgagee or beneficiary and by the successor for the assumption and full performance by the successor of the obligations secured by the mortgage or trust deed.

Source: Laws 1986, Third Spec. Sess., LB 3, § 15.

76-1916 Sale or conveyance; exempt from subdivision requirements.

(1) A sale or conveyance of agricultural land in parcels pursuant to any action on a petition filed pursuant to section 76-1906, (2) a foreclosure sale of mortgaged premises in parcels pursuant to section 76-1912 or 76-1913 or a decree entered under section 25-2138, or (3) a conveyance by deed executed by the owner to a mortgagee or trustee in lieu of foreclosure or exercise of the trustee's power of sale shall be exempt from the requirements of subdivision approval contained in sections 14-116, 15-901, 16-902, 17-1002, 23-174.03, and

23-373 and shall not constitute a subdivision as defined in sections 14-116, 15-901, 19-921, 23-174.03, and 23-372.

Source: Laws 1986, Third Spec. Sess., LB 3, § 16.

ARTICLE 20

RULE AGAINST PERPETUITIES

Section

- 76-2001. Act, how cited.
- 76-2002. Statutory rule against perpetuities.
- 76-2003. When nonvested property interest or power of appointment created.
- 76-2004. Reformation of disposition.
- 76-2005. Exclusions from statutory rule against perpetuities.
- 76-2006. Prospective application.
- 76-2007. Uniformity of application and construction.
- 76-2008. Common-law rule; superseded.

76-2001 Act, how cited.

Sections 76-2001 to 76-2008 shall be known and may be cited as the Uniform Statutory Rule Against Perpetuities Act.

Source: Laws 1989, LB 377, § 1.

76-2002 Statutory rule against perpetuities.

(a) A nonvested property interest is invalid unless:

- (1) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
- (2) The interest either vests or terminates within ninety years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

- (1) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or
- (2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

- (1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or
- (2) The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

Source: Laws 1989, LB 377, § 2.

76-2003 When nonvested property interest or power of appointment created.

(a) Except as provided in subsections (b) and (c) of this section and subsection (a) of section 76-2006, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of the Uniform Statutory Rule Against Perpetuities Act, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in subsection (a) or (b) of section 76-2002, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of the act, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

Source: Laws 1989, LB 377, § 3.

76-2004 Reformation of disposition.

Upon the petition of an interested person, a county court in a proceeding described in section 30-2211 or 30-3812 or a district court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by subdivision (a)(2), (b)(2), or (c)(2) of section 76-2002 if:

(1) A nonvested property interest or a power of appointment becomes invalid under section 76-2002;

(2) A class gift is not but might become invalid under section 76-2002 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by subdivision (a)(1) of section 76-2002 can vest but not within ninety years after its creation.

Source: Laws 1989, LB 377, § 4; Laws 2003, LB 130, § 138.

76-2005 Exclusions from statutory rule against perpetuities.

Section 76-2002 does not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) a reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

(7) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another law of this state;

(8) A property interest, ownership, or a power of appointment transferred in trust for charitable purposes by whose terms such trust is to continue for an indefinite or unlimited period or arrangement of like import; or

(9) A trust in which the governing instrument states that the rule against perpetuities does not apply to the trust and under which the trustee or other person to whom the power is properly granted or delegated has power under the governing instrument, any applicable statute, or the common law to sell, lease, or mortgage property for any period of time beyond the period which would otherwise be required for an interest created under the governing instrument to vest. This subdivision shall apply to all trusts created by will or inter vivos agreement executed or amended on or after July 20, 2002, and to all trusts created by exercise of power of appointment granted under instruments executed or amended on or after July 20, 2002.

Source: Laws 1989, LB 377, § 5; Laws 1996, LB 1002, § 1; Laws 2002, LB 385, § 1.

76-2006 Prospective application.

(a) Except as extended by subsection (b) of this section, the Uniform Statutory Rule Against Perpetuities Act applies to a nonvested property interest or a power of appointment that is created on or after August 25, 1989. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before August 25, 1989, and is determined in a judicial proceeding, commenced on or after such date, to violate this state's rule against perpetuities as that rule existed before such date, a county court in a proceeding described in section 30-2211 or 30-3812 or a district court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the

transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

Source: Laws 1989, LB 377, § 6; Laws 2003, LB 130, § 139.

76-2007 Uniformity of application and construction.

The Uniform Statutory Rule Against Perpetuities Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1989, LB 377, § 7.

76-2008 Common-law rule; superseded.

The Uniform Statutory Rule Against Perpetuities Act supersedes the rule of common law known as the rule against perpetuities.

Source: Laws 1989, LB 377, § 8.

ARTICLE 21

MEMBERSHIP CAMPGROUNDS

Cross References

Recreation camps, permit, inspections, see sections 71-3101 to 71-3107.

Section

- 76-2101. Act, how cited.
- 76-2102. Terms, defined.
- 76-2103. Membership camping contract; registration required.
- 76-2104. Prohibited acts.
- 76-2105. Application for registration; contents; amendment; registration; effect; renewal.
- 76-2106. Exemptions from registration.
- 76-2107. Application for registration; effective; when.
- 76-2108. Denial, suspension, or revocation; when; order; hearing.
- 76-2109. Fees.
- 76-2110. Disclosure statement; contents; amendments.
- 76-2111. Membership camping contract; delivery required; contents.
- 76-2112. Membership camping contract; right to cancel; effect; duties.
- 76-2113. Purchaser's remedies; attorney's fees and court costs.
- 76-2114. Salesperson; registration required; exemption; violation; penalty.
- 76-2115. Salesperson registration; application; contents; denial, suspension, or revocation; grounds; renewal; fee.
- 76-2116. Membership camping operator; offer or execution of contract; requirements; surety bond or letter of credit; authorized.
- 76-2117. Advertisement, communication, or sales literature; restrictions; disclosures required; rain check; prohibited acts.
- 76-2118. Injunctions authorized.
- 76-2119. Civil penalty authorized.
- 76-2120. Applicability of other law.
- 76-2121. Rules and regulations.

76-2101 Act, how cited.

Sections 76-2101 to 76-2121 shall be known and may be cited as the Membership Campground Act.

Source: Laws 1990, LB 656, § 1.

76-2102 Terms, defined.

For purposes of the Membership Campground Act:

(1) Advertisement shall mean an attempt by publication, dissemination, solicitation, or circulation to induce, directly or indirectly, any person to enter into an obligation or acquire a title or interest in a membership camping contract;

(2) Affiliate shall mean any person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(3) Blanket encumbrance shall mean any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or other material lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey all or part of a campground located in this state, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. Blanket encumbrance shall include the lessor's interest in a lease of all or part of a campground which is located in this state and which is made available to purchasers by a membership camping operator. Blanket encumbrance shall not include a lien for taxes or assessments levied by a public body which are not yet due and payable;

(4) Business day shall mean any day except Saturday, Sunday, or a legal holiday;

(5) Campground shall mean real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device, and shall include the outdoor recreational facilities located on the real property. Campground shall not include a mobile home park as defined in section 76-1464;

(6) Campsite shall mean a space:

(a) Designed and promoted for the purpose of locating a trailer, tent, tent trailer, recreational vehicle, pickup camper, or other similar device used for camping; and

(b) With no permanent dwelling on it;

(7) Commission shall mean the State Real Estate Commission;

(8) Controlling persons of a membership camping operator shall mean each director and officer and each owner of twenty-five percent or more of the stock of the operator, if the operator is a corporation, each general partner and each owner of twenty-five percent or more of the partnership or other interests, if the operator is a general or limited partnership or other person doing business as a membership camping operator, and each member owning twenty-five percent or more of the limited liability company, if the operator is a limited liability company;

(9) Facilities shall mean any of the following amenities provided and located on the campground: Campsites; rental trailers; swimming pools; sport courts; recreation buildings and trading posts; or grocery stores;

(10) Membership camping contract shall mean an agreement offered or sold within this state evidencing a purchaser's right to use a campground of a membership camping operator for more than thirty days during the term of the agreement;

(11) Membership camping operator or operator shall mean any person, other than one who is tax exempt under section 501(c)(3) of the Internal Revenue Code, who owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments. Membership camping operator shall not include the operator of a mobile home park as defined in section 76-1464;

(12) Offer shall mean an inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract;

(13) Person shall mean any individual, partnership, limited liability company, firm, corporation, or association;

(14) Purchaser shall mean a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator;

(15) Sale or sell shall mean entering into or other disposition of a membership camping contract for value. For purposes of this subdivision, value shall not include a fee to offset the reasonable costs of a transfer of a membership camping contract; and

(16) Salesperson shall mean any individual, other than a membership camping operator, who is engaged in obtaining commitments of persons to enter into membership camping contracts by making a direct sales presentation to the person but shall not include any individual engaged in the referral of persons without making any representations about the camping program or a direct sales presentation to such persons.

Source: Laws 1990, LB 656, § 2; Laws 1993, LB 121, § 487; Laws 1995, LB 574, § 62.

76-2103 Membership camping contract; registration required.

A person shall not offer or sell a membership camping contract in this state unless the membership camping contract is covered by a membership camping registration as provided in the Membership Campground Act or the transaction is exempt under section 76-2106.

Source: Laws 1990, LB 656, § 3.

76-2104 Prohibited acts.

No person shall, in connection with the offering, sale, or lease of an interest in a membership campground:

- (1) Employ any device, scheme, or artifice to defraud;
- (2) Make any untrue statement of a material fact;
- (3) Fail to state a material fact necessary to make a statement clear;
- (4) Issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements on the literature clear;
- (5) Issue, circulate, or publish any advertising matter or make any written representation unless the name of the person issuing, circulating, or publishing the matter or making the representation is clearly indicated; or
- (6) Make any statement or representation or issue, circulate, or publish any advertising matter containing any statement that the membership campground

has been in any way approved by the commission except in conjunction with a public report issued by the commission.

Source: Laws 1990, LB 656, § 4.

76-2105 Application for registration; contents; amendment; registration; effect; renewal.

(1) Filing fees as prescribed in section 76-2109 shall accompany the application for registration, the renewal of a registration, or any amendment of a registration of membership camping contracts.

(2) The application for registration shall be filed with the commission and shall include all of the following:

(a) The membership camping operator's name and the address of its principal place of business, the form of its organization, the date of organization, the jurisdiction of its organization, and the name and address of each of its offices in this state;

(b) A copy of the membership camping operator's articles of incorporation, partnership agreement, articles of organization, or joint-venture agreement as contemplated or currently in effect;

(c) The name, address, and principal occupation for the past five years of the membership camping operator and of each controlling person of the membership camping operator and the extent of each such person's interest in the membership camping operator as of a specified date within thirty days prior to the filing of the application;

(d) A list of affiliates of the membership camping operator, including the names and addresses of officers and directors;

(e) A legal description of each campground owned or operated by the membership camping operator which is represented to be available for use by purchasers and a statement identifying the existing amenities at each campground and the planned amenities represented as to be available for use by purchasers in the future at each campground. If future amenities are represented, the statement shall include the estimated cost and schedule for completion of those amenities;

(f) A description of the membership camping operator's ownership of or other right to use the campground properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the membership camping operator to use the property, and any material provisions of the agreements which restrict a purchaser's use of the property;

(g) If a blanket encumbrance materially adversely affects a campground, a legal description of the encumbrance and a description of the steps taken to protect purchasers in accordance with section 76-2116 in case of failure to discharge the encumbrance;

(h) A description of all payments of a purchaser under a membership camping contract, including initial fees and any additional fees, charges, or assessments, together with any provision for changing the payments;

(i) A description of any restraints on the transfer of membership camping contracts, including a complete description of any resale agreement or policy;

(j) A description of the policies relating to the availability of campsites and whether reservations are required;

(k) A description of any grounds for forfeiture of a purchaser's membership camping contract;

(l) A sample copy of each membership camping contract to be offered or sold in this state and the purchase price of each type and, if the price varies, the reason for the variance;

(m) A sample copy of each instrument which a purchaser will be required to execute, and a copy of the disclosure statement required by section 76-2110;

(n) A statement of the total number of membership camping contracts for each campground intended to be sold in this state and the method used to determine the number, including a statement of commitment that the number will not be exceeded unless good cause is shown to the commission and subsequent approval is granted by the commission;

(o) A summary or copy of the articles, bylaws, rules, regulations, restrictions, or covenants regulating the purchaser's use of each campground and the facilities located on each property, including a statement of whether and how the articles, bylaws, rules, regulations, restrictions, or covenants may be changed;

(p) A description of any reciprocal agreement allowing purchasers to use campsites, facilities, or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract; and

(q) Financial statements of the membership camping operator in a form acceptable to the commission and prepared in accordance with generally accepted accounting principles, which statements shall include a financial statement for the most recent fiscal year and a financial statement for the most recent fiscal quarter. The commission may require an audited financial statement if the commission is not satisfied with the reliability of the submitted statement and the ability of the membership camping operator to meet future commitments.

(3) The application shall be signed by the membership camping operator, by an officer or a general partner of the membership camping operator, or by another person holding a power of attorney for such purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

(4) An application for registration shall be amended within twenty-five days of any material change in the information included in the application. A material change shall include, but not be limited to, any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract but shall not include minor changes covering the use of the campground, its facilities, or the reciprocal program.

(5) The registration of the membership camping operator shall be renewed annually by filing an application for renewal with the required fee prescribed in section 76-2109 not later than thirty days prior to the anniversary of the current registration. The application shall include all changes which have occurred in the information included in the application previously filed.

(6) Registration with the commission shall not constitute approval or endorsement by the commission of the membership camping operator, the membership camping contract, or the campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement shall be unlawful.

Source: Laws 1990, LB 656, § 5; Laws 1993, LB 121, § 488.

76-2106 Exemptions from registration.

The following transactions shall be exempt from registration:

- (1) The offer, sale, or transfer by any one person of not more than one membership camping contract in any twelve-month period;
- (2) The offer or sale by a government, government agency, or other subdivision of government;
- (3) The bona fide pledge of a membership camping contract; and
- (4) Transactions subject to regulation pursuant to the Nebraska Time-Share Act.

Source: Laws 1990, LB 656, § 6.

Cross References

Nebraska Time-Share Act, see section 76-1701.

76-2107 Application for registration; effective; when.

The application for registration shall become effective automatically upon the expiration of forty-five calendar days following filing of a completed application with the commission unless one of the following occurs:

- (1) The application is denied under section 76-2108;
- (2) The commission grants the registration effective as of an earlier date; or
- (3) The applicant consents to a delay of the effective date.

If the commission requests additional information with respect to the application, the application shall become effective upon the expiration of fifteen business days following the filing with the commission of the additional information or forty-five days after the original filing, whichever is later, unless an order pursuant to section 76-2108 is issued or unless declared effective on an earlier date by order of the commission.

Source: Laws 1990, LB 656, § 7.

76-2108 Denial, suspension, or revocation; when; order; hearing.

The commission may by order deny a membership camping operator's application or suspend or revoke his or her registration if the commission finds that the order is for the protection of prospective purchasers or purchasers of membership camping contracts or that one of the following applies:

- (1) The membership camping operator's advertising, sales techniques, or trade practices have been or are deceptive, false, or misleading;
- (2) The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts in this state. The commission may require a surety bond or, if one is unobtainable, other evidence of financial assurances satisfactory to the commission;

(3) The membership camping operator's application for registration or an amendment to the registration is incomplete in a material respect;

(4) The membership camping operator has failed to file timely amendments to the application for registration as required by subsection (4) of section 76-2105;

(5) The membership camping operator has failed to comply with any provision of the Membership Campground Act that materially affects the rights of purchasers, prospective purchasers, or owners of membership camping contracts;

(6) The membership camping operator has made a false or misleading representation or concealed material facts in any document or information filed with the commission; or

(7) The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility is planned without reasonable expectation that the facility will be completed within a reasonable time or without the apparent means to ensure its completion.

An order denying an application or suspending or revoking a registration shall be sent by certified mail, return receipt requested, to the applicant or registrant. The applicant or registrant shall have thirty calendar days from the date the order was mailed to request a hearing. If a hearing is not requested within thirty days and is not ordered by the commission, the order shall remain in effect until modified or vacated by the commission, except that if the commission finds that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order, summary suspension of a membership camping operator's registration may be ordered. If the membership camping operator desires to contest the summary order, the membership camping operator shall request a hearing within fifteen calendar days of service of the summary order. If so requested, the hearing shall be instituted within twenty calendar days of the request, and the contest of the summary order shall be promptly determined.

Source: Laws 1990, LB 656, § 8.

76-2109 Fees.

Each application for registration and each application for amendment or renewal of a registration shall be accompanied by a fee not to exceed three hundred dollars as determined by the commission which shall be sufficient to defray the costs of administering the Membership Campground Act.

Source: Laws 1990, LB 656, § 9.

76-2110 Disclosure statement; contents; amendments.

(1) A membership camping operator subject to the registration requirements of sections 76-2103 and 76-2105 shall provide a disclosure statement to a purchaser or prospective purchaser before the person signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract.

(2) The front cover or first page of the disclosure statement shall contain only the following in the order stated:

(a) Membership camping operator's disclosure statement printed at the top in boldface type of a minimum size of ten points;

(b) The name and principal business address of the membership camping operator and any material affiliate of the membership camping operator;

(c) A statement that the membership camping operator is in the business of offering for sale membership camping contracts;

(d) A statement printed in double-spaced, boldface type of a minimum size of ten points which reads as follows:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE ONLY SUMMARY IN NATURE. YOU, AS A PROSPECTIVE PURCHASER, SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. ANY ORAL MISREPRESENTATION SHALL BE A VIOLATION OF THE MEMBERSHIP CAMPGROUND ACT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT; and

(e) A statement printed in double-spaced, boldface type of a minimum size of ten points which reads as follows:

IF YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL THE CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE THIRD BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED OR THE DATE OF RECEIPT OF THIS DISCLOSURE STATEMENT, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU, AS THE PURCHASER, MUST HAND DELIVER OR MAIL NOTICE OF YOUR INTENT TO CANCEL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEY PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL-USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE.

(3) The following pages of the disclosure statement shall contain all of the following in the order stated:

(a) The name, principal occupation, and address of every director, partner, limited liability company member, or controlling person of the membership camping operator;

(b) A description of the nature of the purchaser's right or license to use the campground and the facilities which are to be available for use by purchasers;

(c) A description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business;

(d) The location of each of the campgrounds which is to be available for use by purchasers and a description of the facilities at each campground which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A description of any facilities that are or will be available to nonpurchasers and a projected date of completion shall also be provided. The description shall include, but not be limited to, the number of campsites in each campground and campsites in each campground with full or partial hookups, swimming pools, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, and grocery stores;

(e) The fees and charges that purchasers are or may be required to pay for the use of the campground or any facilities;

(f) Any initial, additional, or special fee due from the purchaser, together with a description of the purpose and method of calculating the fee;

(g) The extent to which financial arrangements, if any, have been provided for the completion of facilities, together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete the facilities;

(h) The names of the managing entity, if any, and the significant terms of any management contract, including, but not limited to, the circumstances under which the membership camping operator may terminate the management contract;

(i) A statement, whether by way of supplement or otherwise, of the rules, regulations, restrictions, or covenants regulating the purchaser's use of the campground and the facilities which are to be available for use by the purchaser, including a statement of whether and how the rules, regulations, restrictions, or covenants may be changed;

(j) A statement of the policies covering the availability of campsites, the availability of reservations, and the conditions under which they are made;

(k) A statement of any grounds for forfeiture of a purchaser's membership camping contract;

(l) A statement of whether the membership camping operator has the right to withdraw permanently from use all or any portion of any campground devoted to membership camping and, if so, the conditions under which the withdrawal shall be permitted;

(m) A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent on the continued affiliation of the membership camping operator with that reciprocal program, whether additional costs may be required to use reciprocal facilities, and whether the membership camping operator reserves the right to terminate such affiliation;

(n) As to all memberships offered by the membership camping operator at each campground, all of the following:

(i) The form of membership offered;

(ii) The types of duration of membership along with a summary of the major privileges, restrictions, and limitations applicable to each type;

(iii) Provisions that have been made for public utilities at each campsite, including water, electricity, telephone, and sewage facilities; and

(iv) The number of memberships to be sold to that campground;

(o) A statement of the assistance, if any, that the membership camping operator will provide to the purchaser in the resale of membership camping contracts and a detailed description of how any such resale program is operated; and

(p) The following statement printed in double-spaced, boldface type of a minimum size of ten points:

REGISTRATION OF THE MEMBERSHIP CAMPING OPERATOR WITH THE STATE REAL ESTATE COMMISSION SHALL NOT CONSTITUTE AN APPROVAL OR ENDORSEMENT BY THE COMMISSION OF THE MEMBERSHIP CAMPING OPERATOR, THE MEMBERSHIP CAMPING CONTRACT, OR THE CAMPGROUND.

The membership camping operator shall promptly amend the disclosure statement to reflect any material change and shall promptly file any such amendments with the commission.

Source: Laws 1990, LB 656, § 10; Laws 1993, LB 121, § 489.

76-2111 Membership camping contract; delivery required; contents.

The membership camping operator shall deliver to the purchaser a fully executed copy of a membership camping contract in writing, which contract shall include at least the following information:

(1) The name of the membership camping operator and the address of its principal place of business;

(2) The actual date the membership camping contract was executed by the purchaser;

(3) The total financial obligation imposed on the purchaser by the contract, including the initial purchase price and any additional charge the purchaser may be required to pay;

(4) A statement that the membership camping operator is required by law to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of the contract and that failure to do so is a violation of the law;

(5) The full name of each salesperson involved in the execution of the membership camping contract; and

(6) In immediate proximity to the space reserved for the purchaser's signature, a conspicuous statement printed in double-spaced, boldface type of a minimum size of ten points:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE OF EXECUTION OF THE CONTRACT OR THE RECEIPT OF THE DISCLOSURE STATEMENT FROM THE MEMBERSHIP CAMPING OPERATOR, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE CONTRACT, HAND DELIVER OR MAIL A POSTAGE PREPAID WRITTEN CANCELLATION TO THE MEMBERSHIP CAMPING OPERATOR

AT THE ADDRESS LISTED ON THIS CONTRACT. UPON CANCELLATION AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL-USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE, YOU WILL RECEIVE A REFUND OF ALL MONEY PAID WITHIN THIRTY CALENDAR DAYS AFTER THE MEMBERSHIP CAMPING OPERATOR RECEIVES NOTICE OF YOUR CANCELLATION.

Source: Laws 1990, LB 656, § 11.

76-2112 Membership camping contract; right to cancel; effect; duties.

A purchaser shall have the right to cancel a membership camping contract within three business days following the date the contract is executed or within three business days following the date of delivery of the written disclosure statement required by section 76-2110, whichever is later. The right to cancel may not be waived and any attempt to obtain such a waiver shall be unlawful and considered a violation of the Membership Campground Act.

A purchaser may cancel the contract by hand delivering a written statement of cancellation or by mailing, postage prepaid, such a statement to the membership camping operator. The cancellation shall be deemed effective upon mailing.

Upon cancellation and return of all membership and reciprocal-use materials furnished at the time of purchase, the membership camping operator shall refund to the purchaser all payments and other consideration given by the purchaser. The refund shall be made within thirty calendar days after the membership camping operator receives notice of the cancellation and may, when payment has been made by credit card, be made by an appropriate credit to the purchaser's account. If the membership camping operator fails to refund the payment or other consideration given within the thirty-day period, it shall be presumed that the membership camping operator is willfully and wrongfully retaining the payment or other consideration. The willful and wrongful retention of a payment or other consideration in violation of this section shall render the membership camping operator liable for the amount of that portion of the payment or other consideration withheld from the purchaser, together with reasonable attorney's fees and court costs.

The membership camping operator or salesperson shall orally inform the purchaser at the time the contract is executed of the right to cancel the contract as provided in this section.

Source: Laws 1990, LB 656, § 12.

76-2113 Purchaser's remedies; attorney's fees and court costs.

A purchaser's remedy for errors in or omissions from the membership camping contract, the materials delivered to the purchaser at the time of sale, or any of the disclosures required in section 76-2117 shall be limited to a right of cancellation and refund of the payment made or consideration given by the purchaser, except that such limitation shall not apply to errors or omissions from the contract or disclosures or other requirements of the Membership Campground Act which are part of a scheme to willfully misstate or omit the information required. Reasonable attorney's fees and court costs shall be awarded to the prevailing party in any action under this section.

Source: Laws 1990, LB 656, § 13.

76-2114 Salesperson; registration required; exemption; violation; penalty.

(1) Unless the transaction is exempt under section 76-2106, it shall be unlawful for any person to act as a salesperson in this state without first registering as a salesperson pursuant to section 76-2115. Persons licensed as real estate brokers or real estate salespersons under the Nebraska Real Estate License Act shall be exempt from registration under this section.

(2) Any person violating this section shall be guilty of a Class II misdemeanor.

Source: Laws 1990, LB 656, § 14.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2115 Salesperson registration; application; contents; denial, suspension, or revocation; grounds; renewal; fee.

(1) A salesperson may apply for registration by filing with the commission an application which includes the following information:

(a) A statement detailing whether the applicant within the past five years has been convicted of any misdemeanor or felony involving theft, fraud, or dishonesty or whether the applicant has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any law designed to protect consumers; and

(b) A statement describing the applicant's employment history for the past five years and whether any termination of employment during the last five years was occasioned by any theft, fraud, or act of dishonesty.

(2) Each application for initial registration shall provide to the commission as part of the application a recent photograph of the applicant.

(3) The commission may deny a salesperson's application for registration or suspend or revoke his or her registration if the commission finds that the order is necessary for the protection of purchasers or owners of membership camping contracts or that the registrant or applicant within the past five years:

(a) Has been convicted of any misdemeanor or felony involving theft, fraud, or act of dishonesty or has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any law designed to protect consumers;

(b) Has violated any material provision of the Membership Campground Act; or

(c) Has engaged in fraudulent or deceitful practices in any industry involving sales to consumers.

(4) Registration shall be effective for a period of one year. Registration shall be renewed annually by the filing of a form prescribed by the commission for such purpose. The registration application or the renewal application shall be accompanied by a fee of fifty dollars and shall automatically become effective upon the expiration of seven business days following filing with the commission unless:

(a) The application has been denied under subsection (3) of this section;

(b) The commission allows the registration to become effective on an earlier date; or

(c) The applicant or registrant consents to delay of the effective date.

Source: Laws 1990, LB 656, § 15.

76-2116 Membership camping operator; offer or execution of contract; requirements; surety bond or letter of credit; authorized.

(1) With respect to any property in this state acquired and put into operation by a membership camping operator on or after January 1, 1991, the membership camping operator shall not offer or execute a membership camping contract in this state granting the right to use the property until the following requirements are met:

(a) Each person holding an interest in a voluntary blanket encumbrance has executed and delivered to the commission a nondisturbance agreement and recorded the agreement in the real estate records of the county in which the campground is located. The agreement shall include all of the following:

(i) That the rights of the holder or holders of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers;

(ii) That any person who acquires the affected campground or any portion of the campground by the exercise of any right of sale or foreclosure contained in the blanket encumbrance takes the campground subject to the rights of purchasers; and

(iii) That the holder or holders of the blanket encumbrance shall not use or cause the campground to be used in a manner which interferes with the right of purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract; and

(b) Each hypothecation lender which has a lien on or security interest in the membership camping operator's ownership interest in the campground has executed and delivered to the commission a nondisturbance agreement and recorded the agreement in the real estate records of the county in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender has executed, delivered, and recorded an instrument stating that such person will give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this section:

(i) Hypothecation lender shall mean a financial institution which provides a major hypothecation loan to a membership camping operator;

(ii) Major hypothecation loan shall mean a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts; and

(iii) Nondisturbance agreement shall mean an instrument by which a hypothecation lender agrees to conditions substantially the same as those set forth in subdivision (a) of this subsection.

(2) In lieu of compliance with subsection (1) of this section, a surety bond or letter of credit satisfying the requirements of this subsection may be delivered to and accepted by the commission. The surety bond or letter of credit shall be issued to the commission for the benefit of purchasers and shall be in an amount which is not less than one hundred five percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. The bond shall be issued by a surety which is

authorized to do business in this state and which has sufficient net worth to satisfy the indebtedness. The aggregate liability of the surety for all damages shall not exceed the amount of the bond. The letter of credit shall be irrevocable, shall be drawn upon a bank, savings and loan association, or other financial institution, and shall be in form and content acceptable to the commission. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses, and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced.

Source: Laws 1990, LB 656, § 16.

76-2117 Advertisement, communication, or sales literature; restrictions; disclosures required; rain check; prohibited acts.

(1) Any advertisement, communication, or sales literature relating to membership camping contracts, including oral statements by a salesperson or any other person, shall not contain:

(a) Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which the statements were made;

(b) Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible; or

(c) Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

(2) A person shall not by any means, as part of an advertising program, offer any item of value as an inducement to the recipient to visit a location, attend a sales presentation, or contact a salesperson unless the person clearly and conspicuously discloses in writing in the offer in readily understandable language each of the following:

(a) The name and street address of the owner of the real or personal property or the provider of the services which are the subject of such visit, sales presentation, or contact with a salesperson;

(b) A general description of the business of the owner or provider identified and the purpose of any requested visit, sales presentation, or contact with a salesperson, including a general description of the facilities or proposed facilities or services which are the subject of the sales presentation;

(c) A statement of the odds, in arabic numerals, of receiving each item offered;

(d) All restrictions, qualifications, and other conditions that shall be satisfied before the recipient is entitled to receive the item, including all of the following:

(i) Any deadline by which the recipient shall visit the location, attend the sales presentation, or contact the salesperson in order to receive the item;

(ii) The approximate duration of any visit and sales presentation; and

(iii) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife be present in order to receive the item;

(e) A statement that the owner or provider reserves the right to provide a rain check or a substitute or like item if these rights are reserved;

(f) A statement that a recipient who receives an offered item may request and will receive evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient; and

(g) All other rules, terms, and conditions of the offer, plan, or program.

(3) A person making an offer subject to registration under sections 76-2103 and 76-2105 or the person's employee or agent shall not offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(4) A person making an offer subject to registration under sections 76-2103 and 76-2105 or the person's employee or agent shall not fail to provide any offered item which a recipient is entitled to receive, unless the failure to provide the item is due to a higher than reasonably anticipated response to the offer which caused the item to be unavailable and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

(5) If the person making an offer subject to registration under sections 76-2103 and 76-2105 is unable to provide an offered item because of limitations of supply not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered or receive a like or substitute item of equal or greater value at no additional cost or obligation to the recipient.

(6) If a rain check is provided, the person making an offer subject to registration under sections 76-2103 and 76-2105, within a reasonable time, and in any event not later than thirty calendar days after the rain check is issued, shall deliver the agreed item to the recipient's address without additional cost or obligation to the recipient unless the item for which the rain check is provided remains unavailable because of limitations of supply not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for such reasons, the person, not later than thirty days after the expiration of the thirty-day period, shall deliver a like or substitute item of equal or greater retail value to the recipient.

(7) On the request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to registration under sections 76-2103 and 76-2105 shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(8) A person making an offer subject to registration under sections 76-2103 and 76-2105 or the person's employee or agent shall not do any of the following:

(a) Misrepresent the size, quantity, identity, or quality of any prize, gift, money, or other item of value offered;

(b) Misrepresent in any manner the odds of receiving a particular gift, prize, amount of money, or other item of value;

(c) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular prize, gift, money, or other item of value, unless the representation is true;

- (d) Label any offer a notice of termination or notice of cancellation; and
- (e) Misrepresent in any manner the offer, plan, or program.

Source: Laws 1990, LB 656, § 17.

76-2118 Injunctions authorized.

Whenever in the judgment of the commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Membership Campground Act, the Attorney General may maintain an action in the name of the State of Nebraska in the district court of the county in which such violation or threatened violation occurred or in the district court of Lancaster County to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with the Membership Campground Act. The Attorney General shall not be required to give any bond nor shall any court costs be adjudged against the state.

Source: Laws 1990, LB 656, § 18.

76-2119 Civil penalty authorized.

The Attorney General may seek a civil penalty of not more than ten thousand dollars for each violation of the Membership Campground Act in the district court of Lancaster County. Each day of continued violation shall constitute a separate offense.

Source: Laws 1990, LB 656, § 19.

76-2120 Applicability of other law.

A membership camping contract or an offer or a sale of a membership camping contract shall not be subject to the Securities Act of Nebraska or the Nebraska Time-Share Act.

Source: Laws 1990, LB 656, § 20.

Cross References

Nebraska Time-Share Act, see section 76-1701.

Securities Act of Nebraska, see section 8-1123.

76-2121 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the Membership Campground Act.

Source: Laws 1990, LB 656, § 21.

ARTICLE 22

REAL PROPERTY APPRAISER ACT

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76-2234.01.	Repealed. Laws 2001, LB 162, § 44.
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76-2248.	Attorney General; powers and duties.
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76-2201 Act, how cited.

Sections 76-2201 to 76-2250 shall be known and may be cited as the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 1; Laws 1991, LB 203, § 6; Laws 1994, LB 1107, § 6; Laws 1999, LB 618, § 1; Laws 2001, LB 162, § 1; Laws 2006, LB 778, § 13.

76-2202 Legislative findings.

The Legislature finds that changes to the Real Property Appraiser Act made by Laws 2006, LB 778, are necessary to comply with the Appraiser Qualifications Board’s Real Property Appraiser Qualification Criteria, effective January 1, 2008. Further, the increased educational standards required by Laws 2006, LB 778, are due to the changes in the required core curriculum necessitated by the 2008 criteria.

Source: Laws 1990, LB 1153, § 2; Laws 1991, LB 203, § 7; Laws 1994, LB 1107, § 7; Laws 2006, LB 778, § 14.

76-2203 Definitions, where found.

For purposes of the Real Property Appraiser Act, the definitions found in sections 76-2204 to 76-2219 shall be used.

Source: Laws 1990, LB 1153, § 3; Laws 1991, LB 203, § 8; Laws 1994, LB 1107, § 8; Laws 1999, LB 618, § 2; Laws 2001, LB 162, § 2; Laws 2006, LB 778, § 15.

76-2203.01 Repealed. Laws 2006, LB 778, § 75.

76-2204 Appraisal, defined.

Appraisal means an analysis, opinion, or conclusion prepared by a real property appraiser relating to the value of specified interests in or aspects of identified real estate or identified real property. An appraisal may be classified by the nature of the assignment into either a valuation assignment or an evaluation assignment.

Source: Laws 1990, LB 1153, § 4; Laws 2001, LB 162, § 3; Laws 2006, LB 778, § 16.

76-2205 Appraisal Foundation, defined.

Appraisal Foundation means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

Source: Laws 1990, LB 1153, § 5; Laws 2006, LB 778, § 17.

76-2205.01 Appraisal practice, defined.

Appraisal practice means valuation services performed by an individual acting as an appraiser, including, but not limited to, appraisal, appraisal review, or appraisal consulting.

Source: Laws 2001, LB 162, § 4; Laws 2006, LB 778, § 18.

76-2206 Appraisal report, defined.

Appraisal report means any communication, written or oral, of an appraisal. The testimony of a real property appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is deemed to be an oral appraisal report.

Source: Laws 1990, LB 1153, § 6; Laws 2006, LB 778, § 19.

76-2207 Appraiser trainee, defined.

Appraiser trainee means a person who, under the direct supervision of a certified residential or certified general real property appraiser, assists the appraiser in any phase of appraisal activity but does not include nonprofessional employees such as clerical employees.

Source: Laws 1990, LB 1153, § 7; Laws 1991, LB 203, § 10; Laws 1994, LB 1107, § 9; Laws 2001, LB 162, § 5; Laws 2006, LB 778, § 20; Laws 2008, LB1011, § 1.

76-2208 Board, defined.

Board means the Real Property Appraiser Board.

Source: Laws 1990, LB 1153, § 8; Laws 1991, LB 203, § 11; Laws 2006, LB 778, § 21.

76-2209 Broker's price opinion, defined.

Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale.

Source: Laws 1999, LB 618, § 3; Laws 2006, LB 778, § 22.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2210 Certified general real property appraiser, defined.

Certified general real property appraiser means a person who holds a valid credential as a certified general real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 10; Laws 1991, LB 203, § 13; Laws 1994, LB 1107, § 10; Laws 2006, LB 778, § 23; Laws 2007, LB186, § 1.

76-2210.01 Certified real property appraiser, defined.

Certified real property appraiser means a person who holds a valid credential as a certified general real property appraiser or a valid credential as a certified

residential real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1994, LB 1107, § 11; Laws 2006, LB 778, § 24; Laws 2007, LB186, § 2.

76-2210.02 Certified residential real property appraiser, defined.

Certified residential real property appraiser means a person who holds a valid credential as a certified residential real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1994, LB 1107, § 12; Laws 2006, LB 778, § 25; Laws 2007, LB186, § 3.

76-2211 Comparative market analysis, defined.

Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of listing, purchase, or sale.

Source: Laws 1999, LB 618, § 4; Laws 2006, LB 778, § 26.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2211.01 Consulting service, defined.

Consulting service means an impartial evaluation service as a disinterested third party rendered as part of an appraisal practice that responds to a client's stated objective and any other engagement for which a real property appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased opinion.

Source: Laws 1991, LB 203, § 14; Laws 2006, LB 778, § 27.

76-2211.02 Credential, defined.

Credential means a registration, license, or certificate.

Source: Laws 2001, LB 162, § 6; Laws 2006, LB 778, § 28.

76-2212 Evaluation assignment, defined.

Evaluation assignment means an assignment that relates to the nature, quality, or utility of identified real estate or identified real property and which typically does not include an opinion of value. Evaluation assignment does not include reports prepared by experts from professional disciplines other than real property appraisal such as: A soil test or soil analysis of identified real estate prepared by a civil engineer; a title opinion or zoning analysis of identified real estate prepared by a lawyer; an architectural analysis of identified improved real estate prepared by an architect; and a property management

analysis of identified improved real estate prepared by a property manager or property management consultant.

Source: Laws 1990, LB 1153, § 12; Laws 1991, LB 203, § 15; Laws 1994, LB 1107, § 13; Laws 2006, LB 778, § 29.

76-2213 Licensed real property appraiser, defined.

Licensed real property appraiser means a person who holds a valid credential as a licensed real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 13; Laws 1991, LB 203, § 16; Laws 2006, LB 778, § 30; Laws 2007, LB186, § 4.

76-2213.01 Uniform Standards of Professional Appraisal Practice, defined.

Uniform Standards of Professional Appraisal Practice means the standards promulgated by the Appraisal Foundation, as the standards existed on January 1, 2008.

Source: Laws 2001, LB 162, § 11; R.S.1943, (2003), § 76-2218.01; Laws 2006, LB 778, § 31; Laws 2007, LB186, § 5; Laws 2008, LB1011, § 2.

76-2214 Real estate, defined.

Real estate means a parcel or tract of land, including improvements, if any.

Source: Laws 1990, LB 1153, § 14; Laws 2006, LB 778, § 32.

76-2215 Real property appraisal activity, defined.

Real property appraisal activity means any act or process, performed for a fee or other valuable consideration, involved in developing an appraisal or preparing an appraisal report, including but not limited to, a consulting service, an evaluation assignment, or a valuation assignment.

Source: Laws 1990, LB 1153, § 15; Laws 2001, LB 162, § 7; Laws 2006, LB 778, § 33.

76-2216 Real property appraiser, defined.

Real property appraiser means a person (1) who engages in real property appraisal activity, (2) who advertises or holds himself or herself out to the general public as a real property appraiser, or (3) who offers, attempts, or agrees to perform or performs real property appraisal activity with the intention or upon the promise of receiving valuable consideration. Real property appraiser includes persons defined as real estate appraisers prior to July 14, 2006.

Source: Laws 1990, LB 1153, § 16; Laws 2001, LB 162, § 8; Laws 2006, LB 778, § 34.

76-2217 Real property, defined.

Real property means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

Source: Laws 1990, LB 1153, § 17; Laws 2006, LB 778, § 35.

76-2217.01 Registered real property appraiser, defined.

Registered real property appraiser means a person who holds a valid credential as a registered real property appraiser as provided in section 76-2229.01.

Source: Laws 1991, LB 203, § 17; Laws 1994, LB 1107, § 14; Laws 2001, LB 162, § 9; Laws 2006, LB 778, § 36; Laws 2007, LB186, § 6.

76-2217.02 Trainee real property appraiser, defined.

Trainee real property appraiser means a person who holds a valid credential as a trainee real property appraiser issued under the Real Property Appraiser Act and who, under the direct supervision of a certified residential or certified general real property appraiser, assists the appraiser in any phase of appraisal activity but does not include nonprofessional employees such as clerical employees.

Source: Laws 2006, LB 778, § 37; Laws 2008, LB1011, § 3.

76-2218 Two-year continuing education period, defined.

Two-year continuing education period means a period of twenty-four months commencing on January 1 following the date of credentialing under the Real Property Appraiser Act and each succeeding twenty-four-month period.

Source: Laws 1990, LB 1153, § 18; Laws 1991, LB 203, § 19; Laws 1994, LB 1107, § 15; Laws 2001, LB 162, § 10; Laws 2006, LB 778, § 38.

76-2218.01 Transferred to section 76-2213.01**76-2219 Valuation assignment, defined.**

Valuation assignment means (1) an appraisal that estimates the value of identified real estate or identified real property at a particular point in time or (2) a valuation service provided as a consequence of an agreement between a real property appraiser and a client.

Source: Laws 1990, LB 1153, § 19; Laws 1991, LB 203, § 20; Laws 2006, LB 778, § 39; Laws 2007, LB186, § 7.

76-2220 Proper credentialing required.

Except as provided in section 76-2221, it shall be unlawful for anyone to act as a real property appraiser in this state without first obtaining proper credentialing as required under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 20; Laws 1991, LB 203, § 21; Laws 1994, LB 1107, § 16; Laws 2001, LB 162, § 12; Laws 2006, LB 778, § 40.

76-2221 Act; exemptions.

The Real Property Appraiser Act shall not apply to:

(1) Any real property appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, or small loan company

licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who signs an appraisal report as a credentialed real property appraiser shall be subject to the act and the Uniform Standards of Professional Appraisal Practice. Any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who does not sign an appraisal report as a credentialed real property appraiser shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(2) A person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal. No compensation, fee, or other consideration shall be charged for such opinion or analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing and carries the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property and not for any other purpose, including, but not limited to, lending purposes. This opinion or analysis is not governed by the Real Property Appraiser Act, but is subject to enforcement through the Nebraska Real Estate License Act;

(3) Any person who provides assistance (a) in obtaining the data upon which an appraisal is based, (b) in the physical preparation of an appraisal report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

(4) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(5) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property; or

(7) Any person appointed by a county board of equalization to act as a referee pursuant to section 77-1502.01, except that any person who also practices as an independent real property appraiser for others shall be subject to the Real Property Appraiser Act and shall be credentialed prior to engaging in such other appraising. Any appraiser appointed to act as a referee pursuant to section 77-1502.01 and who prepares an appraisal report for the county board of equalization shall not sign such appraisal report as a credentialed appraiser and shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 21; Laws 1991, LB 203, § 22; Laws 1994, LB 1107, § 17; Laws 1999, LB 618, § 5; Laws 2001, LB 162, § 13; Laws 2003, LB 131, § 35; Laws 2005, LB 676, § 1; Laws 2006, LB 778, § 41; Laws 2008, LB1011, § 4.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2222 Real Property Appraiser Board; created; members; terms; compensation.

(1) The Real Property Appraiser Board is hereby created. The board shall consist of five members, one member who is a certified real property appraiser shall be selected from each of the three congressional districts, and two members shall be selected at large. The two members selected at large shall include one representative of financial institutions and one licensed real estate broker who also holds a credential as a licensed or certified real property appraiser. The Governor shall appoint the members of the board. The members shall be appointed so that the membership of the board selected from the congressional districts includes at least two certified general real property appraisers.

(2) The term of each member of the board shall be five years, except that of the members initially appointed one shall serve for one year, one shall serve for two years, one shall serve for three years, and one shall serve for four years as designated by the Governor. Upon the expiration of his or her term, a member of the board shall continue to hold office until the appointment and qualification of his or her successor. No person shall serve as a member of the board for consecutive terms. Any vacancy shall be filled in the same manner as the original appointment. The Governor may remove a member for cause.

(3) The members of the board shall elect a chairperson during the first meeting of each year from among the members.

(4) Four members shall constitute a quorum. Each member shall receive a per diem of one hundred dollars per day or substantial part of a day for each scheduled meeting of the board at which the member is present and shall be

reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1990, LB 1153, § 22; Laws 1991, LB 203, § 23; Laws 1994, LB 1107, § 18; Laws 2001, LB 162, § 14; Laws 2006, LB 778, § 42; Laws 2008, LB1011, § 5.

76-2223 Board; powers and duties; rules and regulations.

The board shall administer and enforce the Real Property Appraiser Act and may:

(1) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(2) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all appraiser classifications, solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers for examinations, and administer or contract for the administration of examinations in such places and at such times as deemed appropriate;

(3) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(4) Review from time to time the procedure for selecting individual questions from the bank of questions for use in connection with each scheduled examination and review from time to time the questions in the bank of questions and the related answers to ascertain that they meet the specifications established by the board;

(5) Collect all fees required or permitted by the act. The board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2008;

(6) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(7) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(8) Deny, censure, suspend, or revoke an application or credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(9) Take appropriate disciplinary action against a credential holder if the board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

(10) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(11) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational activities, and incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

(12) Establish and annually adopt minimum standards for appraisals as required under section 76-2237;

(13) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for schools, courses, and instructors. The rules and regulations shall be adopted pursuant to the Administrative Procedure Act; and

(14) Do all other things necessary to carry out the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 23; Laws 1991, LB 203, § 24; Laws 1994, LB 1107, § 19; Laws 2001, LB 162, § 15; Laws 2006, LB 778, § 43; Laws 2007, LB186, § 8; Laws 2008, LB1011, § 6.

Cross References

Administrative Procedure Act, see section 84-920.

76-2224 Board; personnel, facilities, and equipment.

In order to administer and enforce the Real Property Appraiser Act, the board may hire a director and other staff, rent office space, and acquire other facilities and equipment. The board may contract for administrative assistance, including facilities, equipment, supplies, and personnel that are required by the board to carry out its responsibilities under the act.

Source: Laws 1990, LB 1153, § 24; Laws 1991, LB 203, § 25; Laws 1994, LB 1107, § 20; Laws 2006, LB 778, § 44.

76-2225 Board; civil and criminal immunity.

The members of the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning a credential holder pursuant to the Real Property Appraiser Act if such action is taken without malicious intent and in the reasonable belief that it was taken pursuant to the powers vested in the members of the board.

Source: Laws 1990, LB 1153, § 25; Laws 1991, LB 203, § 26; Laws 1994, LB 1107, § 21; Laws 2001, LB 162, § 16; Laws 2006, LB 778, § 45.

76-2226 Real Property Appraiser Fund; created; use; investment.

There is hereby created the Real Property Appraiser Fund. The board may use the fund for the administration and enforcement of the Real Property Appraiser Act and to meet the necessary expenditures of the board. The fund shall include a sufficient cash fund balance as determined by the board. The

expense of administering and enforcing the act shall not exceed the money collected by the board under the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 1153, § 26; Laws 1991, LB 203, § 27; Laws 1994, LB 1066, § 78; Laws 1994, LB 1107, § 22; Laws 2001, LB 162, § 17; Laws 2006, LB 778, § 46; Laws 2007, LB186, § 9.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

76-2227 Credentials; application; requirements.

(1) Applications for credentials, including authorization to take the appropriate examination, and for renewal of credentials shall be made in writing to the board on forms approved by the board. The payment of the appropriate fee fixed by the board pursuant to section 76-2241 shall accompany all applications.

(2) At the time of filing an initial or renewal application for credentials, the applicant shall sign a pledge that he or she has read and will comply with the Uniform Standards of Professional Appraisal Practice. Each applicant shall also certify that he or she understands the types of misconduct for which disciplinary proceedings may be initiated.

(3) Credentials shall be issued only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence to perform assignments in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualification has been presented to the board upon request.

(4) No credential shall be issued to a corporation, partnership, limited liability company, firm, or group.

Source: Laws 1990, LB 1153, § 27; Laws 1991, LB 203, § 28; Laws 1993, LB 121, § 490; Laws 1994, LB 1107, § 23; Laws 2001, LB 162, § 18; Laws 2006, LB 778, § 47; Laws 2007, LB186, § 10.

76-2228 Appraisers; classification.

On and after January 1, 2008, there shall be five classes of credentials issued to real property appraisers as follows:

(1) Trainee real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2228.01;

(2) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2229.01;

(3) Licensed real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2230;

(4) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2231.01; and

(5) Certified general real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2232.

Source: Laws 1990, LB 1153, § 28; Laws 1991, LB 203, § 29; Laws 1994, LB 1107, § 24; Laws 2001, LB 162, § 19; Laws 2006, LB 778, § 48; Laws 2007, LB186, § 11; Laws 2008, LB1011, § 7.

76-2228.01 Trainee real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a trainee real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
- (b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;
- (c) Have successfully completed no fewer than seventy-five class hours in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include an examination pertinent to the material presented. The applicant shall have completed the class hours within the five-year period immediately preceding submission of the application and shall have completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course within the two-year period immediately preceding submission of the application;
- (d) Be subject to direct supervision by a supervising appraiser or appraisers who are certified residential real property appraisers or certified general real property appraisers in good standing. The supervising appraiser shall be responsible for the training and direct supervision of the trainee by accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice, reviewing the trainee appraisal reports, and personally inspecting each appraised property with the trainee until the supervising appraiser determines the trainee is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice. The trainee shall maintain an appraisal log for each supervising appraiser in accordance with standards set by rule and regulation of the board; and
- (e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) If a trainee real property appraiser remains in the classification in excess of two years, the trainee shall be required in the third and successive years to successfully complete no fewer than fourteen hours of instruction in courses or seminars for each year of the period preceding the renewal and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, at a minimum of every two years.

The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(3) The application for a credential as a trainee real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 2006, LB 778, § 49; Laws 2007, LB186, § 12.

76-2229 Use of titles; restrictions.

(1) No person other than a registered real property appraiser shall assume or use the title registered real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a registered real property appraiser by this state. No person other than a licensed real property appraiser shall assume or use the title licensed real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a licensed real property appraiser by this state. No person other than a certified residential real property appraiser shall assume or use the title certified residential real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified residential real property appraiser by this state. No person other than a certified general real property appraiser shall assume or use the title certified general real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified general real property appraiser by this state. No person other than a trainee real property appraiser shall assume or use the title trainee real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a trainee real property appraiser by this state. A real property appraiser shall state whether he or she is a registered real property appraiser, licensed real property appraiser, certified residential real property appraiser, certified general real property appraiser, or trainee real property appraiser whenever he or she identifies himself or herself as a real property appraiser, including on all reports which are signed individually or as cosigner.

(2) The terms registered real property appraiser, licensed real property appraiser, certified residential real property appraiser, certified general real property appraiser, and trainee real property appraiser may only be used to refer to a person who is credentialed as such under the Real Property Appraiser Act and may not be used following or immediately in connection with the name or signature of a corporation, partnership, limited liability company, firm, or group or in such manner that it might be interpreted as referring to a corporation, partnership, limited liability company, firm, or group or to anyone other than the credential holder. This requirement shall not be construed to prevent a credential holder from signing an appraisal report on behalf of a corporation, partnership, limited liability company, firm, or group if it is clear that only the individual holds the credential and that the corporation, partnership, limited liability company, firm, or group does not.

Source: Laws 1990, LB 1153, § 29; Laws 1991, LB 203, § 30; Laws 1993, LB 121, § 491; Laws 1994, LB 1107, § 25; Laws 2001, LB 162, § 20; Laws 2006, LB 778, § 50; Laws 2007, LB186, § 13; Laws 2008, LB1011, § 8.

76-2229.01 Credential as a registered real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a registered real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
- (b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;
- (c) Have successfully completed no fewer than ninety class hours in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course of study shall include an examination pertinent to the material presented;
- (d) Pass an examination administered by the board which demonstrates that the applicant has:
 - (i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;
 - (ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;
 - (iii) An understanding of the basic principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;
 - (iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;
 - (v) An understanding of basic real estate law;
 - (vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;
 - (vii) An understanding of the Uniform Standards of Professional Appraisal Practice;
 - (viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and
 - (ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and
- (e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) The application for registration shall include the applicant's social security number and such other information as the board may require.

(3) On and after January 1, 2008, the scope of practice of a registered real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units having a transaction value of less than two hundred fifty thousand dollars.

(4) On and after January 1, 2008, an applicant shall receive no more than three successive annual renewals for credentialing as a registered real property

appraiser. Notwithstanding any other provision of section 76-2228 to the contrary, the board shall not approve any initial application for credentialing as a registered real property appraiser on and after January 1, 2012.

Source: Laws 1991, LB 203, § 31; Laws 1994, LB 1107, § 26; Laws 1997, LB 752, § 204; Laws 2001, LB 162, § 21; Laws 2006, LB 778, § 51; Laws 2007, LB186, § 14; Laws 2008, LB1011, § 9.

76-2229.02 Repealed. Laws 2001, LB 162, § 44.

76-2230 Credential as a licensed real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a licensed real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
- (b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;
- (c) Have successfully completed no fewer than one hundred fifty class hours, which may include the class hours set forth in section 76-2229.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include a closed-book examination pertinent to the material presented;
- (d) Have no fewer than two thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twelve months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;
- (e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:
 - (i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;
 - (ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, the scope of practice for a licensed real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units with a transaction value of less than one million dollars and complex property having one, two, three, or four residential units with a transaction value of less than two hundred fifty thousand dollars.

(3) If an applicant is applying for renewal of a credential as a licensed real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only when the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(4) The application for the credential as a licensed real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 30; Laws 1991, LB 203, § 33; Laws 1994, LB 1107, § 28; Laws 1997, LB 29, § 1; Laws 1997, LB 752, § 205; Laws 2001, LB 162, § 22; Laws 2006, LB 778, § 52; Laws 2007, LB186, § 15; Laws 2008, LB1011, § 10.

76-2231 Repealed. Laws 1991, LB 203, § 58.**76-2231.01 Credential as a certified residential real property appraiser; applicant; qualifications.**

(1) On and after January 1, 2008, to qualify for a credential as a certified residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold an associate degree, or higher, from an accredited university, college, community college, or junior college; or

(ii) Have successfully completed, as verified by the board, twenty-one semester hours of coursework or its equivalent from an accredited university, college, community college, or junior college that shall have included English composition; principles of macroeconomics or microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; and business or real estate law;

(c) Have successfully completed no fewer than two hundred class hours, which may include the class hours set forth in sections 76-2229.01 and 76-2230, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Credit toward the class hour requirement may be awarded to teachers of appraisal courses. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand five hundred hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twenty-four months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, the scope of practice of a certified residential real property appraiser shall be limited to the appraisal of property having one, two, three, or four residential units without regard to transaction value or complexity.

(3) If an applicant is applying for renewal of a credential as a certified residential real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(4) The application for a credential as a certified residential real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1994, LB 1107, § 29; Laws 1997, LB 29, § 2; Laws 1997, LB 752, § 206; Laws 2001, LB 162, § 23; Laws 2006, LB 778, § 53; Laws 2007, LB186, § 16; Laws 2008, LB1011, § 11.

76-2232 Credential as a certified general real property appraiser; applicant; qualifications.

(1) On and after January 1, 2008, to qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold a bachelor's degree, or higher, from an accredited university or college; or

(ii) Have successfully completed, as verified by the board, thirty semester hours of coursework or its equivalent from an accredited university or college that shall have included English composition; macroeconomics; microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; business or real estate law; and two elective courses in accounting, geography, agricultural economics, business management, or real estate;

(c) Have successfully completed no fewer than three hundred class hours, which may include the class hours set forth in sections 76-2229.01, 76-2230, and 76-2231.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Credit toward the class hour requirement may be awarded to teachers of appraisal courses. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than three thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than thirty months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

- (iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;
 - (v) An understanding of basic real estate law;
 - (vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;
 - (vii) An understanding of the Uniform Standards of Professional Appraisal Practice;
 - (viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and
 - (ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and
- (f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) If an applicant is applying for renewal of a credential as a certified general real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(3) The application for a credential as a certified general real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 32; Laws 1991, LB 203, § 34; Laws 1994, LB 1107, § 30; Laws 1997, LB 29, § 3; Laws 1997, LB 752, § 207; Laws 2001, LB 162, § 24; Laws 2006, LB 778, § 54; Laws 2007, LB186, § 17; Laws 2008, LB1011, § 12.

76-2233 Nonresident; credential; issuance; when.

(1) A nonresident of this state may obtain a credential as a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by (a) complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing, (b) submitting an application on a form approved by the board, and (c) submitting an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon

the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state.

(2) If, in the determination of the board, another state or territory or the District of Columbia has substantially equivalent requirements to the requirements of this state, an applicant who is a resident of that state, territory, or district and is currently credentialed to appraise real estate and real property under the laws of that state, territory, or district may through reciprocity become credentialed under the act. To qualify for reciprocal credentialing, the applicant shall:

(a) Submit evidence that he or she is currently a resident of the state, territory, or District of Columbia in which he or she is credentialed to appraise real estate and real property and that such credential is in good standing, along with his or her social security number and such other information as the board may require;

(b) Certify that disciplinary proceedings are not pending against him or her or state the nature of any pending disciplinary proceedings;

(c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state;

(d) Pay fees as established in section 76-2241; and

(e) Comply with such other terms and conditions as may be determined by the board.

Source: Laws 1990, LB 1153, § 33; Laws 1991, LB 203, § 35; Laws 1994, LB 1107, § 31; Laws 1997, LB 752, § 208; Laws 2001, LB 162, § 25; Laws 2006, LB 778, § 55; Laws 2007, LB186, § 18; Laws 2008, LB1011, § 13.

76-2233.01 Nonresident; temporary credential; issuance; when.

A nonresident may obtain a temporary credential as a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary credential, an applicant shall:

(1) Submit an application on a form approved by the board;

(2) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state;

(3) Submit evidence that he or she is credentialed as a licensed or certified appraiser of real estate and real property and is currently in good standing in the jurisdiction of residency, along with his or her social security number and such other information as the board may require;

(4) Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or in any other jurisdiction or state the nature of any pending disciplinary proceedings; and

(5) Pay an application fee in an amount established by the board.

A temporary credential issued under this section shall be expressly limited to a grant of authority to perform the appraisal work required by the contract for appraisal services in this state. Each temporary credential shall expire upon the completion of the appraisal work required by the contract for appraisal services or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

Source: Laws 1991, LB 203, § 36; Laws 1994, LB 1107, § 32; Laws 1997, LB 752, § 209; Laws 2001, LB 162, § 26; Laws 2006, LB 778, § 56; Laws 2007, LB186, § 19.

76-2233.02 Credential; expiration; renewal.

A credential issued under the Real Property Appraiser Act other than a temporary credential shall remain in effect until December 31 following the date of credentialing unless surrendered, revoked, suspended, or canceled prior to such date. To renew a valid credential, the credential holder shall file an application on a form approved by the board and pay the prescribed renewal fee to the board not later than November 30 of each year. In every second year of renewal, as specified in section 76-2236, evidence of completion of continuing education requirements shall accompany renewal application or be on file with the board prior to renewal.

If a credential holder fails to apply and meet the requirements for renewal by November 30, such credential holder may obtain a renewal of such credential by satisfying all of the requirements for renewal and paying a late renewal fee if such late renewal takes place prior to July 1 of the following year. The board may refuse to renew any credential if the credential holder has continued to perform real property appraisal activities or other related activities in this state following the expiration of his or her credential.

Source: Laws 1991, LB 203, § 37; Laws 1994, LB 1107, § 33; Laws 2001, LB 162, § 27; Laws 2006, LB 778, § 57.

76-2234 Repealed. Laws 2001, LB 162, § 44.

76-2234.01 Repealed. Laws 2001, LB 162, § 44.

76-2235 Repealed. Laws 2001, LB 162, § 44.

76-2236 Continuing education; requirements; extension or waiver.

Every credential holder shall furnish evidence to the board that he or she has satisfactorily completed no fewer than twenty-eight hours of approved continuing education activities in each two-year continuing education period. Hours of satisfactorily completed approved continuing education activities cannot be carried over from one two-year continuing education period to another. The board may extend or waive the continuing education requirements by rule or regulation. As prescribed by rule or regulation of the board and at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, shall be included in the continuing education requirement of each credential holder. The board shall approve continuing education activities which it determines would protect the public by improving the

competency of credential holders. Evidence of completion of such continuing education activities for the two-year continuing education period may be submitted to the board as each activity is completed. A person who holds a temporary credential shall not have to meet any continuing education requirements in this state.

Source: Laws 1990, LB 1153, § 36; Laws 1991, LB 203, § 40; Laws 1994, LB 1107, § 37; Laws 1997, LB 29, § 4; Laws 2001, LB 162, § 28; Laws 2006, LB 778, § 58; Laws 2007, LB186, § 20.

76-2237 Uniform Standards of Professional Appraisal Practice; rules and regulations.

Each credential holder shall comply with the Uniform Standards of Professional Appraisal Practice. The board shall adopt and promulgate rules and regulations which conform to the Uniform Standards of Professional Appraisal Practice. The board shall review such rules and regulations annually. A copy of each such rule or regulation shall be mailed to the business address of each credential holder.

Source: Laws 1990, LB 1153, § 37; Laws 1991, LB 203, § 41; Laws 1994, LB 1107, § 38; Laws 2001, LB 162, § 29; Laws 2006, LB 778, § 59; Laws 2007, LB186, § 21.

76-2238 Disciplinary action; denial of application; grounds.

The following acts and omissions shall be considered grounds for disciplinary action or denial of an application by the board:

- (1) Failing to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;
- (2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure a credential through fraud or misrepresentation;
- (3) Paying money or other valuable consideration other than the fees provided for by the act to any member or employee of the board to procure a credential;
- (4) An act or omission involving real estate or appraisal practice which constitutes dishonesty, fraud, or misrepresentation with or without the intent to substantially benefit the credential holder or another person or with the intent to substantially injure another person;
- (5) Entry of a final civil or criminal judgment against a credential holder on grounds of fraud, misrepresentation, or deceit involving real estate or in the making of an appraisal;
- (6) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is related to the qualifications, functions, or duties of a real property appraiser;
- (7) Engaging in the business of real property appraising under an assumed or fictitious name;
- (8) Paying a finder's fee or a referral fee to any person in connection with the appraisal of real estate or real property, except that an intracompany payment

for business development shall not be considered to be unethical or a violation of this subdivision;

(9) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(10) Any violation of the act or any rule or regulation adopted and promulgated pursuant to the act;

(11) Violation of the confidential nature of any information to which a credential holder gained access through employment for evaluation assignments or valuation assignments;

(12) Acceptance of a fee for performing a real property appraisal valuation assignment or evaluation assignment when the fee is or was contingent upon (a) the real property appraiser reporting a predetermined analysis, opinion, or conclusion, (b) the analysis, opinion, conclusion, or valuation reached, or (c) the consequences resulting from the appraisal;

(13) Failure or refusal to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(14) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal, including failure to follow the standards and ethical rules adopted by the board;

(15) Failure to maintain, or to make available for inspection and copying, records required by the board;

(16) Demonstrating negligence, incompetence, or unworthiness to act as an appraiser, whether of the same or of a different character as otherwise specified in this section;

(17) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction;

(18) Failure to comply with terms of a consent agreement or settlement agreement;

(19) Failure to submit or produce books, records, documents, work files, appraisal reports, or other materials requested by the board concerning any matter under investigation;

(20) Presentation to the board of any check which is returned to the State Treasurer unpaid, whether payment of fee is for an initial or renewal credential or for examination; and

(21) Failure to pass the examination.

Source: Laws 1990, LB 1153, § 38; Laws 1991, LB 203, § 42; Laws 1994, LB 1107, § 39; Laws 2001, LB 162, § 30; Laws 2006, LB 778, § 60.

76-2239 Investigations; authorized; disciplinary action; complaint; procedure; hearing.

The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the Real Property Appraiser Act by any credential holder or applicant for credentialing under the act. The board may revoke or suspend the credential or otherwise discipline a credential holder or deny any application

for any of the acts or omissions set forth in section 76-2238. Violation of the act or the rules and regulations during a period of probation shall cause immediate execution of a suspension penalty. Upon receipt of information indicating that a credential holder may have violated any provision of the act, the board shall make an investigation of the facts to determine whether or not there is evidence of a violation. If technical assistance is required, the board may contract with or use qualified individuals or companies.

If an investigation indicates that a credential holder may have violated a provision of the act, the board may offer the credential holder an opportunity to voluntarily and informally discuss the alleged violation before the board. The board may enter into consent agreements or negotiate settlements. If an investigation indicates that a credential holder has violated a provision of the act, a formal complaint shall be prepared by the board and served upon the credential holder. The complaint shall require the credential holder to file an answer within thirty days of the date of service. In responding to a complaint, the credential holder may admit the allegations of the complaint, deny the allegations of the complaint, or plead otherwise. Failure to make a timely response shall be deemed an admission of the allegations of the complaint. Upon receipt of an answer to the complaint, the director or chairperson of the board shall set a date, time, and place for an administrative hearing on the complaint. The date of the hearing shall not be less than thirty nor more than one hundred twenty days from the date that the answer is filed unless such date is extended for good cause.

Source: Laws 1990, LB 1153, § 39; Laws 1991, LB 203, § 43; Laws 1994, LB 1107, § 40; Laws 2001, LB 162, § 31; Laws 2006, LB 778, § 61.

76-2240 Complaints; hearing; decision; order; appeal.

(1) The administrative hearing on the allegations in the complaint filed pursuant to section 76-2239 shall be heard by the board at the time and place prescribed by the board and in accordance with the Administrative Procedure Act. If, at the conclusion of the hearing, the board determines that the credential holder is guilty of the violation, it shall take such disciplinary action as it deems appropriate. Disciplinary actions which may be taken shall include, but not be limited to, revocation, suspension, probation, admonishment, letter of reprimand, and formal censure, with or without publication, of the credential holder and may or may not include an education requirement. Costs incurred for an administrative hearing, including fees of counsel, court reporters, investigators, and witnesses, shall be taxed as costs in such action as the board may direct.

(2) The decision and order of the board shall be final. Any decision or order of the board may be appealed. The appeal shall be on questions of law only and otherwise shall be in accordance with the Administrative Procedure Act.

Source: Laws 1990, LB 1153, § 40; Laws 1991, LB 203, § 44; Laws 1994, LB 1107, § 41; Laws 2001, LB 162, § 32.

Cross References

Administrative Procedure Act, see section 84-920.

76-2241 Fees.

The board shall charge and collect appropriate fees for its services under the Real Property Appraiser Act as follows:

- (1) An application fee of one hundred fifty dollars;
- (2) An examination fee of no more than three hundred dollars. The board may direct applicants to pay the fee directly to a third party who has contracted to administer the examination;
- (3) An initial and renewal credentialing fee, other than temporary credentialing, of no more than three hundred dollars;
- (4) A late renewal fee of twenty-five dollars for each month or portion of a month the fee is late;
- (5) A temporary credential application fee for a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser of no more than one hundred dollars; and
- (6) A pocket card fee of no more than fifty dollars for a licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser holding a temporary credential under the act.

All fees for credentialing through reciprocity shall be the same as those paid by others pursuant to this section.

In addition to the fees set forth in this section, the board may collect and transmit to the appropriate federal authority any fees established under the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2008. The board may establish such fees as it deems appropriate for special examinations and other services provided by the board. All fees and other revenue collected pursuant to the Real Property Appraiser Act shall be remitted by the board to the State Treasurer for credit to the Real Property Appraiser Fund.

Source: Laws 1990, LB 1153, § 41; Laws 1991, LB 203, § 45; Laws 1994, LB 1107, § 42; Laws 2001, LB 162, § 33; Laws 2006, LB 778, § 62; Laws 2007, LB186, § 22; Laws 2008, LB1011, § 14.

76-2242 Credential holder; proof of credentials; issuance.

- (1) The board shall provide to each credential holder proof that such person has been credentialed under the Real Property Appraiser Act for the classification requirements set forth in the act. The board shall also issue a pocket card in such size and form as it may approve.
- (2) Each credential issued under the act shall designate the principal place of business of the credential holder.
- (3) Proof of credentialing and pocket cards issued by the board shall remain the property of the state, and upon surrender, cancellation, suspension, or revocation, any person holding the documents shall immediately return such documents to the board.

Source: Laws 1990, LB 1153, § 42; Laws 1991, LB 203, § 46; Laws 1994, LB 1107, § 43; Laws 2001, LB 162, § 34; Laws 2006, LB 778, § 63; Laws 2007, LB186, § 23.

76-2243 Professional corporation; practice of appraising.

Nothing contained in the Real Property Appraiser Act shall be deemed to prohibit any credential holder under the act from engaging in the practice of

real property appraising as a professional corporation in accordance with the Nebraska Professional Corporation Act.

Source: Laws 1990, LB 1153, § 43; Laws 1991, LB 203, § 47; Laws 2001, LB 162, § 35; Laws 2006, LB 778, § 64.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

76-2244 Principal place of business; requirements.

Each resident credential holder shall designate and maintain a principal place of business and shall conspicuously display his or her proof of credentialing in such place of business. Upon any change of his or her principal place of business, a resident or nonresident credential holder shall promptly give notice thereof in writing to the board and the board shall issue a new proof of credentialing for the unexpired term. A nonresident shall not be required to maintain a place of business in this state if he or she maintains an active place of business in his or her place of domicile.

Source: Laws 1990, LB 1153, § 44; Laws 1991, LB 203, § 48; Laws 2001, LB 162, § 36; Laws 2008, LB1011, § 15.

76-2245 Action for compensation; conditions.

No person engaged in real property appraisal activities in this state or acting in the capacity of a real property appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of real property appraisal activities for which credentialing is required by the Real Property Appraiser Act without alleging and proving that he or she was duly credentialed under the act in this state at all times during the performance of such activities.

Source: Laws 1990, LB 1153, § 45; Laws 1991, LB 203, § 49; Laws 2001, LB 162, § 37; Laws 2006, LB 778, § 65.

76-2246 Appraisal without credentials; penalty.

Any person required to be credentialed by the Real Property Appraiser Act who engages in real property appraisal activity or who advertises or holds himself or herself out to the general public as a real property appraiser in this state without obtaining proper credentialing under the act shall be guilty of a Class III misdemeanor and shall be ineligible to apply for credentialing under the act for a period of one year from the date of his or her conviction of such offense. The board may, in its discretion, credential such person within such one-year period upon application and after an administrative hearing.

Source: Laws 1990, LB 1153, § 46; Laws 1991, LB 203, § 50; Laws 1994, LB 1107, § 44; Laws 2001, LB 162, § 38; Laws 2006, LB 778, § 66.

76-2247 Repealed. Laws 1991, LB 203, § 58.

76-2247.01 Services; authorized; contingent fee prohibited; when.

A person may retain or employ a real property appraiser credentialed under the Real Property Appraiser Act to provide appraisal services, including, but not limited to, valuation assignments and consulting services. In each case, the

appraisal and the appraisal report shall comply with the Real Property Appraiser Act and the Uniform Standards of Professional Appraisal Practice.

In a valuation assignment, the real property appraiser shall remain an impartial, disinterested third party. When providing a consulting service, the real property appraiser may complete the evaluation assignment in a manner that responds to a client's stated objective but shall also remain an impartial, disinterested third party. Compensation of a real property appraiser for either a valuation assignment or consulting service shall not be contingent upon the real property appraiser reporting a predetermined analysis, opinion, or conclusion reached or upon the results achieved.

Source: Laws 1991, LB 203, § 51; Laws 1994, LB 1107, § 45; Laws 2001, LB 162, § 39; Laws 2006, LB 778, § 67; Laws 2007, LB186, § 24.

76-2248 Attorney General; powers and duties.

At the request of the board, the Attorney General shall render to the board an opinion with respect to all questions of law arising in connection with the administration of the Real Property Appraiser Act and shall act as attorney for the board in all actions and proceedings brought by or against the board under or pursuant to the act. All fees and expenses of the Attorney General arising out of such duties shall be paid out of the Real Property Appraiser Fund. The Attorney General may appoint special counsel to prosecute such action, and all fees and expenses of such counsel allowed shall be taxed as costs in the action as the court may direct.

Source: Laws 1990, LB 1153, § 48; Laws 1991, LB 203, § 52; Laws 2001, LB 162, § 40; Laws 2006, LB 778, § 68.

76-2249 Directory of appraisers; information; distribution.

(1) The board may prepare a directory showing the name and place of business of credential holders under the Real Property Appraiser Act. Copies of the directory shall be made available to the public at such reasonable price per copy as may be fixed by the board and shall be provided to federal authorities as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2008.

(2) The board shall provide without charge to any credential holder under the act a set of rules and regulations adopted and promulgated by the board and any other information which the board deems important in the area of real property appraisal in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the board determines appropriate. The board may update such material as often as it deems necessary. The board may provide such material to any other person upon request and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

Source: Laws 1990, LB 1153, § 49; Laws 1991, LB 203, § 53; Laws 1993, LB 842, § 1; Laws 1994, LB 1107, § 46; Laws 2001, LB 162, § 41; Laws 2006, LB 778, § 69; Laws 2008, LB1011, § 16.

76-2250 Certificate of good standing.

The board may, upon payment of a fee in an amount specified in its rules and regulations, issue a certificate of good standing to any credential holder under the Real Property Appraiser Act who is in good standing in this state.

Source: Laws 1990, LB 1153, § 50; Laws 1991, LB 203, § 54; Laws 1994, LB 1107, § 47; Laws 2001, LB 162, § 42; Laws 2006, LB 778, § 70.

ARTICLE 23**ONE-CALL NOTIFICATION SYSTEM**

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76-2301 Act, how cited.

Sections 76-2301 to 76-2330 shall be known and may be cited as the One-Call Notification System Act.

Source: Laws 1994, LB 421, § 1; Laws 2002, LB 1105, § 494.

76-2302 Legislative intent.

(1) It is the intent of the Legislature to establish a means by which excavators may notify operators of underground facilities in an excavation area so that operators have the opportunity to identify and locate the underground facilities prior to excavation and so that the excavators may then observe proper precautions to safeguard the underground facilities from damage.

(2) It is the purpose of the One-Call Notification System Act to aid the public by preventing injury to persons and damage to property and the interruption of utility services resulting from accidents caused by damage to underground facilities.

Source: Laws 1994, LB 421, § 2.

76-2303 Definitions, where found.

For purposes of the One-Call Notification System Act, the definitions found in sections 76-2304 to 76-2317 shall be used.

Source: Laws 1994, LB 421, § 3.

76-2304 Business day, defined.

Business day shall mean any day other than a Saturday, Sunday, or state or nationally observed legal holiday.

Source: Laws 1994, LB 421, § 4.

76-2305 Center, defined.

Center shall mean the statewide one-call notification center.

Source: Laws 1994, LB 421, § 5.

76-2306 Damage, defined.

Damage shall mean any impact with, partial or complete severance, destruction, impairment, or penetration of, or removal or weakening of support from an underground facility, including its protective coating, housing, or other protective device.

Source: Laws 1994, LB 421, § 6.

76-2307 Emergency condition, defined.

Emergency condition shall mean any condition which constitutes a clear and present danger to life, health, or property or which demands immediate action to prevent or repair a major service outage.

Source: Laws 1994, LB 421, § 7.

76-2308 Excavation, defined.

Excavation shall mean any activity in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives and shall include grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving but shall not include (1) normal maintenance of roads if the maintenance does not change the original road grade and does not involve the road ditch, (2) tilling of soil and gardening for seeding and other agricultural purposes, (3) digging of graves or in landfills in planned locations, (4) maintenance or rebuilding of railroad track or facilities located on a railroad right-of-way by the railroad company or its contractors when such maintenance or rebuilding does not change the track grade, or (5) hand digging around the base of a pole for pole inspection as part of routine maintenance or replacement of a pole when the replacement pole is similarly sized and is installed in the existing hole.

Source: Laws 1994, LB 421, § 8.

76-2309 Excavator, defined.

Excavator shall mean a person who engages in excavation in this state.

Source: Laws 1994, LB 421, § 9.

76-2310 Gas or hazardous liquid underground pipeline facility, defined.

Gas or hazardous liquid underground pipeline facility shall mean any underground facility used or intended for use in the transportation of gas or the treatment of gas or used or intended for use in the transportation of hazardous liquids including petroleum or petroleum products.

Source: Laws 1994, LB 421, § 10.

76-2311 Nonpermanent surface, defined.

Nonpermanent surface shall mean any ground consisting of uncovered dirt or rock or ground that is covered by grass or other plant life, crushed rock, gravel, or other similar natural substance.

Source: Laws 1994, LB 421, § 11.

76-2312 Normal working hours, defined.

Normal working hours shall mean the hours of 7 a.m. to 5 p.m. on a business day in each time zone in the state.

Source: Laws 1994, LB 421, § 12.

76-2313 Operator, defined.

Operator shall mean a person who manages or controls the functions of an underground facility but shall not include a person who is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on the real property.

Source: Laws 1994, LB 421, § 13.

76-2314 Permanent surface, defined.

Permanent surface shall mean any ground that is covered by a hard, artificial, weatherproof material such as concrete, asphalt, or other similar artificial substance.

Source: Laws 1994, LB 421, § 14.

76-2315 Person, defined.

Person shall mean an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer of an individual.

Source: Laws 1994, LB 421, § 15.

76-2316 Statewide one-call notification center, defined.

Statewide one-call notification center shall mean the association certified by the State Fire Marshal, operating on a nonprofit basis, supported by its members, and having as its principal purpose the statewide receipt and dissemination to participating operators of information on a fair and uniform basis

concerning intended excavation in an area where the operators have underground facilities.

Source: Laws 1994, LB 421, § 16.

76-2317 Underground facility, defined.

Underground facility shall mean any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic communications, telephonic communications, telegraphic communications, cable television, electric energy, oil, gas, hazardous liquids, or other substances, including pipes, trunk lines, fiber optic cables, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such personal property.

Source: Laws 1994, LB 421, § 17.

76-2318 Center; membership required.

Operators of underground facilities shall become members of and participate in the statewide one-call notification center.

Source: Laws 1994, LB 421, § 18.

76-2319 Board of directors; rules and regulations; selection of vendor.

The center shall be governed by a board of directors who shall establish the operating procedures and the technology needed for the center pursuant to rules and regulations adopted and promulgated by the State Fire Marshal. The rules and regulations adopted and promulgated by the State Fire Marshal shall provide for the qualifications, appointment, retention, and composition of the board of directors. The board of directors shall also establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board of directors, and any agreement shall be reviewed by the board of directors at least once every three years, with an opportunity to receive new bids if desired by the board of directors.

Source: Laws 1994, LB 421, § 19.

76-2320 Operator; duty to furnish information; center operational, when; certification.

Every operator shall furnish the vendor selected by the board of directors with information concerning the location of its underground facilities. Every operator having underground facilities in existence in this state on February 16, 1994, shall furnish such information to the vendor by April 3, 1995. The vendor shall have the center operational on October 2, 1995. The center shall be certified by the State Fire Marshal, and the certification shall be reviewed every two years to ensure continued compliance with federal law.

Source: Laws 1994, LB 421, § 20.

76-2321 Excavation; notice; contents; commencement.

(1) A person shall not commence any excavation without first giving notice to every operator. An excavator's notice to the center shall be deemed notice to all operators. An excavator's notice to operators shall be ineffective for purposes of this subsection unless given to the center. Notice to the center shall be given at least two full business days, but no more than ten business days, before commencing the excavation, except notice may be given more than ten business days in advance when the excavation is a road construction, widening, repair, or grading project provided for in sections 70-311 to 70-313 and 86-708 to 86-710. An excavator may commence work before the elapse of two full business days when (a) notice to the center has been given as provided by this subsection and (b) all the affected operators have notified the excavator that the location of all the affected operator's underground facilities have been marked or that the operators have no underground facilities in the location of the proposed excavation.

(2) The notice required pursuant to subsection (1) of this section shall include (a) the name and telephone number of the person making the notification, (b) the name, address, and telephone number of the excavator, (c) the location of the area of the proposed excavation, including the range, township, section, and quarter section, unless the area is within the corporate limits of a city or village, in which case the location may be by street address, (d) the date and time excavation is scheduled to commence, (e) the depth of excavation, (f) the type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring, and (g) whether the use of explosives is anticipated.

Source: Laws 1994, LB 421, § 21; Laws 2002, LB 1105, § 496.

The exception to the notice requirement in subsection (1) of this section applies only to certain "road construction, widening, repair, or grading project" undertaken by counties and townships, and does not apply to state road construction projects. *Galaxy Telecom v. J.P. Theisen & Sons*, 265 Neb. 270, 656 N.W.2d 444 (2003).

76-2322 Excavator; notice to center.

An excavator shall serve notice of intent to excavate upon the center by calling the center's toll-free telephone number. The center shall inform the excavator of all operators to whom such notice will be transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation. The center shall assign an identification number to each notice received.

Source: Laws 1994, LB 421, § 22.

76-2323 Underground facilities; mark or identify.

(1) Upon receipt of the information contained in the notice pursuant to section 76-2321, an operator shall advise the excavator of the approximate location of underground facilities in the area of the proposed excavation by marking or identifying the location of the underground facilities with stakes, flags, paint, or any other clearly identifiable marking or reference point. The location of the underground facility given by the operator shall be within a strip of land eighteen inches on either side of the marking or identification plus one-half of the width of the underground facility. If in the opinion of the operator the precise location of a facility cannot be determined and marked as required, the operator shall provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time. The location shall be marked or identified using color standards prescribed by the center. The operator shall

respond no later than two business days after receipt of the information in the notice or at a time mutually agreed to by the parties.

(2) The marking or identification shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the excavation will continue for longer than five business days, the operator shall remark or reidentify the location of the underground facility upon the request of the excavator. The request for remarking or reidentification shall be made through the center.

(3) An operator who determines that it does not have any underground facility located in the area of the proposed excavation shall notify the excavator of the determination prior to the date of commencement of the excavation.

Source: Laws 1994, LB 421, § 23.

76-2324 Excavator; liability for damage; when.

An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 76-2323. An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility that is operated by the excavator shall not be in violation of the One-Call Notification System Act.

In addition to any liability provided in this section an operator of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.

Source: Laws 1994, LB 421, § 24.

76-2325 Violations; civil penalty.

Any person who violates the provisions of section 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, or 76-2330 shall be subject to a civil penalty as follows:

(1) For a violation related to a gas or hazardous liquid underground pipeline facility, an amount not to exceed ten thousand dollars for each violation for each day the violation persists, up to a maximum of five hundred thousand dollars; and

(2) For a violation related to any other underground facility, an amount not to exceed five hundred dollars for each day the violation persists, up to a maximum of five thousand dollars.

An action to recover a civil penalty shall be brought by the Attorney General or a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed.

All penalties shall be handled and distributed pursuant to Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 421, § 25.

76-2325.01 Unlawful interference; penalty.

Any person who willfully and maliciously breaks, injures, destroys, or otherwise interferes with the poles, wires, or other facilities of any telecommunications or railroad company or electric light and power company in this state or who willfully and purposely interrupts or interferes with the transmission of telecommunications messages or the transmission of light, heat, and power in this state shall be subject to the action and penalty prescribed in section 28-519.

Source: Laws 1887, c. 87, § 2, p. 634; R.S.1913, § 7419; Laws 1915, c. 140, § 1, p. 306; C.S.1922, § 7098; C.S.1929, § 86-302; R.S.1943, § 86-304; Laws 1978, LB 748, § 49; Laws 1999, LB 496, § 5; R.S.1943, (1999), § 86-304; Laws 2002, LB 1105, § 495.

Employee of railroad who cuts down telephone wires at crossing is subject to penalty. *Alt v. State*, 88 Neb. 259, 129 N.W. 432 (1911).

76-2326 Damage; duty of excavator.

If any underground facility is damaged, dislocated, or disturbed before or during excavation, the excavator shall immediately notify the center. An excavator shall not conceal or attempt to conceal damage, dislocation, or disturbance of an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility.

Source: Laws 1994, LB 421, § 26.

76-2327 Incorrect location; duty of excavator.

If in the course of excavation the excavator discovers that the operator has incorrectly located the underground facility, he or she shall notify the center as soon as practical but no later than seventy-two hours after discovery.

Source: Laws 1994, LB 421, § 27.

76-2328 Local permits; treatment; claims against political subdivisions.

The One-Call Notification System Act shall not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before an excavation. A permit issued by a governing body shall not relieve an excavator from complying with the requirements of the act. No claim shall be maintained under the One-Call Notification System Act against a political subdivision or its officers, agents, or employees except to the extent, and only to the extent, provided by the Political Subdivisions Tort Claims Act.

Source: Laws 1994, LB 421, § 28.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

76-2329 Emergency conditions; notification requirements; liability.

Sections 76-2321 and 76-2323 shall not apply to an excavation made under an emergency condition if all reasonable precautions are taken to protect the

underground facilities. If an emergency condition exists, the excavator shall give notification in substantial compliance with section 76-2321 as soon as practical. Upon being notified that an emergency condition exists, each operator shall provide all reasonably available location information to the excavator as soon as possible. If the emergency condition has arisen through no fault of the excavator, sections 76-2324 and 76-2325 shall not apply and the excavator shall be liable for damage to any underground facility located in the area if the damage occurs because of the negligent acts or omissions of the excavator.

Source: Laws 1994, LB 421, § 29.

76-2330 Center; duties.

The center shall:

- (1) Maintain adequate records documenting compliance with the requirements of the One-Call Notification System Act, including records of all telephone calls and records of all location requests for the preceding five years which will be made available and printed upon request of an operator or excavator;
- (2) Provide the notification service during normal working hours at a minimum; and
- (3) Provide procedures for emergency notification for calls received at other than normal working hours.

Source: Laws 1994, LB 421, § 30.

ARTICLE 24

AGENCY RELATIONSHIPS

Section

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Section

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76-2401 Legislative findings.

The Legislature finds, determines, and declares that (1) the application of the common law of agency to the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property has resulted in misunderstandings and consequences that are contrary to the best interests of the public, (2) the real estate brokerage industry has a significant impact upon the economy of the State of Nebraska, and (3) it is in the best interests of the public to codify in statute the relationships between real estate brokers or salespersons and persons who are sellers, landlords, buyers, or tenants of rights and interests in real property.

Source: Laws 1994, LB 883, § 1.

76-2402 Definitions, where found.

For purposes of sections 76-2401 to 76-2430, the definitions found in sections 76-2403 to 76-2415 shall be used.

Source: Laws 1994, LB 883, § 2.

76-2403 Adverse material fact, defined.

Adverse material fact shall mean a fact which (1) significantly affects the desirability or value of the property to a party and is not reasonably ascertainable or known to a party or (2) establishes a reasonable belief that another party will not be able to, or does not intend to, complete that party's obligations under a contract creating an interest in real property.

Source: Laws 1994, LB 883, § 3; Laws 2002, LB 863, § 2.

76-2404 Affiliated licensee, defined.

Affiliated licensee shall mean an associate broker as defined in section 81-885.01 or a salesperson as defined in such section who is under the supervision of a designated broker.

Source: Laws 1994, LB 883, § 4.

76-2405 Brokerage relationship, defined.

Brokerage relationship shall mean the relationship created between a designated broker and a client pursuant to sections 76-2401 to 76-2430 relating to the performance of services of a broker as defined in section 81-885.01 and shall also mean the relationship created between the client and the designated broker's affiliated licensees pursuant to sections 76-2401 to 76-2430.

Source: Laws 1994, LB 883, § 5.

76-2406 Confidential information, defined.

Confidential information shall mean information made confidential by statute, rule, regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

Source: Laws 1994, LB 883, § 6.

76-2407 Client, defined.

Client shall mean a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 76-2401 to 76-2430 and is the seller, landlord, buyer, or tenant to whom the licensee owes the duty as set forth in such sections.

Source: Laws 1994, LB 883, § 7; Laws 2002, LB 863, § 3.

76-2408 Commission, defined.

Commission shall mean the State Real Estate Commission.

Source: Laws 1994, LB 883, § 8.

76-2409 Customer, defined.

Customer shall mean a seller, landlord, buyer, or tenant in a real estate transaction in which a licensee is involved but who has not entered into a brokerage relationship with a licensee.

Source: Laws 1994, LB 883, § 9.

76-2410 Designated broker, defined.

Designated broker shall have the same meaning as in section 81-885.01.

Source: Laws 1994, LB 883, § 10.

76-2411 Dual agent, defined.

Dual agent shall mean a limited agent who, with the written informed consent of all parties to a contemplated real estate transaction, has entered into a brokerage relationship with and therefor represents both the seller and buyer or both the landlord and tenant.

Source: Laws 1994, LB 883, § 11.

76-2412 Licensee, defined.

Licensee shall mean a designated broker, an associate broker, and a salesperson all as defined in section 81-885.01.

Source: Laws 1994, LB 883, § 12.

76-2413 Limited agent, defined.

Limited agent shall mean a licensee whose duties and obligations to a client are those set forth in sections 76-2417 to 76-2419.

Source: Laws 1994, LB 883, § 13.

76-2414 Single agent, defined.

Single agent shall mean a limited agent who has entered into a brokerage relationship with and therefor represents only one party in a real estate transaction. A single agent may be one of the following:

- (1) Buyer's agent, which shall mean a licensee who represents the buyer in a real estate transaction;
- (2) Landlord's agent, which shall mean a licensee who represents the landlord in a leasing transaction;
- (3) Seller's agent, which shall mean a licensee who represents the seller in a real estate transaction; and
- (4) Tenant's agent, which shall mean a licensee who represents the tenant in a leasing transaction.

Source: Laws 1994, LB 883, § 14.

76-2415 Subagent, defined.

Subagent shall mean a designated broker, together with his or her affiliated licensees, engaged by another designated broker to act as a limited agent for a client. A subagent owes the same obligations and responsibilities to the client pursuant to section 76-2417 or 76-2418 as does the client's primary designated broker.

Source: Laws 1994, LB 883, § 15.

76-2416 Licensee; act as agent, when; agency relationships authorized; compensation, when.

(1) When engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as a limited agent in any transaction as a single agent, subagent, or dual agent. The licensee's general duties and obligations arising from the limited agency relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to sections 76-2420 to 76-2422. Alternatively, when engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as an agent in any transaction in accordance with a written contract as described in subsection (6) of section 76-2422.

(2) A licensee shall be considered a buyer's or tenant's limited agent unless:

(a) The designated broker enters into a written seller's agent or landlord's agent agreement with the party to be represented pursuant to subsection (2) of section 76-2422;

(b) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection (5) of section 76-2422;

(c) The designated broker enters into a written dual agency agreement with the parties to be represented pursuant to subsection (4) of section 76-2422; or

(d) The designated broker enters into a written agency agreement pursuant to subsection (6) of section 76-2422.

(3) Sections 76-2401 to 76-2430 shall not obligate any buyer or tenant to pay compensation to a licensee unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection (3) of section 76-2422.

(4) A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a

seller's agent and working with that seller in buying another property as a buyer's agent or as a subagent if the licensee complies with sections 76-2401 to 76-2430 in establishing the relationships for each transaction.

Source: Laws 1994, LB 883, § 16.

76-2417 Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of the written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - (i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
 - (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;
 - (iii) Disclosing in writing to the client all adverse material facts actually known by the licensee; and
 - (iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (d) To account in a timely manner for all money and property received;
- (e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

(2) A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the

property; or (v) any material limitation on the client's ability to perform under the terms of the contract.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(5)(a) A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

Source: Laws 1994, LB 883, § 17; Laws 2002, LB 863, § 4.

76-2418 Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of any written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - (i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (ii) Presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (iii) Disclosing in writing to the client adverse material facts actually known by the licensee; and
 - (iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (d) To account in a timely manner for all money and property received;
- (e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

(2) A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would consti-

tute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a seller, a landlord, or a prospective seller or landlord, except that the licensee shall disclose in writing to any seller, landlord, or prospective seller or landlord all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts concerning the client's financial ability to perform the terms of the transaction.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5)(a) A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the buyer's or tenant's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

Source: Laws 1994, LB 883, § 18; Laws 2002, LB 863, § 5.

76-2419 Dual agent; powers and duties; confidentiality; immunity; imputation of knowledge or information.

(1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a written agreement pursuant to section 76-2422.

(2) A dual agent shall be a limited agent for both the seller and buyer or the landlord and tenant and shall have the duties and obligations required by sections 76-2417 and 76-2418 unless otherwise provided for in this section.

(3) Except as provided in subsections (4) and (5) of this section, a dual agent may disclose any information to one client that the licensee gains from the other client if the information is relevant to the transaction or client. A dual agent shall disclose to both clients all adverse material facts actually known by the licensee.

(4) The following information shall not be disclosed by a dual agent without the informed written consent of the client to whom the information pertains:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any client buying, selling, or leasing the property; and

(d) That a client will agree to financing terms other than those offered.

(5)(a) A dual agent shall not disclose to one client any confidential information about the other client unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation.

(b) No cause of action for any person shall arise against a dual agent for making any required or permitted disclosure.

(c) A dual agent does not terminate the dual-agency relationship by making any required or permitted disclosure.

(6) In a dual-agency relationship there shall be no imputation of knowledge or information between any client and the dual agent or among persons within an entity engaged as a dual agent.

Source: Laws 1994, LB 883, § 19; Laws 2002, LB 863, § 6.

76-2420 Designated broker; written policy; relationships.

(1) Every designated broker shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

(2) A designated broker shall not be required to offer or engage in more than one of the brokerage relationships enumerated in section 76-2416.

Source: Laws 1994, LB 883, § 20.

76-2421 Licensee offering brokerage services; duties.

(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall:

(a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and

(b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.

(2) When a seller, landlord, buyer, or tenant has already entered into a written agreement for brokerage services with a designated broker or when a buyer or tenant has a brokerage relationship under sections 76-2401 to 76-2430 without a written agreement, no other licensee shall be required to make the disclosures required by this section.

(3) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a seller's or landlord's agent or subagent may perform with the customer.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the buyer or tenant and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a buyer's or tenant's agent or subagent may perform with the customer.

(5) The written disclosure required pursuant to subsections (1), (3), and (4) of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure shall not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

(6) A licensee shall not be required to give the written disclosures required by this section to a corporation, limited liability company, partnership, limited liability partnership, or similar entity or to any entity which, if doing business in the State of Nebraska, would be required to be registered with the Secretary of State when such corporation, limited liability company, partnership, limited liability partnership, or entity is purchasing, leasing, or selling real property (a) on which there are five or more residential dwelling units, (b) which is subdivided for five or more residential dwelling units, or (c) any portion of which is zoned or assessed by the county assessor as commercial or industrial property.

(7) Disclosures made in accordance with sections 76-2401 to 76-2430 shall be sufficient to disclose brokerage relationships to the public.

Source: Laws 1994, LB 883, § 21; Laws 2002, LB 863, § 7.

76-2422 Written agreements for brokerage services; when required.

(1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services shall be left with the client or clients.

(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell.

(3) Before or while engaging in any of the acts enumerated in subdivision (2) of section 81-885.01, a designated broker acting as a single agent for a buyer or tenant may enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities

specified in section 76-2418, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase property or a lease or letter of intent to lease is entered into for the specific property.

(5) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a subagent shall enter into a written contract with the primary designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

(6) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker who intends to establish an agency relationship with any party or parties to a transaction in which the designated broker's duties and responsibilities exceed those contained in sections 76-2417 and 76-2418 shall enter into a written agency agreement with a party or parties to the transaction to perform services on their behalf. The agreement shall specify the agent's duties and responsibilities, including any duty of confidentiality, and the terms of compensation. Any agreement under this subsection shall be subject to the common-law requirements of agency applicable to real estate licensees.

Source: Laws 1994, LB 883, § 22; Laws 2002, LB 863, § 8; Laws 2005, LB 88, § 1.

76-2423 Representation; commencement and termination; when.

(1)(a) The relationships set forth in sections 76-2401 to 76-2430 shall commence at the time that the licensee begins representing a client and continue until performance or completion of the representation.

(b) If the representation is not performed or completed for any reason, the relationship shall end at the earlier of:

(i) The date of expiration agreed upon by the parties; or

(ii) The termination or relinquishment of the relationship by the parties.

(2) Except as otherwise agreed in writing, a licensee shall owe no further duty or obligation after termination or expiration of the contract or representation or completion of performance except the duties of:

(a) Accounting for all money and property related to and received during the relationship; and

(b) Keeping confidential all information received during the course of the relationship which was made confidential by sections 76-2401 to 76-2430, by instructions from the client, or by the policy of the designated broker unless:

(i) The client to whom the information pertains grants written consent to disclose the information; or

(ii) Disclosure of the information is required by law.

Source: Laws 1994, LB 883, § 23.

76-2424 Compensation; payment.

(1) In any real estate transaction, the designated broker's compensation may be paid by the seller, the landlord, the buyer, the tenant, or a third party or by sharing the compensation between designated brokers.

(2) Payment of compensation by itself shall not establish an agency relationship between the party who paid the compensation and the designated broker or any affiliated licensee.

(3) A seller or landlord may agree that a single agent designated broker or subagent may share with another designated broker the compensation paid by the seller or landlord.

(4) A buyer or tenant may agree that a single agent designated broker or subagent may share with another designated broker the compensation paid by the buyer or tenant.

(5) A designated broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell, or lease.

Source: Laws 1994, LB 883, § 24.

76-2425 Violation; unfair trade practice; commission; powers.

Violation of any provision of sections 76-2401 to 76-2430 by a licensee shall constitute an unfair trade practice pursuant to section 81-885.24 for which the commission may investigate and take administrative action against the licensee pursuant to the Nebraska Real Estate License Act.

Source: Laws 1994, LB 883, § 25.

76-2426 Misrepresentation; liability.

(1) A client shall not be liable for a misrepresentation of his or her limited agent arising out of the limited-agency agreement unless the client knew or should have known of the misrepresentation.

(2) A licensee who is serving as a limited agent or subagent of a client shall not be liable for a misrepresentation of his or her client arising out of the brokerage-services agreement unless the licensee knew or should have known of the misrepresentation.

(3) A licensee who is serving as a limited agent of a client shall not be liable for a misrepresentation of any subagent unless the licensee knew or should have known of the misrepresentation.

(4) A licensee who is serving as a subagent shall not be liable for a misrepresentation of the primary limited agent unless the subagent knew or should have known of the misrepresentation.

Source: Laws 1994, LB 883, § 26; Laws 2002, LB 863, § 9.

76-2427 Designated broker; appointment of limited agent; effect.

A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing those affiliated licensees who will be acting as limited agents of that client to the exclusion of all other affiliated licensees. A designated broker shall not be considered to be a dual agent solely because he or she makes an appointment under this section, except that any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and shall be required to comply with the provisions of sections 76-2401 to 76-2430 governing dual agents.

Source: Laws 1994, LB 883, § 27.

76-2428 Affiliated licensees; powers and duties; immunity.

(1) All affiliated licensees to the extent allowed by their licenses shall have the same duties and responsibilities to the client and customer pursuant to sections 76-2417 to 76-2419 as the designated broker except as provided in section 76-2427.

(2) All affiliated licensees have the same protections from vicarious liability as their designated broker.

Source: Laws 1994, LB 883, § 28.

76-2429 Sections; supersede common law; extent; construction.

Sections 76-2401 to 76-2430 shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section 76-2422. Sections 76-2401 to 76-2430 shall be construed broadly to accomplish their purposes.

Source: Laws 1994, LB 883, § 29.

76-2430 Commission; rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out sections 76-2401 to 76-2430.

Source: Laws 1994, LB 883, § 30.

ARTICLE 25

NEBRASKA PLANE COORDINATE SYSTEM ACT

Section

76-2501. Act, how cited.

76-2502. Terms, defined.

- Section
 76-2503. Plane coordinate values.
 76-2504. Plane coordinates; recording; waiver.
 76-2505. Use of term; restriction.
 76-2506. Tracts of land; how described.

76-2501 Act, how cited.

Sections 76-2501 to 76-2506 shall be known and may be cited as the Nebraska Plane Coordinate System Act.

Source: Laws 1998, LB 924, § 63; R.S.1943, (1999), § 86-1601; Laws 2002, LB 1105, § 497.

76-2502 Terms, defined.

(1) For purposes of the Nebraska Plane Coordinate System Act, Nebraska Plane Coordinate System means the system of plane coordinates for designating the geographic position of points on the surface of the earth, within the State of Nebraska, which have been established by the National Ocean Service/National Geodetic Survey, or its successors, for defining and stating the geographic positions or locations of points on the surface of the earth, within the State of Nebraska; and

(2) For purposes of more precisely defining the Nebraska Plane Coordinate System, the following definition by the National Ocean Service/National Geodetic Survey is also adopted:

The Nebraska Plane Coordinate System is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 40 degrees 00 minutes and 43 degrees 00 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 100 degrees 00 minutes west of Greenwich and the parallel 39 degrees 50 minutes north latitude. This origin is given the coordinates. N = 0 meters and E = 500,000 meters.

Source: Laws 1998, LB 924, § 64; R.S.1943, (1999), § 86-1602; Laws 2002, LB 1105, § 498.

76-2503 Plane coordinate values.

The plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point of this system shall consist of two distances expressed in meters and decimals of a meter when using the Nebraska Plane Coordinate System. One of the distances, to be known as the "northing" or "N", shall give the position in a north-and-south direction. The other, to be known as the "easting" or "E", shall give the position in an east-and-west direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented horizontal control stations of the North American National Geodetic Horizontal Network as published by the National Ocean Service/National Geodetic Survey, or its successors, and whose plane coordinates have been computed based on the system described in the Nebraska Plane Coordinate System Act. Any such station may be used for establishing a survey connection to the Nebraska Plane Coordinate System.

Source: Laws 1998, LB 924, § 65; R.S.1943, (1999), § 86-1603; Laws 2002, LB 1105, § 499.

76-2504 Plane coordinates; recording; waiver.

No coordinates based on the Nebraska Plane Coordinate System purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless such point is within one kilometer of a monumented horizontal control station established in conformity with the standards of accuracy and specifications for first-order or second-order geodetic surveying, as prepared and published by the Federal Geodetic Control Subcommittee of the United States Department of Commerce. Standards and specifications of the Federal Geodetic Control Subcommittee, or its successor, in force on the date of the survey shall apply. Publishing existing monumented horizontal control stations, or the acceptance with intent to publish the newly established monumented horizontal control stations, by the National Ocean Service/National Geodetic Survey shall constitute evidence of adherence to the Federal Geodetic Control Subcommittee specifications. The State Surveyor may grant a waiver of the requirements of this section upon submission of evidence that the standards of accuracy and specifications used exceed the requirements of this section.

Source: Laws 1998, LB 924, § 66; R.S.1943, (1999), § 86-1604; Laws 2002, LB 1105, § 500.

76-2505 Use of term; restriction.

The use of the term “Nebraska Plane Coordinate System” on any map, report, survey, or other document shall be limited to coordinates based upon the Nebraska Plane Coordinate System.

Source: Laws 1998, LB 924, § 67; R.S.1943, (1999), § 86-1605; Laws 2002, LB 1105, § 501.

76-2506 Tracts of land; how described.

Descriptions of tracts of land by reference to subdivisions, lines or corners of the United States public land survey, or other original pertinent surveys, are hereby recognized as the basic and prevailing method for describing tracts of land. Whenever coordinates of the Nebraska Plane Coordinate System are used in descriptions of tracts of land, they shall be construed as being supplementary to descriptions of such subdivisions, lines or corners of the United States public land survey, or such other original pertinent surveys contained in official plats and field notes of record. In the event of any conflict, coordinates of the Nebraska Plane Coordinate System shall not determine the issue, but may be used as collateral facts to show additional evidence.

Source: Laws 1998, LB 924, § 68; R.S.1943, (1999), § 86-1606; Laws 2002, LB 1105, § 502.

ARTICLE 26**UNIFORM ENVIRONMENTAL COVENANTS ACT**

- Section
 76-2601. Act, how cited.
 76-2602. Terms, defined.
 76-2603. Nature of rights; subordination of interests.
 76-2604. Contents of environmental covenant.
 76-2605. Validity; effect on other instruments.
 76-2606. Relationship to other land-use law.

Section	
76-2607.	Notice.
76-2608.	Recording.
76-2609.	Duration; amendment by court action.
76-2610.	Amendment or termination by consent.
76-2611.	Enforcement of environmental covenant.
76-2612.	Uniformity of application and construction.
76-2613.	Relation to Electronic Signatures in Global and National Commerce Act.

76-2601 Act, how cited.

Sections 76-2601 to 76-2613 may be cited as the Uniform Environmental Covenants Act.

Source: Laws 2005, LB 298, § 2.

76-2602 Terms, defined.

In the Uniform Environmental Covenants Act:

(1) Activity and use limitations means restrictions or obligations created under the act with respect to real property.

(2) Agency means the Department of Environmental Quality or any other Nebraska or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) Common interest community means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) Environmental covenant means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) Environmental response project means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property, including the Petroleum Release Remedial Action Act;

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act.

(6) Holder means the grantee of an environmental covenant as specified in subsection (a) of section 76-2603.

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Source: Laws 2005, LB 298, § 3.

Cross References

Petroleum Release Remedial Action Act, see section 66-1501.

Remedial Action Plan Monitoring Act, see section 81-15,181.

76-2603 Nature of rights; subordination of interests.

(a) Any person, including a person that owns an interest in the real property, may be a holder, except that the State of Nebraska, a municipality, or another unit of local government may not be a holder unless it is the owner of the real property. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) A right of an agency under the Uniform Environmental Covenants Act or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(c) An agency is only bound by any obligation it expressly assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than the act except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) A prior interest is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) The act does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Source: Laws 2005, LB 298, § 4.

76-2604 Contents of environmental covenant.

(a) An environmental covenant must:

(1) State that the instrument is an environmental covenant executed pursuant to the Uniform Environmental Covenants Act;

(2) Contain a legally sufficient description of the real property subject to the covenant;

- (3) Describe the activity and use limitations on the real property;
 - (4) Identify every holder;
 - (5) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and
 - (6) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.
- (b) In addition to the information required by subsection (a) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:
- (1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
 - (2) Requirements for periodic reporting describing compliance with the covenant;
 - (3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;
 - (4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
 - (5) Limitation on amendment or termination of the covenant in addition to those contained in sections 76-2609 and 76-2610;
 - (6) Rights of the holder in addition to its right to enforce the covenant pursuant to section 76-2611; and
 - (7) Rights to enforce granted to any person.
- (c) In addition to other conditions for its approval of an environmental covenant, the agency may require that those persons specified by the agency who have interests in the real property have signed the covenant.

Source: Laws 2005, LB 298, § 5.

76-2605 Validity; effect on other instruments.

- (a) An environmental covenant that complies with the Uniform Environmental Covenants Act runs with the land.
- (b) An environmental covenant that is otherwise effective is valid and enforceable even if:
 - (1) It is not appurtenant to an interest in real property;
 - (2) It can be or has been assigned to a person other than the original holder;
 - (3) It is not of a character that has been recognized traditionally at common law;
 - (4) It imposes a negative burden;
 - (5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
 - (6) The benefit or burden does not touch or concern real property;
 - (7) There is no privity of estate or contract;
 - (8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before September 4, 2005, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. The act does not apply in any other respect to such an instrument.

(d) The act does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Source: Laws 2005, LB 298, § 6.

76-2606 Relationship to other land-use law.

The Uniform Environmental Covenants Act does not authorize a use of real property that is otherwise prohibited by zoning, by law other than the act regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than the act.

Source: Laws 2005, LB 298, § 7.

76-2607 Notice.

(a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

- (1) Each person that signed the covenant;
- (2) Each person holding a recorded interest in the real property subject to the covenant;
- (3) Each person in possession of the real property subject to the covenant;
- (4) Each municipality or other unit of local government in which real property subject to the covenant is located; and
- (5) Any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Source: Laws 2005, LB 298, § 8.

76-2608 Recording.

(a) An environmental covenant, any amendment or termination of the covenant under section 76-2609 or 76-2610, and any subordination agreement must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in subsection (c) of section 76-2609, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

(c) A copy of a document recorded under subsection (a) of this section shall also be provided to the Department of Environmental Quality if the department has not signed the covenant.

(d) The department shall make available to the public a listing of all documents under subsection (a) of this section or documents under subsection (c) of this section which have been provided to the department.

Source: Laws 2005, LB 298, § 9.

76-2609 Duration; amendment by court action.

(a) An environmental covenant is perpetual unless it is:

(1) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent pursuant to section 76-2610;

(3) Terminated pursuant to subsection (b) of this section;

(4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) Terminated or modified in an eminent domain proceeding, but only if:

(A) The agency that signed the covenant is a party to the proceeding;

(B) All persons identified in subsections (a) and (b) of section 76-2610 are given notice of the pendency of the proceeding; and

(C) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in subsections (a) and (b) of section 76-2610 have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to the Administrative Procedure Act.

(c) Except as otherwise provided in subsections (a) and (b) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired by application of sections 57-227 to 57-239, 72-301 to 72-314, or 76-288 to 76-298.

Source: Laws 2005, LB 298, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

76-2610 Amendment or termination by consent.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The agency;

(2) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) Except as otherwise provided in subdivision (d)(2) of this section, the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties;

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this section; and

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.

Source: Laws 2005, LB 298, § 11.

76-2611 Enforcement of environmental covenant.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The agency;

(3) Any person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) A municipality or other unit of local government in which the real property subject to the covenant is located.

(b) The Uniform Environmental Covenants Act does not limit the regulatory authority of the agency under law other than the Uniform Environmental Covenants Act with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

(d) The Uniform Environmental Covenants Act does not limit the right of any person to recover damages under any other provision of law.

Source: Laws 2005, LB 298, § 12.

76-2612 Uniformity of application and construction.

In applying and construing the Uniform Environmental Covenants Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2005, LB 298, § 13.

76-2613 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Environmental Covenants Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Source: Laws 2005, LB 298, § 14.

ARTICLE 27**NEBRASKA FORECLOSURE PROTECTION ACT**

Section

- 76-2701. Act, how cited.
- 76-2702. Legislative findings and intent.
- 76-2703. Definitions, where found.
- 76-2704. Associate, defined.
- 76-2705. Equity purchase contract, defined.
- 76-2706. Equity purchaser, defined.
- 76-2707. Evidence of debt, defined.
- 76-2708. Foreclosure consultant, defined.
- 76-2709. Foreclosure consulting contract, defined.
- 76-2710. Holder of evidence of debt, defined.
- 76-2711. Homeowner, defined.
- 76-2712. Residence in foreclosure, defined.
- 76-2713. Foreclosure consulting contract; form; notice required; right to cancel; notice.
- 76-2714. Homeowner; right to cancel foreclosure consulting contract; notice; when effective; repayment of funds.
- 76-2715. Foreclosure consulting contract; provisions prohibited.
- 76-2716. Foreclosure consultant; prohibited acts.
- 76-2717. Foreclosure consultant or associate; unconscionable transaction or contract; review by court.
- 76-2718. Foreclosure consulting contract and notices; English required; translation into other language.
- 76-2719. Equity purchase contract; form.
- 76-2720. Equity purchase contract; contents; notice.
- 76-2721. Homeowner; right to cancel equity purchase contract; limitation; when effective.
- 76-2722. Equity purchase contract; Notice of Cancellation; form; copy provided to homeowner.
- 76-2723. Option to repurchase; conditions.
- 76-2724. Equity purchase contract; provisions prohibited.
- 76-2725. Equity purchaser; duties; prohibited acts.
- 76-2726. Equity purchaser or associate; unconscionable transaction or contract; review by court.
- 76-2727. Equity purchase contract and related documents and instruments; English required; translation into other language.
- 76-2728. Violation; penalty.

76-2701 Act, how cited.

Sections 76-2701 to 76-2728 shall be known and may be cited as the Nebraska Foreclosure Protection Act.

Source: Laws 2008, LB123, § 1.

76-2702 Legislative findings and intent.

The Legislature hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and prevent the most deceptive and unconscionable of these business practices, provide each homeowner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the Legislature that all violations of the Nebraska Foreclosure Protection Act have a significant public impact and that the terms of the act be liberally construed to achieve these purposes.

Source: Laws 2008, LB123, § 2.

76-2703 Definitions, where found.

For purposes of the Nebraska Foreclosure Protection Act, unless the context otherwise requires, the definitions found in sections 76-2704 to 76-2712 apply.

Source: Laws 2008, LB123, § 3.

76-2704 Associate, defined.

Associate means a partner, a subsidiary, an affiliate, an agent, or any other person working in association with a foreclosure consultant or an equity purchaser. Associate does not include a person who is excluded from the definition of an equity purchaser or a foreclosure consultant.

Source: Laws 2008, LB123, § 4.

76-2705 Equity purchase contract, defined.

Equity purchase contract means an agreement between an equity purchaser and a homeowner pertaining to the acquisition of title to the homeowner's personal residence.

Source: Laws 2008, LB123, § 5.

76-2706 Equity purchaser, defined.

Equity purchaser means a person who, in the course of the person's business, vocation, or occupation, acquires title to a residence in foreclosure. Equity purchaser does not include a person who acquires such title:

(1) For the purpose of using such property as his or her personal residence for at least one year;

(2) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record, if such consensual lien or encumbrance is recorded in the register of deeds office of the county where the residence in foreclosure is located prior to a foreclosure sale;

- (3) By a deed from any trustee, sheriff, or other person appointed by a court as a result of a foreclosure sale;
- (4) At a sale of property authorized by statute;
- (5) By order or judgment of any court;
- (6) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of such person; or
- (7) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in this state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person.

Source: Laws 2008, LB123, § 6.

76-2707 Evidence of debt, defined.

Evidence of debt means a writing that evidences a promise to pay or a right to the payment of a monetary obligation such as a promissory note; bond; negotiable instrument; loan, credit, or similar agreement; or monetary judgment entered by a court of competent jurisdiction.

Source: Laws 2008, LB123, § 7.

76-2708 Foreclosure consultant, defined.

- (1) Foreclosure consultant means a person who:
 - (a) Does not, directly or through an associate, take or acquire any interest in or title to the residence in foreclosure; and
 - (b) In the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a homeowner to perform, in exchange for compensation from the homeowner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:
 - (i) Stop or postpone a foreclosure sale;
 - (ii) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;
 - (iii) Assist the homeowner in exercising a right to cure a default;
 - (iv) Obtain an extension of the period within which the homeowner may cure a default;
 - (v) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;
 - (vi) Assist the homeowner to obtain a loan or an advance of funds;
 - (vii) Avoid or reduce the impairment of the homeowner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, any foreclosure sale or the granting of a deed in lieu of foreclosure, or any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(viii) In any way delay, hinder, or prevent the foreclosure upon the homeowner's residence; or

(ix) Assist the homeowner in obtaining from the beneficiary, mortgagee, or grantee of the lien in foreclosure, or from counsel for such beneficiary, mortgagee, or grantee, the remaining or excess proceeds from the foreclosure sale of the residence in foreclosure.

(2) Foreclosure consultant does not include:

(a) A person licensed to practice law in this state while performing any activity related to the person's attorney-client relationship with a homeowner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(b) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(c) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of such entities, or an employee or agent acting on behalf of any of such entities;

(d) A person originating or closing a loan in a person's normal course of business, if, as to that loan:

(i) The loan is subject to the requirements of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as the act existed on July 18, 2008; or

(ii) With respect to any junior mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under subdivision (2)(d)(i) of this section or is initially payable on the face of the note or contract to an entity included in subdivision (2)(c) of this section;

(e) A judgment creditor of the homeowner;

(f) A title insurance company or title insurance agent authorized to conduct business in this state while performing title insurance and settlement services;

(g) A person licensed as a real estate broker, associate broker, or real estate salesperson pursuant to the Nebraska Real Estate License Act while the person engages in any activity for which the person is licensed; or

(h) A nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

Source: Laws 2008, LB123, § 8.

76-2709 Foreclosure consulting contract, defined.

Foreclosure consulting contract means any agreement between a foreclosure consultant and a homeowner.

Source: Laws 2008, LB123, § 9.

76-2710 Holder of evidence of debt, defined.

Holder of evidence of debt means the person in actual possession of or otherwise entitled to enforce an evidence of debt, except that holder of evidence of debt does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

- (1) The person who is the obligee of and who is in possession of an original evidence of debt;
- (2) The person in possession of an original evidence of debt together with the proper endorsement or assignment thereof to such person;
- (3) The person in possession of a negotiable instrument evidencing a debt which has been duly negotiated to such person or to bearer or indorsed in blank; or
- (4) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as an agent, a nominee, or a trustee or in a similar capacity for the obligee of the evidence of debt.

Source: Laws 2008, LB123, § 10.

76-2711 Homeowner, defined.

Homeowner means the owner of a residence in foreclosure, including a vendee under a contract for deed to real property as defined in section 45-1002.

Source: Laws 2008, LB123, § 11; Laws 2009, LB328, § 52.

76-2712 Residence in foreclosure, defined.

Residence in foreclosure means a residence or dwelling that is occupied as the homeowner's principal place of residence and against which any type of foreclosure action, including, but not limited to, the filing of a notice of default of a deed of trust or the filing of a lawsuit to foreclose a mortgage or other lien, has been commenced.

Source: Laws 2008, LB123, § 12.

76-2713 Foreclosure consulting contract; form; notice required; right to cancel; notice.

(1) A foreclosure consulting contract shall be in writing and provided to and retained by the homeowner, with changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the homeowner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name, address, facsimile number, and email address of the foreclosure consultant to which a notice of cancellation may be delivered and the date the homeowner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed by each homeowner of the residence in foreclo-

sure and the foreclosure consultant, and shall be acknowledged by a notary public in the presence of the homeowner at the time the contract is signed by the homeowner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point, boldface type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the homeowner's signature:

NOTICE REQUIRED BY NEBRASKA LAW

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS) ASSOCIATE CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DOCUMENT THAT TRANSFERS ANY INTEREST IN YOUR HOME OR PROPERTY TO (HIM/HER/IT) OR (HIS/HER/ITS) ASSOCIATE.

..... (NAME OF FORECLOSURE CONSULTANT) OR (HIS/HER/ITS) ASSOCIATE CANNOT GUARANTEE YOU THAT THEY WILL BE ABLE TO REFINANCE YOUR HOME OR ARRANGE FOR YOU TO KEEP YOUR HOME. YOU MAY, AT ANY TIME, CANCEL THIS CONTRACT, WITHOUT PENALTY OF ANY KIND.

IF YOU WANT TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE, INDICATING YOUR INTENT TO CANCEL TO (NAME OF FORECLOSURE CONSULTANT) AT (ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS).

AS PART OF ANY CANCELLATION, YOU (THE HOMEOWNER) MUST REPAY ANY MONEY ACTUALLY SPENT ON YOUR BEHALF BY (NAME OF FORECLOSURE CONSULTANT) PRIOR TO RECEIPT OF THIS NOTICE AND, AS A RESULT OF THIS AGREEMENT, WITHIN SIXTY DAYS, ALONG WITH INTEREST AT THE PRIME RATE PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO PERCENTAGE POINTS, WITH THE TOTAL INTEREST RATE NOT TO EXCEED EIGHT PERCENT PER YEAR.

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. CONTACT AN ATTORNEY OR A HOUSING COUNSELOR APPROVED BY THE FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT BEFORE SIGNING.

(6) A completed form in duplicate, captioned NOTICE OF CANCELLATION, shall accompany a foreclosure consulting contract. The notice of cancellation shall:

- (a) Be on a separate sheet of paper attached to the contract;
- (b) Be easily detachable; and
- (c) Contain the following statement, printed in at least fourteen-point type:

NOTICE OF CANCELLATION

..... (DATE OF CONTRACT)

TO: (NAME OF FORECLOSURE CONSULTANT)

(ADDRESS OF FORECLOSURE CONSULTANT, INCLUDING FACSIMILE NUMBER AND EMAIL ADDRESS)

I HEREBY CANCEL THIS CONTRACT.

..... (DATE)

..... (HOMEOWNER’S SIGNATURE)

(7) A foreclosure consultant shall provide to the homeowner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the homeowner may cancel a foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

Source: Laws 2008, LB123, § 13.

76-2714 Homeowner; right to cancel foreclosure consulting contract; notice; when effective; repayment of funds.

(1) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when a homeowner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile number or email address identified in the contract or other materials provided to the homeowner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the homeowner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the homeowner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or his or her associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the Federal Reserve Board plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the homeowner.

(6) Except as provided in subsection (5) of this section, the right to cancel shall not be conditioned on the repayment of any funds.

Source: Laws 2008, LB123, § 14.

76-2715 Foreclosure consulting contract; provisions prohibited.

A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(1) Waive any of the rights specified in sections 76-2713 to 76-2718 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

- (4) Impose any costs or fees greater than the actual costs and fees.

Source: Laws 2008, LB123, § 15.

76-2716 Foreclosure consultant; prohibited acts.

A foreclosure consultant shall not:

- (1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

- (2) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the homeowner that exceeds the prime rate published by the Federal Reserve Board at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;

- (3) Take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

- (4) Receive any consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

- (5) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a homeowner with whom the foreclosure consultant has contracted;

- (6) Obtain a power of attorney from a homeowner for any purpose other than to inspect documents as provided by law; or

- (7) Induce or attempt to induce a homeowner to enter into a foreclosure consulting contract that does not comply in all respects with sections 76-2713 to 76-2718.

Source: Laws 2008, LB123, § 16.

76-2717 Foreclosure consultant or associate; unconscionable transaction or contract; review by court.

- (1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

- (2)(a) If a court, as a matter of law, finds a foreclosure consulting contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

- (b) When it is claimed or appears to the court that a foreclosure consulting contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

- (c) In order to support a finding of unconscionability, there must be evidence of an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together

with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

Source: Laws 2008, LB123, § 17.

76-2718 Foreclosure consulting contract and notices; English required; translation into other language.

A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source: Laws 2008, LB123, § 18.

76-2719 Equity purchase contract; form.

Every equity purchase contract shall be written in at least twelve-point, boldface type and fully completed, signed, and dated by the homeowner and equity purchaser prior to the execution of any instrument quitclaiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

Source: Laws 2008, LB123, § 19.

76-2720 Equity purchase contract; contents; notice.

(1) Every equity purchase contract shall contain the entire agreement of the parties and shall include the following:

(a) The name, business address, telephone number, facsimile number, and email address of the equity purchaser;

(b) The street address and full legal description of the residence in foreclosure;

(c) Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the homeowner, the equity purchase contract shall so state;

(d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;

(e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the homeowner before or after the sale;

(f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;

(g) The terms of any rental agreement or lease;

(h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, downpayment, purchase price, closing costs, commissions, or other fees or costs;

(i) A notice of cancellation as provided in section 76-2722; and

(j) The following notice, in at least fourteen-point, boldface type, completed with the name of the equity purchaser, immediately above the statement required by section 76-2722:

NOTICE REQUIRED BY NEBRASKA LAW

**UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED,
..... (NAME) OR ANYONE WORKING FOR
..... (NAME) CANNOT ASK YOU TO SIGN OR HAVE YOU
SIGN ANY DEED OR ANY OTHER DOCUMENT.**

(2) The equity purchase contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

Source: Laws 2008, LB123, § 20.

76-2721 Homeowner; right to cancel equity purchase contract; limitation; when effective.

(1)(a) In addition to any right of rescission available under state or federal law, a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs a contract that complies with the Nebraska Foreclosure Protection Act or until noon on the last business day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(b) There shall be no right to cancel under the act with regard to any equity purchase contract executed on or after noon of the last business day before the foreclosure sale of the residence in foreclosure, if the homeowner first agrees to enter into an equity purchase contract with the equity purchaser on or after noon of the last business day before the foreclosure sale.

(2) Cancellation occurs when a homeowner personally delivers written notice of cancellation to the address specified in the equity purchase contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by a homeowner need not take the particular form as provided with the equity purchase contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the equity purchase contract.

(4) In the absence of any written notice of cancellation from a homeowner, the execution by the homeowner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the homeowner did not cancel the equity purchase contract.

Source: Laws 2008, LB123, § 21.

76-2722 Equity purchase contract; Notice of Cancellation; form; copy provided to homeowner.

(1)(a) The equity purchase contract shall contain, as the last provision before the space reserved for the homeowner’s signature, a conspicuous statement in at least twelve-point, boldface type, as follows:

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME BEFORE (DATE AND TIME OF DAY). SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(b) The equity purchaser shall accurately specify, within the equity purchase contract, the date and time of day on which the cancellation right ends.

(c) If no right to cancel the equity purchase contract exists under the Nebraska Foreclosure Protection Act as set forth in subdivision (1)(b) of section 76-2721, the equity purchase contract shall conspicuously state that no such cancellation right exists.

(2) The equity purchase contract shall be accompanied by duplicate completed forms, captioned Notice of Cancellation in at least twelve-point, boldface type if the equity purchase contract is printed or in capital letters if the equity purchase contract is typed, followed by a space in which the equity purchaser shall enter the date on which the homeowner executed the equity purchase contract. Such form shall:

- (a) Be attached to the equity purchase contract;
- (b) Be easily detachable; and

(c) Contain the following statement, in at least ten-point type if the equity purchase contract is printed or in capital letters if the contract is typed:

NOTICE OF CANCELLATION

..... (ENTER DATE EQUITY PURCHASE CONTRACT WAS SIGNED). YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE (ENTER DATE AND TIME OF DAY). TO CANCEL THIS TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION IN THE UNITED STATES MAIL, POSTAGE PREPAID, TO, (NAME OF PURCHASER) AT (STREET ADDRESS OF PURCHASER'S PLACE OF BUSINESS) NOT LATER THAN (ENTER DATE AND TIME OF DAY). I HEREBY CANCEL THIS TRANSACTION

..... (DATE)
..... (SELLER'S SIGNATURE).

(3) The equity purchaser shall provide the homeowner with a copy of the equity purchase contract and the attached notice of cancellation.

(4) The time during which the homeowner may cancel the equity purchase contract does not begin to run until the equity purchaser has complied with this section.

Source: Laws 2008, LB123, § 22.

76-2723 Option to repurchase; conditions.

A transaction in which a homeowner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and in which an option to repurchase is reserved to the homeowner or is given by the equity purchaser to the homeowner shall be permitted only where all of the following conditions have been met:

- (1) The reconveyance contract complies in all respects with section 76-2720;

(2) The reconveyance contract provides the homeowner with a nonwaivable, thirty-day right to cure any default of the reconveyance contract and specifies that the homeowner may exercise this right to cure on at least three separate occasions during the term of such reconveyance contract;

(3) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure, which assumption or discharge shall be accomplished without a violation of the terms and conditions of the liens being assumed or discharged;

(4) The equity purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the homeowner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the homeowner's monthly gross income; and

(5) The price the homeowner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 76-2726, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure, including repairs and capital improvements, and may include below market rent discounts. The equity purchaser shall provide the homeowner with documentation proving such costs and below market rent discounts prior to the homeowner's exercise of the option to purchase.

Source: Laws 2008, LB123, § 23.

76-2724 Equity purchase contract; provisions prohibited.

A provision in an equity purchase contract between an equity purchaser and a homeowner is void as against public policy if it attempts or purports to:

(1) Waive any of the rights specified in sections 76-2719 to 76-2727 or the right to a jury trial;

(2) Consent to jurisdiction for litigation or choice of law in a state other than Nebraska;

(3) Consent to venue in a county other than the county in which the residence in foreclosure is located; or

(4) Impose any costs or fees greater than the actual costs and fees.

Source: Laws 2008, LB123, § 24.

76-2725 Equity purchaser; duties; prohibited acts.

(1) The equity purchase contract provisions required by sections 76-2719 to 76-2724 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the homeowner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(a) Accept from a homeowner an execution of, or induce a homeowner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) Record with the register of deeds any document, including, but not limited to, the equity purchase contract, or any lease, lien, or instrument of conveyance that has been signed by the homeowner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the homeowner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 76-2721 and 76-2722, the equity purchaser shall return without condition the original equity purchase contract and any other documents signed by the homeowner.

(4) An equity purchaser shall not make any untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the homeowner will receive after a foreclosure sale, any equity purchase contract term, the homeowner's rights or obligations incident to or arising out of the sale transaction, or the nature of any document that the equity purchaser induces the homeowner to sign or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

Source: Laws 2008, LB123, § 25.

76-2726 Equity purchaser or associate; unconscionable transaction or contract; review by court.

(1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2)(a) If a court, as a matter of law, finds an equity purchase contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the equity purchase contract, enforce the remainder of the equity purchase contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

Source: Laws 2008, LB123, § 26.

76-2727 Equity purchase contract and related documents and instruments; English required; translation into other language.

Any equity purchase contract, rental agreement, lease, or option or right to repurchase and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a homeowner shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source: Laws 2008, LB123, § 27.

76-2728 Violation; penalty.

A person who violates any provision of the Nebraska Foreclosure Protection Act is guilty of a Class IV felony.

Source: Laws 2008, LB123, § 28.

ARTICLE 28

NEBRASKA SECURITY INSTRUMENT SATISFACTION ACT

Section

- 76-2801. Act, how cited.
- 76-2802. Terms, defined.
- 76-2803. Secured creditor; record deed of reconveyance or release or satisfaction of security interest; failure to act; liability.
- 76-2804. Closing agent; certificate of satisfaction; execution and recordation authorized.
- 76-2805. Certificate of satisfaction; contents; statutory form.
- 76-2806. Closing agent; notification to secured creditor; contents; statutory form.
- 76-2807. Certificate of satisfaction; recording; effect; wrongful recording; remedy; liability; designation of authority; recording.

76-2801 Act, how cited.

Sections 76-2801 to 76-2807 shall be known and may be cited as the Nebraska Security Instrument Satisfaction Act.

Source: Laws 2008, LB386, § 1.

76-2802 Terms, defined.

For purposes of the Nebraska Security Instrument Satisfaction Act:

- (1) Closing agent means a licensed title insurance agent as defined in section 44-19,108 designated by a title insurer to execute and file certificates of satisfaction pursuant to a designation of authority or a member in good standing of the Nebraska State Bar Association;
- (2) Designation of authority means the designation of a title insurance agent by a title insurer, executed and acknowledged as required by law, stating (a) the name of the title insurer, (b) the name of the title insurance agent, (c) that the title insurance agent has authority to execute and record certificates of satisfaction on behalf of the title insurer, and (d) that the title insurance agent has consented to and accepts the terms of the designation;
- (3) Good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing;
- (4) Landowner means a person that owns the real property described in a security instrument;

(5)(a) Notification or notice means:

(i) Depositing the notice in the mail or any commercially reasonable delivery service, properly addressed with postage or cost of delivery provided for;

(ii) Transmitting the notice by facsimile transmission or electronic mail to an address identified by the recipient, but only if the recipient agreed to receive notification in this manner; or

(iii) Otherwise causing the notice to be received within the time it would have been received if notification had been given by mail or commercial delivery service.

(b) Notification given under subdivision (5)(a) of this section is effective:

(i) Three days following the date that the notice is deposited in the mail or with a commercially reasonable delivery service for delivery other than by overnight delivery;

(ii) One day following the date the notice is deposited with a commercially reasonable delivery service for overnight delivery;

(iii) On the date that the secured creditor or closing agent submits electronic verification of receipt of the notice, if transmitted under subdivision (5)(a)(ii) of this section; or

(iv) On the date the notice is received, if transmitted by any other method permitted by the Nebraska Security Instrument Satisfaction Act;

(6) Payoff amount means the sum necessary to satisfy a secured obligation;

(7) Payoff statement means a statement of the amount of unpaid balance of the secured obligation containing (a) the date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount, (b) the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest, (c) the payment cutoff time, if any, (d) the address or place where payment must be made, and (e) any limitation as to the authorized method of payment;

(8) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(9) Purchase means taking by sale, mortgage, lien, security interest, gift, or any other voluntary transaction creating an interest in real property;

(10) Purchaser means a person who takes by purchase;

(11) Record means to submit a document complying with applicable legal standards with required fees and taxes paid to the appropriate government office pursuant to Nebraska law;

(12) Residential real property means real property located in this state which is used primarily for personal, family, or household purposes and is improved by one to four dwelling units;

(13) Secured creditor means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full payment or performance of the secured obligation. The term does not include a trustee under a security instrument;

(14) Secured obligation means an obligation the payment or performance of which is secured by a security interest;

(15) Security instrument means an agreement, whether denominated a mortgage, deed of trust, trust deed, or otherwise, that creates or provides for a security interest. Such an agreement is a security instrument even if it also creates or provides for a lien upon personal property;

(16) Security interest means an interest in residential real property created by a security instrument; and

(17) Title insurer means a person authorized and licensed to transact the business of insuring titles to interests in real property in this state.

Source: Laws 2008, LB386, § 2.

76-2803 Secured creditor; record deed of reconveyance or release or satisfaction of security interest; failure to act; liability.

(1) A secured creditor shall, after the secured creditor receives full payment or performance of the secured obligation, record a deed of reconveyance or a release or satisfaction of a security interest in the real property records of each county in which the security instrument is recorded. If a security instrument secures a line of credit or future advances, the secured obligation is fully paid or performed if, in addition to full payment or performance, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances as provided under section 76-238.01 or 76-1002.

(2) In addition to any other remedy provided by law, a secured creditor who fails to record a deed of reconveyance or a release or satisfaction of a security interest within sixty days after receiving full payment or performance of the secured obligation is liable to the landowner or purchaser for actual damages in the amount of any loss caused by the failure, including reasonable attorney's fees and costs. The provisions of this subsection do not apply if the secured creditor received full payment or performance before July 18, 2008.

(3) A secured creditor is not liable under this section if the secured creditor (a) established a reasonable procedure to achieve compliance with its obligations under this section, (b) complied with that procedure in good faith, and (c) was unable to comply with its obligations due to circumstances beyond its control.

Source: Laws 2008, LB386, § 3.

76-2804 Closing agent; certificate of satisfaction; execution and recordation authorized.

A closing agent may, on behalf of a landowner or purchaser, execute a certificate of satisfaction that complies with the requirements of the Nebraska Security Instrument Satisfaction Act and record the certificate of satisfaction in the real property records of each county in which the security instrument is recorded, if a deed of reconveyance or release or satisfaction of the security interest has not been executed and recorded within sixty days after the date (1) the secured creditor has received full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor and, if applicable, notification pursuant to subsection (1) of section

76-2803 has been performed and (2) the closing agent has notified the secured creditor in accordance with section 76-2806.

Source: Laws 2008, LB386, § 4.

76-2805 Certificate of satisfaction; contents; statutory form.

(1) A certificate of satisfaction shall:

(a) Identify the original parties to the security instrument, the landowner, the secured creditor, the record holder of the security instrument, if different from the secured creditor, the recording data for the security instrument, and a legal description of the real property identified in the security instrument;

(b) State that the person executing the certificate of satisfaction is the closing agent and, if the closing agent is a title insurance agent, state the book and page or instrument number of the designation of authority by which the title insurance agent is authorized to file the certificate of satisfaction;

(c) State that the secured creditor provided a payoff statement;

(d) State that there is satisfactory evidence that the secured creditor has received full payment or performance of the sums identified in the payoff statement;

(e) State that there are reasonable grounds to believe that the real property described in the security instrument is residential real property;

(f) State that the secured creditor has failed to execute and record a deed of reconveyance or release or satisfaction of the security interest and that the closing agent has not received a notification that the secured obligation remains unsatisfied;

(g) State that sixty days have elapsed since the secured creditor received full payment or performance of the sums identified in the payoff statement and notification in accordance with section 76-2806 has been given to the secured creditor; and

(h) Be executed and acknowledged as required for a conveyance of an interest in real property.

(2) The following statutory certificate of satisfaction, when reproduced and used in the identical words or in substantially the same or a more similar than dissimilar form, shall satisfy the requirements of subsection (1) of this section:

CERTIFICATE OF SATISFACTION

The undersigned closing agent with a designation of authority recorded in book, page(s), or as instrument of the miscellaneous records relating to real estate of County, Nebraska, from a title insurer authorized to transact the business of insuring titles to interests in real property in the State of Nebraska, or a member in good standing of the Nebraska State Bar Association, hereby represents:

(a) The indebtedness secured by that certain security instrument, identified as a mortgage, trust deed, or deed of trust, executed by, as mortgagor/trustor, to, as trustee, and, as beneficiary or, as mortgagee, recorded on in book, page(s), or as Inst. No. of the mortgage records of County, Nebraska, and creating a security interest in the following described real estate: has received

full payment or performance pursuant to a payoff statement provided to the undersigned on by, the holder of the underlying indebtedness, and being the secured creditor;

(b) The undersigned has satisfactory evidence that the secured creditor has received full payment or performance of the sums identified in such payoff statement;

(c) The undersigned has reasonable grounds to believe that the real property described in the security instrument is residential real property;

(d) The undersigned has not received notification that the secured obligation remains unsatisfied; and

(e) To the best knowledge of the undersigned, the secured creditor has not recorded any instrument satisfying or releasing the security interest within sixty days following (i) the secured creditor's receipt of full payment or performance and (ii) notification as required by law.

Dated:, by, Closing Agent.

Source: Laws 2008, LB386, § 5.

76-2806 Closing agent; notification to secured creditor; contents; statutory form.

(1) At least sixty days in advance of recording a certificate of satisfaction, a closing agent shall notify the secured creditor that the closing agent has the authority to execute and record a certificate of satisfaction of the security interest. The notification shall include:

(a) The identity and mailing address of the closing agent;

(b) Identification of the security instrument for which the recording of a deed of reconveyance or a release or satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument;

(c) A statement that the closing agent has reasonable grounds to believe that:

(i) The real property described in the security instrument is residential real property;

(ii) The person to which the notification is being given is the secured creditor; and

(iii) The closing agent has made full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor either prior to or contemporaneous with the giving of the notification;

(d) A statement that the closing agent has the authority, pursuant to a designation of authority if the closing agent is a title insurance agent, to execute and record a certificate of satisfaction of the security interest unless within sixty days after notification:

(i) The secured creditor records a deed of reconveyance or a release or satisfaction of a security interest;

(ii) The closing agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied; or

(iii) The closing agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; and

(e) A statement that the secured creditor will be subject to liability under section 76-252 or 76-1014.01 or the Nebraska Security Instrument Satisfaction Act.

(2) The following statutory notification, when reproduced and used in the identical words or in substantially the same or a more similar than dissimilar form, shall satisfy the requirements of subsection (1) of this section:

LENDER PAYOFF/SATISFACTION NOTIFICATION

This notification is given pursuant to the Nebraska Security Instrument Satisfaction Act by the below-named closing agent with regard to the payoff and release or satisfaction of the lien of a security instrument in which you are named the secured creditor.

(a) The closing agent is The mailing address of the closing agent is

(b) The security instrument that is the subject of this notification was entered into on by, as mortgagor/trustor(s); to, as trustee, and, as beneficiary or, as mortgagee, recorded on in book, page(s) or as Inst. No. of the mortgage records of County, Nebraska, against the following described real estate:

(c) The closing agent has reasonable grounds to believe that:

(i) The real property described in the security instrument is residential real property;

(ii) The person to whom this notification is being given is the secured creditor; and

(iii) Full payment or performance of the secured obligation has been made in accordance with a payoff statement furnished by the secured creditor prior to or contemporaneous with the giving of this notification.

(d) The closing agent has authority, pursuant to a designation of authority if the closing agent is a title insurance agent, to execute and record a certificate of satisfaction of the security interest unless within sixty days after notification:

(i) The secured creditor records a deed of reconveyance or a release or satisfaction of the security interest;

(ii) The closing agent is notified by the secured creditor that the secured obligation remains unsatisfied; or

(iii) The closing agent receives from the secured creditor a notification stating that the secured creditor has assigned the security interest and identifying the name and address of the assignee.

(e) This notification shall constitute a written request for a deed of reconveyance of a trust deed or release or satisfaction of a mortgage pursuant to sections 76-252 and 76-1014.01. These statutes provide for liability on the part of a mortgagee or beneficiary who fails to deliver such deed of reconveyance of a trust deed or release or satisfaction of a mortgage within sixty days following such written request. Liability shall be five thousand dollars or actual damages resulting from such failure, whichever is greater, together with court costs to include reasonable attorney's fees.

Dated:, by, Closing Agent.

Source: Laws 2008, LB386, § 6.

76-2807 Certificate of satisfaction; recording; effect; wrongful recording; remedy; liability; designation of authority; recording.

(1) A certificate of satisfaction complying with the Nebraska Security Instrument Satisfaction Act is evidence of the facts contained in it, shall be accepted for recording in the county in which the security instrument is recorded, and, upon recording, operates as a satisfaction of the security interest described in the certificate of satisfaction. If a security instrument is recorded in more than one county and a certificate of satisfaction is recorded in one of them, a certified copy of the certificate of satisfaction may be recorded in another county with the same effect as the original.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, in addition to any other remedy provided by law, a closing agent wrongfully or erroneously recording a certificate of satisfaction under this section shall be liable to the secured creditor for actual damages caused by the recording of the certificate of satisfaction and reasonable attorney's fees and costs.

(b) A closing agent that records a certificate of satisfaction of a security instrument wrongfully or erroneously is not liable if the closing agent complied in good faith with the act.

(c) If a certificate of satisfaction is executed and recorded by a title insurance agent pursuant to a designation of authority, the title insurer making such designation shall be liable to a secured creditor for the wrongful or erroneous recording of the certificate of satisfaction by such designee, to the same extent as provided under subdivisions (a) and (b) of this subsection.

(d) A single designation of authority may be recorded in the office of the register of deeds in any county in which a certificate of satisfaction may be recorded. The register of deeds shall record such designation of authority upon payment of the required fees. When the designation of authority is recorded, the register of deeds shall index such instrument under the name of the title insurance agent designated in the instrument in the manner provided for miscellaneous instruments relating to real estate. A separate designation of authority shall not be necessary for each certificate of satisfaction. Such authority shall continue until a revocation of the designation of authority is recorded in the county where the designation of authority was recorded.

(3) The recording of a certificate of satisfaction does not itself extinguish the liability of any person liable for payment of the underlying obligation.

Source: Laws 2008, LB386, § 7.

ARTICLE 29**MANUFACTURED HOMES AND MOBILE HOMES**

Section

76-2901. Manufactured home or mobile home; deemed real property.

76-2901 Manufactured home or mobile home; deemed real property.

For purposes of a bankruptcy plan under 11 U.S.C. chapter 13, a manufactured home or a mobile home shall be deemed real property under subdivision (b)(2) of 11 U.S.C. 1322, as such section existed on July 18, 2008.

Source: Laws 2008, LB953, § 1.

ARTICLE 30
WIND AGREEMENTS

Section

- 76-3001. Terms, defined.
76-3002. Wind agreement; limit on term; termination, when.
76-3003. Wind agreement; compliance with other law.
76-3004. Production of wind-generated energy; restriction on severance from surface estate.

76-3001 Terms, defined.

For purposes of sections 76-3001 to 76-3004:

(1) Decommissioning security means a security instrument that is posted or given prior to construction by the wind developer to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system; and

(2) Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, or lease or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for, or to develop, a wind energy conversion system as defined in section 66-909.02 on the land or in the air space.

Source: Laws 2009, LB568, § 1.

76-3002 Wind agreement; limit on term; termination, when.

A wind agreement shall run with the land benefited and burdened and shall terminate upon the conditions stated in the wind agreement, except that the initial term of a wind agreement shall not exceed forty years. A wind agreement shall terminate if development of a wind energy conversion system as defined in section 66-909.02 has not commenced within ten years after the effective date of the wind agreement, except that this period may be extended by mutual agreement of the parties to the wind agreement.

Source: Laws 2009, LB568, § 2.

76-3003 Wind agreement; compliance with other law.

A wind agreement shall comply with section 66-911.01.

Source: Laws 2009, LB568, § 3.

76-3004 Production of wind-generated energy; restriction on severance from surface estate.

No interest in any resource located on a tract of land and associated with the production or potential production of wind-generated energy on the tract of land may be severed from the surface estate.

Source: Laws 2009, LB568, § 4.

REVENUE AND TAXATION

CHAPTER 77 REVENUE AND TAXATION

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ARTICLE 1
DEFINITIONS

Section	
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77-101 Definitions, where found.

For purposes of Chapter 77 and any statutes dealing with taxation, unless the context otherwise requires, the definitions found in sections 77-102 to 77-132 shall be used.

Source: Report of 1943 Statute Commission, § 77-101; Laws 1943, c. 115, § 1, p. 401; R.S.1943, § 77-101; Laws 1987, LB 508, § 1; Laws 1992, LB 1063, § 43; Laws 1992, Second Spec. Sess., LB 1, § 42; Laws 1997, LB 270, § 2; Laws 1999, LB 194, § 5; Laws 2000, LB 968, § 22; Laws 2001, LB 170, § 2; Laws 2003, LB 292, § 3; Laws 2005, LB 263, § 2.

77-102 Property, defined.

The word property includes every kind of property, tangible or intangible, subject to ownership.

Source: Laws 1903, c. 73, § 3, p. 389; R.S.1913, § 6291; Laws 1921, c. 133, art. I, § 1, p. 545; C.S.1922, § 5808; C.S.1929, § 77-101; R.S.1943, § 77-102.

DEFINITIONS

§ 77-103

Leasehold interest in buildings on federal air force base was property subject to taxation. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Term property includes intangible property. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Lease for years is property, the subject of an independent assessment as the property of the lessee. *North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County*, 125 Neb. 841, 252 N.W. 313 (1934).

A cause of action sounding in tort is not property as that term is understood in the revenue law of the state. *Seward County v. Jones*, 105 Neb. 705, 181 N.W. 652 (1921).

Each station is assessed as independent business, and it may deduct from credits due all debts owing at time of return as regards that particular station, which net amount, if any, is taxed. *Nye-Schneider-Fowler Co. v. Boone County*, 102 Neb. 742, 169 N.W. 436 (1918).

77-103 Real property, defined.

Real property shall mean:

- (1) All land;
- (2) All buildings, improvements, and fixtures, except trade fixtures;
- (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and
- (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

Source: Laws 1903, c. 73, § 1, p. 389; R.S.1913, § 6289; Laws 1921, c. 133, art. I, § 2, p. 545; C.S.1922, § 5809; C.S.1929, § 77-102; R.S.1943, § 77-103; Laws 1951, c. 257, § 1, p. 881; Laws 1961, c. 372, § 1, p. 1147; Laws 1969, c. 638, § 1, p. 2551; Laws 1989, Spec. Sess., LB 1, § 1; Laws 1991, LB 829, § 5; Laws 1992, LB 1063, § 44; Laws 1992, Second Spec. Sess., LB 1, § 43; Laws 1997, LB 270, § 3; Laws 2007, LB334, § 13.

1. Constitutionality
2. Mineral Interests
3. Fixtures
4. Miscellaneous

1. Constitutionality

This section as amended by L.B. 1, passed November 17, 1989, violates Neb. Const. Art. VIII, sections 1 and 2, and Neb. Const. Art. III, section 18. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

2. Mineral Interests

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax roles separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax roles. *State ex rel. Svoboda v. Weiler*, 205 Neb. 799, 290 N.W.2d 456 (1980).

The removal of minerals whether held in solution upon the land or resting in the soil or subsurface, is the removal of a component part of the real estate itself. The severance changes the character of the property, but it remains real estate until detached. *Whelock & Manning OO Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

When a mineral interest is conveyed, unless the instrument provides otherwise, an estate in fee simple or a corporeal hereditament separate from the estate in the overlying land is

created. *Whelock & Manning OO Ranches, Inc. v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

Before severance, interest in oil and gas well is taxable as real property. *Conway v. County of Adams*, 172 Neb. 94, 108 N.W.2d 637 (1961).

Interest in mineral lease is real estate. *Fawn Lake Ranch Co. v. Cumbow*, 102 Neb. 288, 167 N.W. 75 (1918).

3. Fixtures

Common law rules relating to fixtures are largely codified herein and the term household goods would not normally encompass fixtures. *State ex rel. Meyer v. Peters*, 191 Neb. 330, 215 N.W.2d 520 (1974).

Grain elevator erected on leasehold with privilege of removal is real estate as regards insurance on same. *Calnon v. Fidelity-Phenix Fire Ins. Co.*, 114 Neb. 194, 206 N.W. 765 (1925).

Tax on land and a building or other improvement is a single and indivisible tax, even if the building or other improvement is assessed separately from the land. *Phelps County v. Anderson*, 2 Neb. App. 236, 508 N.W.2d 314 (1993).

4. Miscellaneous

Cited in discussion of taxability of intangible property of foreign corporation. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Existence of lease for years may constitute ownership of interest in land. *North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County*, 125 Neb. 841, 252 N.W. 313 (1934).

77-103.01 Class or subclass of real property, defined.

Class or subclass of real property means a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass.

Source: Laws 2001, LB 170, § 3; Laws 2003, LB 291, § 1.

77-104 Personal property, defined.

The term personal property includes all property other than real property and franchises.

Source: Laws 1903, c. 73, § 2, p. 389; R.S.1913, § 6290; Laws 1921, c. 133, art. I, § 3, p. 545; C.S.1922, § 5810; C.S.1929, § 77-103; R.S.1943, § 77-104.

Right to participate in proceeds of sale of oil and gas severed from real estate is taxable as personal property. *Conway v. County of Adams*, 172 Neb. 94, 108 N.W.2d 637 (1961).

Chattel real was personal property. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Cited in discussion of taxability of intangible property of foreign corporation. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Warrants of city are exempt from taxation. *Droll v. Furnas County*, 108 Neb. 85, 187 N.W. 876 (1922).

Net credits of corporation are taxable as personal property in counties where it operates. *Nye-Schneider-Fowler Co. v. Boone County*, 99 Neb. 383, 156 N.W. 773 (1916), affirmed by 102 Neb. 742, 169 N.W. 436 (1918).

77-105 Tangible personal property, intangible personal property, defined.

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased. The term intangible personal property includes all other personal property, including money.

Source: Laws 1921, c. 133, art. I, § 4, p. 545; C.S.1922, § 5811; C.S.1929, § 77-104; Laws 1933, c. 156, § 2, p. 592; C.S.Supp.,1941, § 77-104; R.S.1943, § 77-105; Laws 1991, LB 829, § 6; Laws 2007, LB334, § 14.

Electricity is not tangible personal property for tax purposes. *Omaha Pub. Power Dist. v. Nebraska Dept. of Revenue*, 248 Neb 518, 537 N.W.2d 312 (1995).

Cited in discussion of taxability of intangible property of foreign corporation. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

In view of change in legislative definition of intangible property, corporation is taxable where it has its principal office or place of business. *Joyce Lumber Co. v. Anderson*, 125 Neb. 886, 252 N.W. 394 (1934).

77-106 Money, defined.

The term money includes all kinds of coin and all kinds of paper, issued by or under authority of the United States, circulating as money.

Source: Laws 1903, c. 73, § 4, p. 389; R.S.1913, § 6292; Laws 1921, c. 133, art. I, § 5, p. 545; C.S.1922, § 5812; C.S.1929, § 77-105; R.S.1943, § 77-106.

77-107 Credits, defined.

The word credits includes corporation shares of stock, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, other than real estate mortgages, securities, debentures, bonds, other than those of the United States, annuities, and all other demands for labor or other valuable thing, whether due or to become due.

Source: Laws 1903, c. 73, § 5, p. 389; R.S.1913, § 6293; Laws 1921, c. 133, art. I, § 6, p. 546; C.S.1922, § 6813; C.S.1929, § 77-106; R.S.1943, § 77-107.

Credits include open accounts owing by school district. Stephenson School Supply Co. v. County of Lancaster, 172 Neb. 453, 110 N.W.2d 41 (1961).

Debts due are credits and are taxable. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Warrants of city are exempt from taxation. Droll v. Furnas County, 108 Neb. 85, 187 N.W. 876 (1922).

Cause of action in tort is not a right in property within meaning of revenue laws. Seward County v. Jones, 105 Neb. 705, 181 N.W. 652 (1921).

Credits were construed to mean net credits. Nye-Schneider-Fowler Co. v. Boone County, 102 Neb. 742, 169 N.W. 436 (1918).

77-108 County board, defined.

The term county board includes both county commissioners and supervisors, as the case may be.

Source: Laws 1903, c. 73, § 6, p. 389; R.S.1913, § 6294; Laws 1921, c. 133, art. I, § 7, p. 546; C.S.1922, § 5814; C.S.1929, § 77-107; R.S.1943, § 77-108.

77-109 County tax, defined.

The term county tax includes all taxes due to the county, school districts and other subdivisions of the county, which are levied and collected by the county.

Source: Laws 1903, c. 73, § 7, p. 389; R.S.1913, § 6295; Laws 1921, c. 133, art. I, § 8, p. 546; C.S.1922, § 5815; C.S.1929, § 77-108; R.S.1943, § 77-109.

County tax includes taxes levied for school districts. C. R. T. Corp. v. Board of Equalization, 172 Neb. 540, 110 N.W.2d 194 (1961).

77-110 Repealed. Laws 2000, LB 968, § 91.**77-111 Township, precinct, defined.**

The words township and precinct shall each include the other, and shall also include towns in counties under township organization.

Source: Laws 1903, c. 73, § 9, p. 390; R.S.1913, § 6297; Laws 1921, c. 133, art. I, § 10, p. 546; C.S.1922, § 5817; C.S.1929, § 77-110; R.S.1943, § 77-111.

77-112 Actual value, defined.

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be deter-

mined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S. 1943, § 77-112; Laws 1955, c. 289, § 1, p. 918; Laws 1957, c. 320, § 1, p. 1138; Laws 1967, c. 493, § 1, p. 1684; Laws 1971, LB 945, § 1; Laws 1985, LB 30, § 1; Laws 1985, LB 271, § 1; Laws 1989, LB 361, § 3; Laws 1991, LB 404, § 1; Laws 1991, LB 320, § 1; Laws 1992, LB 1063, § 46; Laws 1992, Second Spec. Sess., LB 1, § 45; Laws 1996, LB 934, § 1; Laws 1997, LB 270, § 4; Laws 1997, LB 342, § 1; Laws 2000, LB 968, § 23; Laws 2003, LB 292, § 4; Laws 2003, LB 295, § 1.

1. Actual value
2. Miscellaneous

1. Actual value

Under this section, actual value of real property for purposes of taxation shall mean the market value of real property in the ordinary course of trade. *Firethorn Invest. v. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 622 N.W.2d 605 (2001).

The statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade. *US Ecology, Inc. v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

Pursuant to subsection (1) of this section, although differing factors may cause the appraised value of property to be less than its actual value, some relationship exists between appraised and actual value such that the appraised value is relevant evidence of at least the minimum value of the land. *First Nat. Bank of York v. Critel*, 251 Neb. 128, 555 N.W.2d 773 (1996).

This section, which specifies factors for determining actual value of real estate for tax purposes, does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine the actual value of real estate for tax purposes; actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. *First Nat. Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).

Nothing in the statute requires the county assessor or county board of equalization to use all of the factors set forth therein. Instead, those officials may use such factors or combination thereof which they determine to be applicable in determining actual value under the state constitution. *Affiliated Foods Co-op v. County of Madison*, 229 Neb. 605, 428 N.W.2d 201 (1988).

Actual value, market value, and fair market value mean exactly the same thing. *Xerox Corp. v. Karnes*, 217 Neb. 728, 350 N.W.2d 566 (1984); *Chudomelka v. Board of Equalization*, 187 Neb. 542, 192 N.W.2d 403 (1971).

Nothing in this section requires the county assessor or county board of equalization to take into account all of the elements of the formula contained therein, but only those determined to be

applicable. *Airport Inn v. County Bd. of Equalization*, 215 Neb. 659, 340 N.W.2d 378 (1983).

Board found the actual market value of the property in question to be the same as the purchase price. *Potts v. Board of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982); *LaGord Assoc. v. County of Cass*, 209 Neb. 99, 306 N.W.2d 578 (1981).

"Actual value" of a development's common areas is not reflected in the increased value of the adjacent lots where the grant of use privileges to lot owners in the common areas lacks sufficient formality, definition, and duration of creation to constitute valid restrictions on the use of the common areas. For the purposes of taxation, the terms actual value, market value, and fair market value mean exactly the same thing. *Beaver Lake Assn. v. County Board of Equalization*, 210 Neb. 247, 313 N.W.2d 673 (1981).

Items set out by statute as examples to be used in determining value of property subject to taxation are not the only factors which enter into the valuation of property for taxation. *Grado-ville v. Board of Equalization*, 207 Neb. 615, 301 N.W.2d 62 (1981); *Nash Finch Co. v. County Board of Equalization*, 191 Neb. 645, 217 N.W.2d 170 (1974); *Hastings Building Co. v. Board of Equalization*, 190 Neb. 63, 206 N.W.2d 338 (1973); *County of Gage v. State Board of Equalization & Assessment*, 185 Neb. 749, 178 N.W.2d 759 (1970).

Sales-assessment ratios were given consideration in determining actual value of land for taxation. *County of Loup v. State Board of Equalization & Assessment*, 180 Neb. 478, 143 N.W.2d 890 (1966).

Assessor properly considered all elements of value. *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 138 N.W.2d 641 (1965).

Actual value is to be determined by using the applicable elements set forth in this section. *Richards v. Board of Equalization*, 178 Neb. 537, 134 N.W.2d 56 (1965); *Leech, Inc. v. Board of Equalization of Chase County*, 176 Neb. 841, 127 N.W.2d 917 (1964); *H/K Company v. Board of Equalization of Lancaster County*, 175 Neb. 268, 121 N.W.2d 382 (1963).

Actual value is defined by law. *Union P. R.R. Co. v. State Bd. of Equalization & Assessment*, 170 Neb. 139, 101 N.W.2d 892 (1960); *Chicago & N.W. Ry. Co. v. State Bd. of Equalization & Assessment*, 170 Neb. 106, 101 N.W.2d 873 (1960); *Chicago, B. & Q. R.R. Co. v. State Bd. of Equalization & Assessment*, 170 Neb. 77, 101 N.W.2d 856 (1960).

There are no yardsticks by which actual value can be determined with complete accuracy. *S. S. Kresge Co. v. Jensen*, 164 Neb. 833, 83 N.W.2d 569 (1957).

Actual value means value in the market in the ordinary course of trade. *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956); *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63 N.W.2d 441 (1954); *County of Douglas v. State Board of Equalization and Assessment*, 158 Neb. 325, 63 N.W.2d 449 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954); *Novak v. Board of Equalization of Douglas County*, 145 Neb. 664, 17 N.W.2d 882 (1945).

This section requires the use of applicable statutory factors, individually or in combination, to determine the actual value of real estate for tax purposes. *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

The actual value of real property for purposes of taxation may be determined by using professionally accepted mass appraisal techniques, including, but not limited to (1) comparison with sales of real property of known or recognized value, taking into account location, zoning, and current functional use (comparable sales approach), (2) earning capacity of the real property (income approach), and (3) reproduction cost less depreciation (replacement cost approach). *Forney v. Box Butte Cty. Bd. of Equal.*, 7 Neb. App. 417, 582 N.W.2d 631 (1998).

2. Miscellaneous

Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the

property correctly. But where the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under the compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration. *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

Where the evidence shows the assessed value of property has been determined by a formula in substantial compliance with this section, which has been uniformly and impartially applied, such assessed value will not ordinarily be disturbed on appeal on evidence indicating a mere difference of opinion as to the valuation. *Greenwood Ranch v. Morrill Cty. Bd. of Equal.*, 232 Neb. 114, 439 N.W.2d 760 (1989); *Lexington Building Co., Inc. v. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

Act held unconstitutional which would establish a method of valuing tangible personal property different from this section. *State ex rel. Meyer v. McNeill*, 185 Neb. 586, 177 N.W.2d 596 (1970).

Formula prescribed by this section states it should be used where applicable. *Rodeo Tel. Membership Corp. v. County of Greeley*, 181 Neb. 492, 149 N.W.2d 357 (1967).

State Board of Equalization and Assessment took into consideration the requirements of this section. *Carpenter v. State Board of Equalization and Assessment*, 178 Neb. 611, 134 N.W.2d 272 (1965).

Formula furnished is applicable to personal property as well as real estate. *L. J. Messer Co. v. Board of Equalization*, 171 Neb. 393, 106 N.W.2d 478 (1960).

Section applied to stock of foreign corporation. *Omaha Nat. Bank v. Jensen*, 157 Neb. 22, 58 N.W.2d 582 (1953).

Where statutory formula was applied fairly and impartially to all similar properties, assessment should be sustained. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

77-113 Person, defined.

The word person includes any number of persons and any partnership, limited liability company, association, joint-stock company, corporation, or other entity that may be the owner of property.

Source: Laws 1903, c. 73, § 10, p. 390; R.S.1913, § 6298; Laws 1921, c. 133, art. I, § 11, p. 546; C.S.1922, § 5818; C.S.1929, § 77-111; R.S.1943, § 77-113; Laws 1993, LB 121, § 492.

For taxation purposes, a partnership is considered as an entity apart from the individual partners. *Svoboda & Hannah v. Board of Equalization*, 180 Neb. 215, 142 N.W.2d 328 (1966).

State is an entity that may be adversely affected by action of county boards of equalization, and a person within meaning of

revenue act. *State v. Odd Fellows Hall Assn.*, 123 Neb. 440, 243 N.W. 616 (1932).

77-114 Gender and number, how construed.

The words used in the singular shall include the plural; and in the masculine gender shall include the feminine and neuter genders, and vice versa, as the case may require.

Source: Laws 1903, c. 73, § 11, p. 390; R.S.1913, § 6299; Laws 1921, c. 133, art. I, § 12, p. 546; C.S.1922, § 5819; C.S.1929, § 77-112; R.S.1943, § 77-114.

Cross References

For statute construction, see section 49-802.

Singular number often includes the plural in construction of statutes, generally when manifest intention of Legislature requires it. *Follmer v. State*, 94 Neb. 217, 142 N.W. 908 (1913).

77-115 County assessor, defined.

County assessor includes an elected or appointed county assessor or a county clerk who is an ex officio county assessor. In counties in which the state has assumed the assessment function, the Property Tax Administrator or his or her designee performs the duties and has the authority of the county assessor.

Source: Laws 1987, LB 508, § 2; Laws 1990, LB 821, § 41; Laws 2000, LB 968, § 24; Laws 2003, LB 292, § 5; Laws 2008, LB965, § 2.

Cross References

County clerk acting as ex officio county assessor, see section 23-3203.

77-116 County official, defined.

The term county official shall include any county officer or employee of a county officer who is charged with the duty of valuing, assessing, or equalizing property for property tax purposes.

Source: Laws 1987, LB 508, § 3.

77-117 Improvements on leased land, defined.

Improvements on leased land shall mean any item of real property defined in subdivisions (2) through (4) of section 77-103 which is located on land owned by a person other than the owner of the item.

Source: Laws 1992, LB 1063, § 45; Laws 1992, Second Spec. Sess., LB 1, § 44; Laws 1997, LB 270, § 5.

77-118 Nebraska adjusted basis, defined.

Nebraska adjusted basis shall mean the adjusted basis of property as determined under the Internal Revenue Code increased by the total amount allowed under the code for depreciation or amortization or pursuant to an election to expense depreciable property under section 179 of the code.

Source: Laws 1992, LB 1063, § 47; Laws 1992, Second Spec. Sess., LB 1, § 46; Laws 1995, LB 574, § 63.

The basis as defined by section 1012 of the Internal Revenue Code in turn composes the Nebraska adjusted basis under this section, which then composes the net book value under subsection (1) of section 77-120. *Mid City Bank, Inc. v. Douglas Cty. Bd. of Equal.*, 260 Neb. 282, 616 N.W.2d 341 (2000).

Under section 1012 of the Internal Revenue Code, the basis of property is its cost to the taxpayer. *Pfizer Inc. v. Lancaster Cty. Bd. of Equal.*, 260 Neb. 265, 616 N.W.2d 326 (2000).

77-119 Depreciable tangible personal property, defined.

Depreciable tangible personal property shall mean tangible personal property which is used in a trade or business or used for the production of income and which has a determinable life of longer than one year.

Source: Laws 1992, LB 1063, § 48; Laws 1992, LB 719A, § 204.

77-120 Net book value of property for taxation, defined.

(1) Net book value of property for taxation shall mean that portion of the Nebraska adjusted basis of the property as of the assessment date for the applicable recovery period in the table set forth in this subsection.

NET BOOK VALUE AS A PERCENT OF
NEBRASKA ADJUSTED BASIS

DEFINITIONS

§ 77-120

Year	Recovery Period (in years)					
	3	5	7	10	15	20
1	75.00	85.00	89.29	92.50	95.00	96.25
2	37.50	59.50	70.16	78.62	85.50	89.03
3	12.50	41.65	55.13	66.83	76.95	82.35
4	0.00	24.99	42.88	56.81	69.25	76.18
5		8.33	30.63	48.07	62.32	70.46
6		0.00	18.38	39.33	56.09	65.18
7			6.13	30.59	50.19	60.29
8			0.00	21.85	44.29	55.77
9				13.11	38.38	51.31
10				4.37	32.48	46.85
11				0.00	26.57	42.38
12					20.67	37.92
13					14.76	33.46
14					8.86	29.00
15					2.95	24.54
16					0.00	20.08
17						15.62
18						11.15
19						6.69
20						2.23
21						0.00

Net book value as a percent of Nebraska adjusted basis shall be calculated using the one-hundred-fifty-percent declining balance method, switching to straight line, with a one-half-year convention.

(2) The applicable recovery period for any item of property shall be determined as follows:

(a) Three-year property shall include property with a class life of four years or less;

(b) Five-year property shall include property with a class life of more than four years and less than ten years;

(c) Seven-year property shall include property with a class life of ten years or more but less than sixteen years;

(d) Ten-year property shall include property with a class life of sixteen years or more but less than twenty years;

(e) Fifteen-year property shall include property with a class life of twenty years or more but less than twenty-five years; and

(f) Twenty-year property shall include property with a class life of twenty-five years or more.

(3) Class life shall be based upon the anticipated useful life of a class of property and shall be determined by the Property Tax Administrator under the Internal Revenue Code.

(4) One-half-year convention shall be a convention which treats all property placed in service during any tax year as placed in service on the midpoint of such tax year.

(5) The percent shown for year one shall be the percent used for January 1 of the year following the year of acquisition of the property.

Source: Laws 1992, LB 1063, § 49; Laws 1992, Second Spec. Sess., LB 1, § 47; Laws 1995, LB 490, § 27; Laws 1995, LB 574, § 64.

The basis as defined by section 1012 of the Internal Revenue Code in turn composes the Nebraska adjusted basis under section 77-118, which then composes the net book value under

subsection (1) of this section. Mid City Bank, Inc. v. Douglas Cty. Bd. of Equal., 260 Neb. 282, 616 N.W.2d 341 (2000).

77-121 Taxable property, defined.

Taxable property shall mean any real or tangible personal property subject to tax pursuant to law and not exempt from tax.

Source: Laws 1992, LB 1063, § 50; Laws 1992, Second Spec. Sess., LB 1, § 48.

77-122 Purchase, defined.

Purchase shall include taking by sale, discount, negotiation, or any other transaction for value creating an interest in property except liens. Purchase shall not include transfers for stock or other ownership interests upon creation, dissolution, or any other tax-free reorganization for income tax purposes of any corporation, partnership, limited liability company, trust, or other entity.

Source: Laws 1992, LB 1063, § 51; Laws 1992, Second Spec. Sess., LB 1, § 49; Laws 1993, LB 121, § 493.

The step transaction doctrine can be applied to determine if the transaction at issue is a purchase under this section. Mid

City Bank, Inc. v. Douglas Cty. Bd. of Equal., 260 Neb. 282, 616 N.W.2d 341 (2000).

77-123 Omitted property, defined.

Omitted property means, for the current tax year, any taxable real property that was not assessed on March 19 and any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property exempt under subdivisions (1)(a) through (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 77-128.

Source: Laws 1997, LB 270, § 6; Laws 1998, LB 1104, § 5; Laws 1999, LB 194, § 6; Laws 1999, LB 271, § 3; Laws 2004, LB 973, § 5.

77-124 Undervalued and overvalued property, defined.

Undervalued and overvalued property means any taxable real property that is assessed by the county assessor but has a taxable value lower or higher than other taxable property with which it is required to be equalized.

Source: Laws 1997, LB 270, § 7.

77-125 Tax situs, defined.

Tax situs means the tax district wherein taxable real property is located or taxable tangible personal property is located for fifty percent or more of the calendar year. Taxable tangible personal property of a business shall be assessed at the location of the business unless the property has acquired tax situs elsewhere.

Source: Laws 1997, LB 270, § 8; Laws 1999, LB 194, § 9.

77-126 Assessment, defined.

Assessment means the act of listing the description of all real property and taxable tangible personal property, determining its taxability, determining its taxable value, and placing it on the assessment roll.

Source: Laws 1997, LB 270, § 9; Laws 2003, LB 292, § 6.

77-127 Tax district, defined.

Tax district means an area within a county in which all of the taxable property is subject to property taxes at the same consolidated property tax rate.

Source: Laws 1997, LB 270, § 10.

77-128 Clerical error, defined.

Clerical error means transposition of numbers, mathematical error, computer malfunction causing programming and printing errors, data entry error, items of real property other than land identified on the wrong parcel, incorrect ownership, or certification of an incorrect valuation to political subdivisions.

Source: Laws 1999, LB 194, § 7.

77-129 Assessment roll, defined.

Assessment roll means a complete and verified list of all real property and the taxable tangible personal property in a county and the associated assessments as defined in section 77-126. The assessment roll is described in section 77-1303.

Source: Laws 1999, LB 194, § 8; Laws 2003, LB 292, § 7.

77-130 Taxing official, defined.

Taxing official means any federal, state, or local government officer or employee who is charged with the duty of auditing, assessing, equalizing, levying, computing, and collecting taxes.

Source: Laws 2000, LB 968, § 25.

77-131 Taxable value, defined.

Taxable value shall be as described in section 77-201 and shall have the same meaning as assessed value.

Source: Laws 2003, LB 292, § 8.

77-132 Parcel, defined.

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land. If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel.

Source: Laws 2005, LB 263, § 3.

ARTICLE 2**PROPERTY TAXABLE, EXEMPTIONS, LIENS****Cross References**

Mineral or royalty interests in land, separate from other interests for tax lien purposes, see section 57-227.
Motor vehicles, taxes and fees, see Chapter 60.

REVENUE AND TAXATION

- Section
- 77-201. Property taxable; valuation; classification.
- 77-201.01. Repealed. Laws 1967, c. 498, § 3.
- 77-202. Property taxable; exemptions enumerated.
- 77-202.01. Property taxable; tax exemptions; application; waiver of deadline; penalty; lien.
- 77-202.02. Property taxable; exempt status; application; hearing; procedure.
- 77-202.03. Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.
- 77-202.04. Property taxable; exempt status; appeal; failure to give notice; effect.
- 77-202.05. Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.
- 77-202.06. Repealed. Laws 2004, LB 973, § 72.
- 77-202.07. Repealed. Laws 2004, LB 973, § 72.
- 77-202.08. Repealed. Laws 1997, LB 271, § 57.
- 77-202.09. Cemetery organization; exemption; application; procedure; late filing.
- 77-202.10. Cemetery organization; period of exemption; annual review.
- 77-202.11. Leased public property; taxation status; lessee; lien; procedure.
- 77-202.12. Public property; taxation status; county assessor; duties; appeal.
- 77-202.13. Repealed. Laws 2008, LB 965, § 27.
- 77-202.14. Repealed. Laws 1979, LB 65, § 33.
- 77-202.15. Repealed. Laws 1979, LB 65, § 33.
- 77-202.16. Repealed. Laws 1979, LB 65, § 33.
- 77-202.17. Repealed. Laws 1979, LB 65, § 33.
- 77-202.18. Repealed. Laws 1979, LB 65, § 33.
- 77-202.19. Repealed. Laws 1979, LB 65, § 33.
- 77-202.20. Repealed. Laws 1979, LB 65, § 33.
- 77-202.21. Repealed. Laws 1979, LB 65, § 33.
- 77-202.22. Repealed. Laws 1979, LB 65, § 33.
- 77-202.23. Disabled or blind honorably discharged veteran; terms, defined.
- 77-202.24. Disabled or blind veteran; mobile home exempt.
- 77-202.25. Disabled or blind honorably discharged veteran; property exemption; application; procedure; appeal.
- 77-202.26. Repealed. Laws 1980, LB 882, § 9.
- 77-202.27. Repealed. Laws 1980, LB 882, § 9.
- 77-202.28. Repealed. Laws 1980, LB 882, § 9.
- 77-202.29. Repealed. Laws 1980, LB 882, § 9.
- 77-202.30. Repealed. Laws 1980, LB 882, § 9.
- 77-202.31. Repealed. Laws 1980, LB 882, § 9.
- 77-202.32. Repealed. Laws 1980, LB 882, § 9.
- 77-202.33. Repealed. Laws 1986, LB 817, § 15.
- 77-202.34. Repealed. Laws 1979, LB 65, § 33.
- 77-202.35. Repealed. Laws 1979, LB 65, § 33.
- 77-202.36. Repealed. Laws 1980, LB 882, § 9.
- 77-202.37. Repealed. Laws 1980, LB 882, § 9.
- 77-202.38. Repealed. Laws 1980, LB 882, § 9.
- 77-202.39. Repealed. Laws 1980, LB 882, § 9.
- 77-202.40. Repealed. Laws 1980, LB 882, § 9.
- 77-202.41. Repealed. Laws 1980, LB 882, § 9.
- 77-202.42. Repealed. Laws 1980, LB 882, § 9.
- 77-202.43. Repealed. Laws 1980, LB 882, § 9.
- 77-202.44. Repealed. Laws 1979, LB 65, § 33.
- 77-202.45. Repealed. Laws 1979, LB 65, § 33.
- 77-202.46. Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.
- 77-202.47. Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.
- 77-203. Property taxes; when due; first lien.
- 77-204. Real estate taxes; when delinquent.
- 77-205. Repealed. Laws 1997, LB 269, § 80.

Section	
77-206.	Repealed. Laws 1997, LB 269, § 80.
77-207.	Delinquent taxes; interest.
77-208.	General taxes; lien on real estate; priority.
77-209.	Special assessments; lien on real estate; priority.
77-210.	Repealed. Laws 2000, LB 968, § 91.
77-211.	Hospital which provides office building or office space; rent included in lieu of taxes; payment in lieu of taxes to county treasurer; allocation.
77-212.	Hospitals providing for supportive medical services to patients; exempt from in lieu of tax payment.

77-201 Property taxable; valuation; classification.

(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.

(4) 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.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201;

Laws 1939, c. 102, § 1, p. 461; C.S.Supp., 1941, § 77-201; R.S. 1943, § 77-201; Laws 1953, c. 265, § 1, p. 877; Laws 1955, c. 289, § 2, p. 918; Laws 1957, c. 320, § 2, p. 1138; Laws 1959, c. 353, § 1, p. 1244; Laws 1979, LB 187, § 191; Laws 1985, LB 30, § 2; Laws 1985, LB 271, § 2; Laws 1986, LB 816, § 1; Laws 1989, LB 361, § 5; Laws 1991, LB 404, § 2; Laws 1991, LB 320, § 2; Laws 1992, LB 1063, § 52; Laws 1992, Second Spec. Sess., LB 1, § 50; Laws 1997, LB 269, § 34; Laws 1997, LB 270, § 11; Laws 1997, LB 271, § 38; Laws 2004, LB 973, § 6; Laws 2005, LB 66, § 11; Laws 2006, LB 808, § 24; Laws 2006, LB 968, § 2; Laws 2007, LB166, § 3; Laws 2009, LB166, § 4.

1. Taxable value
2. Property taxable
3. Miscellaneous

1. Taxable value

This section requires that all property be taxed at actual value. *Chief Indus. v. Hamilton Cty. Bd. of Equal.*, 228 Neb. 275, 422 N.W.2d 324 (1988).

Uniform valuation of tangible property is required under this section. *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

The statute provides that the uniform method of valuing property for taxation as required by Neb. Const., art. VII, section 1, is valuation at actual value. *Xerox Corp. v. Karnes*, 217 Neb. 728, 350 N.W.2d 566 (1984).

Taxes must be levied uniformly and proportionately on all tangible property valued at its actual value. *Kearney Convention Center v. Board of Equal.*, 216 Neb. 292, 344 N.W.2d 620 (1984).

Actual value, market value, and fair market value mean exactly the same thing for purposes of taxation. *Richman Gordman v. Board of Equalization*, 214 Neb. 470, 334 N.W.2d 447 (1983); *Hastings Building Co. v. Board of Equalization*, 212 Neb. 847, 326 N.W.2d 670 (1982); *Riha Farms Inc. v. County of Sarpy*, 212 Neb. 385, 322 N.W.2d 797 (1982).

"Actual value" of a development's common areas is not reflected in the increased value of the adjacent lots where the grant of use privileges to lot owners in the common areas lacks sufficient formality, definition, and duration of creation to constitute valid restrictions on the use of the common areas. *Beaver Lake Assn. v. County Board of Equalization*, 210 Neb. 247, 313 N.W.2d 673 (1981).

All property not exempt is subject to taxation upon its actual value. *Rehkopf v. Board of Equalization*, 180 Neb. 90, 141 N.W.2d 462 (1966); *H/K Company v. Board of Equalization of Lancaster County*, 175 Neb. 268, 121 N.W.2d 382 (1963).

Stock of merchandise is valued at actual value. *Podewitz v. Gering Nat. Bank*, 171 Neb. 383, 106 N.W.2d 497 (1960).

In 1959, all tangible property was required to be assessed at thirty-five percent of its actual value. *Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 77, 101 N.W.2d 856 (1960); *Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment*, 170 Neb. 106, 101 N.W.2d 873 (1960); *Union P. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 139, 101 N.W.2d 892 (1960).

The cost of a stock of merchandise is not its actual value. *S. S. Kresge Co. v. Jensen*, 164 Neb. 833, 83 N.W.2d 569 (1957).

Actual value means value in the market in the ordinary course of trade. *Ahern v. Board of Equalization of Richardson County*, 160 Neb. 709, 71 N.W.2d 307 (1955).

Property was valued and assessed at its actual value. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

State board should value and assess property at its actual value in ordinary course of trade. *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63

N.W.2d 441 (1954); *County of Douglas v. State Board of Equalization and Assessment*, 158 Neb. 325, 63 N.W.2d 449 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954).

Property is required to be assessed at its actual value. *Laflin v. State Board of Equalization and Assessment*, 156 Neb. 427, 56 N.W.2d 469 (1953).

All property of a city of the second class must be assessed at its actual valuation. *Thomson v. City of Chadron*, 145 Neb. 316, 16 N.W.2d 447 (1944).

Evidence of sale price of other farm lands was not admissible to prove fair market value. *Swanson v. Board of Equalization*, 142 Neb. 506, 6 N.W.2d 777 (1942).

Witness may express his opinion as to actual value without stating that he has taken each and every element affecting the actual value into consideration. *Edgerton v. Board of Equalization*, 140 Neb. 493, 300 N.W. 413 (1941).

In determining actual value of farm property, taxing authorities must take into consideration the market value and all other elements. *Knox County v. State Board of Equalization & Assessment*, 138 Neb. 895, 296 N.W. 157 (1941).

All nonexempt property is subject to taxation on its actual value, which means its value in the ordinary course of trade. *Nebraska State Building Corporation v. City of Lincoln*, 137 Neb. 535, 290 N.W. 421 (1940); *Schulz v. Dixon County*, 134 Neb. 549, 279 N.W. 179 (1938), overruling *Schmidt v. Saline County*, 122 Neb. 56, 239 N.W. 203 (1931).

While evidence may not definitely show a market value of property in ordinary course of trade, values may be fixed from all the evidence. *Yellow Cab & Baggage Co. v. Board of Equalization of Douglas County*, 119 Neb. 28, 226 N.W. 810 (1929).

Party could not complain that property was not assessed at actual value and at same time claim that tax on intangible property was invalid. *Sommerville v. Board of County Commissioners of Douglas County*, 116 Neb. 282, 216 N.W. 815 (1927).

Revenue act of 1921 changed the basis of assessment generally from twenty percent of actual value to actual value. *State ex rel. Liberty High School District of Sioux County v. Johnson*, 116 Neb. 249, 216 N.W. 828 (1927).

Effect of change of taxation of property at its actual rather than assessed valuation was to increase the taxable value of the property fivefold. *Drew v. Mumford*, 114 Neb. 100, 206 N.W. 159 (1925).

Shares in foreign corporation, owned and possessed by resident, are taxable at actual value. *Bute v. Hamilton County*, 113 Neb. 230, 202 N.W. 616 (1925).

An assessment will not be set aside merely because all property has not been assessed at its actual value, where the assessment has been made with reasonable uniformity upon all classes of property. *Chicago, R. I. & P. Ry. Co. v. State*, 111 Neb. 362, 197 N.W. 114 (1923).

This section contemplates that all property be assessed at its true value. *Sioux City Bridge Co. v. Dakota County*, 105 Neb. 843, 182 N.W. 485 (1921).

Property is to be valued at its taxable value for purpose of making a levy to raise the tax provided for. *Cunningham v. Douglas County*, 104 Neb. 405, 177 N.W. 742 (1920).

Owner cannot require board to value property at seventy-five percent of actual value on plea that it is custom to make such reduction. *Lincoln Telephone & Telegraph Co. v. Johnson County*, 102 Neb. 254, 166 N.W. 627 (1918).

Bridge company is denied equal protection of laws by assessment of its property at full value while the other property in the county is assessed at a fraction of its value. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

2. Property taxable

All property not expressly exempt is subject to taxation. *K-K Appliance Co. v. Board of Equalization of Phelps County*, 165 Neb. 547, 86 N.W.2d 381 (1957).

Leasehold interest in buildings constructed on air force base was taxable. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Shares of stock in foreign corporation owned by resident were taxable. *Omaha Nat. Bank v. Jensen*, 157 Neb. 22, 58 N.W.2d 582 (1953).

Tangible property of grain broker must be returned and assessed as other tangible personal property. *State v. T. W. Jones Grain Co.*, 156 Neb. 822, 58 N.W.2d 212 (1953).

Exempt or nonexempt character of property arises from the use to which it is put and the purpose thereof at the time the levy is made. *American Province of Servants of Mary Real Estate Corp. v. County of Douglas*, 147 Neb. 485, 23 N.W.2d 714 (1946).

All property, not exempt, is taxable, and obligation to return property for taxation is a continuing one. *In re Estate of Rogers*, 147 Neb. 1, 22 N.W.2d 297 (1946).

Legislature has implemented the general provision that all property in this state, not expressly exempt, shall be subject to taxation. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Under former law all property in this state, not expressly exempt therefrom, was subject to taxation and was to be valued and assessed at its actual value. *Novak v. Board of Equalization of Douglas County*, 145 Neb. 664, 17 N.W.2d 882 (1945).

Intangible property of nonresident owner is not taxable in this state. *Massey-Harris Co. v. Douglas County*, 143 Neb. 547, 10 N.W.2d 346 (1943).

Laundry owned and used by charitable institution in carrying on its work is exempt from taxation. *House of the Good Shepherd of Omaha v. Board of Equalization of Douglas County*, 113 Neb. 489, 203 N.W. 632 (1925).

Cause of action in tort is not a right in property and is not taxable. *Seward County v. Jones*, 105 Neb. 705, 181 N.W. 652 (1921).

Personal property in possession of owner at his place of residence in another state is not subject to taxation in this state. *Preston v. Harlan County*, 97 Neb. 667, 150 N.W. 1009 (1915).

When certificate is issued entitling company to patents, land is liable to taxation. *Elkhorn Land & Town Lot Co. v. Dixon County*, 35 Neb. 426, 53 N.W. 382 (1892); *White v. Burlington & M. R. R.R. Co.*, 5 Neb. 393 (1877).

Government bonds are not subject to taxation if held in good faith. *Dixon County v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888).

Notes belonging to nonresident, placed in hands of agent in this state for collection and reloading, are taxable. *Finch v. York County*, 19 Neb. 50, 26 N.W. 589 (1886).

Homestead may be taxed as soon as owner has right to complete title. *Bellinger v. White*, 5 Neb. 399 (1877).

3. Miscellaneous

Pursuant to subsection (1) of this section, although differing factors may cause the appraised value of property to be less than its actual value, some relationship exists between appraised and actual value such that the appraised value is relevant evidence of at least the minimum value of the land. *First Nat. Bank of York v. Critel*, 251 Neb. 128, 555 N.W.2d 773 (1996).

The burden of proof is upon a taxpayer to establish that the value of his property has not been fairly and proportionately equalized with all other property. *Lincoln Tel. & Tel. Co. v. County Board of Equalization*, 209 Neb. 465, 308 N.W.2d 515 (1981).

Presumption that a board of equalization has faithfully performed its official duties, which obtains only while there is an absence of competent evidence to the contrary, disappears when there is competent evidence on appeal to the contrary, and from that point on the reasonableness of the valuation fixed by the board of equalization becomes one of fact based on the evidence, unaided by presumption, with the burden of showing such value to be unreasonable resting upon the appellant on appeal from the action of the board. *Gradoville v. Board of Equalization*, 207 Neb. 615, 301 N.W.2d 62 (1981).

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax rolls separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax rolls. *State ex rel. Svoboda v. Weiler*, 205 Neb. 799, 290 N.W.2d 456 (1980).

Where statute provides a method for valuing tangible property different from that prescribed for other tangible property, it is unconstitutional. *Homan v. Board of Equalization*, 141 Neb. 400, 3 N.W.2d 650 (1942).

Excessive valuation of nonexempt property may be corrected by proceedings in error to the district court. *Eppley Hotels Company v. City of Lincoln*, 138 Neb. 347, 293 N.W. 234 (1940).

Whether assessed on interest of mortgagor or mortgagee, taxes must be deemed assessed on land. *Matthews v. Guenther*, 120 Neb. 742, 235 N.W. 98 (1931).

Amount of assessment of bridge was proper. *Meridian Highway Bridge Co. v. Cedar County*, 117 Neb. 214, 220 N.W. 241 (1928).

Findings of board of equalization will not be disturbed unless manifestly wrong. *Meridian Highway Bridge Co. v. Cedar County*, 117 Neb. 214, 220 N.W. 241 (1928); *Sioux City Bridge Co. v. Dakota County*, 105 Neb. 843, 182 N.W. 485 (1921).

In assessing for taxation stock in domestic corporations, mortgages in which mortgagor agrees to pay tax, should not be deducted. *J. B. Kelkenney Realty Co. v. Douglas County*, 116 Neb. 796, 219 N.W. 140 (1928).

To secure equal taxation, property undervalued should be raised. *Sioux City Bridge Co. v. Dakota County*, 105 Neb. 843, 182 N.W. 485 (1921).

77-201.01 Repealed. Laws 1967, c. 498, § 3.

77-202 Property taxable; exemptions enumerated.

(1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public

purpose. For purposes of this subdivision, public purpose means use of the property (i) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (ii) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

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

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, 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 means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally insured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(e) Household goods and personal effects 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 valuation of land.

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

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

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

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

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

Source: Laws 1903, c. 73, § 13, p. 390; R.S.1913, § 6301; Laws 1921, c. 133, art. II, § 2, p. 547; C.S.1922, § 5821; C.S.1929, § 77-202; R.S.1943, § 77-202; Laws 1955, c. 290, § 1, p. 921; Laws 1965, c. 468, § 1, p. 1514; Laws 1965, c. 469, § 1, p. 1516; Laws 1967, c. 494, § 1, p. 1685; Laws 1967, c. 495, § 1, p. 1686; Laws 1971, LB 945, § 2; Laws 1975, LB 530, § 3; Laws 1980, LB 882, § 1; Laws 1980, LB 913, § 1; Laws 1982, LB 383, § 5; Laws 1984, LB 891, § 1; Laws 1985, LB 268, § 1; Laws 1986, LB 732, § 1; Laws 1987, LB 775, § 13; Laws 1988, LB 855, § 3; Laws 1989, Spec. Sess., LB 7, § 2; Laws 1991, LB 829, § 7; Laws 1992, LB 1063, § 53; Laws 1992, Second Spec. Sess., LB 1, § 51; Laws 1994, LB 961, § 7; Laws 1997, LB 271, § 39; Laws 1999, LB 271, § 4; Laws 2002, LB 994, § 10; Laws 2005, LB 312, § 4; Laws 2008, LB1027, § 1.

Cross References

Nebraska Advantage Act, see section 77-5701.

- 1. Constitutionality
- 2. Use and ownership of property
- 3. Procedures
- 4. Exemption granted
- 5. Exemption not granted
- 6. Effect of exemption
- 7. Miscellaneous

1. Constitutionality

Subsections (6) through (9) of this section are unconstitutional under Neb. Const. art. VIII, section 1. MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991).

The provision including major appliances either attached or detached to real property is unconstitutional. State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 (1974).

2. Use and ownership of property

In reference to subsection (1)(c) of this section, exclusive use means the primary or dominant use of property, as opposed to incidental use. A parsonage which is furnished to a member of the clergy, which is an essential part of a church, and which is used primarily to promote the objects and purposes of a faith is property used exclusively for religious purposes and is exempt

from taxation. *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).

Subsection (1)(c) of this section contains a two-tier approach to property tax exemption: the first tier involves the nature, character, or status of a property owner, and the second tier concerns the use of the property. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

To be tax exempt, property must (1) be owned by an organization designated in subsection (1)(c) of this section; (2) be used exclusively for at least one of the purposes specified in subsection (1)(c); and (3) not be (a) owned or used for financial gain to the property owner or user, (b) used more than 20 hours per week for sale of alcoholic liquors, or (c) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Under subsection (1)(c) of this section, if a property owner is not of a type entitled to property tax exemption, considering the property's use is unnecessary. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Property is not used for financial gain or profit to either the owner or the user if no part of the income from the property is distributed to the owner's or user's members, directors, or officers, or to private individuals. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).

The constitution and statute require that the property be owned for an exempt purpose, but there is no requirement that the ownership and use must be by the same entity. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).

Vacant space in property owned by a charitable organization is exempt from taxation if it is intended for a charitable use, the dominant use of the property as a whole is for exempt purposes, and the conditions under which it is held preclude its use for commercial purposes. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).

Legislature has used the same language as appears in the Constitution in exempting from taxation property owned and used for educational, religious, or charitable purposes. *Lincoln Woman's Club v. City of Lincoln*, 178 Neb. 357, 133 N.W.2d 455 (1965).

The primary or dominant use, and not an incidental use, is controlling in determining whether property is exempt from taxation. *Doane College v. County of Saline*, 173 Neb. 8, 112 N.W.2d 248 (1961).

It is the exclusive use of property for religious or educational purposes that determines exemption from taxation. *Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall*, 166 Neb. 588, 90 N.W.2d 50 (1958).

Use of property is test to right to exemption. *Central Union Conference Assn. v. Lancaster County*, 109 Neb. 106, 189 N.W. 982 (1922); *St. Elizabeth Hospital v. Lancaster County*, 109 Neb. 104, 189 N.W. 981 (1922).

Exemption is based solely on use of premises and not on ownership. *Scott v. Society of Russian Israelites*, 59 Neb. 571, 81 N.W. 624 (1900); *First Christian Church of Beatrice v. City of Beatrice*, 39 Neb. 432, 58 N.W. 166 (1894).

3. Procedures

In its appellate review of a question whether property is exempt from taxation pursuant to subsection (1)(c) of this section, the Supreme Court determines tax exemption in an equitable trial of factual questions de novo on the record. *Immanuel, Inc. v. Board of Equal.*, 222 Neb. 405, 384 N.W.2d 266 (1986).

Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of proving the right to the exemption is upon the claimant. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).

The burden of proof is upon one claiming property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in this section. *OEA Senior Citizens, Inc. v. County of Douglas*, 186 Neb. 593, 185 N.W.2d 464 (1971); *Berean Fundamental Church Council, Inc. v. Board of Equalization*, 186 Neb. 431, 183 N.W.2d 750 (1971).

Party claiming property to be exempt from taxation has the burden of proof of establishing such exemption. *Nebraska Conf. Assn. Seventh Day Adventists v. Board of Equalization of Hall County*, 179 Neb. 326, 138 N.W.2d 455 (1965).

4. Exemption granted

An industrial park which is created by a city council acting as a community redevelopment authority may serve the purpose of community development, and thus be exempt from taxation as property which serves a public purpose. *City of York v. York Cty. Bd. of Equal.*, 266 Neb. 311, 664 N.W.2d 456 (2003).

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to Neb. Const. art. VIII, sec. 2, or subsection (1)(a) of this section. Airports owned and operated by municipalities are exempt from taxation. *City of York v. York Cty. Bd. of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003).

Pursuant to subsection (1)(a) of this section, real property acquired by the city through enforcement of special assessment liens and offered for sale to the public at a price which does not exceed delinquent special assessments and accrued interest, is used "for a public purpose" and is therefore exempt from real estate taxation. *City of Alliance v. Box Butte Cty. Bd. of Equal.*, 265 Neb. 262, 656 N.W.2d 439 (2003).

Pursuant to the former subsection (1)(c) of this section, an assisted living facility owned and used exclusively for charitable purposes, that is, the primary or dominant use of the property is for charitable purposes, is entitled to a property tax exemption. *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 640 N.W.2d 398 (2002).

Lease of property to a charitable organization by a charitable organization for substantially less than its fair rental value is a use of property for charitable purpose. *United Way v. Douglas Co. Bd. of Equal.*, 215 Neb. 1, 337 N.W.2d 103 (1983).

Where a nursing home's association with two other companies did not result in financial gain or profit to either the owner or user, and the primary or dominant use of the nursing home continued to be for religious or charitable purposes, the property remains exempt from taxation. *Bethesda Foundation v. County of Saunders*, 200 Neb. 574, 264 N.W.2d 664 (1978).

Property of rest home was exempt from taxation under this section. *Evangelical Lutheran Good Samaritan Soc. v. County of Gage*, 181 Neb. 831, 151 N.W.2d 446 (1967).

Operation of ranch for boys was such as to require entire ranch to be exempt from taxation. *Lariat Boys Ranch v. Board of Equalization of Logan County*, 181 Neb. 198, 147 N.W.2d 515 (1966).

Building used by Young Women's Christian Association for low-rent housing was exempt from taxation. *Young Women's Christian Assn. v. City of Lincoln*, 177 Neb. 136, 128 N.W.2d 600 (1964).

Legislature has exempted from taxation hospitals owned and used exclusively for charitable purposes. *Muller v. Nebraska Methodist Hospital*, 160 Neb. 279, 70 N.W.2d 86 (1955).

Property of school district is exempt from taxation. *Madison County v. School Dist. No. 2*, 148 Neb. 218, 27 N.W.2d 172 (1947).

Scottish Rite temple and grounds are exempted from taxation as property used exclusively for educational, religious or charitable purposes. *Scottish Rite of Freemasonry v. Lancaster County Board of Commissioners*, 122 Neb. 586, 241 N.W. 93 (1932), 81 A.L.R. 1166 (1932), overruling *Scottish Rite Building Co. v. Lancaster County*, 106 Neb. 95, 182 N.W. 574 (1921), and *Mt. Moriah Lodge No. 57, A.F. & A.M. v. Otoe County*, 101 Neb. 274, 162 N.W. 639 (1917).

Laundry owned and used by charitable institution in carrying on its work is exempt. *House of the Good Shepherd of Omaha v. Board of Equalization of Douglas County*, 113 Neb. 489, 203 N.W. 632 (1925).

Farm and dairy property used for school purposes are exempt. *Central Union Conference Assn. v. Lancaster County*, 109 Neb. 106, 189 N.W. 982 (1922).

Hospital used exclusively for religious and charitable purposes is exempt. *St. Elizabeth Hospital v. Lancaster County*, 109 Neb. 104, 189 N.W. 981 (1922).

City of Omaha waterworks is exempt. *City of Omaha v. Douglas County*, 96 Neb. 865, 148 N.W. 938 (1914).

Property of Masonic lodge was exempt. *Plattsmouth Lodge No. 6, A.F. & A.M. v. Cass County*, 79 Neb. 463, 113 N.W. 167 (1907).

A contested area within a community hall located on the county fairgrounds, which is used primarily for county fair purposes, is exempt under this section. *Brown Cty. Ag. Socy. v. Brown Cty. Bd. of Equal.*, 11 Neb. App. 642, 660 N.W.2d 518 (2003).

5. Exemption not granted

The Nebraska State Bar Foundation is not entitled to a tax exemption under subsection (1)(c) of this section as a charitable or educational organization. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Property owned and used primarily for furnishing low-rent housing not entitled to exemption as property owned and used exclusively for charitable purposes. *Christian Retirement Homes, Inc. v. Board of Equalization of Lancaster County*, 186 Neb. 11, 180 N.W.2d 136 (1970); *County of Douglas v. OEA Senior Citizens, Inc.*, 172 Neb. 696, 111 N.W.2d 719 (1961).

Industries operated and maintained primarily for purpose of providing student employment are an incidental and not a direct use of property for educational purposes and do not qualify for tax exemption. *Union College v. Board of Equalization of Lancaster County*, 183 Neb. 579, 162 N.W.2d 772 (1968).

Property of college fraternity was not used exclusively for educational purposes. *Iota Benefit Assn. v. County of Douglas*, 165 Neb. 330, 85 N.W.2d 726 (1957).

Household goods of the value of \$200 exempt from taxation are not exempt from sale for payment of taxes properly assessed on other property of debtor. *Ryder, Sheriff v. Livingston*, 145 Neb. 862, 18 N.W.2d 507 (1945).

Lodge property encumbered by unpaid real estate mortgages is not owned exclusively for charitable purposes. *North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County*, 125 Neb. 841, 252 N.W. 313 (1934).

Portion of building of charitable institution used for business purposes was not exempt. *Y.M.C.A. v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921); *Y.M.C.A. of Omaha v. Douglas County*, 60 Neb. 642, 83 N.W. 924 (1900).

A fraternal beneficiary association is not a charitable association within meaning of section. *Royal Highlanders v. State*, 77 Neb. 18, 108 N.W. 183 (1906).

Commercial college is a school and part of property not used exclusively for school is liable to taxation. *Rohrbough v. Douglas County*, 76 Neb. 679, 107 N.W. 1000 (1906).

If building is used at same time for school purposes and as a family residence, it is not exempt. *Watson v. Cowles*, 61 Neb. 216, 85 N.W. 35 (1901).

6. Effect of exemption

Exempt from taxes means not subject to taxation. *Hanson v. City of Omaha*, 154 Neb. 72, 46 N.W.2d 896 (1951).

Where a tax is levied upon property as a whole, and a part is exempt under the Constitution and statutes, the assessment, if inseparable, is unauthorized, and the whole tax is void. *McDonald v. Masonic Temple Craft*, 135 Neb. 48, 280 N.W. 275 (1938).

Tax levied on property that is exempt is void and collection thereof may be enjoined. *East Lincoln Lodge No. 210, A. F. & A. M. v. City of Lincoln*, 131 Neb. 379, 268 N.W. 91 (1936).

Where two lower floors of building were rented for commercial purposes and two upper floors were used exclusively for religious, charitable and educational purposes, part of the taxable value of the lot could be considered in determining total taxable value of property. *Masonic Temple Craft v. Board of Equalization of Lincoln County*, 129 Neb. 293, 261 N.W. 569 (1935); modified on rehearing 129 Neb. 827, 263 N.W. 150 (1935).

Section does not exempt from special assessments for improvements. *City of Beatrice v. Brethren Church*, 41 Neb. 358, 59 N.W. 932 (1894).

Only increased value for tree culture can be exempted. *Burlington & M. R. R.R. Co. v. Board of County Commissioners of Seward County*, 10 Neb. 211, 4 N.W. 1016 (1880).

7. Miscellaneous

A solid waste landfill operated pursuant to the Integrated Solid Waste Management Act serves a public purpose and may be exempt from property taxation. *City of York v. York Cty. Bd. of Equal.*, 266 Neb. 311, 664 N.W.2d 456 (2003).

Regarding "mental" benefit of the public in subsection (1)(c) of this section as one of the requisite purposes of a charitable organization, "mental" means "intellectual," which means, among other things, engaged in creative literary, artistic, or scientific labor. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Relative to a charitable organization, "an indefinite number of persons" in subsection (1)(c) of this section means a group of persons with a common characteristic, that is, a class, uncertain in number and composed from the public at large or a community. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Under subsection (1)(c) of this section, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Under subsection (1)(c) of this section, "operated exclusively," in reference to a charitable organization, means an organization's primary or predominant activity. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

Property, abandoned for religious purposes, is liable to taxation from time of abandonment. *Holthaus v. Adams County*, 74 Neb. 861, 105 N.W. 632 (1905).

77-202.01 Property taxable; tax exemptions; application; waiver of deadline; penalty; lien.

(1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section 77-202 for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to 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 Tax Commissioner. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before February 1 following. Notice that a list of the applications from organizations seeking tax exemption, descriptions of the property, and recommendations of the county assessor are available in the county assessor's office shall be published in a newspaper of general circulation in the county at least ten days prior to consideration of any application by the county board of equalization.

(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. 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.

Source: Laws 1963, c. 441, § 1, p. 1460; Laws 1969, c. 639, § 1, p. 2552; Laws 1980, LB 688, § 1; Laws 1984, LB 835, § 2; Laws 1986, LB 817, § 1; Laws 1993, LB 346, § 7; Laws 1993, LB 345, § 4; Laws 1995, LB 490, § 28; Laws 1996, LB 1122, § 1; Laws 1997, LB 270, § 12; Laws 1997, LB 271, § 40; Laws 1999, LB 194, § 10; Laws 1999, LB 271, § 5; Laws 2000, LB 968, § 26; Laws 2007, LB334, § 15.

Sections 77-202.01 through 77-202.07 are clear and comprehensive and constitute a complete and comprehensive act dealing with the matter of tax exemptions. *Indian Hills Comm. Ch. v. County Bd. of Equal.*, 226 Neb. 510, 412 N.W.2d 459 (1987).

A taxpayer who has sought and has been denied exemption under this section and who does not appeal pursuant to section 77-202.04 may not thereafter pay the tax and seek a refund

under section 77-1736.10. *Campus Lt. Hse. Min. v. Buffalo Cty. Bd. of Equal.*, 225 Neb. 271, 404 N.W.2d 46 (1987).

The county assessor may recommend taxable or exempt status under this section, but may not appeal from ruling of board of equalization. *Bemis v. Board of Equalization of Douglas County*, 197 Neb. 175, 247 N.W.2d 447 (1976).

77-202.02 Property taxable; exempt status; application; hearing; procedure.

The county board of equalization, between February 1 and June 1 after a hearing on ten days' notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner.

For applications accepted after approval of a waiver pursuant to section 77-202.01, the county board of equalization shall hear and certify its decision on or before August 15.

Source: Laws 1963, c. 441, § 2, p. 1460; Laws 1969, c. 640, § 1, p. 2553; Laws 1980, LB 688, § 2; Laws 1995, LB 490, § 29; Laws 1997, LB 270, § 13; Laws 1997, LB 271, § 41; Laws 2000, LB 968, § 27; Laws 2003, LB 292, § 9; Laws 2005, LB 263, § 4; Laws 2007, LB334, § 16.

The county assessor may recommend taxable or exempt status under section 77-202.01, but may not appeal from ruling of board of equalization. *Bemis v. Board of Equalization of Douglas County*, 197 Neb. 175, 247 N.W.2d 447 (1976).

A county board of equalization must give an applicant 10 days' notice before a hearing is held on the application. *Washington Cty. Bd. of Equal. v. Rushmore Borglum*, 11 Neb. App. 377, 650 N.W.2d 504 (2002).

77-202.03 Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.

(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 Tax Commissioner, 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 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.

Source: Laws 1963, c. 441, § 3, p. 1460; Laws 1965, c. 470, § 1, p. 1517; Laws 1969, c. 641, § 1, p. 2554; Laws 1973, LB 530, § 1; Laws 1973, LB 114, § 1; Laws 1976, LB 786, § 1; Laws 1979, LB 17, § 8; Laws 1980, LB 688, § 3; Laws 1981, LB 179, § 3; Laws 1983, LB 494, § 1; Laws 1986, LB 817, § 2; Laws 1989, LB 133, § 1; Laws 1990, LB 919, § 1; Laws 1993, LB 734, § 42; Laws 1995, LB 490, § 30; Laws 1996, LB 1122, § 2; Laws 1997, LB 270, § 14; Laws 1997, LB 271, § 42; Laws 1998, LB 1104, § 6; Laws 1999, LB 194, § 11; Laws 1999, LB 271, § 6; Laws 2000, LB 968, § 28; Laws 2004, LB 973, § 7; Laws 2007, LB166, § 4; Laws 2007, LB334, § 17.

If property is tax exempt in any given year, such exemption may continue for 3 successive years after grant of such exemption, if the property owner annually and timely files the speci-

fied affidavit. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

An integral part of the process to obtain a tax exemption is reapplication for such exemption. A new application is required before a previously granted exemption has expired, and failure to make reapplication for exemption or to file a new application as required by this section results in cessation of the tax exemption when the current exemption expires. *Indian Hills Comm. Ch. v. County Bd. of Equal.*, 226 Neb. 510, 412 N.W.2d 459 (1987).

This section does not require a board of equalization to review an exemption during the four-year exemption period when there is no evidence of a change in the use of the exempt property. *Ross v. Governors of the Knights of Ak-Sar-Ben*, 207 Neb. 305, 299 N.W.2d 145 (1980).

77-202.04 Property taxable; exempt status; appeal; failure to give notice; effect.

(1) Notice of a county board of equalization’s decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board’s decision. Persons, corporations, or organizations may appeal denial of an application for exemption by a county board of equalization. Only the county assessor may appeal the grant of such an exemption by a county board of equalization. Appeals pursuant to this section shall be made to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization. The Tax Commissioner may in his or her discretion intervene in any such appeal pursuant to this section.

(2) Any owner may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the taxable status of real property for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in sections 77-202 to 77-202.25.

Source: Laws 1963, c. 441, § 4, p. 1461; Laws 1969, c. 642, § 1, p. 2556; Laws 1995, LB 490, § 31; Laws 1997, LB 271, § 43; Laws 2000, LB 968, § 29; Laws 2004, LB 973, § 8; Laws 2005, LB 15, § 3; Laws 2007, LB334, § 18.

A taxpayer who has sought and has been denied exemption under section 77-202.01 and who does not appeal pursuant to this section may not thereafter pay the tax and seek a refund under section 77-1736.10. *Campus Lt. Hse. Min. v. Buffalo Cty. Bd. of Equal.*, 225 Neb. 271, 404 N.W.2d 46 (1987).

Giving notice of appeal and filing appeal bond must be completed within twenty days following board decision. *United*

Way of the Midlands v. Douglas County Board of Equalization, 199 Neb. 323, 259 N.W.2d 270 (1977).

An appeal from a tax exemption may be taken pursuant to this section only. *Bemis v. Board of Equalization of Douglas County*, 197 Neb. 175, 247 N.W.2d 447 (1976).

77-202.05 Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.

The Tax Commissioner shall prescribe forms for distribution to the county assessors on which persons, corporations, and organizations may apply for tax-exempt status for real or tangible personal property. The forms shall include the following information:

- (1) Name of owner or owners of the property, and if a corporation, the names of the officers and directors, and place of incorporation;
- (2) Legal description of real property and a general description as to class and use of all tangible personal property; and
- (3) The precise statutory provision under which exempt status for such property is claimed.

Source: Laws 1963, c. 441, § 5, p. 1461; Laws 1969, c. 643, § 1, p. 2557; Laws 1995, LB 490, § 32; Laws 1997, LB 271, § 44; Laws 2000, LB 968, § 30; Laws 2007, LB334, § 19.

77-202.06 Repealed. Laws 2004, LB 973, § 72.

77-202.07 Repealed. Laws 2004, LB 973, § 72.

77-202.08 Repealed. Laws 1997, LB 271, § 57.

77-202.09 Cemetery organization; exemption; application; procedure; late filing.

Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Tax Commissioner. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before February 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before August 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Source: Laws 1997, LB 270, § 16; Laws 1999, LB 271, § 7; Laws 2007, LB334, § 20.

77-202.10 Cemetery organization; period of exemption; annual review.

Any real property exemption granted to a cemetery organization shall remain in effect without reapplication unless disqualified by change of ownership or use. On or before August 1 the county assessor shall annually make a review of the ownership and use of all cemetery real property and report such review to the county board of equalization.

Source: Laws 1997, LB 270, § 17.

77-202.11 Leased public property; taxation status; lessee; lien; procedure.

(1) Leased public property, other than property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201.

(2) On or before January 31 each year, the state and each governmental subdivision shall provide to the appropriate county assessor each new lease or preexisting lease which has been materially changed which went into effect during the previous year and a listing of previously reported leases that are still in effect.

(3) Taxes on property assessed to the lessee shall be due and payable in the same manner as other property taxes and shall be a first lien upon the personal property of the person to whom assessed until paid and shall be collected in the same manner as personal property taxes as provided in sections 77-1711 to 77-1724. The state or its governmental subdivisions shall not be obligated to pay the taxes upon failure of the lessee to pay. Notice of delinquent taxes shall

be timely sent to the lessee and to the state or the governmental subdivision. No lien or attachment shall be attached to the property of the state or the governmental subdivisions for failure of the lessee to pay the taxes due.

(4) The state or any governmental subdivision may, if it chooses to do so in its discretion, provide the appropriate county assessor a description of the property rather than a copy of the lease; request that the assessor notify it of the amount of tax which would be assessed to the leaseholder; voluntarily pay that tax; and collect that tax from the leaseholder as part of the rent.

(5) Except as provided in Article VIII, section 11, of the Constitution of Nebraska, no in lieu of tax payments provided for in any other section of law shall be made with respect to any leased public property to which this section applies.

Source: Laws 1999, LB 271, § 8; Laws 2000, LB 968, § 31; Laws 2003, LB 292, § 10.

77-202.12 Public property; taxation status; county assessor; duties; appeal.

(1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.

(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Tax Commissioner in his or her discretion may intervene in an appeal pursuant to this section.

Source: Laws 1999, LB 271, § 9; Laws 2000, LB 968, § 32; Laws 2005, LB 263, § 5; Laws 2007, LB334, § 21.

77-202.13 Repealed. Laws 2008, LB 965, § 27.

77-202.14 Repealed. Laws 1979, LB 65, § 33.

77-202.15 Repealed. Laws 1979, LB 65, § 33.

77-202.16 Repealed. Laws 1979, LB 65, § 33.

77-202.17 Repealed. Laws 1979, LB 65, § 33.

77-202.18 Repealed. Laws 1979, LB 65, § 33.

77-202.19 Repealed. Laws 1979, LB 65, § 33.

77-202.20 Repealed. Laws 1979, LB 65, § 33.

77-202.21 Repealed. Laws 1979, LB 65, § 33.

77-202.22 Repealed. Laws 1979, LB 65, § 33.

77-202.23 Disabled or blind honorably discharged veteran; terms, defined.

As used in sections 77-202.23 and 77-202.24, unless the context otherwise requires:

(1) Disabled person shall mean a veteran who has lost the use of or has undergone amputation of two or more extremities or has undergone amputation of one or more extremities and has lost the use of one or more extremities; and

(2) Blind shall mean a veteran whose sight is so defective as to seriously limit his ability to engage in the ordinary vocations and activities of life.

Source: Laws 1971, LB 990, § 1; Laws 1979, LB 273, § 1.

77-202.24 Disabled or blind veteran; mobile home exempt.

A mobile home shall be exempt from taxation if it is owned and occupied by a disabled or blind veteran of the United States Armed Forces whose disability or blindness is recognized by the United States Department of Veterans Affairs as service connected and who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions).

Source: Laws 1971, LB 990, § 2; Laws 1979, LB 273, § 2; Laws 1991, LB 2, § 16; Laws 1992, LB 719A, § 162; Laws 1997, LB 271, § 46; Laws 2005, LB 54, § 16.

77-202.25 Disabled or blind honorably discharged veteran; property exemption; application; procedure; appeal.

Application for the exemption provided in section 77-202.24 shall be made to the county assessor on or before April 1 of every year. The county assessor shall approve or disapprove such application and shall notify the taxpayer of his or her decision within twenty days of the filing of the application. The taxpayer may appeal the decision of the county assessor to the county board of equalization within twenty days after notice of the decision is mailed by the county assessor.

The taxpayer may appeal any decision of the county board of equalization under this section pursuant to section 77-202.04.

Source: Laws 1984, LB 835, § 3; Laws 1995, LB 490, § 36; Laws 1997, LB 271, § 47.

77-202.26 Repealed. Laws 1980, LB 882, § 9.

77-202.27 Repealed. Laws 1980, LB 882, § 9.

77-202.28 Repealed. Laws 1980, LB 882, § 9.

77-202.29 Repealed. Laws 1980, LB 882, § 9.

77-202.30 Repealed. Laws 1980, LB 882, § 9.

77-202.31 Repealed. Laws 1980, LB 882, § 9.

77-202.32 Repealed. Laws 1980, LB 882, § 9.

77-202.33 Repealed. Laws 1986, LB 817, § 15.

77-202.34 Repealed. Laws 1979, LB 65, § 33.

77-202.35 Repealed. Laws 1979, LB 65, § 33.

77-202.36 Repealed. Laws 1980, LB 882, § 9.

77-202.37 Repealed. Laws 1980, LB 882, § 9.

77-202.38 Repealed. Laws 1980, LB 882, § 9.

77-202.39 Repealed. Laws 1980, LB 882, § 9.

77-202.40 Repealed. Laws 1980, LB 882, § 9.

77-202.41 Repealed. Laws 1980, LB 882, § 9.

77-202.42 Repealed. Laws 1980, LB 882, § 9.

77-202.43 Repealed. Laws 1980, LB 882, § 9.

77-202.44 Repealed. Laws 1979, LB 65, § 33.

77-202.45 Repealed. Laws 1979, LB 65, § 33.

77-202.46 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

77-202.47 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

77-203 Property taxes; when due; first lien.

All property taxes levied for any county, city, village, or other political subdivision therein shall be due and payable on December 31 next following the date of levy except as provided in section 77-1214. Commencing on that date taxes on real property shall be a first lien on the property taxed until paid or extinguished as provided by law. Taxes on personal property shall be a first lien upon the personal property of the person to whom assessed until paid.

Source: Laws 1903, c. 73, § 14, p. 390; R.S.1913, § 6302; Laws 1919, c. 163, § 1, p. 367; Laws 1921, c. 133, art. II, § 3, p. 547; C.S.1922, § 5822; C.S.1929, § 77-203; Laws 1933, c. 134, § 1, p. 513; Laws 1935, c. 151, § 1, p. 557; Laws 1937, c. 167, § 2, p. 636; Laws 1939, c. 98, § 2, p. 421; Laws 1941, c. 157, § 2, p. 607; C.S.Supp.,1941, § 77-1959; R.S.1943, § 77-203; Laws 1959, c. 354, § 4, p. 1249; Laws 1969, c. 645, § 1, p. 2559; Laws 1971, LB 945, § 3; Laws 1997, LB 269, § 35; Laws 1998, LB 1104, § 7.

Cross References

Real property taxes, extinguishment, see section 77-1861.

1. First lien
2. Miscellaneous

1. First lien

All general real property taxes are a first lien. *Polenz v. City of Ravenna*, 145 Neb. 845, 18 N.W.2d 510 (1945).

Lien of taxes is not satisfied by statutory sale of property, but the sale only operates to transfer the lien to the purchaser. *Coffin v. Old Line Life Ins. Co.*, 138 Neb. 857, 295 N.W. 884 (1941).

Special assessments are subsequent to general taxes in distribution of proceeds of tax foreclosure sale. *Douglas County v. Shannon*, 125 Neb. 783, 252 N.W. 199 (1934).

Since taxes are required to be paid and are a first lien on land, agreement to pay taxes and highest rate of interest is usurious and invalidates mortgage to extent of usury. *Matthews v. Guenther*, 120 Neb. 742, 235 N.W. 98 (1931).

Taxes take precedence over all other liens. *Merriam v. Goodlett*, 36 Neb. 384, 54 N.W. 686 (1893); *Mutual Ben. Life Ins. Co. v. Siefken*, 1 Neb. Unof. 860, 96 N.W. 603 (1901).

Lien of taxes due to county was inferior to perfected loan of agency of United States. *United States v. Hauff*, 267 F.Supp. 390 (D. Neb. 1966).

Proceeds of sale of real estate of bankrupt corporation were allocated first to county for real estate taxes. In re *Independent Truckers, Inc.*, 226 F.Supp. 440 (D. Neb. 1963).

2. Miscellaneous

Under this section, property tax liability is not determinable or chargeable until December 31 following the prior year. Under this section, property tax liability is not apportionable between the real estate life tenant and the remaindermen. In re *Estate of Olsen*, 254 Neb. 809, 579 N.W.2d 529 (1998).

Where right to levy certain taxes is clearly conferred on cities of metropolitan class, such cities may supply the details necessary for full exercise of such power. *Chicago & N. W. Ry. Co. v. Bauman*, 132 Neb. 67, 271 N.W. 256 (1937).

Life tenant should pay taxes on land during continuance of his estate. *Spiech v. Tierney*, 56 Neb. 514, 76 N.W. 1090 (1898).

77-204 Real estate taxes; when delinquent.

One-half of the taxes due under section 77-203 shall become delinquent on May 1 and the second half on September 1 next following the date the taxes become due, except that in counties having a population of more than one hundred thousand, the first half shall become delinquent April 1 and the second half August 1 next following the date the taxes become due.

Source: Laws 1903, c. 73, § 150, p. 442; R.S.1913, § 6479; C.S.1922, § 6002; Laws 1925, c. 43, § 10, p. 172; C.S.1929, § 77-1907; Laws 1933, c. 134, § 1, p. 513; Laws 1935, c. 151, § 1, p. 557; Laws 1937, c. 167, § 2, p. 636; Laws 1939, c. 98, § 2, p. 421; Laws 1941, c. 157, § 2, p. 607; C.S.Supp.,1941, § 77-1959; R.S. 1943, § 77-204; Laws 1961, c. 373, § 1, p. 1148; Laws 1965, c. 471, § 1, p. 1518; Laws 1967, c. 497, § 1, p. 1689; Laws 1987, LB 508, § 4.

77-205 Repealed. Laws 1997, LB 269, § 80.**77-206 Repealed. Laws 1997, LB 269, § 80.****77-207 Delinquent taxes; interest.**

All delinquent taxes shall draw interest 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, from the date they become delinquent, and the interest shall be collected the same as the tax upon which the interest accrues.

Source: Laws 1903, c. 73, § 150, p. 442; R.S.1913, § 6479; C.S.1922, § 6002; Laws 1925, c. 43, § 10, p. 172; C.S.1929, § 77-1907; Laws 1933, c. 134, § 1, p. 513; Laws 1935, c. 151, § 1, p. 557; Laws 1937, c. 167, § 2, p. 636; Laws 1939, c. 98, § 2, p. 421; Laws 1941, c. 157, § 2, p. 607; C.S.Supp.,1941, § 77-1959; R.S. 1943, § 77-207; Laws 1969, c. 646, § 1, p. 2563; Laws 1979, LB 84, § 1; Laws 1980, LB 933, § 29; Laws 1981, LB 167, § 38.

Penalty of interest is that which the Legislature has fixed as an inducement to pay taxes. In re *Estate of Rogers*, 147 Neb. 1, 22 N.W.2d 297 (1946).

77-208 General taxes; lien on real estate; priority.

The first lien upon real estate under section 77-203 shall take priority over all other encumbrances and liens thereon.

Source: Laws 1903, c. 73, § 17, p. 391; R.S.1913, § 6305; Laws 1921, c. 133, art. II, § 6, p. 547; C.S.1922, § 5825; C.S.1929, § 77-206; R.S.1943, § 77-208.

Special assessments are inferior to lien of general taxes. *Polenz v. City of Ravenna*, 145 Neb. 845, 18 N.W.2d 510 (1945); *County of Garden v. Schaaf*, 145 Neb. 676, 17 N.W.2d 874 (1945); *Douglas County v. Shannon*, 125 Neb. 783, 252 N.W. 199 (1934).

Irrigation district assessments are first lien on land, and are prior to existing mortgage lien. *Flansburg v. Shumway*, 117 Neb. 125, 219 N.W. 956 (1928).

77-209 Special assessments; lien on real estate; priority.

All special assessments, regularly assessed and levied as provided by law, shall be a lien on the real estate on which assessed, and shall take priority over all other encumbrances and liens thereon except the first lien of general taxes under section 77-203.

Source: Laws 1903, c. 73, § 18, p. 391; R.S.1913, § 6306; Laws 1921, c. 133, art. II, § 7, p. 548; C.S.1922, § 5826; C.S.1929, § 77-207; R.S.1943, § 77-209.

All special taxes are a lien, subject to the lien of general taxes, and superior to all other encumbrances and liens. *Polenz v. City of Ravenna*, 145 Neb. 845, 18 N.W.2d 510 (1945).

Proceeds of tax foreclosure are applied, first, to the payment of costs; second, to the payment of general taxes; and the remainder, if insufficient to pay special assessments, to be prorated equitably upon special assessments due. *County of Garden v. Schaaf*, 145 Neb. 676, 17 N.W.2d 874 (1945).

Charges for irrigation water sold and delivered are not special assessments for which a lien is given. *Union Central Life Ins. Co. v. Cover*, 137 Neb. 260, 289 N.W. 331 (1939).

On tax foreclosure, general taxes are superior to special assessments. *Douglas County v. Shannon*, 125 Neb. 783, 252 N.W. 199 (1934).

Where notice to landowners is not given, lien of special assessments will be held subject to liens of recorded mortgages. *Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co.*, 114 Neb. 596, 209 N.W. 256 (1926).

Lien for special assessments due to city was inferior to perfected lien of agency of United States. *United States v. Hauff*, 267 F.Supp. 390 (D. Neb. 1966).

Proceeds of sale of real estate of bankrupt corporation were allocated first to county for real estate taxes. In re *Independent Truckers, Inc.*, 226 F.Supp. 440 (D. Neb. 1963).

77-210 Repealed. Laws 2000, LB 968, § 91.

77-211 Hospital which provides office building or office space; rent included in lieu of taxes; payment in lieu of taxes to county treasurer; allocation.

Any political subdivision, tax-exempt corporation, or proprietorship acting with respect to any hospital and which provides office buildings or office space to tenants who shall be engaged in private enterprise shall charge such tenants a sufficient amount of rent so that a portion of the rent payments shall be in lieu of taxes. Such payments in lieu of taxes shall be paid to the county treasurer to be allocated to the taxing units within which the property is located so that each shall receive, as in lieu of tax payments, the same amount that it would have received from such leased property if it were not exempt from taxation.

Source: Laws 1973, LB 294, § 1.

77-212 Hospitals providing for supportive medical services to patients; exempt from in lieu of tax payment.

Space provided for supportive medical services to patients in hospitals shall be exempt from section 77-211.

Source: Laws 1973, LB 294, § 2.

REVENUE AND TAXATION

ARTICLE 3

DEPARTMENT OF REVENUE

Cross References

Constitutional provisions:

Appointment of Tax Commissioner, powers and duties, compensation, see Article IV, section 28, Constitution of Nebraska.

Bond, see Article IV, section 26, Constitution of Nebraska.

Oath, see Article XV, section 1, Constitution of Nebraska.

Audit of office of Auditor of Public Accounts, see section 81-106.

Governor's Committee on Intergovernmental Cooperation, member of, see section 81-817.

Wage withholding for federal internal revenue purposes, prescribe necessary records and forms for, see section 81-902.

Section

- 77-301. Transferred to section 77-363.
- 77-301.01. Repealed. Laws 1972, LB 1044, § 1.
- 77-301.02. Repealed. Laws 1971, LB 33, § 1.
- 77-302. Transferred to section 77-364.
- 77-302.01. Repealed. Laws 1980, LB 834, § 66.
- 77-303. Repealed. Laws 1980, LB 834, § 66.
- 77-303.01. Transferred to section 77-378.
- 77-303.02. Transferred to section 77-367.
- 77-303.03. Transferred to section 77-368.
- 77-304. Transferred to section 77-370.
- 77-305. Transferred to section 77-371.
- 77-306. Transferred to section 77-387.
- 77-307. Transferred to section 77-388.
- 77-308. Transferred to section 77-389.
- 77-309. Transferred to section 77-390.
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- 77-311. Transferred to section 77-392.
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- 77-315. Transferred to section 77-396.
- 77-316. Transferred to section 77-397.
- 77-317. Transferred to section 77-398.
- 77-318. Transferred to section 77-399.
- 77-318.01. Repealed. Laws 1980, LB 834, § 66.
- 77-319. Transferred to section 77-3,100.
- 77-320. Repealed. Laws 1980, LB 834, § 66.
- 77-321. Repealed. Laws 1980, LB 834, § 66.
- 77-322. Repealed. Laws 1980, LB 834, § 66.
- 77-323. Transferred to section 77-372.
- 77-324. Transferred to section 77-373.
- 77-325. Repealed. Laws 1980, LB 834, § 66.
- 77-326. Transferred to section 77-365.
- 77-327. Transferred to section 77-377.
- 77-328. Transferred to section 77-375.
- 77-329. Transferred to section 77-376.
- 77-330. Repealed. Laws 1980, LB 834, § 66.
- 77-331. Repealed. Laws 1980, LB 834, § 66.
- 77-332. Transferred to section 77-374.
- 77-333. Repealed. Laws 1980, LB 834, § 66.
- 77-333.01. Transferred to section 77-386.
- 77-333.02. Repealed. Laws 1980, LB 834, § 66.
- 77-334. Repealed. Laws 1969, c. 649, § 1.
- 77-335. Repealed. Laws 1980, LB 834, § 66.
- 77-336. Repealed. Laws 1980, LB 834, § 66.
- 77-337. Repealed. Laws 1980, LB 834, § 66.
- 77-338. Repealed. Laws 1980, LB 834, § 66.
- 77-339. Repealed. Laws 1980, LB 834, § 66.
- 77-340. Transferred to section 77-360.

DEPARTMENT OF REVENUE

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77-341.	Transferred to section 77-362.
77-342.	Transferred to section 77-369.
77-343.	Repealed. Laws 1980, LB 834, § 66.
77-344.	Transferred to section 77-3,101.
77-345.	Transferred to section 77-3,102.
77-346.	Transferred to section 77-3,103.
77-347.	Repealed. Laws 1980, LB 834, § 66.
77-348.	Transferred to section 77-3,104.
77-349.	Transferred to section 77-3,105.
77-350.	Transferred to section 77-3,106.
77-351.	Transferred to section 77-3,107.
77-352.	Transferred to section 77-3,108.
77-353.	Transferred to section 77-379.
77-354.	Transferred to section 77-380.
77-355.	Transferred to section 77-381.
77-356.	Transferred to section 77-382.
77-357.	Transferred to section 77-383.
77-358.	Transferred to section 77-384.
77-359.	Transferred to section 77-385.
77-360.	Department of Revenue; created; Tax Commissioner; chief executive officer.
77-361.	Department of Revenue; functions and goals.
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77-378.	Repealed. Laws 1999, LB 194, § 40.
77-379.	Act, how cited.
77-380.	Legislative intent.
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77-384.	Repealed. Laws 1991, LB 82, § 6.

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77-385.	Tax expenditure report; summary; submission required.
77-386.	Repealed. Laws 1982, LB 454, § 4.
77-387.	Repealed. Laws 1987, LB 508, § 50.
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77-390.	Repealed. Laws 1987, LB 508, § 50.
77-391.	Repealed. Laws 1987, LB 508, § 50.
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77-395.	Repealed. Laws 1987, LB 508, § 50.
77-396.	Repealed. Laws 1987, LB 508, § 50.
77-397.	Repealed. Laws 1997, LB 770, § 5.
77-398.	Repealed. Laws 2000, LB 968, § 92.
77-399.	Repealed. Laws 1997, LB 270, § 110.
77-3,100.	Repealed. Laws 1997, LB 270, § 110.
77-3,101.	Repealed. Laws 1985, LB 273, § 72.
77-3,102.	Repealed. Laws 1985, LB 273, § 72.
77-3,103.	Repealed. Laws 1985, LB 273, § 72.
77-3,104.	Repealed. Laws 1985, LB 273, § 72.
77-3,105.	Repealed. Laws 1985, LB 273, § 72.
77-3,106.	Repealed. Laws 1985, LB 273, § 72.
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77-3,113.	Repealed. Laws 1997, LB 270, § 110.
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77-3,115.	Material for developing tax policy changes; study; contents.
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77-3,119.	Tax Commissioner; certify population of cities and villages.

77-301 Transferred to section 77-363.

77-301.01 Repealed. Laws 1972, LB 1044, § 1.

77-301.02 Repealed. Laws 1971, LB 33, § 1.

77-302 Transferred to section 77-364.

77-302.01 Repealed. Laws 1980, LB 834, § 66.

77-303 Repealed. Laws 1980, LB 834, § 66.

77-303.01 Transferred to section 77-378.

77-303.02 Transferred to section 77-367.

77-303.03 Transferred to section 77-368.

77-304 Transferred to section 77-370.

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- 77-318 Transferred to section 77-399.
- 77-318.01 Repealed. Laws 1980, LB 834, § 66.
- 77-319 Transferred to section 77-3,100.
- 77-320 Repealed. Laws 1980, LB 834, § 66.
- 77-321 Repealed. Laws 1980, LB 834, § 66.
- 77-322 Repealed. Laws 1980, LB 834, § 66.
- 77-323 Transferred to section 77-372.
- 77-324 Transferred to section 77-373.
- 77-325 Repealed. Laws 1980, LB 834, § 66.
- 77-326 Transferred to section 77-365.
- 77-327 Transferred to section 77-377.
- 77-328 Transferred to section 77-375.
- 77-329 Transferred to section 77-376.
- 77-330 Repealed. Laws 1980, LB 834, § 66.
- 77-331 Repealed. Laws 1980, LB 834, § 66.
- 77-332 Transferred to section 77-374.
- 77-333 Repealed. Laws 1980, LB 834, § 66.
- 77-333.01 Transferred to section 77-386.

77-333.02 Repealed. Laws 1980, LB 834, § 66.

77-334 Repealed. Laws 1969, c. 649, § 1.

77-335 Repealed. Laws 1980, LB 834, § 66.

77-336 Repealed. Laws 1980, LB 834, § 66.

77-337 Repealed. Laws 1980, LB 834, § 66.

77-338 Repealed. Laws 1980, LB 834, § 66.

77-339 Repealed. Laws 1980, LB 834, § 66.

77-340 Transferred to section 77-360.

77-341 Transferred to section 77-362.

77-342 Transferred to section 77-369.

77-343 Repealed. Laws 1980, LB 834, § 66.

77-344 Transferred to section 77-3,101.

77-345 Transferred to section 77-3,102.

77-346 Transferred to section 77-3,103.

77-347 Repealed. Laws 1980, LB 834, § 66.

77-348 Transferred to section 77-3,104.

77-349 Transferred to section 77-3,105.

77-350 Transferred to section 77-3,106.

77-351 Transferred to section 77-3,107.

77-352 Transferred to section 77-3,108.

77-353 Transferred to section 77-379.

77-354 Transferred to section 77-380.

77-355 Transferred to section 77-381.

77-356 Transferred to section 77-382.

77-357 Transferred to section 77-383.

77-358 Transferred to section 77-384.

77-359 Transferred to section 77-385.

77-360 Department of Revenue; created; Tax Commissioner; chief executive officer.

There is hereby created and established a department of state government to be known as the Department of Revenue, of which the chief executive officer shall be the Tax Commissioner.

Source: Laws 1969, c. 630, § 1, p. 2532; R.S.1943, (1976), § 77-340; Laws 1980, LB 834, § 1.

77-361 Department of Revenue; functions and goals.

The functions and goals of the Department of Revenue shall be to: (1) Execute faithfully the revenue and property tax laws of the State of Nebraska; (2) provide for efficient, updated, and economical methods and systems of revenue accounting, reporting, enforcement, and related activities; and (3) continually seek to improve its system of administration to provide greater efficiency and convenience to this state's taxpayers.

Source: Laws 1980, LB 834, § 2; Laws 2007, LB334, § 23.

77-362 Tax Commissioner; powers, duties, functions.

The Tax Commissioner, through the Department of Revenue, shall exercise those powers, duties, and functions vested in and administered by the Tax Commissioner.

Source: Laws 1969, c. 630, § 2, p. 2532; R.S.1943, (1976), § 77-341; Laws 1980, LB 834, § 3.

77-362.01 Tax amnesty; authorized; when.

If a federal tax amnesty law is enacted, the Tax Commissioner shall have the authority to duplicate the federal amnesty program in implementing a Nebraska tax amnesty program for all taxpayers owing any tax imposed by reason of or pursuant to authorization by any law of the State of Nebraska and collected by the Department of Revenue. The Tax Commissioner shall have the authority to waive any and all penalties and any and all interest on all delinquent taxes due and owing from any taxpayer.

Source: Laws 1986, LB 1027, § 213.

77-363 Tax Commissioner; appointment; salary.

The Governor shall nominate, and, with the advice and consent of the Legislature, shall appoint a Tax Commissioner and shall fix his or her salary.

Source: Laws 1921, c. 133, art. III, § 1, p. 548; C.S.1922, § 5827; C.S.1929, § 77-301; R.S.1943, § 77-301; Laws 1951, c. 258, § 1, p. 883; Laws 1957, c. 367, § 6, p. 1291; Laws 1963, c. 442, § 1, p. 1462; Laws 1967, c. 612, § 1, p. 2059; R.S.1943, (1976), § 77-301; Laws 1980, LB 834, § 4.

Chapter 63, Laws 1933, reducing salaries of state officers, was unconstitutional as to heads of departments for failure to comply with section 14, Article III, of the Constitution respecting amendments. State ex rel. Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935); State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935).

Sec. 28, Art. IV, of the Constitution is self-executing and, together with this section, constitute a Tax Commissioner and administrative agency which may appeal from orders of county boards of equalization. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

77-364 Tax Commissioner; vacancy; removal by Governor.

In case of vacancy in the office of Tax Commissioner by death, resignation, or otherwise, the Governor shall make a temporary appointment until the next

session of the Legislature, when the vacancy for the unexpired term shall be filled in the manner provided in section 77-363. The Tax Commissioner may be removed by the Governor, following a public hearing, if requested by the Tax Commissioner.

Source: Laws 1921, c. 133, art. III, § 2, p. 548; C.S.1922, § 5828; C.S.1929, § 77-302; R.S.1943, § 77-302; Laws 1951, c. 258, § 2, p. 883; Laws 1965, c. 459, § 16, p. 1460; R.S.1943, (1976), § 77-302; Laws 1980, LB 834, § 5.

77-365 Revenue administration; Tax Commissioner; creation of divisions and bureaus; relationships with taxpayers.

The Tax Commissioner shall establish, consistent with the laws of the State of Nebraska, such divisions or bureaus or other subdivisions within the office of the Tax Commissioner as he or she may find necessary or desirable to maintain adequate and effective relationships with taxpayers and to improve the administration of the tax laws of this state.

Source: Laws 1965, c. 459, § 7, p. 1457; R.S.1943, (1976), § 77-326; Laws 1980, LB 834, § 6.

77-365.01 Repealed. Laws 1999, LB 36, § 41.

77-366 Tax Commissioner; officers and employees; deputies; bond or insurance; powers.

(1) The Tax Commissioner shall appoint or employ deputies, investigators, inspectors, agents, security personnel, and other persons as he or she deems necessary to administer and effectively enforce all provisions of the revenue and property tax laws of this state. The appointed personnel shall hold office at the pleasure of the Tax Commissioner. Any appointed or employed personnel shall perform the duties assigned by the Tax Commissioner.

(2) All personnel appointed or employed by the Tax Commissioner shall be bonded or insured as required by section 11-201. As specified by the Tax Commissioner, certain personnel shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101. Such personnel shall be empowered to arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by the Tax Commissioner, collect taxes, and bring an offender before any court with jurisdiction in this state, except that such personnel shall not be authorized to carry weapons or enforce any laws other than laws administered by the Tax Commissioner or the Department of Revenue and sections 28-1101 to 28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101.

(3) Subsection (2) of this section shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, revenue or otherwise.

Source: Laws 1980, LB 834, § 7; Laws 1990, LB 821, § 42; Laws 1993, LB 345, § 5; Laws 1995, LB 490, § 38; Laws 1999, LB 36, § 6; Laws 2004, LB 884, § 36; Laws 2007, LB334, § 24; Laws 2007, LB638, § 19.

77-367 Repealed. Laws 1997, LB 270, § 110.

77-368 Repealed. Laws 1997, LB 270, § 110.

77-369 Tax Commissioner; rules and regulations; adopt; publish.

The Tax Commissioner shall make, adopt, and publish such rules and regulations as he or she may deem necessary and desirable to carry out the powers and duties imposed upon him or her and the Department of Revenue.

Source: Laws 1969, c. 630, § 3, p. 2532; R.S.1943, (1976), § 77-342; Laws 1980, LB 834, § 10; Laws 1995, LB 490, § 40; Laws 1999, LB 36, § 7.

77-370 Department of Revenue; uniform tax books, records, and forms; approval.

The form of all schedules, books of instruction, records, and all other forms which may be necessary or expedient for the proper administration of the revenue and property tax laws of the state shall be approved by the Department of Revenue. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable.

Source: Laws 1921, c. 133, art. III, § 3, p. 548; C.S.1922, § 5829; C.S.1929, § 77-303; R.S.1943, § 77-304; Laws 1959, c. 355, § 2, p. 1251; Laws 1969, c. 647, § 1, p. 2565; R.S.1943, (1976), § 77-304; Laws 1980, LB 834, § 11; Laws 1997, LB 270, § 18; Laws 1999, LB 36, § 8; Laws 2007, LB334, § 25.

This section requires the Tax Commissioner to approve all forms, schedules, books of instructions, etc., as may be necessary or expedient to the proper administration of the tax laws. Lincoln Tel. & Tel. Co. v. County Board of Equalization, 209 Neb. 465, 308 N.W.2d 515 (1981).

77-370.01 Repealed. Laws 1995, LB 152, § 1.

77-371 Repealed. Laws 1999, LB 36, § 41.

77-372 Revenue administration; implementation of programs; records; statistical information.

The Department of Revenue shall develop, operate, and implement systems for the production of records of taxes and other revenue and receipts collected by any agency of the State of Nebraska. Such records shall provide for the collection and recording of such accounting information in such fashion as may be required by the accounting division of the Department of Administrative Services and shall provide in addition for such further statistical information as the Department of Revenue may find necessary for the effective execution of its responsibilities under appropriate laws of this state.

Source: Laws 1965, c. 459, § 4, p. 1456; R.S.1943, (1976), § 77-323; Laws 1980, LB 834, § 13.

77-373 Revenue administration; implementation of agreements and working relationships; state and federal agencies.

The Department of Revenue may develop and implement such agreements and working relationships which are consistent with the laws of the State of Nebraska with any federal office, state agency, or local subdivision of state

government, either within or without the State of Nebraska which it may find necessary or desirable for proper administration of the tax laws of this state.

Source: Laws 1965, c. 459, § 5, p. 1457; R.S.1943, (1976), § 77-324; Laws 1980, LB 834, § 14.

77-373.01 Department of Labor and Department of Revenue; statistical compilation; confidentiality; disclosure authorized.

(1) The Department of Labor and the Department of Revenue shall use the codes under the North American Industry Classification System for the compilation and publication of statistics rather than codes under the Standard Industrial Classification System.

For the sole purpose of determining or updating the proper code under the appropriate industrial classification system, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be strictly limited to the name, address, and federal employer identification number or numbers of the taxpayer and the code under the industrial classification system.

(2) Notwithstanding sections 77-2711 and 77-27,119 and for the sole purpose of administration of the Contractor Registration Act and the contractor data base provisions of section 48-2117, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be limited to the name, address, and federal employer identification number or numbers of the taxpayer.

(3) The disclosures allowed under this section may be made notwithstanding any other provision of law of this state regarding disclosure of information by either department. Any information received by either department under this section shall be considered confidential by the receiving department, and any employee who discloses such information other than as specifically allowed by this section or other laws of this state shall be subject to the penalties normally imposed on employees who improperly disclose information.

Source: Laws 1997, LB 875, § 19; Laws 2009, LB162, § 8.

Cross References

Contractor Registration Act, see section 48-2101.

77-374 Department of Revenue; efficiency recommendations; report; to whom.

Where the Department of Revenue shall find that the administration of the revenue and property tax laws of the state might be more efficiently and economically conducted, it shall cause to be prepared recommendations to effect the desired objective. Such recommendations shall be given to the Governor and the chairperson of the appropriate legislative committee when the Legislature is next in regular session following the development of the recommendations. Should the Legislature be in regular session at the time such recommendations are compiled, the recommendations shall be communicated to the Governor and the appropriate committee of the Legislature.

Source: Laws 1965, c. 459, § 13, p. 1459; R.S.1943, (1976), § 77-332; Laws 1980, LB 834, § 15; Laws 2007, LB334, § 26.

77-375 Tax Commissioner; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.

(1) The Tax Commissioner or his or her duly authorized representative may administer oaths and compel the attendance of witnesses and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.

(2) Any person shall comply with a written demand of the Tax Commissioner requiring the production of records notwithstanding the confidentiality provisions of section 8-1401. The records and the information contained thereon shall be protected pursuant to the confidentiality provisions applicable to the Tax Commissioner. Any person disclosing information to the Tax Commissioner pursuant to a demand for production of records under this subsection is immune from liability, civil, criminal, or otherwise, that might result from disclosing such information. The Tax Commissioner shall pay the costs of providing such information pursuant to section 8-1402.

(3) The Tax Commissioner may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.

(4) The Tax Commissioner shall have access to the information required to be reported under the New Hire Reporting Act for the purpose of administering taxes he or she has a duty to collect.

Source: Laws 1965, c. 459, § 9, p. 1457; R.S.1943, (1976), § 77-328; Laws 1980, LB 834, § 16; Laws 1993, LB 345, § 6; Laws 1995, LB 490, § 42; Laws 1998, LB 1104, § 8; Laws 1999, LB 36, § 9; Laws 2007, LB223, § 1.

Cross References

New Hire Reporting Act, see section 48-2301.

77-375.01 Repealed. Laws 1999, LB 36, § 41.**77-376 Tax Commissioner; examination of financial records; no release of information.**

The Tax Commissioner may examine or cause to be examined in his or her behalf, and make memoranda from, any of the financial records of state and local subdivisions, persons, and corporations subject to the tax laws of this state. No information shall be released that is not so authorized by existing statutes.

Source: Laws 1965, c. 459, § 10, p. 1458; R.S.1943, (1976), § 77-329; Laws 1980, LB 834, § 17; Laws 1995, LB 490, § 43; Laws 1999, LB 36, § 10.

77-377 Proceedings by Attorney General or county attorney; enforcement of revenue laws.

The Department of Revenue may request the Attorney General or any county attorney to institute proceedings, actions, and prosecutions as may be required to enforce the laws relating to penalties, liabilities, assessments, collection, and payment of revenue and punishment of public officers, persons, or officers or agents of corporations for failure to comply with or for neglect to comply with

the provisions of any revenue or property tax law administered by or subject to the administrative jurisdiction of the department.

Source: Laws 1965, c. 459, § 8, p. 1457; R.S.1943, (1976), § 77-327; Laws 1980, LB 834, § 18; Laws 1993, LB 345, § 7; Laws 2007, LB334, § 27.

77-377.01 Delinquent tax collection; contract with collection agency; when authorized.

The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to the Collection Agency Act, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process.

For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment, one of which shall have been sent by certified or registered mail. The notice sent by certified or registered mail shall include a statement that the matter of such taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

Source: Laws 1981, LB 170, § 1; Laws 1993, LB 261, § 22; Laws 1993, LB 161, § 2.

Cross References

Collection Agency Act, see section 45-601.

77-377.02 Delinquent tax collection; collection agency; fees; remit funds.

(1) Fees for services, reimbursements, or other remuneration to such collection agency shall be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the Tax Commissioner and the collection agency shall provide for the payment of fees for such services, reimbursements, or other remuneration not in excess of fifty percent of the total amount of delinquent taxes, penalties, and interest actually collected.

(2) All funds collected, less the fees for collection services as provided in the contract, shall be remitted to the Tax Commissioner within forty-five days from the date of collection from a taxpayer. Forms to be used for such remittances shall be prescribed by the Tax Commissioner.

Source: Laws 1981, LB 170, § 2.

77-377.03 Delinquent tax collection; collection agency; bond required.

Before entering into such a contract, the Tax Commissioner shall require a bond for the collection agency not in excess of one hundred thousand dollars, guaranteeing compliance with the terms of the contract and such bond shall be in addition to any bond required by section 45-608.

Source: Laws 1981, LB 170, § 3.

77-377.04 Delinquent tax collection; collection agency; subject to taxation.

A collection agency entering into a contract with the Tax Commissioner for the collection of delinquent taxes pursuant to sections 77-377.01 to 77-377.04 agrees that it is receiving income from sources within this state or doing business in this state for purposes of the Nebraska income tax laws pursuant to section 77-2733 or 77-2734.02.

Source: Laws 1981, LB 170, § 4; Laws 1984, LB 1124, § 1.

77-378 Repealed. Laws 1999, LB 194, § 40.**77-379 Act, how cited.**

Sections 77-379 to 77-385 shall be known and may be cited as the Tax Expenditure Reporting Act.

Source: Laws 1979, LB 17, § 1; R.S.Supp.,1979, § 77-353; Laws 1980, LB 834, § 20; Laws 1991, LB 82, § 1.

77-380 Legislative intent.

It is the intent of sections 77-202.03 and 77-379 to 77-385 to provide a mechanism which will enable the Legislature to better determine those sectors of the economy which are receiving indirect subsidies as a result of tax expenditures. The Legislature recognizes that the present budgeting system fails to accurately and totally reflect the revenue lost due to such tax expenditures and that as a result undetermined amounts of potential revenue are escaping public or legislative scrutiny. The loss of such potential revenue causes a narrowing of the tax base which in turn forces higher tax rates on the remaining tax base.

Source: Laws 1979, LB 17, § 2; R.S.Supp.,1979, § 77-354; Laws 1980, LB 834, § 21.

77-381 Terms, defined.

For purposes of the Tax Expenditure Reporting Act, unless the context otherwise requires:

- (1) Tax expenditure shall mean a revenue reduction that occurs in the tax base of the state or a political subdivision as the result of an exemption, deduction, exclusion, tax deferral, credit, or preferential rate introduced into the tax structure;
- (2) Department shall mean the Department of Revenue;
- (3) Income tax shall mean the tax imposed upon individuals and corporations under the Nebraska Revenue Act of 1967;
- (4) Sales tax shall mean the tax imposed upon expenditures under the Nebraska Revenue Act of 1967;
- (5) Property tax shall mean the tax imposed upon real and personal property under Chapter 77; and
- (6) Miscellaneous tax shall mean revenue sources other than income, sales, and property taxes for state and local government including, but not limited to, motor fuel taxes, liquor taxes, cigarette taxes, inheritance and estate taxes, generation-skipping transfer taxes, insurance premium taxes, and occupation

taxes and fees or other taxes which generate state or local revenue annually in excess of two million dollars.

Source: Laws 1979, LB 17, § 3; R.S.Supp.,1979, § 77-355; Laws 1980, LB 834, § 22; Laws 1992, LB 1004, § 1; Laws 1994, LB 1160, § 121; Laws 1995, LB 182, § 65.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-382 Department; tax expenditure report; prepare; contents.

The department shall prepare a tax expenditure report describing (1) the basic provisions of the Nebraska tax laws, (2) the actual or estimated revenue loss caused by the exemptions, deductions, exclusions, deferrals, credits, and preferential rates in effect on July 1 of each year and allowed under Nebraska's tax structure and in the property tax, and (3) the elements which make up the tax base for state and local income, including income, sales and use, property, and miscellaneous taxes. The department shall review the major tax exemptions for which state general funds are used to reduce the impact of revenue lost due to a tax expenditure. The report shall indicate an estimate of the amount of the reduction in revenue resulting from the operation of all tax expenditures. The report shall make recommendations relating to the elimination, in whole or in part, of particular tax expenditures or to the limiting of the duration of particular tax expenditures to a fixed number of years. It is the intent of the Legislature that nothing in the Tax Expenditure Reporting Act shall cause the valuation or assessment of any property exempt from taxation on the basis of its use exclusively for religious, educational, or charitable purposes.

Source: Laws 1979, LB 17, § 4; R.S.Supp.,1979, § 77-356; Laws 1980, LB 834, § 23; Laws 1991, LB 82, § 2.

77-383 Tax expenditure report; department; access to information.

The department may request from any state or local official or agency any information necessary to complete the report required under section 77-382. All state and local officials or agencies shall cooperate with the department with respect to any such request.

Source: Laws 1979, LB 17, § 5; R.S.Supp.,1979, § 77-357; Laws 1980, LB 834, § 24.

77-384 Repealed. Laws 1991, LB 82, § 6.

77-385 Tax expenditure report; summary; submission required.

The report required under section 77-382 and a summary of the report shall be submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Legislature's Revenue and Appropriations Committees on or before October 15, 1991, and October 15 of every even-numbered year thereafter. The summary shall be included with or appended to the Governor's budget presented to the Legislature in odd-numbered years.

Source: Laws 1979, LB 17, § 7; R.S.Supp.,1979, § 77-359; Laws 1980, LB 834, § 26; Laws 1991, LB 82, § 3.

77-386 Repealed. Laws 1982, LB 454, § 4.

- 77-387 Repealed. Laws 1987, LB 508, § 50.
- 77-388 Repealed. Laws 1987, LB 508, § 50.
- 77-389 Repealed. Laws 1987, LB 508, § 50.
- 77-390 Repealed. Laws 1987, LB 508, § 50.
- 77-391 Repealed. Laws 1987, LB 508, § 50.
- 77-392 Repealed. Laws 1987, LB 508, § 50.
- 77-393 Repealed. Laws 1987, LB 508, § 50.
- 77-394 Repealed. Laws 1987, LB 508, § 50.
- 77-395 Repealed. Laws 1987, LB 508, § 50.
- 77-396 Repealed. Laws 1987, LB 508, § 50.
- 77-397 Repealed. Laws 1997, LB 770, § 5.
- 77-398 Repealed. Laws 2000, LB 968, § 92.
- 77-399 Repealed. Laws 1997, LB 270, § 110.
- 77-3,100 Repealed. Laws 1997, LB 270, § 110.
- 77-3,101 Repealed. Laws 1985, LB 273, § 72.
- 77-3,102 Repealed. Laws 1985, LB 273, § 72.
- 77-3,103 Repealed. Laws 1985, LB 273, § 72.
- 77-3,104 Repealed. Laws 1985, LB 273, § 72.
- 77-3,105 Repealed. Laws 1985, LB 273, § 72.
- 77-3,106 Repealed. Laws 1985, LB 273, § 72.
- 77-3,107 Repealed. Laws 1985, LB 273, § 72.
- 77-3,108 Repealed. Laws 1985, LB 273, § 72.
- 77-3,109 Charge for publications; authorized.**

The Department of Revenue may charge persons and state agencies for the following publications of the Department of Revenue: Department of Revenue Annual Report, Package XN, Department of Revenue Tax Expenditure Report, and the Department of Revenue State Funds Booklet. The Tax Commissioner shall set the price of such publications which shall be the cost of production.

Source: Laws 1986, LB 1027, § 211.

77-3,110 Department of Revenue Miscellaneous Receipts Fund; created; use; investment.

All funds received pursuant to sections 77-3,109 and 77-3,118 shall be remitted to the State Treasurer for credit to the Department of Revenue Miscellaneous Receipts Fund which is hereby created. All money in the fund shall be administered by the Department of Revenue and shall be used to defray

the cost of production of the publications listed in section 77-3,109 or of the listings described in section 77-3,118. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 1027, § 212; Laws 1993, LB 345, § 10; Laws 1994, LB 1066, § 79.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-3,111 Miscellaneous Services Revolving Fund; created; administration; investment.

There is hereby created a fund to be known as the Miscellaneous Services Revolving Fund to which shall be credited all money received by the Department of Revenue for services performed and billed to other agencies or persons. All reimbursements to the department for such services shall be credited to the fund and expenditures therefrom shall be made only when such funds are available. The Department of Revenue shall only bill for the actual amount expended in performing such services.

Any money in the fund shall be administered by the Department of Revenue, and any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1987, LB 523, § 44; Laws 1995, LB 7, § 86.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-3,112 Low-level radioactive waste facility or employment; employment of person removed under immigration and customs enforcement or convicted for certain violations; tax credit or exemption; prohibited.

(1) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person or taxpayer any tax credit or exemption for the construction of a facility or the employment of people for the disposal in Nebraska of low-level radioactive waste for which a license is required pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person any tax credit, exemption, or refund for the employment of any person who has been removed from the United States pursuant to proceedings initiated by the United States Immigration and Customs Enforcement, or other competent authority, or who has been convicted in a criminal court proceeding for offenses related to illegal immigration. Any benefits that were received prior to the removal or conviction will be recaptured to the extent the benefits were received based on the employment of such persons.

Source: Laws 1987, LB 523, § 46; Laws 2007, LB223, § 2.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

77-3,113 Repealed. Laws 1997, LB 270, § 110.

77-3,114 Repealed. Laws 1997, LB 270, § 110.**77-3,115 Material for developing tax policy changes; study; contents.**

The Department of Revenue shall gather, prepare, and study material which shall be used as a basis for developing tax policy changes. The material shall be directed toward providing results which would be useful to a concept of analyzing the impact of taxes on different economic sectors as defined by the Standard Industrial Code in the state and the impact on those sectors of any policy changes in taxes. The study shall be updated to serve as a basis to review future proposed tax policy changes. The study shall include, but not be restricted to, the following:

- (1) Compiling an accurate and dependable set of indicators that show the role each economic sector plays in Nebraska's economy and each sector's legal tax incidence by tax types. The purpose is to develop an appropriate share for each economic sector's responsibility for state and local taxes;
- (2) The amount of taxes, fees, and other governmental costs imposed on each economic sector which amount shall include those taxes, fees, and other governmental costs imposed on individuals employed in industries in such sector; and
- (3) If possible, an estimate of those state and local taxes, fees, and other governmental costs which are exported outside the state or offset by provisions of state and federal tax laws.

Source: Laws 1992, LB 719A, § 217.

77-3,116 Study; cooperation with Department of Labor and other state agencies; contracts authorized; reports; department; duty.

The Department of Revenue and the Department of Labor shall cooperate and participate in the collection of data for the study. Other state agencies, including the University of Nebraska, shall assist in the study or the update as requested by the Department of Revenue and as any necessary funds are available. Any agency may contract with the Department of Revenue to provide such assistance. The Department of Revenue may also contract with an independent entity for the entity to conduct or assist in conducting such study or update. The department, other state agency, or independent entity preparing the material or study shall utilize and consider, along with other information, the results of any available study relating to the items listed in section 77-3,115 and conducted or contracted for by the Legislature in the year prior to April 16, 1992.

A preliminary report of the initial study's models and initial findings shall be reported by the Department of Revenue to the chairpersons of the Appropriations Committee and Revenue Committee of the Legislature, the Clerk of the Legislature, and the Governor by December 1, 1992. The initial study shall be completed and the department shall report its findings to the same entities by December 1, 1993. The study shall be updated and the update shall be reported to the same entities (1) on December 1, 1994, and every four years thereafter or (2) more often if determined appropriate by the Tax Commissioner and if the data or economic circumstances reported in the previous report have changed to such a degree as to vary the conclusions in the previous report or update.

Any models developed for the initial study or update shall be shared with the Legislative Fiscal Analyst. The Department of Revenue shall include in its

budget request for every other biennium following the 1991-93 biennium sufficient appropriation authority to conduct or contract for the required update.

Source: Laws 1992, LB 719A, § 218.

77-3,117 Department of Revenue; computation authorized.

(1) When the Department of Revenue finds that the administration of the revenue laws might be more efficiently and economically conducted, the department may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts will be rounded to the nearest dollar, with amounts ending in fifty cents or more rounded to the next highest dollar.

(2) The department may, on an annual basis, eliminate account balances of one dollar or less under uniform procedures developed by the department.

(3) For sales and use tax purposes, the tax computation shall be carried to the third decimal place and rounded down to a whole cent whenever the third decimal place is four or less and rounded up to a whole cent whenever the third decimal place is greater than four.

Source: Laws 1993, LB 345, § 8; Laws 2003, LB 282, § 5.

77-3,118 Department of Revenue; charge for information; authorized.

The Department of Revenue may charge persons and state agencies for any listings made by the department of information that is not confidential. The Tax Commissioner shall set the price of such listings which shall be the cost of production.

Source: Laws 1993, LB 345, § 9.

77-3,119 Tax Commissioner; certify population of cities and villages.

(1) The Tax Commissioner shall certify the population of cities and villages to be used for purposes of calculations made pursuant to subdivision (4) of section 18-2603, subdivisions (3)(a) and (b) of section 35-1205, subdivision (1) of section 39-2517, and sections 39-2513 and 77-27,137.01. The Tax Commissioner shall transmit copies of such certification to all interested parties upon request.

(2) The Tax Commissioner shall certify the population of each city and village based upon the most recent federal census. The Tax Commissioner shall determine the most recent federal census for each city and village by using the most recent federal census figures available from (a) the most recent federal decennial census, (b) the most recent federal census update or recount certified by the United States Bureau of the Census, or (c) the most recent federal census figure of the city or village plus the population of territory annexed as calculated in sections 18-1753 and 18-1754.

(3) The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 1127, § 1; Laws 1998, LB 1120, § 26; Laws 2000, LB 968, § 33.

ARTICLE 4

TRAINING AND CERTIFICATION OF COUNTY ASSESSORS

Cross References

County assessors, generally, see section 23-3201.

Election of county assessor, see section 32-519.

Section

- 77-401. Transferred to section 23-3205.
- 77-401.01. Repealed. Laws 1986, LB 888, § 1.
- 77-401.02. Transferred to section 23-3206.
- 77-402. Repealed. Laws 1987, LB 508, § 50.
- 77-403. Transferred to section 23-3210.
- 77-404. Transferred to section 23-3208.
- 77-405. Repealed. Laws 1949, c. 225, § 1.
- 77-405.01. Repealed. Laws 1982, LB 592, § 2.
- 77-406. Transferred to section 77-1202.01.
- 77-407. Transferred to section 23-3306.
- 77-408. Transferred to section 23-3209.
- 77-409. Transferred to section 77-1233.02.
- 77-410. Transferred to section 77-1233.03.
- 77-411. Repealed. Laws 1987, LB 508, § 50.
- 77-412. Transferred to section 77-1233.04.
- 77-412.01. Transferred to section 77-1233.05.
- 77-413. Repealed. Laws 1965, c. 475, § 7.
- 77-414. Educational courses and standards; Tax Commissioner; duties.
- 77-415. Repealed. Laws 2007, LB 334, § 108.
- 77-416. Repealed. Laws 1997, LB 270, § 110.
- 77-417. Repealed. Laws 2007, LB 334, § 108.
- 77-418. Repealed. Laws 1997, LB 270, § 110.
- 77-419. Repealed. Laws 1997, LB 270, § 110.
- 77-420. Supplementary seminars; purpose.
- 77-421. Certification as county assessor; applicants; forms; examination; fee.
- 77-422. Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect.
- 77-423. Transferred to section 23-3202.
- 77-424. Repealed. Laws 1982, LB 592, § 2.
- 77-425. Repealed. Laws 1999, LB 36, § 41; Laws 1999, LB 194, § 40.
- 77-426. Transferred to section 23-3204.
- 77-427. Repealed. Laws 1986, LB 1105, § 2.
- 77-428. Repealed. Laws 1997, LB 270, § 110.
- 77-429. Transferred to section 23-3203.
- 77-430. Transferred to section 77-1311.01.

77-401 Transferred to section 23-3205.

77-401.01 Repealed. Laws 1986, LB 888, § 1.

77-401.02 Transferred to section 23-3206.

77-402 Repealed. Laws 1987, LB 508, § 50.

77-403 Transferred to section 23-3210.

77-404 Transferred to section 23-3208.

77-405 Repealed. Laws 1949, c. 225, § 1.

77-405.01 Repealed. Laws 1982, LB 592, § 2.

77-406 Transferred to section 77-1202.01.

77-407 Transferred to section 23-3306.

77-408 Transferred to section 23-3209.

77-409 Transferred to section 77-1233.02.

77-410 Transferred to section 77-1233.03.

77-411 Repealed. Laws 1987, LB 508, § 50.

77-412 Transferred to section 77-1233.04.

77-412.01 Transferred to section 77-1233.05.

77-413 Repealed. Laws 1965, c. 475, § 7.

77-414 Educational courses and standards; Tax Commissioner; duties.

The Property Tax Administrator shall:

(1) Establish, implement, and maintain a required system of educational courses for the certification and recertification of all holders of county assessor certificates; and

(2) Establish the required educational standards and criteria for certification and recertification of all holders of county assessor certificates.

In order to promote compliance with the requirements of this section, the Tax Commissioner shall adopt and promulgate, and from time to time amend or revise, rules and regulations containing the necessary educational standards and criteria for certification and recertification.

Source: Laws 1999, LB 194, § 14; Laws 2003, LB 443, § 1; Laws 2007, LB334, § 28.

77-415 Repealed. Laws 2007, LB 334, § 108.

77-416 Repealed. Laws 1997, LB 270, § 110.

77-417 Repealed. Laws 2007, LB 334, § 108.

77-418 Repealed. Laws 1997, LB 270, § 110.

77-419 Repealed. Laws 1997, LB 270, § 110.

77-420 Supplementary seminars; purpose.

In cooperation with the county assessors association, the Property Tax Administrator may arrange and conduct seminars in assessment methods, which seminars shall be supplementary to any educational course required under section 77-414.

Source: Laws 1963, c. 439, § 6, p. 1458; Laws 1995, LB 490, § 51; Laws 1997, LB 270, § 21; Laws 2003, LB 443, § 4.

77-421 Certification as county assessor; applicants; forms; examination; fee.

(1) The Property Tax Administrator shall, in February, May, August, and November of each year, hold an examination of applicants for certification as county assessor. An applicant for the examination shall, not less than ten days before an examination, present to the Property Tax Administrator a written application on forms provided by the Property Tax Administrator. Such appli-

cation shall not be considered by the Property Tax Administrator unless accompanied by a payment of a fee to the order of the Tax Commissioner. The fees shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The amount of such fee shall be determined annually by the Tax Commissioner and shall be sufficient to cover the costs of the administration of the examination. Such examination shall be written and shall be of such character as fairly to test and determine the qualifications, fitness, and ability of the person tested actually to perform the duties of county assessor. The Property Tax Administrator shall prepare such examination.

(2) When the office of county assessor is vacant, the county board may for good cause request a certification examination from the Property Tax Administrator at a time different from those set out in subsection (1) of this section. The request shall be in writing and shall state the basis for the certification examination. The Property Tax Administrator shall within ten days after receipt of the request for certification review the request and send notice of approval or disapproval to the county board. If approved, the Property Tax Administrator shall state the date, time, and place of the requested certification examination.

Source: Laws 1969, c. 623, § 1, p. 2520; Laws 1983, LB 245, § 1; Laws 1986, LB 1105, § 1; Laws 1995, LB 490, § 52; Laws 1997, LB 270, § 22; Laws 1999, LB 36, § 12; Laws 2000, LB 968, § 34; Laws 2007, LB334, § 29; Laws 2009, LB166, § 5.

This section is not involved in an unconstitutional delegation of legislative power or an unreasonable classification. Shear v. County Board of Commissioners of Rock County, 187 Neb. 849, 195 N.W.2d 151 (1972).

77-422 Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect.

(1) Upon the successful completion of the examination by the applicant, a county assessor certificate shall be issued to him or her.

(2) The Tax Commissioner shall establish a system for revocation or suspension of a certificate, including a certificate issued by the Property Tax Administrator, for failure to maintain the educational standards and criteria and shall have the power to revoke the certificate if the certificate holder has not successfully met the educational requirements in section 77-414. A copy of the Tax Commissioner’s written order revoking or suspending a certificate shall be mailed to the person within seven days after the date of the order.

(3) Any person whose certificate, including a certificate issued by the Property Tax Administrator, has been revoked or suspended may appeal the written order of the Tax Commissioner, within thirty days after the date of the order, to the Tax Equalization and Review Commission in accordance with section 77-5013.

(4) A person whose certificate has been invalidated by the commission or the Tax Commissioner shall not be eligible to hold a certificate for five years after the date of invalidation.

Source: Laws 1969, c. 623, § 2, p. 2521; Laws 2003, LB 443, § 5; Laws 2004, LB 973, § 9; Laws 2006, LB 808, § 25; Laws 2007, LB334, § 30.

This section is not involved in an unconstitutional delegation of legislative power or an unreasonable classification. Shear v. County Board of Commissioners of Rock County, 187 Neb. 849, 195 N.W.2d 151 (1972).

77-423 Transferred to section 23-3202.

77-424 Repealed. Laws 1982, LB 592, § 2.

77-425 Repealed. Laws 1999, LB 36, § 41; Laws 1999, LB 194, § 40.

77-426 Transferred to section 23-3204.

77-427 Repealed. Laws 1986, LB 1105, § 2.

77-428 Repealed. Laws 1997, LB 270, § 110.

77-429 Transferred to section 23-3203.

77-430 Transferred to section 77-1311.01.

ARTICLE 5 STATE TAX BOARD

Section

77-501.	Repealed. Laws 2000, LB 1067, § 36.
77-502.	Repealed. Laws 2000, LB 1067, § 36.
77-503.	Repealed. Laws 2000, LB 1067, § 36.
77-504.	Repealed. Laws 1987, LB 508, § 50.
77-505.	Transferred to section 77-5022.
77-506.	Transferred to section 77-5023.
77-506.01.	Repealed. Laws 1991, LB 320, § 13.
77-507.	Repealed. Laws 1987, LB 508, § 50.
77-507.01.	Transferred to section 77-5024.
77-507.02.	Repealed. Laws 1987, LB 508, § 50.
77-507.03.	Transferred to section 77-5025.
77-508.	Transferred to section 77-5026.
77-508.01.	Transferred to section 77-5027.
77-509.	Transferred to section 77-5028.
77-509.01.	Transferred to section 77-5029.
77-509.02.	Transferred to section 77-5030.
77-510.	Repealed. Laws 1997, LB 397, § 51.
77-510.01.	Repealed. Laws 1969, c. 793, § 1.
77-511.	Repealed. Laws 1997, LB 397, § 51.
77-512.	Repealed. Laws 1969, c. 657, § 1.
77-513.	Repealed. Laws 1969, c. 657, § 1.
77-514.	Repealed. Laws 1969, c. 657, § 1.
77-515.	Repealed. Laws 1969, c. 411, § 1.
77-516.	Repealed. Laws 1969, c. 411, § 1.
77-517.	Repealed. Laws 1969, c. 657, § 1.
77-518.	Transferred to section 77-1316.01.
77-519.	Transferred to section 77-1613.02.

77-501 Repealed. Laws 2000, LB 1067, § 36.

77-502 Repealed. Laws 2000, LB 1067, § 36.

77-503 Repealed. Laws 2000, LB 1067, § 36.

77-504 Repealed. Laws 1987, LB 508, § 50.

77-505 Transferred to section 77-5022.

77-506 Transferred to section 77-5023.

77-506.01 Repealed. Laws 1991, LB 320, § 13.

- 77-507 Repealed. Laws 1987, LB 508, § 50.
- 77-507.01 Transferred to section 77-5024.
- 77-507.02 Repealed. Laws 1987, LB 508, § 50.
- 77-507.03 Transferred to section 77-5025.
- 77-508 Transferred to section 77-5026.
- 77-508.01 Transferred to section 77-5027.
- 77-509 Transferred to section 77-5028.
- 77-509.01 Transferred to section 77-5029.
- 77-509.02 Transferred to section 77-5030.
- 77-510 Repealed. Laws 1997, LB 397, § 51.
- 77-510.01 Repealed. Laws 1969, c. 793, § 1.
- 77-511 Repealed. Laws 1997, LB 397, § 51.
- 77-512 Repealed. Laws 1969, c. 657, § 1.
- 77-513 Repealed. Laws 1969, c. 657, § 1.
- 77-514 Repealed. Laws 1969, c. 657, § 1.
- 77-515 Repealed. Laws 1969, c. 411, § 1.
- 77-516 Repealed. Laws 1969, c. 411, § 1.
- 77-517 Repealed. Laws 1969, c. 657, § 1.
- 77-518 Transferred to section 77-1316.01.
- 77-519 Transferred to section 77-1613.02.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

Cross References

Bonds, see sections 10-401 and 18-623.

Excise tax, see sections 74-1320 to 74-1322.

Special assessments, see sections 15-733, 17-561, 31-335, and 74-609.

(a) RAILROAD OPERATING PROPERTY

Section	
77-601.	Railroad operating property; assessment.
77-602.	Railroad operating property; duty of Property Tax Administrator; when valued.
77-603.	Railroad property; annual statement; contents.
77-603.01.	Railroad operating property; sale; report by purchaser; contents; penalty; waiver.
77-604.	Railroad property; statement by railroad company not conclusive; taxable value; distribution; valuation per mile; how determined.
77-605.	Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver.

REVENUE AND TAXATION

Section	
77-606.	Railroad nonoperating property; annual statement by railroad to county assessor; when made.
77-607.	Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad's officers or agents.
77-608.	Repealed. Laws 1997, LB 270, § 110.
77-609.	Railroad operating property; density factor; recalculation.
77-610.	Repealed. Laws 1985, LB 268, § 31.
77-611.	Repealed. Laws 1997, LB 270, § 110.
77-612.	Railroad property; notice of valuation; appeal.
77-613.	Repealed. Laws 1985, LB 268, § 31.
77-614.	Repealed. Laws 1985, LB 268, § 31.
77-615.	Repealed. Laws 1997, LB 270, § 110.
77-616.	Railroad property; levy of taxes; injunction prohibited.
77-617.	Repealed. Laws 1985, LB 268, § 31.
77-618.	Repealed. Laws 1985, LB 268, § 31.
77-619.	Repealed. Laws 1989, LB 643, § 2.
77-620.	Repealed. Laws 1989, LB 643, § 2.
77-621.	Railroad property; valuation; contents of report.
77-622.	Repealed. Laws 1985, LB 268, § 31.
77-623.	Railroad operating property; valuation; county assessor; duties; lien.
77-624.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-625.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-626.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-627.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-628.	Transferred to section 77-1613.01.
77-629.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-629.01.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-630.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-631.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-631.01.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-631.02.	Transferred to section 77-1250.03.
77-631.03.	Transferred to section 77-1250.04.
77-631.04.	Transferred to section 77-1250.05.
77-632.	Repealed. Laws 1986, LB 817, § 15.
77-633.	Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.
77-634.	Repealed. Laws 1985, LB 268, § 31.
77-635.	Repealed. Laws 1985, LB 268, § 31.
77-636.	Repealed. Laws 1985, LB 268, § 31.
77-637.	Repealed. Laws 1985, LB 268, § 31.
77-638.	Repealed. Laws 1985, LB 268, § 31.
77-639.	Repealed. Laws 1985, LB 268, § 31.
77-640.	Repealed. Laws 1985, LB 268, § 31.
77-641.	Repealed. Laws 1985, LB 268, § 31.
77-642.	Repealed. Laws 1985, LB 268, § 31.
77-643.	Repealed. Laws 1985, LB 268, § 31.
77-644.	Repealed. Laws 1985, LB 268, § 31.
77-645.	Repealed. Laws 1985, LB 268, § 31.
77-646.	Repealed. Laws 1985, LB 268, § 31.
77-647.	Repealed. Laws 1985, LB 268, § 31.
77-648.	Repealed. Laws 1985, LB 268, § 31.
77-649.	Repealed. Laws 1985, LB 268, § 31.
77-650.	Repealed. Laws 1985, LB 268, § 31.
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77-652.	Repealed. Laws 1985, LB 268, § 31.
77-653.	Repealed. Laws 1985, LB 268, § 31.
77-654.	Repealed. Laws 1985, LB 268, § 31.
77-655.	Repealed. Laws 1985, LB 268, § 31.
77-656.	Repealed. Laws 1985, LB 268, § 31.
77-657.	Repealed. Laws 1985, LB 268, § 31.
77-658.	Repealed. Laws 1985, LB 268, § 31.
77-659.	Repealed. Laws 1985, LB 268, § 31.

- Section
 77-660. Repealed. Laws 1985, LB 268, § 31.
 77-661. Repealed. Laws 1985, LB 268, § 31.
 77-662. Repealed. Laws 1985, LB 268, § 31.
 77-663. Repealed. Laws 1985, LB 268, § 31.
 77-664. Repealed. Laws 1985, LB 268, § 31.
 77-665. Repealed. Laws 1985, LB 268, § 31.
 77-666. Repealed. Laws 1985, LB 268, § 31.
 77-667. Repealed. Laws 1985, LB 268, § 31.
 77-668. Repealed. Laws 1985, LB 268, § 31.
 77-669. Repealed. Laws 1985, LB 268, § 31.
 77-670. Repealed. Laws 1985, LB 268, § 31.
 77-671. Repealed. Laws 1985, LB 268, § 31.
 77-672. Repealed. Laws 1985, LB 268, § 31.
 77-673. Repealed. Laws 1985, LB 268, § 31.
 77-674. Repealed. Laws 1985, LB 268, § 31.
 77-675. Repealed. Laws 1985, LB 268, § 31.
 77-676. Repealed. Laws 1992, LB 864, § 1.
 77-677. Repealed. Laws 1992, LB 864, § 1.
 77-678. Repealed. Laws 1990, LB 932, § 1.

(b) CAR LINE COMPANIES

- 77-679. Car line company, defined.
 77-680. Car line companies; annual statement.
 77-681. Railroad companies; annual statement.
 77-682. Car line companies; value and assessment.
 77-683. Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements.
 77-684. Tax rate; determination; collection; appeal; distribution.
 77-685. Distress warrant; receipt issued.
 77-686. Certification of levy.
 77-687. Delinquency in payment of taxes; interest; collection by Tax Commissioner.
 77-688. Collection procedures; cumulative.
 77-689. Taxes; delinquent; lien; collection.
 77-690. Taxation; levy; money and credits; surrender to Tax Commissioner.
 77-691. Money; disposition.
 77-692. Repealed. Laws 1992, LB 719A, § 224.

(c) ADJUSTMENT TO VALUE

- 77-693. Adjustment to value of railroad and car line property; Property Tax Administrator; powers and duties.

(a) RAILROAD OPERATING PROPERTY

77-601 Railroad operating property; assessment.

The Property Tax Administrator shall assess all operating property of the railroads and railroad corporations in the State of Nebraska as defined in section 77-602.

Source: Laws 1903, c. 73, § 85, p. 413; Laws 1909, c. 111, § 1, p. 441; R.S.1913, § 6375; Laws 1921, c. 133, art. VI, § 1, p. 554; C.S. 1922, § 5839; C.S.1929, § 77-501; R.S.1943, § 77-601; Laws 1969, c. 645, § 3, p. 2559; Laws 1969, c. 658, § 1, p. 2575; Laws 1979, LB 105, § 1; Laws 1985, LB 268, § 3; Laws 1995, LB 490, § 60.

1. State taxation
2. Local taxation
3. Miscellaneous

1. State taxation

Examples of property subject to valuation by the Tax Commissioner include railroad personal property and public service entities, including pipelines. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

Roundhouse, machine shops and office building should be assessed by State Board of Equalization and Assessment. *Missouri P. R.R. Corp. v. Board of Equalization of Richardson County*, 114 Neb. 84, 206 N.W. 150 (1925).

Water pipe line owned and operated by railroad company should be assessed by State Board of Equalization and Assessment. *Chicago, B. & Q. R.R. Co. v. Webster County*, 101 Neb. 311, 163 N.W. 316 (1917).

Section does not exclude property situated more than one hundred feet from center of main track of road. *Chicago, B. & Q. R.R. Co. v. Box Butte County*, 99 Neb. 208, 155 N.W. 881 (1915).

State Board of Equalization has exclusive jurisdiction in valuing and assessing railroad property, and mandamus will not lie to correct assessment. *State ex rel. Bee Bldg. Co. v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902).

Bridge across navigable stream is assessable by State Board of Equalization. *Chicago, B. & Q. R.R. Co. v. Richardson County*, 61 Neb. 519, 85 N.W. 532 (1901).

Roundhouse was assessed by state, and repair shops locally. *Red Willow County v. Chicago, B. & Q. R.R. Co.*, 26 Neb. 660, 42 N.W. 879 (1889).

Property, assessable by State Board of Equalization, is not rendered taxable by county through failure of company to list same. *Burlington & M. R. R.R. v. Lancaster County*, 15 Neb. 251, 18 N.W. 71 (1883).

Judgment of state court, sustaining a tax alleged to be illegal because of unjust discrimination, can be reviewed on constitutional grounds. *Ex parte, Williams, Tax Commissioner*, 277 U.S. 267 (1928).

2. Local taxation

Property outside of right-of-way is assessable in county where located. *Chicago, B. & Q. R.R. Co. v. Cass County*, 72 Neb. 489, 101 N.W. 11 (1904); *Chicago, B. & Q. R.R. Co. v. Hitchcock County*, 40 Neb. 781, 59 N.W. 358 (1894).

Material for building railroad, not so used, but stored for a long time, is subject to local taxation. *Chicago, B. & Q. R.R. Co. v. Merrick County*, 36 Neb. 176, 54 N.W. 309 (1893).

Right-of-way with no superstructure is assessed locally, and such taxes cannot be enjoined. *Repub. Val. & W. Ry. v. Chase County*, 33 Neb. 759, 51 N.W. 132 (1892).

3. Miscellaneous

Railroad property is required to be assessed at same percentage of actual value as other tangible property. *Union P. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 139, 101 N.W.2d 892 (1960); *Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment*, 170 Neb. 106, 101 N.W.2d 873 (1960); *Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 77, 101 N.W.2d 856 (1960).

Construction by enforcing officers, acquiesced in by continued noninterference, is approved unless unconstitutional, or clearly wrong. *State ex rel. Village of Dakota City v. Bryan*, 112 Neb. 692, 200 N.W. 870 (1924).

Railroad, for purpose of taxation, is considered an entity, and includes all property held and used principally in operation of road. *Chicago, B. & Q. R.R. Co. v. Box Butte County*, 99 Neb. 208, 155 N.W. 881 (1915).

It is competent for the Legislature to provide for the valuation and assessment of railroad property as a unit by one assessing body. *Chicago, B. & Q. R.R. Co. v. Richardson County*, 72 Neb. 482, 100 N.W. 950 (1904); *State ex rel. Morton v. Back*, 72 Neb. 402, 100 N.W. 952 (1904).

Value of property assessed as means of earning income, should be considered. *State ex rel. Bldg. Co. v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902).

77-602 Railroad operating property; duty of Property Tax Administrator; when valued.

The Property Tax Administrator in May of each year shall proceed to ascertain all operating property of any railroad company owning, operating, or controlling any railroad or railroad service in this state. Operating property is property that contributes to the operation of a railroad and which for the purpose of this section shall be held to include the main track, sidetrack, spur tracks, warehouse tracks, roadbed, right-of-way and depot grounds, all machine and repair shops, general office buildings, storehouses, and all water and fuel stations, buildings, and superstructures located on any of such property, any manufacturing plant necessary in the operation of such railroad and any property used or held in connection with the manufacturing plant, all machinery, rolling stock, telegraph lines and instruments connected with such lines, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, franchises, all personal property of such railroad company, and all other real property of such railroad company which is adjacent and contiguous to the railroad right-of-way and is used or held for the sole purpose of operating the railroad. Nonoperating property is property owned or leased by a railroad company that does not contribute to the operation of a railroad. The Property Tax Administrator shall value operating property as other real and personal property.

Source: Laws 1903, c. 73, § 86, p. 414; R.S.1913, § 6376; Laws 1921, c. 133, art. VI, § 2, p. 555; C.S.1922, § 5840; C.S.1929, § 77-502; R.S.1943, § 77-602; Laws 1969, c. 659, § 1, p. 2577; Laws 1979,

LB 105, § 2; Laws 1979, LB 103, § 1; Laws 1981, LB 486, § 1; Laws 1985, LB 268, § 4; Laws 1995, LB 490, § 61; Laws 1997, LB 270, § 24.

Roundhouse, machine shops and office building are not subject to local taxation. *Missouri P. R.R. Corp. v. Board of Equalization of Richardson County*, 114 Neb. 84, 206 N.W. 150 (1925).

Interpretation by State Board of Equalization of law pertaining to apportioning of value of rolling stock, was proper. *State ex rel. Village of Dakota City v. Bryan*, 112 Neb. 692, 200 N.W. 870 (1924).

Water pipe line owned and operated by railroad company is not subject to local taxation. *Chicago, B. & Q. R.R. Co. v. Webster County*, 101 Neb. 311, 163 N.W. 316 (1917).

Railroad for purpose of taxation is considered an entity and includes all property held and used principally in operation of road. *Chicago, B. & Q. R.R. Co. v. Box Butte County*, 99 Neb. 208, 155 N.W. 881 (1915).

77-603 Railroad property; annual statement; contents.

On or before April 15 each year, the person, company, or corporation owning, operating, or controlling any railroad or railroad service in this state shall, by a duly authorized corporate representative or official, return to the Property Tax Administrator a statement of the property of such company on January 1 preceding. The statement shall be made on forms prescribed by the Tax Commissioner. All information reported by the railroad company, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15. Such statement shall include:

- (1) A list of the right-of-way, track, and roadbed, giving the entire length of the main track and sidetrack in this and other states, and showing as to this state the portion in each governmental subdivision;
- (2) A schedule showing: (a) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (b) the amount of capital stock paid up; (c) the market value of the stock or, if of no market value, then the true value of the shares of stock; (d) the total amount of all secured and unsecured indebtedness except for current expenses of operating the road; and (e) the taxable valuation of all its operating property in this state that is locally assessed;
- (3) A correct return of the value of all materials and supplies used for operating and carrying on the business of such railroad;
- (4) The total gross earnings and net earnings of such corporation during the year for which the statement is made, and the total amount expended in the operation and maintenance of the property and the improvements to such property, distinguishing that expended in improvement or betterment from that expended in maintenance and operation, also the dividend last declared upon its shares and the amount thereof, and the date, number, and amount of all dividends declared upon its stock during the year preceding the date of such report; and
- (5) Such other necessary information as the Property Tax Administrator may require, all of which shall be taken into consideration in ascertaining and fixing the value of such railroad and the franchise thereof.

Source: Laws 1903, c. 73, § 87, p. 414; R.S.1913, § 6377; Laws 1921, c. 133, art. VI, § 3, p. 555; C.S.1922, § 5841; C.S.1929, § 77-503; R.S.1943, § 77-603; Laws 1979, LB 105, § 3; Laws 1979, LB 103,

§ 2; Laws 1981, LB 179, § 4; Laws 1985, LB 268, § 5; Laws 1992, LB 719A, § 163; Laws 1995, LB 490, § 62; Laws 1997, LB 270, § 25; Laws 2004, LB 973, § 10; Laws 2007, LB334, § 31.

A railroad is required to make a return of its property for taxation. *Union P. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 139, 101 N.W.2d 892 (1960); *Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment*, 170 Neb. 106, 101 N.W.2d 873 (1960); *Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 77, 101 N.W.2d 856 (1960).

Roundhouse, machine shops and office building are assessed by State Board of Equalization. *Missouri P. R.R. Corp. v. Board of Equalization of Richardson County*, 114 Neb. 84, 206 N.W. 150 (1925).

There are no settled or infallible rules for the ascertainment of the actual value of railroad property. *Chicago, R. I. & P. Ry. v. State*, 111 Neb. 362, 197 N.W. 114 (1923).

Water pipe line owned and operated by railroad company is assessed by State Board of Equalization. *Chicago, B. & Q. R.R. Co. v. Webster County*, 101 Neb. 311, 163 N.W. 316 (1917).

State Board of Equalization acts in quasi-judicial capacity, and its orders are final and cannot be attacked collaterally. *State ex rel. Union P. R.R. Co. v. State Board of Equalization and Assessment*, 81 Neb. 139, 115 N.W. 789 (1908).

County taxing officers cannot collect taxes on unused roadbed by distress warrant. *Chicago, B. & Q. R.R. Co. v. Custer County*, 69 Neb. 429, 95 N.W. 859 (1903).

77-603.01 Railroad operating property; sale; report by purchaser; contents; penalty; waiver.

The sale of railroad operating property as defined in section 77-602 shall be reported by the purchaser to the Property Tax Administrator within thirty days after the date of sale. The purchaser shall identify the seller, the date of the sale, any change in the name of the railroad, the main track and sidetrack mileage located in each political subdivision, and the purchase price. If additional information regarding the sale is deemed necessary, the Property Tax Administrator shall make a written request for such information to the purchaser or seller. This requirement shall apply only to a purchaser subject to section 77-603. For each day's failure to furnish the information required to be reported by this section, the Tax Commissioner shall assess 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 and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1997, LB 270, § 26; Laws 1999, LB 36, § 13; Laws 2007, LB334, § 32.

77-604 Railroad property; statement by railroad company not conclusive; taxable value; distribution; valuation per mile; how determined.

The returns of railroad companies or corporations shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, including records of the Public Service Commission or other regulatory body, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

The taxable value of the railroad companies allocated to the state shall be distributed as follows:

(1) Five percent shall be distributed to all taxing subdivisions where the railroad company has investment in general office buildings or machine and repair facilities proportionate to the company's investment in general office buildings and machine and repair facilities in the state; and

(2) The balance shall be distributed to all taxing subdivisions including cities and villages based on a formula in which fifty percent of the valuation is based on miles of main track and sidetrack and fifty percent of the valuation is based on density factor on miles of main track and sidetrack. The value per mile of sidetrack shall equal the value of the line divided by the following quantity: The number of miles of sidetrack plus two times the number of miles of main track. The value per mile of main track shall equal twice the value per mile of sidetrack as computed in this section.

For purposes of Chapter 77, article 6, the reference to sidetrack shall include all track not properly designated as main track and shall include, but not be limited to, passing track, yard track, and track within terminals. Main track shall be defined as that track over which regularly scheduled railroad operations are conducted. Density factor shall be determined by ton-miles traveled over a route, measured by the number of tons of revenue freight moved one mile.

Source: Laws 1903, c. 73, § 89, p. 417; R.S.1913, § 6378; Laws 1921, c. 133, art. VI, § 4, p. 557; C.S.1922, § 5842; C.S.1929, § 77-504; R.S.1943, § 77-604; Laws 1979, LB 103, § 3; Laws 1981, LB 486, § 2; Laws 1985, LB 268, § 6; Laws 1992, LB 1063, § 64; Laws 1992, Second Spec. Sess., LB 1, § 62; Laws 1995, LB 490, § 63.

Railroad property is required to be assessed on the same basis as other tangible property. *Union P. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 139, 101 N.W.2d 892 (1960); *Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment*, 170 Neb. 106, 101 N.W.2d 873 (1960); *Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 77, 101 N.W.2d 856 (1960).

Where State Board of Equalization considers facts and information not contained in railroad report, source of such informa-

tion should be inserted in records. *Chicago, R. I. & P. Ry. v. State*, 111 Neb. 362, 197 N.W. 114 (1923).

Railroad for purposes of taxation is considered as entity, and includes all property held and used principally in operation of road. *Chicago, B. & Q. R.R. Co. v. Box Butte County*, 99 Neb. 208, 155 N.W. 881 (1915).

Valuation of each mile of railroad was properly obtained by dividing the whole value in the state by the number of miles of main track in state. *State ex rel. Platte County v. Sheldon*, 79 Neb. 455, 113 N.W. 208 (1907).

77-605 Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver.

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 Tax Commissioner shall assess 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 and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 88, p. 416; R.S.1913, § 6379; Laws 1921, c. 133, art. VI, § 5, p. 557; C.S.1922, § 5843; C.S.1929, § 77-505; R.S.1943, § 77-605; Laws 1977, LB 39, § 212; Laws 1979, LB 105, § 4; Laws 1979, LB 187, § 195; Laws 1980, LB 599, § 11; Laws 1985, LB 268, § 7; Laws 1986, LB 817, § 4; Laws 1995, LB 490, § 64; Laws 1997, LB 270, § 27; Laws 1999, LB 36, § 14; Laws 2007, LB334, § 33.

77-606 Railroad nonoperating property; annual statement by railroad to county assessor; when made.

The county assessor shall assess all nonoperating property of any railroad company. A railroad company operating within the State of Nebraska shall, on

or before January 1 of each year, report to the county assessor all nonoperating property belonging to such railroad company.

Source: Laws 1903, c. 73, § 90, p. 417; R.S.1913, § 6380; Laws 1921, c. 133, art. VI, § 6, p. 558; C.S.1922, § 5844; C.S.1929, § 77-506; R.S.1943, § 77-606; Laws 1947, c. 251, § 4, p. 808; Laws 1969, c. 658, § 2, p. 2576; Laws 1979, LB 105, § 5; Laws 1979, LB 103, § 4; Laws 1985, LB 268, § 8; Laws 1995, LB 490, § 65; Laws 1997, LB 270, § 28.

77-607 Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad's officers or agents.

The Tax Commissioner shall have power to require any officer, agent, or servant of any railroad or railway company having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1903, c. 73, § 91, p. 417; R.S.1913, § 6381; Laws 1921, c. 133, art. VI, § 7, p. 558; C.S.1922, § 5845; C.S.1929, § 77-507; R.S.1943, § 77-607; Laws 1977, LB 39, § 213; Laws 1985, LB 268, § 9; Laws 1995, LB 490, § 66; Laws 1997, LB 270, § 29; Laws 2007, LB334, § 34.

77-608 Repealed. Laws 1997, LB 270, § 110.

77-609 Railroad operating property; density factor; recalculation.

Beginning January 1, 2001, the Property Tax Administrator shall annually calculate the density factor used in distributing value along the line based upon an average of the most recent three years. If a density factor cannot be determined in this manner, the Property Tax Administrator may use other information to develop a fair and reasonable factor in lieu of the density factor.

Source: Laws 1927, c. 174, § 1, p. 509; C.S.1929, § 77-509; R.S.1943, § 77-609; Laws 1979, LB 105, § 6; Laws 1985, LB 268, § 11; Laws 1995, LB 490, § 68; Laws 2000, LB 968, § 35.

State board is required to set forth the manner in which it arrived at the assessment of a railroad and the several items included in the total assessment. *Union P. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 139, 101

N.W.2d 892 (1960); *Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment*, 170 Neb. 106, 101 N.W.2d 873 (1960); *Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment*, 170 Neb. 77, 101 N.W.2d 856 (1960).

77-610 Repealed. Laws 1985, LB 268, § 31.

77-611 Repealed. Laws 1997, LB 270, § 110.

77-612 Railroad property; notice of valuation; appeal.

On or before July 1, the Property Tax Administrator shall mail a draft appraisal to each railroad company required to file pursuant to section 77-603. The Property Tax Administrator shall, on or before July 15 of each year, notify by certified mail each railroad company of the total allocated value of its operating property. If a railroad company feels aggrieved, such railroad company may, on or before August 1, file with the Tax Commissioner an administrative appeal in writing stating that it claims the valuation is unjust or inequitable.

ble, the amount which it is claimed the valuation should be, and the excess therein and asking for an adjustment of the valuation by the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1927, c. 174, § 1, p. 510; C.S.1929, § 77-509; R.S.1943, § 77-612; Laws 1985, LB 268, § 13; Laws 1988, LB 352, § 153; Laws 1995, LB 490, § 70; Laws 1997, LB 270, § 30; Laws 2004, LB 973, § 11; Laws 2007, LB334, § 35.

Complaint must state wherein it is claimed that assessment is unjust, supported by specific detail of items. Chicago, B. & Q. R.R. Co. v. State Board of Equalization & Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

77-613 Repealed. Laws 1985, LB 268, § 31.

77-614 Repealed. Laws 1985, LB 268, § 31.

77-615 Repealed. Laws 1997, LB 270, § 110.

77-616 Railroad property; levy of taxes; injunction prohibited.

No injunction shall be granted restraining the levy of taxes under the assessment made by the Property Tax Administrator.

Source: Laws 1927, c. 174, § 1, p. 511; C.S.1929, § 77-509; R.S.1943, § 77-616; Laws 1985, LB 268, § 15; Laws 1995, LB 490, § 72.

77-617 Repealed. Laws 1985, LB 268, § 31.

77-618 Repealed. Laws 1985, LB 268, § 31.

77-619 Repealed. Laws 1989, LB 643, § 2.

77-620 Repealed. Laws 1989, LB 643, § 2.

77-621 Railroad property; valuation; contents of report.

On or before August 10, the Property Tax Administrator shall certify to the railroad company and county assessor the railroad company's total taxable equalized value and the distribution of that value determined pursuant to section 77-604. The report of distributed value shall include:

- (1) The number of miles of main track and sidetrack of each railroad located in each governmental subdivision and the total length of main track and sidetrack in the county;
- (2) The assessed valuation per mile of such main track and sidetrack; and
- (3) The valuations that shall be placed to the credit of such governmental subdivision in the county.

Source: Laws 1903, c. 73, § 94, p. 418; R.S.1913, § 6384; Laws 1921, c. 133, art. VI, § 10, p. 559; C.S.1922, § 5848; C.S.1929, § 77-510; R.S.1943, § 77-621; Laws 1979, LB 105, § 13; Laws 1979, LB 103, § 5; Laws 1985, LB 268, § 18; Laws 1995, LB 490, § 73; Laws 1997, LB 270, § 31; Laws 1998, LB 306, § 18.

77-622 Repealed. Laws 1985, LB 268, § 31.

77-623 Railroad operating property; valuation; county assessor; duties; lien.

For purposes of certifying values pursuant to section 13-509, the county assessor shall include the railroad company value as certified by the Property Tax Administrator pursuant to section 77-621. The taxes so levied shall be included upon the personal property tax roll and be due and payable in the same manner as personal property taxes pursuant to sections 77-203 and 77-204. From the date the taxes are due and payable, the taxes shall be a first lien upon the personal property of the railroad company to whom assessed until paid. The procedure for the collection of any delinquent tax pursuant to this section shall be that used for the collection of personal property tax.

Source: Laws 1903, c. 73, § 96, p. 418; R.S.1913, § 6386; Laws 1921, c. 133, art. VI, § 12, p. 559; C.S.1922, § 5850; C.S.1929, § 77-512; R.S.1943, § 77-623; Laws 1947, c. 251, § 5, p. 809; Laws 1979, LB 105, § 15; Laws 1985, LB 268, § 19; Laws 1995, LB 490, § 74; Laws 1997, LB 270, § 32; Laws 1998, LB 306, § 19; Laws 2000, LB 968, § 36.

77-624 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-625 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-626 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-627 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-628 Transferred to section 77-1613.01.

77-629 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-629.01 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-630 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-631 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-631.01 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-631.02 Transferred to section 77-1250.03.

77-631.03 Transferred to section 77-1250.04.

77-631.04 Transferred to section 77-1250.05.

77-632 Repealed. Laws 1986, LB 817, § 15.

77-633 Repealed. Laws 1989, First Spec. Sess., LB 7, § 11.

77-634 Repealed. Laws 1985, LB 268, § 31.

77-635 Repealed. Laws 1985, LB 268, § 31.

77-636 Repealed. Laws 1985, LB 268, § 31.

77-637 Repealed. Laws 1985, LB 268, § 31.

77-638 Repealed. Laws 1985, LB 268, § 31.

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- 77-669 Repealed. Laws 1985, LB 268, § 31.

77-670 Repealed. Laws 1985, LB 268, § 31.

77-671 Repealed. Laws 1985, LB 268, § 31.

77-672 Repealed. Laws 1985, LB 268, § 31.

77-673 Repealed. Laws 1985, LB 268, § 31.

77-674 Repealed. Laws 1985, LB 268, § 31.

77-675 Repealed. Laws 1985, LB 268, § 31.

77-676 Repealed. Laws 1992, LB 864, § 1.

77-677 Repealed. Laws 1992, LB 864, § 1.

77-678 Repealed. Laws 1990, LB 932, § 1.

(b) CAR LINE COMPANIES

77-679 Car line company, defined.

For purposes of sections 77-680 to 77-691, car line company shall mean any person, other than a person operating a railroad, owning or operating any railroad cars through, in, or into the State of Nebraska.

Source: Laws 1992, LB 719A, § 205.

77-680 Car line companies; annual statement.

The president or other chief officer or owner of every car line company shall, on or before June 1 of each year, furnish to the Property Tax Administrator, on forms prescribed by the Tax Commissioner, a statement showing (1) the aggregate number of miles made by each class of its cars on the several lines of railroad in this state during the preceding year ending December 31, (2) the aggregate number of miles made by each class of its cars on all railroad lines during the preceding year ending December 31, (3) the total number of each type of its cars, (4) the taxable value of its cars, and (5) the number of its cars required to make the total mileage in this state. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement.

Source: Laws 1992, LB 1063, § 65; Laws 1992, LB 719A, § 206; Laws 1993, LB 734, § 47; Laws 1995, LB 490, § 75; Laws 2009, LB166, § 6.

77-681 Railroad companies; annual statement.

The president or other chief officer of every railroad company which has lines running through, in, or into this state shall, on or before June 1 of each year, furnish to the Property Tax Administrator a statement, verified by the affidavit of the officer or person making the statement, showing the total number of miles traveled by each class of cars of every car line company on their lines, branches, sidings, spurs, and warehouse tracks in this state during the preceding year ending December 31. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed thirty days after June 1.

Source: Laws 1992, LB 1063, § 66; Laws 1992, LB 719A, § 207; Laws 1993, LB 734, § 48; Laws 1995, LB 490, § 76; Laws 1997, LB 270, § 33.

77-682 Car line companies; value and assessment.

The Property Tax Administrator shall ascertain from the statements made under sections 77-680 and 77-681, or from any other information available, the number of cars of each class required to make the total mileage in this state of each car line company within the period of one year. The Property Tax Administrator shall ascertain and fix the value upon each particular class of cars which as nearly as possible shall be the taxable value of such cars, and the number so ascertained shall be assessed to the respective car line company. The method of allocation shall be determined by the Property Tax Administrator. For the purpose of making the assessment, the Property Tax Administrator may base the assessment upon the statements of the railroad companies.

Source: Laws 1992, LB 1063, § 67; Laws 1992, LB 719A, § 208; Laws 1995, LB 490, § 77.

77-683 Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements.

(1) For each day's failure to furnish the statement required by section 77-680 or 77-681 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 and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

(2) In determining the number of such cars, the Property Tax Administrator, insofar as may be practicable, shall harmonize the statements of the railroad companies and car line companies. Such assessment shall be included in the records of the Property Tax Administrator.

Source: Laws 1992, LB 1063, § 68; Laws 1992, LB 719A, § 209; Laws 1995, LB 490, § 78; Laws 1997, LB 270, § 34; Laws 1999, LB 36, § 15; Laws 2007, LB334, § 36.

77-684 Tax rate; determination; collection; appeal; distribution.

The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in sections 77-682 and 77-683 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each car line company a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that such tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If a car line company feels aggrieved, such company may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013. The Property Tax Administrator shall remit the tax collected, less a three-percent collection fee, to the State Treasurer for distribution among the taxing subdivisions in proportion to all railroad taxes

levied by taxing subdivisions. The collection fee shall be remitted to the State Treasurer for credit to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1992, LB 1063, § 69; Laws 1992, LB 719A, § 210; Laws 1993, LB 345, § 11; Laws 1995, LB 490, § 79; Laws 1997, LB 270, § 35; Laws 1999, LB 36, § 16; Laws 2000, LB 968, § 37; Laws 2004, LB 973, § 12; Laws 2007, LB334, § 37.

77-685 Distress warrant; receipt issued.

The Tax Commissioner may issue a distress warrant to compel payment of the tax required by section 77-684 which may be served by any sheriff, any member of the Nebraska State Patrol, or any person specially deputized by the Tax Commissioner to serve such warrant. At the time the tax is paid, the Tax Commissioner shall issue a receipt in duplicate, one of which shall be given to the taxpayer and one filed with the State Treasurer at the time the tax collected is remitted by the Tax Commissioner to the state treasury.

Source: Laws 1992, LB 1063, § 70; Laws 1992, Second Spec. Sess., LB 1, § 63; Laws 1995, LB 490, § 80; Laws 2007, LB334, § 38.

77-686 Certification of levy.

The Property Tax Administrator, on or before January 15 of each year, shall certify to the State Treasurer the names of the car line companies and the several amounts of taxes levied under section 77-684.

Source: Laws 1992, LB 1063, § 71; Laws 1992, LB 719A, § 211; Laws 1995, LB 490, § 81; Laws 1998, LB 1104, § 9.

77-687 Delinquency in payment of taxes; interest; collection by Tax Commissioner.

One-half of the taxes levied as provided in section 77-684 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due and payable. All delinquent taxes shall bear interest 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 they become delinquent, and the interest shall be collected in the same manner as the tax on which the interest accrues. If such taxes and interest due thereon have not been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the tax and interest by distress and sale of any property belonging to such delinquent car line company in the same manner as is required of county treasurers and county sheriffs in like cases.

Source: Laws 1992, LB 1063, § 72; Laws 1992, LB 719A, § 212; Laws 1995, LB 490, § 82; Laws 1997, LB 270, § 36; Laws 2007, LB334, § 39.

77-688 Collection procedures; cumulative.

Sections 77-689 to 77-691 shall apply to car line companies taxed under sections 77-680 to 77-691, and the procedure provided in sections 77-689 to 77-691 for collection of such taxes shall be in addition to other procedures available for the collection of such taxes.

Source: Laws 1992, LB 1063, § 73; Laws 1992, LB 719A, § 213.

77-689 Taxes; delinquent; lien; collection.

If any taxes and interest and penalties due on such taxes have not 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 the car line companies until the liability therefor is satisfied or otherwise released or discharged. The Tax Commissioner or his or her designated agent may collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such car line companies. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1992, LB 1063, § 74; Laws 1992, LB 719A, § 214; Laws 1995, LB 490, § 83; Laws 2007, LB334, § 40.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-690 Taxation; levy; money and credits; surrender to Tax Commissioner.

Any car line company in possession of any money and credits upon which levy has been made shall, upon demand of the Tax Commissioner or his or her designated agent, surrender the same to the Tax Commissioner or his or her designated agent. If any such car line company fails or refuses to surrender the money and credits in accordance with the requirements of this section, such car line company shall be liable to the State of Nebraska in a sum equal to the value of the money and credits not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1992, LB 1063, § 75; Laws 1992, LB 719A, § 215; Laws 1995, LB 490, § 84; Laws 2007, LB334, § 41.

77-691 Money; disposition.

The money realized from any levy made pursuant to section 77-689 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. Any balance remaining shall then be paid over to the car line company entitled thereto.

Source: Laws 1992, LB 1063, § 76; Laws 1992, LB 719A, § 216; Laws 1995, LB 490, § 85; Laws 2007, LB334, § 42.

77-692 Repealed. Laws 1992, LB 719A, § 224.

(c) ADJUSTMENT TO VALUE

77-693 Adjustment to value of railroad and car line property; Property Tax Administrator; powers and duties.

(1) The Property Tax Administrator in determining the taxable value of railroads and car lines shall determine the following ratios involving railroad and car line property and commercial and industrial property:

(a) The ratio of the taxable value of all commercial and industrial personal property in the state actually subjected to property tax divided by the market value of all commercial and industrial personal property in the state;

(b) The ratio of the taxable value of all commercial and industrial real property in the state actually subjected to property tax divided by the market value of all commercial and industrial real property in the state;

(c) The ratio of the taxable value of railroad personal property to the market value of railroad personal property. The numerator of the ratio shall be the taxable value of railroad personal property. The denominator of the ratio shall be the railroad system value allocated to Nebraska and multiplied by a factor representing the net book value of rail transportation personal property divided by the net book value of total rail transportation property;

(d) The ratio of the taxable value of railroad real property to the market value of railroad real property. The numerator of the ratio shall be the taxable value of railroad real property. The denominator of the ratio shall be the railroad system value allocated to Nebraska and multiplied by a factor representing the net book value of rail transportation real property divided by the net book value of total rail transportation property; and

(e) Similar calculations shall be made for car line taxable properties.

(2) If the ratio of the taxable value of railroad and car line personal or real property exceeds the ratio of the comparable taxable commercial and industrial property by more than five percent, the Property Tax Administrator may adjust the value of such railroad and car line property to the percentage of the comparable taxable commercial and industrial property pursuant to federal statute or Nebraska federal court decisions applicable thereto.

(3) For purposes of this section, commercial and industrial property shall mean all real and personal property which is devoted to commercial or industrial use other than rail transportation property and land used primarily for agricultural purposes.

Source: Laws 1992, LB 719A, § 219; Laws 1995, LB 490, § 86.

ARTICLE 7

DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION

Section

- 77-701. Property assessment division; established; Property Tax Administrator; powers and duties; pending litigation; how treated.
 77-702. Property Tax Administrator; qualifications; duties.
 77-703. Repealed. Laws 2007, LB 334, § 108.
 77-704. Repealed. Laws 2007, LB 334, § 108.
 77-705. Uniform tax books, records, and forms; approval.
 77-706. Property tax administration; implementation of agreements and working relationships; state and federal agencies.
 77-707. Property Tax Administrator; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.
 77-708. Repealed. Laws 2007, LB 334, § 108.
 77-709. Property assessment division; annual report; powers and duties.

77-701 Property assessment division; established; Property Tax Administrator; powers and duties; pending litigation; how treated.

(1) A division of state government to be known as the property assessment division of the Department of Revenue is established. The Property Tax Administrator shall be the chief administrative officer of the division but shall be under the general supervision of the Tax Commissioner.

(2) The goals and functions of the division shall be to: (a) Execute faithfully the property tax laws of the State of Nebraska; (b) provide for efficient, updated

methods and systems of property tax reporting, enforcement, and related activities; and (c) continually seek to improve its system of administration.

(3) All employees, budget requirements, appropriations, encumbrances, and assets and liabilities of the Department of Property Assessment and Taxation for the administration of property valuation and equalization shall be transferred and delivered to the division. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Act.

(4) In any litigation pending on July 1, 2007, at 12:01 a.m., in any court in this state, any contested case pending on such date and time under the Administrative Procedure Act, or any appeal pending on such date and time before the Tax Equalization and Review Commission, in which the Property Tax Administrator is a party, the Tax Commissioner shall be substituted for the Property Tax Administrator as the party in such litigation, contested case, or appeal.

Source: Laws 1999, LB 36, § 21; Laws 2007, LB334, § 43.

Cross References

Administrative Procedure Act, see section 84-920.
State Employees Retirement Act, see section 84-1331.

77-702 Property Tax Administrator; qualifications; duties.

(1) Commencing with the expiration of the term of the Property Tax Administrator holding office on July 1, 1999, the Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) and subdivision (6)(a) of section 77-5004. The Property Tax Administrator shall adopt and promulgate rules and regulations to carry out his or her duties through June 30, 2007. Rules, regulations, and forms of the Property Tax Administrator in effect on July 1, 2007, shall be valid rules, regulations, and forms of the Department of Revenue beginning on July 1, 2007.

(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Source: Laws 1999, LB 36, § 22; Laws 2001, LB 465, § 1; Laws 2007, LB334, § 44.

77-703 Repealed. Laws 2007, LB 334, § 108.

77-704 Repealed. Laws 2007, LB 334, § 108.**77-705 Uniform tax books, records, and forms; approval.**

The form of all schedules, books of instruction, assessment and tax books, records, and other forms which may be necessary or expedient for the proper administration of the property tax laws of the state shall be approved by the Tax Commissioner. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable. The Department of Revenue may provide forms on a reimbursement basis. Alterations to any prescribed form may be made only upon written application to and written approval from the Tax Commissioner.

Source: Laws 1999, LB 36, § 25; Laws 2007, LB334, § 45.

77-706 Property tax administration; implementation of agreements and working relationships; state and federal agencies.

The Department of Revenue may develop and implement such agreements and working relationships which are consistent with the laws of the State of Nebraska with any federal office, state agency, or local subdivision of state government, either within or without the State of Nebraska, which it may find necessary or desirable for proper administration of the property tax laws of this state.

Source: Laws 1999, LB 36, § 26; Laws 2007, LB334, § 46.

77-707 Property Tax Administrator; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.

(1) The Property Tax Administrator or his or her duly authorized representative may administer oaths, compel the attendance of witnesses, and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.

(2) The Property Tax Administrator may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.

Source: Laws 1999, LB 36, § 27.

77-708 Repealed. Laws 2007, LB 334, § 108.**77-709 Property assessment division; annual report; powers and duties.**

The property assessment division of the Department of Revenue shall publish an annual report detailing property tax valuations, taxes levied, and property tax rates throughout the state. The annual report shall display information by political subdivision and by property type within each county and also include statewide summarizations. The department may charge a fee for copies of the annual report. The Tax Commissioner shall set the fee, based on the reasonable cost of production.

Source: Laws 2001, LB 170, § 4; Laws 2007, LB334, § 47.

ARTICLE 8**PUBLIC SERVICE ENTITIES**

Section

77-801. Public service entity; furnish information; confidentiality.

77-801.01. Terms, defined.

Section

- 77-801.02. Tax Commissioner; powers.
 77-802. Property Tax Administrator; valuation; apportionment of tax.
 77-802.01. County assessor; duties; lien.
 77-802.02. Public service entity; appeals.
 77-803. Public service entity; failure to furnish statement or information; penalty; waiver.
 77-804. Sale of entity; report required; penalty; waiver.

77-801 Public service entity; furnish information; confidentiality.

All public service entities shall, on or before April 15 of each year, furnish a statement specifying such information as may be required by the Property Tax Administrator on forms prescribed by the Tax Commissioner to determine and distribute the entity's total taxable value including the franchise value. All information reported by the public service entities, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15.

The returns of public service entities shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

The county assessor shall assess all nonoperating property of any public service entity. A public service entity operating within the State of Nebraska shall, on or before January 1 of each year, report to the county assessor of each county in which it has situs all nonoperating property belonging to such entity which is not subject to assessment and assessed by the Property Tax Administrator under section 77-802.

Source: Laws 1903, c. 73, § 68, p. 408; Laws 1903, c. 73, § 76, p. 411; Laws 1903, c. 73, § 80, p. 412; Laws 1911, c. 104, § 6, p. 373; R.S.1913, §§ 6358, 6366, 6370; Laws 1921, c. 133, art. IX, § 1, p. 586; C.S.1922, § 5890; C.S.1929, § 77-801; R.S.1943, § 77-801; Laws 1981, LB 179, § 8; Laws 1983, LB 353, § 1; Laws 1985, LB 269, § 2; Laws 1995, LB 490, § 87; Laws 1997, LB 270, § 37; Laws 2000, LB 968, § 38; Laws 2004, LB 973, § 13; Laws 2009, LB166, § 7.

Examples of property subject to valuation by the Tax Commissioner include railroad personal property and public service entities, including pipelines. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

Corporation owning and operating hydro-electric power plant, selling electric energy at its generator, is subject to franchise tax hereunder. *Northern Nebraska Power Co. v. Holt County*, 120 Neb. 724, 235 N.W. 92 (1931).

Occupation tax and tax upon gross receipts are not double taxation. *Nebraska Tel. Co. v. City of Lincoln*, 82 Neb. 59, 117 N.W. 284 (1908).

Value of whole property of telegraph company as an entirety should be considered, and the relation which the value of the property in the taxing district bears to the value of the entire property. *Western U. T. Co. v. Dodge County*, 80 Neb. 18, 113 N.W. 805 (1907).

All items taken together going to make up value of business as going concern should be considered. *Nebraska Tel. Co. v. Hall County*, 75 Neb. 405, 106 N.W. 471 (1906).

Taxation of franchises must be by valuation and in proportion to value, and gross receipts alone are not proper measure of value. *Western U. T. Co. v. City of Omaha*, 73 Neb. 527, 103 N.W. 84 (1905).

Gross receipts refers only to gross receipts for business within state. *State ex rel. Breckenridge v. Fleming*, 70 Neb. 529, 97 N.W. 1063 (1903).

State statute imposing franchise tax on corporation's intangible property in state is not invalid for failure to prescribe method of assessment and taxation, and corporate taxpayer could not object that it failed to provide for allocation and distribution of tax to counties. *Western Union Telegraph Co. v. Weaver*, 5 F.Supp. 493 (D. Neb. 1932).

77-801.01 Terms, defined.

As used in sections 77-801 to 77-804:

- (1) Nonoperating property means property owned or leased by a public service entity that does not contribute to the entity's function;
- (2) Operating property means property owned or leased that contributes to a public service entity's function; and
- (3) Public service entity means any person as defined in section 49-801 or entity, organized for profit under the laws of this state or any other state or government and engaged in the business of waterworks, electrical power, gas works, natural gas, telecommunications, pipelines used for the transmission of oil, heat, steam, or any substance to be used for lighting, heating, or power, and pipelines used for the transmission of articles by pneumatic or other power and all other similar or like entities.

Source: Laws 1985, LB 269, § 1; Laws 1986, LB 732, § 2; Laws 1997, LB 270, § 38; Laws 2000, LB 968, § 39; Laws 2006, LB 808, § 26.

77-801.02 Tax Commissioner; powers.

The Tax Commissioner shall have power to require any officer, agent, or servant of any public service entity having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1997, LB 270, § 39; Laws 2007, LB334, § 48.

77-802 Property Tax Administrator; valuation; apportionment of tax.

The Property Tax Administrator shall apportion the total taxable value including the franchise value to all taxing subdivisions in proportion to the ratio of the original cost of all operating real and tangible personal property of that public service entity having a situs in that taxing subdivision to the original cost of all operating real and tangible personal property of that public service entity having a situs in the state.

If the apportionment in accordance with this section does not fairly represent the proportion of the taxable value, including franchise value properly allocable to the county, the taxpayer may petition for or the Property Tax Administrator may require the inclusion of any other method to effectuate an equitable allocation of the value of the public service entity for purposes of taxation.

On or before July 25, the Property Tax Administrator shall mail a draft appraisal to each public service entity as defined in section 77-801.01. On or before August 10, the Property Tax Administrator shall, by certified mail, notify each public service entity of its taxable value and the distribution of that value to the taxing subdivisions in which the entity has situs. On or before August 10, the Property Tax Administrator shall also certify to the county assessors the taxable value so determined.

Source: Laws 1921, c. 133, art. IX, § 2, p. 587; C.S.1922, § 5891; C.S.1929, § 77-802; R.S.1943, § 77-802; Laws 1983, LB 353,

§ 2; Laws 1984, LB 835, § 6; Laws 1985, LB 269, § 3; Laws 1987, LB 508, § 26; Laws 1995, LB 490, § 88; Laws 1997, LB 270, § 40; Laws 1998, LB 306, § 20; Laws 2004, LB 973, § 14.

Personal notice to taxpayer is not necessary where, on taxpayer's failure to make return, assessing board meets at time and place fixed by statute and makes original assessment. *Northern Nebraska Power Co. v. Holt County*, 120 Neb. 724, 235 N.W. 92 (1931).

77-802.01 County assessor; duties; lien.

For purposes of certifying values pursuant to section 13-509, the county assessor shall include the public service entity value as certified by the Property Tax Administrator pursuant to section 77-802. The taxes so levied shall be included upon the personal property tax roll and be due and payable in the same manner as personal property taxes pursuant to sections 77-203 and 77-204. From the date the taxes are due and payable, the taxes shall be a first lien upon the personal property of the public service entity to whom assessed until paid. The procedure for the collection of any delinquent tax pursuant to this section shall be that used for the collection of personal property tax.

Source: Laws 1997, LB 270, § 41; Laws 1998, LB 306, § 21; Laws 2000, LB 968, § 40.

77-802.02 Public service entity; appeals.

On or before September 10, if a public service entity feels aggrieved, such public service entity may file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the entity within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1997, LB 270, § 42; Laws 2000, LB 968, § 41; Laws 2004, LB 973, § 15; Laws 2007, LB334, § 49.

77-803 Public service entity; failure to furnish statement or information; penalty; waiver.

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 and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 77, p. 411; Laws 1903, c. 73, § 81, p. 412; Laws 1911, c. 104, § 9, p. 375; R.S.1913, §§ 6367, 6371; Laws 1921, c. 133, art. IX, § 3, p. 587; C.S.1922, § 5892; C.S.1929, § 77-803; R.S.1943, § 77-803; Laws 1986, LB 732, § 3; Laws 1986, LB 817, § 6; Laws 1995, LB 490, § 89; Laws 1997, LB 270, § 43; Laws 1999, LB 36, § 17; Laws 2007, LB334, § 50.

77-804 Sale of entity; report required; penalty; waiver.

Any sale of a public service entity as defined in section 77-801.01 shall be reported by the purchaser to the Property Tax Administrator within thirty days

from the date of the sale. The purchaser shall identify the seller, the date of the sale, any change in name of the entity, and the purchase price of the entity. If additional information regarding the sale is needed by the Property Tax Administrator, a specific written request shall be made. For each day's failure to furnish the information, an 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 and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1987, LB 508, § 27; Laws 1995, LB 490, § 90; Laws 1997, LB 270, § 44; Laws 1999, LB 36, § 18; Laws 2007, LB334, § 51.

ARTICLE 9

INSURANCE COMPANIES

Cross References

Fire insurance companies, tax for maintenance of office of State Fire Marshal, see section 81-523.

Occupation tax on fire insurance companies, cities of the first or second class and villages, see section 35-106.

Surplus lines licensee, annual statement, tax payment, see section 44-5506.

Section

- 77-901. Repealed. Laws 1951, c. 256, § 9.
- 77-902. Repealed. Laws 1951, c. 256, § 9.
- 77-903. Repealed. Laws 1951, c. 256, § 9.
- 77-904. Repealed. Laws 1951, c. 256, § 9.
- 77-905. Repealed. Laws 1951, c. 256, § 9.
- 77-906. Repealed. Laws 1951, c. 256, § 9.
- 77-907. Terms, defined.
- 77-908. Insurance companies; tax on gross premiums; rate; exceptions.
- 77-909. Repealed. Laws 1986, LB 1114, § 23.
- 77-910. Computation of tax; forms; department furnish; audit of returns; erroneous payment; refund; limitation.
- 77-911. Tax; failure to remit; license rescinded; notice; hearing; appeal.
- 77-912. Tax; Director of Insurance; disposition; exceptions.
- 77-913. Insurance Tax Fund; created; use; investment; allocation.
- 77-914. Repealed. Laws 1986, LB 1114, § 23.
- 77-915. Tax; challenge to constitutionality; tax paid under protest; credit refund.
- 77-916. Tax; no injunction allowed.
- 77-917. Political subdivision; return of funds not required.
- 77-918. Prepayment of tax; when due; Premium and Retaliatory Tax Suspense Fund; created; investment.

77-901 Repealed. Laws 1951, c. 256, § 9.

77-902 Repealed. Laws 1951, c. 256, § 9.

77-903 Repealed. Laws 1951, c. 256, § 9.

77-904 Repealed. Laws 1951, c. 256, § 9.

77-905 Repealed. Laws 1951, c. 256, § 9.

77-906 Repealed. Laws 1951, c. 256, § 9.

77-907 Terms, defined.

As used in Chapter 77, article 9, unless the context otherwise requires:

(1) Domestic, foreign, and alien insurance companies shall have the meanings as set forth in section 44-103 and shall include reciprocal or interinsurance

exchanges and their designated attorneys in fact as defined in Chapter 44, article 12;

(2) Department shall mean the Department of Insurance;

(3) Director shall mean the Director of Insurance;

(4) Premiums shall mean the consideration paid to insurance companies for insurance and shall include policy fees, assessments, dues, or other similar payments, except that premiums on all annuity contracts and pension, profit-sharing, individually sponsored retirement plans, and other pension plan contracts which are described in section 818(a) of the Internal Revenue Code shall be exempt from taxation;

(5) License shall mean certificate of authority as contemplated by section 44-105; and

(6) Direct writing shall mean insurance as defined in section 44-102, but shall not include reinsurance as defined in section 44-103.

Source: Laws 1951, c. 256, § 1, p. 878; Laws 1965, c. 468, § 2, p. 1514; Laws 1980, LB 905, § 1; Laws 1986, LB 1114, § 9; Laws 1988, LB 855, § 4; Laws 1995, LB 574, § 65.

Definition of insurance did not limit taxation to insurance policies. Bankers Life Ins. Co. v. Laughlin, 160 Neb. 480, 70 N.W.2d 474 (1955).

77-908 Insurance companies; tax on gross premiums; rate; exceptions.

Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent, (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent, and (3) for capitation payments made in accordance with the Medical Assistance Act, the rate of tax shall be five percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax

calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act.

Source: Laws 1951, c. 256, § 2, p. 878; Laws 1984, LB 372, § 13; Laws 1986, LB 1114, § 10; Laws 1989, LB 92, § 275; Laws 1992, LB 1063, § 91; Laws 1992, Second Spec. Sess., LB 1, § 64; Laws 2001, LB 433, § 1; Laws 2002, Second Spec. Sess., LB 9, § 3; Laws 2006, LB 1248, § 83; Laws 2007, LB117, § 53; Laws 2007, LB367, § 5.

Cross References

Captive Insurers Act, see section 44-8201.

Community Development Assistance Act, see section 13-201.

Medical Assistance Act, see section 68-901.

Considerations received for annuity contracts are taxable.
Bankers Life Ins. Co. v. Laughlin, 160 Neb. 480, 70 N.W.2d 474
(1955).

77-909 Repealed. Laws 1986, LB 1114, § 23.

77-910 Computation of tax; forms; department furnish; audit of returns; erroneous payment; refund; limitation.

(1) The computation of the taxes as provided in Chapter 77, article 9, shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the tax computation. The department shall furnish such forms to the companies together with any information relative to the taxes as may be needful or desirable. Upon receipt of the tax payment, the director shall audit and examine the computations and satisfy himself or herself that the taxes have been properly paid in conformity with Chapter 77, article 9.

(2) Commencing with taxes imposed for 1985 or any subsequent year, whenever it appears to the satisfaction of the director that, because of a mistake of fact, error in calculation, or erroneous interpretation of a statute not pertaining to the statute's constitutionality, any tax has been erroneously paid to the director, he or she shall have the authority to refund or credit the amount of such erroneous overpayment. The refund or credit may be made by applying such amount towards the payment of other similar taxes already due or which may become due until such overpayment has been fully reimbursed. A claim for refund or credit of an overpayment of a tax caused by a mistake of fact, error in calculation, or erroneous interpretation of a statute not pertaining to the statute's constitutionality shall be filed by the taxpayer within one year from the date the overpayment was made or such claim shall be forever barred.

Source: Laws 1951, c. 256, § 4, p. 879; Laws 1986, LB 1114, § 11.

77-911 Tax; failure to remit; license rescinded; notice; hearing; appeal.

The director shall rescind or refuse to reissue the license of any company which fails to remit its taxes in conformity with Chapter 77, article 9. Prior to rescinding such license, the director shall issue an order to such company directing the company to show cause why such rescission should not be made. He or she shall in the order give not less than ten days' notice for a hearing before the department. Should the company be aggrieved by such determina-

tion, the company may appeal the determination, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1951, c. 256, § 5, p. 879; Laws 1969, c. 661, § 1, p. 2580; Laws 1986, LB 1114, § 12; Laws 1988, LB 352, § 154.

Cross References

Administrative Procedure Act, see section 84-920.

77-912 Tax; Director of Insurance; disposition; exceptions.

The Director of Insurance shall transmit fifty percent of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer, forty percent of such taxes paid to the General Fund, and ten percent of such taxes paid to the Mutual Finance Assistance Fund promptly upon completion of his or her audit and examination and in no event later than May 1 of each year, except that:

(1) All fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be remitted to the State Treasurer for credit to the General Fund;

(2) All workers' compensation insurance taxes paid pursuant to section 44-150 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund;

(3) Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, all premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state shall be remitted to the Comprehensive Health Insurance Pool Distributive Fund; and

(4) All taxes paid pursuant to section 77-908 for capitation payments made in accordance with the Medical Assistance Act shall be remitted to the Health and Human Services Cash Fund.

Source: Laws 1951, c. 256, § 6, p. 880; Laws 1986, LB 1114, § 13; Laws 1987, LB 302, § 8; Laws 1993, LB 757, § 35; Laws 1996, LB 693, § 8; Laws 1998, LB 1120, § 27; Laws 1999, LB 113, § 3; Laws 2000, LB 1253, § 44; Laws 2002, Second Spec. Sess., LB 9, § 4; Laws 2003, LB 408, § 3; Laws 2006, LB 1248, § 84; Laws 2007, LB296, § 702.

Cross References

Medical Assistance Act, see section 68-901.

77-913 Insurance Tax Fund; created; use; investment; allocation.

The Insurance Tax Fund is created. The State Treasurer shall receive the funds paid pursuant to Chapter 77, article 9, and except as provided in sections 77-912 and 77-918 shall keep all money received in the Insurance Tax Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Prior to June 1 of each year, the State Treasurer shall disburse or allocate all of the funds in the Insurance Tax Fund on May 1 of each year as follows:

(1) Ten percent of the total shall be allocated to the counties proportionately in the proportion that the population of each county bears to the entire state, as shown by the last federal decennial census;

(2) Thirty percent of the total shall be allocated to the Municipal Equalization Fund; and

(3) Sixty percent of the total shall be allocated to the State Department of Education for distribution to school districts as equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act as follows: The Commissioner of Education shall (a) include the amount certified by the State Treasurer pursuant to this section with the amount appropriated to the Tax Equity and Educational Opportunities Fund for distribution in the ensuing school fiscal year, (b) include such amounts in the state aid certified to each school district pursuant to section 79-1022, and (c) distribute such funds as equalization aid under the provisions of the act during the ensuing fiscal year.

Source: Laws 1951, c. 256, § 7, p. 880; Laws 1986, LB 1114, § 18; Laws 1990, LB 1090, § 1; Laws 1996, LB 1050, § 1; Laws 1996, LB 1177, § 17; Laws 1997, LB 269, § 36; Laws 1999, LB 113, § 4; Laws 2003, LB 8, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

77-914 Repealed. Laws 1986, LB 1114, § 23.

77-915 Tax; challenge to constitutionality; tax paid under protest; credit refund.

(1) Commencing with taxes imposed for 1985 or any subsequent year, if a taxpayer believes any tax imposed pursuant to Chapter 77, article 9, is unconstitutional and chooses to challenge such tax, the taxpayer shall pay the tax under protest and, within thirty days after payment or within thirty days after March 15, 1986, whichever is later, initiate a court challenge to the tax in the district court of Lancaster County, which challenge shall be heard by the district court de novo.

(2) If, by judgment or final order of any court of competent jurisdiction in this state in an action not pending on appeal or error, it is adjudged and determined that such taxes are unconstitutional, such taxes shall be refunded only by applying such refund as a credit against the payment of any such tax falling due thereafter unless special circumstances, as determined by the director, require a refund.

Source: Laws 1986, LB 1114, § 14.

77-916 Tax; no injunction allowed.

No injunction shall be granted restraining the collection of taxes levied pursuant to Chapter 77, article 9. The provisions of section 77-915 shall be the exclusive remedy available to the taxpayer.

Source: Laws 1986, LB 1114, § 15.

77-917 Political subdivision; return of funds not required.

Any political subdivision which has received funds pursuant to section 77-913 shall not be required to return any funds received pursuant to such section

resulting from a final order or judgment of a court that such tax is unconstitutional.

Source: Laws 1986, LB 1114, § 16.

77-918 Prepayment of tax; when due; Premium and Retaliatory Tax Suspense Fund; created; investment.

Insurers transacting insurance in this state whose annual tax for the preceding taxable year was four thousand dollars or more shall make prepayments of the annual taxes imposed pursuant to Chapter 77, article 9, and related retaliatory taxes imposed pursuant to Chapter 44, article 1.

Each insurer required to make prepayments shall remit such prepayments on or before April 15, June 15, and September 15 of the current taxable year. Remittance for such prepayments shall be accompanied by a prepayment form prescribed by the director.

The amount of each such prepayment shall be at least one-fourth of either (1) the total tax paid for the immediately preceding taxable year or (2) eighty percent of the actual tax due for the current taxable year. For the taxable year ending December 31, 2001, total tax paid for the immediately preceding taxable year means tax payable prior to any offsets taken under subsection (1) of section 44-4233.

The director, for good cause shown, may extend for not more than ten days the time for making a prepayment. The extension may be granted at any time if a request for such extension is filed with the director within or prior to the period for which the extension may be granted. Insurers who fail to pay any premium or retaliatory tax, including prepayments, when due shall pay interest at the rate prescribed by section 45-104.02, as such rate may from time to time be adjusted, until such tax is paid. Any insurer who fails to make the prepayments within the prescribed time period or to obtain an extension shall be subject to the penalties prescribed in section 77-911.

The director shall immediately deposit one-half of the prepayments received in the Premium and Retaliatory Tax Suspense Fund, which fund is hereby created, and one-half of the prepayments received in the General Fund. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, the director shall determine the amount of the premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, and such amount shall be credited to the Comprehensive Health Insurance Pool Distributive Fund. Except as provided in subsections (5) and (6) of section 44-4225, on May 1 of each year the director shall transfer all of the interest earned in the Premium and Retaliatory Tax Suspense Fund on the immediately preceding year's prepayments to the General Fund and transfer the balance of the preceding year's prepayments deposited in the Premium and Retaliatory Tax Suspense Fund to the Insurance Tax Fund. Any money in the Premium and Retaliatory Tax Suspense Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 1114, § 17; Laws 1992, Fourth Spec. Sess., LB 1, § 14; Laws 1994, LB 1066, § 81; Laws 2000, LB 1253, § 45.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 10

TAX ON NONRESIDENT MOTOR VEHICLE CARRIERS

Section

- 77-1001. Repealed. Laws 1982, LB 383, § 6.
- 77-1002. Repealed. Laws 1982, LB 383, § 6.
- 77-1003. Repealed. Laws 1982, LB 383, § 6.
- 77-1004. Repealed. Laws 1982, LB 383, § 6.
- 77-1005. Repealed. Laws 1982, LB 383, § 6.
- 77-1006. Repealed. Laws 1982, LB 383, § 6.

77-1001 Repealed. Laws 1982, LB 383, § 6.

77-1002 Repealed. Laws 1982, LB 383, § 6.

77-1003 Repealed. Laws 1982, LB 383, § 6.

77-1004 Repealed. Laws 1982, LB 383, § 6.

77-1005 Repealed. Laws 1982, LB 383, § 6.

77-1006 Repealed. Laws 1982, LB 383, § 6.

ARTICLE 11

MAXIMUM LEVY ON TANGIBLE PROPERTY

Section

- 77-1101. Repealed. Laws 1953, c. 265, § 2.
- 77-1102. Repealed. Laws 1953, c. 265, § 2.
- 77-1103. Repealed. Laws 1953, c. 265, § 2.
- 77-1104. Repealed. Laws 1957, c. 326, § 1.
- 77-1105. Repealed. Laws 1957, c. 326, § 1.

77-1101 Repealed. Laws 1953, c. 265, § 2.

77-1102 Repealed. Laws 1953, c. 265, § 2.

77-1103 Repealed. Laws 1953, c. 265, § 2.

77-1104 Repealed. Laws 1957, c. 326, § 1.

77-1105 Repealed. Laws 1957, c. 326, § 1.

ARTICLE 12

PERSONAL PROPERTY, WHERE AND HOW LISTED

Section

- 77-1201. Tangible personal property; assessment date; listing.
- 77-1201.01. Repealed. Laws 1992, Second Spec. Sess., LB 1, § 180.
- 77-1201.02. Repealed. Laws 1967, c. 501, § 2.
- 77-1202. Tangible personal property; where listed and assessed.
- 77-1202.01. Tax lists; how prepared.
- 77-1202.02. Repealed. Laws 1959, c. 365, § 17.
- 77-1203. Repealed. Laws 1986, LB 817, § 15.

PERSONAL PROPERTY, WHERE AND HOW LISTED

Section	
77-1204.	Repealed. Laws 1986, LB 817, § 15.
77-1205.	Repealed. Laws 1986, LB 817, § 15.
77-1206.	Repealed. Laws 1986, LB 817, § 15.
77-1207.	Repealed. Laws 1987, LB 508, § 50.
77-1208.	Repealed. Laws 1997, LB 270, § 110.
77-1209.	Transferred to section 77-1374.
77-1209.01.	Repealed. Laws 1959, c. 365, § 17.
77-1209.02.	Transferred to section 77-1375.
77-1209.03.	Transferred to section 77-1376.
77-1209.04.	Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.
77-1209.05.	Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.
77-1210.	Taxable tangible personal property in transit; where listed and assessed.
77-1211.	Tangible personal property brought into state after December 31 and prior to July 1; where listed and assessed.
77-1212.	Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1213.	Repealed. Laws 2000, LB 968, § 91.
77-1214.	Taxable tangible personal property; attempted sale, levy, or removal; notice to treasurer; collection of taxes due; acceleration of due date; issuance of distress warrants.
77-1215.	Repealed. Laws 1997, LB 270, § 110.
77-1216.	Repealed. Laws 2007, LB 166, § 13.
77-1217.	Repealed. Laws 1987, LB 508, § 50.
77-1218.	Repealed. Laws 1987, LB 508, § 50.
77-1219.	Taxable tangible personal property; assessment certificate; county assessor; duties.
77-1220.	Repealed. Laws 1987, LB 87, § 1.
77-1221.	Repealed. Laws 1980, LB 741, § 1.
77-1222.	Repealed. Laws 1959, c. 365, § 17.
77-1223.	Repealed. Laws 1959, c. 365, § 17.
77-1224.	Repealed. Laws 1959, c. 365, § 17.
77-1225.	Repealed. Laws 1982, LB 728, § 2.
77-1226.	Repealed. Laws 1959, c. 366, § 2.
77-1226.01.	Repealed. Laws 1982, LB 728, § 2.
77-1226.02.	Repealed. Laws 1982, LB 728, § 2.
77-1226.03.	Repealed. Laws 1982, LB 728, § 2.
77-1226.04.	Repealed. Laws 1982, LB 728, § 2.
77-1227.	Repealed. Laws 1982, LB 728, § 2.
77-1228.	Repealed. Laws 1987, LB 508, § 50.
77-1229.	Tangible personal property; form of return; time of filing; exemption; procedure.
77-1229.01.	Personal property; return; filing improperly signed; procedure.
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77-1231.	Repealed. Laws 1959, c. 365, § 17.
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77-1233.	Personal property; statement required on return; signature by taxpayer.
77-1233.01.	Repealed. Laws 1984, LB 835, § 18.
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77-1233.04.	Taxable tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties.
77-1233.05.	Repealed. Laws 1999, LB 194, § 39.
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77-1234.	Violations; duty of officers upon discovery.
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Section	
77-1236.	Personal property; taxpayer; inspection by county assessor; authorized; subpoena; disobedience; contempt proceedings; confidentiality.
77-1237.	Repealed. Laws 1959, c. 365, § 17.
77-1238.	Repealed. Laws 1997, LB 271, § 57.
77-1239.	Repealed. Laws 1997, LB 271, § 57.
77-1239.01.	Repealed. Laws 1997, LB 271, § 57.
77-1239.02.	Repealed. Laws 1997, LB 271, § 57.
77-1239.03.	Repealed. Laws 1981, LB 168, § 18.
77-1239.04.	Repealed. Laws 1981, LB 168, § 18.
77-1239.05.	Repealed. Laws 1997, LB 271, § 57.
77-1239.06.	Repealed. Laws 1997, LB 271, § 57.
77-1240.	Repealed. Laws 1993, LB 346, § 23.
77-1240.01.	Repealed. Laws 1997, LB 271, § 57.
77-1240.02.	Repealed. Laws 1981, LB 168, § 18.
77-1240.03.	Repealed. Laws 1997, LB 271, § 57.
77-1240.04.	Repealed. Laws 1997, LB 271, § 57.
77-1240.05.	Repealed. Laws 1981, LB 168, § 18.
77-1240.06.	Repealed. Laws 1981, LB 168, § 18.
77-1241.	Repealed. Laws 1988, LB 305, § 11.
77-1241.01.	Repealed. Laws 1997, LB 271, § 57.
77-1241.02.	Repealed. Laws 1988, LB 305, § 11.
77-1241.03.	Repealed. Laws 1988, LB 305, § 11.
77-1241.04.	Repealed. Laws 1988, LB 305, § 11.
77-1241.05.	Repealed. Laws 1969, c. 495, § 10.
77-1241.06.	Repealed. Laws 1988, LB 305, § 11.
77-1241.07.	Repealed. Laws 1988, LB 305, § 11.
77-1241.08.	Repealed. Laws 1988, LB 305, § 11.
77-1241.09.	Transferred to section 60-305.15.
77-1242.	Repealed. Laws 1977, LB 518, § 15.
77-1242.01.	Repealed. Laws 1997, LB 271, § 57.
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77-1250.	Taxation of air carriers; when due; lien; distribution to counties; collection fee.
77-1250.01.	Repealed. Laws 1971, LB 26, § 3.
77-1250.02.	Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty.
77-1250.03.	Taxation of air carriers; taxes; delinquent; lien; collection.
77-1250.04.	Taxation of air carriers; money and credits; surrender to Tax Commissioner.
77-1250.05.	Taxation of air carriers; disposition of funds collected.
77-1251.	Repealed. Laws 1977, LB 518, § 14.
77-1252.	Repealed. Laws 1977, LB 518, § 14.
77-1253.	Repealed. Laws 1977, LB 518, § 14.
77-1254.	Repealed. Laws 1977, LB 518, § 14.
77-1255.	Repealed. Laws 1977, LB 518, § 14.
77-1256.	Repealed. Laws 1977, LB 518, § 14.
77-1257.	Repealed. Laws 1977, LB 518, § 14.
77-1258.	Repealed. Laws 1977, LB 518, § 14.
77-1259.	Repealed. Laws 1977, LB 518, § 14.
77-1260.	Repealed. Laws 1977, LB 518, § 14.

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77-1261.	Repealed. Laws 1977, LB 518, § 14.
77-1262.	Repealed. Laws 1977, LB 518, § 16.
77-1263.	Repealed. Laws 1977, LB 518, § 16.
77-1264.	Repealed. Laws 1977, LB 518, § 16.
77-1265.	Repealed. Laws 1977, LB 518, § 16.
77-1266.	Repealed. Laws 1977, LB 518, § 16.
77-1267.	Repealed. Laws 1977, LB 518, § 16.
77-1268.	Repealed. Laws 1977, LB 518, § 16.
77-1269.	Repealed. Laws 1971, LB 30, § 1.
77-1270.	Repealed. Laws 1971, LB 30, § 1.
77-1271.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1272.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1273.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1274.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1275.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1276.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1277.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1278.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1279.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1280.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1281.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1282.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.
77-1283.	Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.

77-1201 Tangible personal property; assessment date; listing.

All tangible personal property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment. A complete list of all taxable tangible personal property held or owned on the assessment date shall be made as follows:

- (1) Every person shall list all his or her taxable tangible personal property as defined in section 77-105 having tax situs in the State of Nebraska;
- (2) The taxable tangible personal property of a minor child shall be listed by the following: (a) His or her guardian; (b) if he or she has no guardian, by his or her parent, if living; and (c) if neither parent is living, by the person having such property in charge;
- (3) The taxable tangible personal property of any other person under guardianship, by his or her guardian or, if he or she has no guardian, by the person having charge of such property;
- (4) The taxable tangible personal property of a person for whose benefit it is held in trust, by the trustee, and of the estate of a deceased person, by the personal representative or administrator;
- (5) The taxable tangible personal property of corporations the assets of which are in the hands of a receiver, by such a receiver;
- (6) The taxable tangible personal property of corporations, by the president or the proper agent or officer thereof;
- (7) The taxable tangible personal property of a firm or company, by a partner, limited liability company member, or agent thereof;
- (8) The taxable tangible personal property of manufacturers and others in the hands of an agent, by and in the name of such agent; and

(9) All leased taxable tangible personal property shall be reported, by itemizing each article, by lessor as owner or lessee as agent.

Source: Laws 1903, c. 73, § 28, p. 394; R.S.1913, § 6313; C.S.1922, § 5914; C.S.1929, § 77-1401; Laws 1935, c. 133, § 1, p. 479; Laws 1935, Spec. Sess., c. 14, § 1, p. 89; C.S.Supp.,1941, § 77-1401; R.S.1943, § 77-1201; Laws 1945, c. 186, § 1, p. 577; Laws 1947, c. 251, § 18, p. 815; Laws 1955, c. 288, § 10, p. 906; Laws 1957, c. 327, § 12, p. 1155; Laws 1959, c. 355, § 9, p. 1255; Laws 1959, c. 365, § 1, p. 1284; Laws 1961, c. 377, § 4, p. 1157; Laws 1961, c. 379, § 1, p. 1163; Laws 1965, c. 483, § 1, p. 1559; Laws 1967, c. 501, § 1, p. 1695; Laws 1969, c. 663, § 1, p. 2583; Laws 1979, LB 80, § 110; Laws 1987, LB 508, § 28; Laws 1992, LB 1063, § 92; Laws 1992, Second Spec. Sess., LB 1, § 65; Laws 1993, LB 121, § 494; Laws 1994, LB 884, § 89; Laws 1997, LB 270, § 45; Laws 1997, LB 271, § 48; Laws 2008, LB965, § 3.

1. Property to be listed
2. Miscellaneous

1. Property to be listed

Motor vehicles were excepted from general requirements for listing of property for taxation. *Peterson v. Hancock*, 166 Neb. 637, 90 N.W.2d 298 (1958).

Leasehold interest in public land is required to be listed. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Grain in elevator on tax date was taxable although under contract of sale. *State v. T. W. Jones Grain Co.*, 156 Neb. 822, 58 N.W.2d 212 (1953).

Intangible property of foreign corporation in hands of agent is required to be listed. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Holder of shares in domestic corporation is not required to list the same when capital stock is assessed in this state. *City Trust Co. of Omaha v. Douglas County*, 101 Neb. 792, 165 N.W. 155 (1917).

One, who takes stock to feed for nonresident of county, has control of same within meaning of section, and should list same for taxation. *Allen v. Dawson County*, 92 Neb. 862, 139 N.W. 682 (1913).

Shares of capital stock of a domestic corporation should be listed by holder when not assessed in this state. *Bressler v. County of Wayne*, 84 Neb. 774, 122 N.W. 23 (1909).

2. Miscellaneous

This section, and others cited by plaintiffs, provide rules to determine situs for taxation of personal property and do not provide for transfer of tax funds from one school district to another. *Sesemann v. Howell*, 195 Neb. 798, 241 N.W.2d 119 (1976).

In the year 1959, timely filing of tax schedules of personal property was impossible. *Misle v. Miller*, 176 Neb. 113, 125 N.W.2d 512 (1963).

Wheat outside the state was taxable at domicile of owner in this state where it had not acquired permanent situs elsewhere. *Ainsworth v. County of Fillmore*, 166 Neb. 779, 90 N.W.2d 360 (1958).

Requirement of filing of personal tax schedule at future date did not create present actual controversy for adjudication under Declaratory Judgments Act. *Miller v. Stolinski*, 149 Neb. 679, 32 N.W.2d 199 (1948).

A conditional sales contract executed before November 1 is superior to statutory tax liens of prior years but inferior to such tax liens for subsequent years. *Landis Machine Co. v. Omaha Merchants Transfer Co.*, 142 Neb. 389, 9 N.W.2d 198 (1943).

If information as to amount and character of his personal property is refused by taxpayer, his appeal from valuation fixed by board should be dismissed. *Hatcher & Co. v. Gosper County*, 95 Neb. 543, 145 N.W. 993 (1914).

The word credits means net credits. Indebtedness may be deducted from gross credits to find true value for assessment. *Scandinavian Mut. Aid Assn. v. Kearney County*, 81 Neb. 468, 116 N.W. 155 (1908); *Oleson v. Cuming County*, 81 Neb. 209, 115 N.W. 783 (1908); *Royal Highlanders v. State*, 77 Neb. 18, 108 N.W. 183 (1906).

Expression money deposited in bank includes money on general deposit. *Critchfield v. Nance County*, 77 Neb. 807, 110 N.W. 538 (1906).

The other items named in schedule are not to be considered as credits. *Lancaster County v. McDonald*, 73 Neb. 453, 103 N.W. 78 (1905).

77-1201.01 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 180.

77-1201.02 Repealed. Laws 1967, c. 501, § 2.

77-1202 Tangible personal property; where listed and assessed.

Taxable tangible personal property shall be listed and assessed where it has acquired tax situs as defined in section 77-125.

Source: Laws 1903, c. 73, § 29, p. 395; R.S.1913, § 6314; Laws 1917, c. 117, § 1, p. 291; C.S.1922, § 5915; C.S.1929, § 77-1402; R.S. 1943, § 77-1202; Laws 1961, c. 380, § 1, p. 1168; Laws 1965, c.

483, § 2, p. 1561; Laws 1969, c. 664, § 1, p. 2585; Laws 1972, LB 1100, § 2; Laws 1987, LB 508, § 29; Laws 1992, LB 1063, § 93; Laws 1992, Second Spec. Sess., LB 1, § 66; Laws 1997, LB 270, § 46; Laws 1997, LB 271, § 49.

This section, and others cited by plaintiffs, provide rules to determine situs for taxation of personal property and do not provide for transfer of tax funds from one school district to another. *Sesemann v. Howell*, 195 Neb. 798, 241 N.W.2d 119 (1976).

This section states the general rule where personal property shall be listed and assessed. *Svoboda & Hannah v. Board of Equalization of Perkins County*, 180 Neb. 215, 142 N.W.2d 328 (1966).

Personal property is assessed where owner resides, except that property having a local situs is assessed at that situs. *Ramm v. County of Holt*, 172 Neb. 88, 108 N.W.2d 808 (1961); *Goebel v. County of Holt*, 172 Neb. 81, 108 N.W.2d 406 (1961).

Cited in discussion of taxability of intangible property of foreign corporation. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

This section does not apply to listing of intangible property. *Joyce Lumber Co. v. Anderson*, 125 Neb. 886, 252 N.W. 394 (1934).

Where a corporation operates lumber stations in several counties, each station is assessed as an independent business. *Nye-Schneider-Fowler Co. v. Boone County*, 102 Neb. 742, 169 N.W. 436 (1918); *Nye-Schneider-Fowler Co. v. Boone County*, 99 Neb. 383, 156 N.W. 773 (1916).

Levy of tax by Sarpy County upon personal property in Douglas County was illegal. *Hydraulic Press Brick Co. v. Douglas County*, 95 Neb. 87, 144 N.W. 1058 (1914).

Credits of a partnership, which maintains but one office in Nebraska, are subject to taxation where office is located. *Clay, Robinson & Co. v. Douglas County*, 88 Neb. 363, 129 N.W. 548 (1911).

The owner of personal property, within meaning of tax laws, is the person who has legal title thereto. *Union Stock Yards Nat. Bank v. Board of Thurston County*, 65 Neb. 410, 92 N.W. 1022 (1902).

77-1202.01 Tax lists; how prepared.

In preparing the tax list, each county assessor shall enter in a separate column, opposite the name of each person, the person's post office address and the number of the school and road districts in which the taxable tangible personal property of such person is assessable.

Source: Laws 1903, c. 73, § 26, p. 393; R.S.1913, § 6311; Laws 1921, c. 133, art. IV, § 5, p. 552; C.S.1922, § 5837; C.S.1929, § 77-405; R.S.1943, § 77-406; R.S.1943, (1986), § 77-406; Laws 1990, LB 821, § 44; Laws 2008, LB965, § 4.

77-1202.02 Repealed. Laws 1959, c. 365, § 17.

77-1203 Repealed. Laws 1986, LB 817, § 15.

77-1204 Repealed. Laws 1986, LB 817, § 15.

77-1205 Repealed. Laws 1986, LB 817, § 15.

77-1206 Repealed. Laws 1986, LB 817, § 15.

77-1207 Repealed. Laws 1987, LB 508, § 50.

77-1208 Repealed. Laws 1997, LB 270, § 110.

77-1209 Transferred to section 77-1374.

77-1209.01 Repealed. Laws 1959, c. 365, § 17.

77-1209.02 Transferred to section 77-1375.

77-1209.03 Transferred to section 77-1376.

77-1209.04 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-1209.05 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-1210 Taxable tangible personal property in transit; where listed and assessed.

Taxable tangible personal property in transit shall be listed and assessed in the tax district where the owner resides, but if such property is intended for a business, it shall be listed and assessed in the tax district where the property of such business is required to be listed.

Source: Laws 1903, c. 73, § 36, p. 396; R.S.1913, § 6321; C.S.1922, § 5922; C.S.1929, § 77-1409; R.S.1943, § 77-1210; Laws 2000, LB 968, § 42; Laws 2008, LB965, § 5.

Legislature has provided that situs of personal property of kind described in this section shall control over residence and domicile of owner. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

77-1211 Tangible personal property brought into state after December 31 and prior to July 1; where listed and assessed.

When any person brings taxable tangible personal property into this state or into one county thereof from 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, within thirty days after July 1, to list and return such property for taxation for the current tax year unless he or she shows to the county assessor under oath and by producing a copy of the listing or assessment duly certified to by the proper officer of the state or county that the property was listed for taxation for the current tax 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 for the current tax year. The county assessor shall at once assess such property and shall enter the same on the tax roll.

Source: Laws 1903, c. 73, § 37, p. 397; R.S.1913, § 6322; C.S.1922, § 5923; C.S.1929, § 77-1410; R.S.1943, § 77-1211; Laws 1947, c. 250, § 14, p. 792; Laws 1947, c. 251, § 20, p. 817; Laws 1955, c. 288, § 13, p. 908; Laws 1959, c. 355, § 12, p. 1257; Laws 1961, c. 381, § 5, p. 1172; Laws 1986, LB 817, § 7; Laws 1992, LB 1063, § 96; Laws 1992, Second Spec. Sess., LB 1, § 69; Laws 1997, LB 270, § 47.

Colonies of honeybees which were not in existence on January 1, which are brought into Nebraska from another state before July 1, are not subject to assessment in Nebraska where their progenitors were taxed for that year in another state. *Knoefler Honey Farms v. County of Sherman*, 196 Neb. 435, 243 N.W.2d 760 (1976).

Industrial Development Act of 1961 did not subject property to taxation to same extent as this section. *State ex rel. Meyer v. County of Lancaster*, 173 Neb. 195, 113 N.W.2d 63 (1962).

This section has no application to the listing and assessing of motor vehicles. *Peterson v. Hancock*, 166 Neb. 637, 90 N.W.2d 298 (1958).

Under former act to avoid assessment of property found in possession of party between April 1 and July 1, showing must be made that property has been already assessed or obtained in exchange for property listed. *Courtright v. Dodge County*, 94 Neb. 669, 144 N.W. 241 (1913).

77-1212 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

77-1213 Repealed. Laws 2000, LB 968, § 91.

77-1214 Taxable tangible personal property; attempted sale, levy, or removal; notice to treasurer; collection of taxes due; acceleration of due date; issuance of distress warrants.

It shall be the duty of any county assessor, sheriff, constable, city council member, and village trustee to at once inform the county treasurer of the making or attempted making of any sale, levy of attachment, or removal of taxable tangible personal property known to him or her. It shall be the duty of the county treasurer to forthwith proceed with the collection of the tax when such acts become known to him or her in any manner. Any personal property tax shall be due and collectible, including all taxable tangible personal property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to sell all or a substantial part of his or her taxable tangible personal property, (2) a levy of attachment is made upon taxable tangible personal property, or (3) a person attempts to remove or removes taxable tangible personal property from the county.

Source: Laws 1903, c. 73, § 39, p. 397; R.S.1913, § 6324; C.S.1922, § 5925; C.S.1929, § 77-1412; R.S.1943, § 77-1214; Laws 1957, c. 321, § 2, p. 1141; Laws 1959, c. 365, § 5, p. 1286; Laws 1997, LB 270, § 48; Laws 2008, LB965, § 6.

77-1215 Repealed. Laws 1997, LB 270, § 110.

77-1216 Repealed. Laws 2007, LB 166, § 13.

77-1217 Repealed. Laws 1987, LB 508, § 50.

77-1218 Repealed. Laws 1987, LB 508, § 50.

77-1219 Taxable tangible personal property; assessment certificate; county assessor; duties.

It shall be the duty of the county assessor, when required by any person, to give a certificate of assessment of taxable tangible personal property showing the amount, kind, location, and net book value of the property assessed, and such certificate shall be evidence of the legal assessment of such property for the year.

Source: Laws 1903, c. 73, § 45, p. 399; R.S.1913, § 6330; C.S.1922, § 5931; C.S.1929, § 77-1418; R.S.1943, § 77-1219; Laws 1947, c. 250, § 15, p. 793; Laws 1947, c. 251, § 22, p. 818; Laws 1977, LB 39, § 215; Laws 1987, LB 508, § 34; Laws 1992, LB 1063, § 97; Laws 1992, Second Spec. Sess., LB 1, § 70; Laws 1997, LB 270, § 49; Laws 2008, LB965, § 7.

77-1220 Repealed. Laws 1987, LB 87, § 1.

77-1221 Repealed. Laws 1980, LB 741, § 1.

77-1222 Repealed. Laws 1959, c. 365, § 17.

77-1223 Repealed. Laws 1959, c. 365, § 17.

77-1224 Repealed. Laws 1959, c. 365, § 17.

77-1225 Repealed. Laws 1982, LB 728, § 2.

77-1226 Repealed. Laws 1959, c. 366, § 2.

77-1226.01 Repealed. Laws 1982, LB 728, § 2.

77-1226.02 Repealed. Laws 1982, LB 728, § 2.

77-1226.03 Repealed. Laws 1982, LB 728, § 2.

77-1226.04 Repealed. Laws 1982, LB 728, § 2.

77-1227 Repealed. Laws 1982, LB 728, § 2.

77-1228 Repealed. Laws 1987, LB 508, § 50.

77-1229 Tangible personal property; form of return; time of filing; exemption; procedure.

(1) Every person required by section 77-1201 to list and value taxable tangible personal property shall list such property upon the forms prescribed by the Tax Commissioner. The forms shall be available from the county assessor and when completed shall be signed by each person or his or her agent and be filed with the county assessor. The forms shall be filed on or before May 1 of each year.

(2) Any person seeking a personal property exemption pursuant to subsection (2) of section 77-4105 or the Nebraska Advantage Act shall annually file a copy of the forms required pursuant to section 77-4105 or the act with the county assessor in each county in which the person is requesting exemption. The copy shall be filed on or before May 1. Failure to timely file the required forms shall cause the forfeiture of the exemption for the tax year. If a taxpayer pursuant to this subsection also has taxable tangible personal property, such property shall be listed and valued as required under subsection (1) of this section.

Source: Laws 1903, c. 73, § 49, p. 399; Laws 1909, c. 111, § 1, p. 437; R.S.1913, § 6336; C.S.1922, § 5938; C.S.1929, § 77-1425; R.S. 1943, § 77-1229; Laws 1947, c. 250, § 16, p. 793; Laws 1947, c. 251, § 26, p. 819; Laws 1959, c. 355, § 16, p. 1260; Laws 1959, c. 365, § 8, p. 1289; Laws 1959, c. 367, § 1, p. 1296; Laws 1969, c. 665, § 1, p. 2587; Laws 1987, LB 508, § 35; Laws 1992, LB 1063, § 98; Laws 1992, Second Spec. Sess., LB 1, § 71; Laws 1995, LB 490, § 92; Laws 1997, LB 270, § 50; Laws 2000, LB 968, § 43; Laws 2005, LB 312, § 5; Laws 2007, LB334, § 52.

Cross References

Nebraska Advantage Act, see section 77-5701.

Timely filing of tax return in the year 1959 was precluded by legislative changing during year of time to file tax return. *Misle v. Miller*, 176 Neb. 113, 125 N.W.2d 512 (1963).

Lessee of improvements placed on public land is required to list property. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Agent required to list property is treated as taxpayer. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Oath should be administered to everyone listing property, but failure so to do will not render assessment void. *Lynam v. Anderson*, 9 Neb. 367, 2 N.W. 732 (1879).

77-1229.01 Personal property; return; filing improperly signed; procedure.

If any listing of personal property required to be filed under section 77-1229 is filed by or on behalf of any person and is not signed as required by law, the county assessor shall notify the person in writing of the fact of such filing and that he or she is required, on or before the last date for filing the statement or within ten days from the date of such notice, whichever is later, to appear and

sign such statement or to file a properly signed corrected statement and that, upon failure to do so, the unsigned statement shall be presumed to be correct.

Source: Laws 1963, c. 437, § 1, p. 1454; Laws 1992, LB 1063, § 99; Laws 1992, Second Spec. Sess., LB 1, § 72.

77-1230 Taxable tangible personal property; amended listing; when required; county assessor; duties; refund; additional tax due.

(1) Whenever a person files an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority and the amendment, change, or correction affects the Nebraska adjusted basis of the person's taxable tangible personal property, such person shall file an amended list of taxable tangible personal property subject to taxation with the county assessor. The person shall file the amended list within ninety days after the filing of the amended federal return or within ninety days after the date the change or correction becomes final.

(2) Within the same tax year or the three previous tax years, a person may file an amended list of taxable tangible personal property subject to taxation upon discovery of errors or omissions on his or her filed list.

(3) If an amended list of taxable tangible personal property subject to taxation is filed, the county assessor shall accept or reject the proposed amendment within fifteen days after filing. The county assessor shall notify the person, on a form prescribed by the Property Tax Administrator, of the action taken, the penalty, if any, and the rate of interest. The notice shall also state the person's appeal rights and appeal procedures, which shall be the same as provided in section 77-1233.06. Such notice shall be given by first-class mail addressed to such person's last-known address.

(4) Whenever changes are made to a taxable tangible personal property return pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes.

(5) If the amendment, change, or correction results in taxable tangible personal property becoming exempt or reduces the net book value of the property for an income tax year, a refund shall be paid pursuant to section 77-1734.01.

(6) If the amendment, change, or correction results in an increase in the net book value of the taxable tangible personal property or makes other tangible personal property taxable, the county assessor shall compute the additional tax due, along with interest, based on the amended listing. Interest shall be computed from the dates the tax would have been delinquent if the property had been listed on or before May 1 of the appropriate year. If the amended listing is filed within the ninety-day period, no additional penalties shall be added. If the listing is not filed within the ninety-day period, the property shall be subject to a penalty pursuant to subsection (4) of section 77-1233.04.

Source: Laws 1992, LB 1063, § 95; Laws 1992, Second Spec. Sess., LB 1, § 68; Laws 1997, LB 270, § 51; Laws 2008, LB965, § 8.

77-1231 Repealed. Laws 1959, c. 365, § 17.

77-1231.01 Repealed. Laws 1977, LB 518, § 15.**77-1232 Personal property; failure to list; false listing; evasion of tax; penalty.**

Any person who makes a false or fraudulent list, schedule, or statement required by law or willfully fails or refuses to deliver to the assessor a list of the taxable tangible personal property which by law is required to be listed, or temporarily converts any part of such property into property not taxable, for the fraudulent purpose of preventing such property from being listed and of evading the payment of taxes thereon, or transfers or transmits any property to any person with such intent, shall be guilty of a Class IV misdemeanor for any such offense committed for any tax year prior to tax year 1993 and a Class II misdemeanor for any such offense committed for tax year 1993 or thereafter.

Source: Laws 1903, c. 73, § 53, p. 402; R.S.1913, § 6340; C.S.1922, § 5942; C.S.1929, § 77-1429; R.S.1943, § 77-1232; Laws 1947, c. 250, § 17, p. 793; Laws 1959, c. 365, § 9, p. 1289; Laws 1977, LB 39, § 219; Laws 1992, LB 1063, § 100; Laws 1992, Second Spec. Sess., LB 1, § 73.

Failure to comply with this section cannot be excused by an unsupported assertion of the constitutional privilege against self-incrimination. *State v. Soester*, 199 Neb. 477, 259 N.W.2d 921 (1977).

Two separate criminal penalties were provided for falsely and willfully failing to return intangible property for taxation. *Bachus v. Swanson*, 179 Neb. 1, 136 N.W.2d 189 (1965).

False oath, administered by assessor who has not taken oath or given bond, constitutes false swearing. *Brunke v. State*, 105 Neb. 343, 180 N.W. 560 (1920).

77-1233 Personal property; statement required on return; signature by taxpayer.

Each schedule or statement required by law to be filed with respect to taxation of personal property shall have the following printed thereon and signed by the taxpayer or his agent:

Taxpayer or Agent—I declare that this (schedule or return) and any accompanying schedule and statements have been examined by me and to the best of my knowledge and belief are a true, correct, and complete return.

Source: Laws 1903, c. 73, § 53, p. 402; R.S.1913, § 6340; C.S.1922, § 5942; C.S.1929, § 77-1429; R.S.1943, § 77-1233; Laws 1959, c. 365, § 10, p. 1289; Laws 1961, c. 377, § 5, p. 1158.

77-1233.01 Repealed. Laws 1984, LB 835, § 18.**77-1233.02 Taxable tangible personal property tax returns; county assessor; duties.**

The county assessor with the aid of his or her deputy and assistants shall carefully examine, check, and verify all taxable tangible personal property tax returns. The assessor may make such investigation, examination, and inspection of the property set out in a return and examine under oath the person making the return as to his or her books, records, and papers in order to enable the assessor to determine that all taxable tangible personal property of the taxpayer is listed for taxation at its net book value.

Source: Laws 1947, c. 250, § 39, p. 804; Laws 1987, LB 508, § 9; R.S.Supp.,1988, § 77-409; Laws 1990, LB 821, § 45; Laws 1992, LB 1063, § 101; Laws 1992, Second Spec. Sess., LB 1, § 74; Laws 1997, LB 270, § 52; Laws 2008, LB965, § 9.

77-1233.03 Assessment of taxable tangible personal property; county assessor; duties.

The county assessor shall have general supervision over and direction of the assessment of all personal property in his or her county. He or she shall advise and instruct all deputies and assistants as to their duties and shall require of them that the assessment of property be uniform throughout the county and that property be assessed as directed by law.

The county assessor may, in extending a value on any item of taxable tangible personal property, reject all values that fall below two dollars and fifty cents and extend all values of two dollars and fifty cents or more to the next higher five dollars or multiples thereof, making all valuations end in zero or five.

Source: Laws 1947, c. 250, § 40, p. 804; Laws 1987, LB 508, § 10; R.S.Supp.,1988, § 77-410; Laws 1990, LB 821, § 46; Laws 2008, LB965, § 10.

77-1233.04 Taxable tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties.

(1) The county assessor shall list and value at net book value any item of taxable tangible personal property omitted from a personal property return of any taxpayer. The county assessor shall change the reported valuation of any item of taxable 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 tangible personal property at net book value. The county assessor shall list or change the valuation of any item of taxable tangible personal property for the current taxing period and the three previous taxing periods or any taxing period included therein.

(2) The taxable 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 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.

Source: Laws 1947, c. 250, § 42, p. 805; Laws 1965, c. 474, § 1, p. 1526; Laws 1965, c. 475, § 2, p. 1530; Laws 1967, c. 499, § 1, p. 1692; Laws 1980, LB 834, § 59; Laws 1981, LB 167, § 39; Laws 1984, LB 835, § 4; Laws 1987, LB 508, § 11; R.S.Supp., 1988, § 77-412; Laws 1990, LB 821, § 47; Laws 1992, LB 1063, § 102; Laws 1992, Second Spec. Sess., LB 1, § 75; Laws 1995, LB 490, § 93; Laws 1997, LB 270, § 53; Laws 1999, LB 194, § 12; Laws 2000, LB 968, § 44; Laws 2007, LB166, § 5; Laws 2008, LB965, § 11.

To sustain an addition to a tax return as omitted property, it must appear that specific items were added, not just revalued. *Sealtest Central Division-Omaha, Kraftco Corp. v. Douglas County Board of Equalization*, 193 Neb. 809, 229 N.W.2d 545 (1975).

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including

the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. *Knoeffler Honey Farms v. County of Sherman*, 193 Neb. 95, 225 N.W.2d 855 (1975).

77-1233.05 Repealed. Laws 1999, LB 194, § 39.

77-1233.06 Taxable tangible personal property tax valuation or penalty; appeal; procedure; collection procedures.

For purposes of section 77-1233.04:

(1) The county assessor shall notify the taxpayer, on a form prescribed by the Tax Commissioner, of the action taken, the penalty, and the rate of interest. The notice shall also state the taxpayer's appeal rights and the appeal procedures. Such notice shall be given by first-class mail addressed to such taxpayer's last-known address. The entire penalty and interest shall be waived if the omission or failure to report any item of taxable tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(2) The taxpayer may appeal the action of the county assessor, either as to the valuation or the penalties imposed, to the county board of equalization within thirty days after the date of notice. The taxpayer shall preserve his or her appeal by filing a written appeal with the county clerk in the same manner as prescribed for protests in section 77-1502. The action of the county assessor shall become final unless a written appeal is filed within the time prescribed;

(3) The action of the county board of equalization, in an appeal of the penalties imposed, shall be limited to correcting penalties which were wrongly imposed or incorrectly calculated. The county board of equalization shall have no authority to waive or reduce any penalty which was correctly imposed and calculated. The entire penalty and interest on the penalty shall be waived if the omission or failure to report any item of taxable tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(4) Upon ten days' notice to the taxpayer, the county board of equalization shall set a date for hearing the appeal of the taxpayer. The county board of equalization shall make its determination on the appeal within thirty days after the date of hearing. The county clerk shall, within seven days after the determination of the county board, send notice to the taxpayer and the county assessor, on forms prescribed by the Tax Commissioner, of the action of the county board. Appeal may be taken within thirty days after the decision of the county board of equalization to the Tax Equalization and Review Commission; and

(5) Taxes and penalties assessed for the current year, if not delinquent, shall be certified to the county treasurer and collected as if the property had been properly reported for taxation, except that separate tax statements may be mailed. Taxes and penalties assessed for the current year, if delinquent, and taxes and penalties assessed for prior years shall be certified to the county treasurer, and the taxes, penalties, and interest thereon shall be due and collectible immediately upon certification. Collection procedures shall be started immediately regardless of the provisions of any other statute to the contrary.

Source: Laws 1997, LB 270, § 55; Laws 1999, LB 194, § 13; Laws 2007, LB334, § 53; Laws 2008, LB965, § 12.

77-1234 Violations; duty of officers upon discovery.

It shall be the duty of the county boards and county assessors to notify the county attorney of the proper county of all willful violations of the provisions with respect to listing of taxable tangible personal property for taxation known to them or any of them.

Source: Laws 1903, c. 73, § 54, p. 403; Laws 1909, c. 111, § 1, p. 439; R.S.1913, § 6341; C.S.1922, § 5943; C.S.1929, § 77-1430; R.S. 1943, § 77-1234; Laws 1947, c. 250, § 18, p. 794; Laws 1997, LB 397, § 11; Laws 2004, LB 973, § 16; Laws 2008, LB965, § 13.

77-1235 Repealed. Laws 1965, c. 475, § 7.

77-1235.01 Repealed. Laws 1961, c. 284, § 1.

77-1236 Personal property; taxpayer; inspection by county assessor; authorized; subpoena; disobedience; contempt proceedings; confidentiality.

For the purpose of determining the net book value of any property, the county assessor shall have the right to demand of the owner or his or her agent or employee an inspection of the following for the year preceding assessment: Inventories; all books of accounts; depreciation schedules filed with the Internal Revenue Service; and workpapers, worksheets, or any other item prepared by or for a taxpayer and not filed with the Internal Revenue Service. If the owner, agent, or employee refuses such demand, the county assessor shall have authority to issue subpoenas to compel the appearance of such owner or agent and employee, together with such papers, books, accounts, and documents as the county assessor may deem necessary, and at such time the county assessor may administer oaths and take testimony. In case of disobedience on the part of any person to comply with any subpoena issued by or on behalf of the county assessor or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the district court for any county or of the judge thereof, on application by the county assessor, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

All documentation provided by the owner or owner's agent or employee pursuant to this section shall be confidential and available to taxing officials only.

Source: Laws 1903, c. 73, § 57, p. 404; R.S.1913, § 6344; C.S.1922, § 5945; C.S.1929, § 77-1432; R.S.1943, § 77-1236; Laws 1959, c. 365, § 12, p. 1290; Laws 1992, LB 1063, § 104; Laws 1992, Second Spec. Sess., LB 1, § 77; Laws 1997, LB 270, § 56.

Inventory of merchant may be considered in determining value of personal property. L. J. Messer Co. v. Board of Equalization of Jefferson County, 171 Neb. 393, 106 N.W.2d 478 (1960).

77-1237 Repealed. Laws 1959, c. 365, § 17.

77-1238 Repealed. Laws 1997, LB 271, § 57.

77-1239 Repealed. Laws 1997, LB 271, § 57.

77-1239.01 Repealed. Laws 1997, LB 271, § 57.

77-1239.02 Repealed. Laws 1997, LB 271, § 57.

77-1239.03 Repealed. Laws 1981, LB 168, § 18.

77-1239.04 Repealed. Laws 1981, LB 168, § 18.

77-1239.05 Repealed. Laws 1997, LB 271, § 57.

77-1239.06 Repealed. Laws 1997, LB 271, § 57.

77-1240 Repealed. Laws 1993, LB 346, § 23.

77-1240.01 Repealed. Laws 1997, LB 271, § 57.

77-1240.02 Repealed. Laws 1981, LB 168, § 18.

77-1240.03 Repealed. Laws 1997, LB 271, § 57.

77-1240.04 Repealed. Laws 1997, LB 271, § 57.

77-1240.05 Repealed. Laws 1981, LB 168, § 18.

77-1240.06 Repealed. Laws 1981, LB 168, § 18.

77-1241 Repealed. Laws 1988, LB 305, § 11.

77-1241.01 Repealed. Laws 1997, LB 271, § 57.

77-1241.02 Repealed. Laws 1988, LB 305, § 11.

77-1241.03 Repealed. Laws 1988, LB 305, § 11.

77-1241.04 Repealed. Laws 1988, LB 305, § 11.

77-1241.05 Repealed. Laws 1969, c. 495, § 10.

77-1241.06 Repealed. Laws 1988, LB 305, § 11.

77-1241.07 Repealed. Laws 1988, LB 305, § 11.

77-1241.08 Repealed. Laws 1988, LB 305, § 11.

77-1241.09 Transferred to section 60-305.15.

77-1242 Repealed. Laws 1977, LB 518, § 15.

77-1242.01 Repealed. Laws 1997, LB 271, § 57.

77-1242.02 Repealed. Laws 1997, LB 271, § 57.

77-1243 Repealed. Laws 1953, c. 268, § 20.**77-1244 Taxation of air carriers; definitions.**

As used in sections 77-1244 to 77-1246:

(1) The term air carrier means any person, firm, partnership, limited liability company, corporation, association, trustee, receiver, or assignee and all other persons, whether or not in a representative capacity, undertaking to engage in the carriage of persons or cargo for hire by aircraft. Any air carrier as herein defined engaged solely in intrastate transportation, whose flight equipment is based at only one airport within the state, shall be excepted from taxation under this section, but shall be subject to taxation in the same manner as other locally assessed property;

(2) The term aircraft arrivals and departures means (a) the number of scheduled landings and takeoffs of the aircraft of an air carrier, (b) the number of scheduled air pickups and deliveries by the aircraft of such carrier, and (c) in the case of nonscheduled operations, shall include all landings and takeoffs, pickups, and deliveries;

(3) The term flight equipment means aircraft fully equipped for flight and used within the continental limits of the United States;

(4) The term originating revenue means revenue to an air carrier from the transportation of revenue passengers and revenue cargo exclusive of the revenue derived from the transportation of express or mail; and

(5) The term revenue tons handled by an air carrier means the weight in tons of revenue passengers and revenue cargo received and discharged as originating or terminating traffic.

Source: Laws 1947, c. 266, § 1, p. 858; Laws 1949, c. 231, § 5, p. 641; Laws 1993, LB 121, § 495.

Tax on flight equipment did not violate federal Constitution. *Mid-Continent Airlines v. State Board of Equalization & Assessment*, 157 Neb. 425, 59 N.W.2d 746 (1953).

Validity of tax on airplane flight equipment challenged, but appeal dismissed on other grounds. *Mid-Continent Airlines, Inc. v. State Board of Equalization and Assessment*, 154 Neb. 371, 48 N.W.2d 81 (1951).

Flight equipment used in interstate commerce was not immune from tax. *Braniff Airways v. Nebraska State Board of Equalization & Assessment*, 347 U.S. 590 (1954).

Federal court would not enjoin payment of tax where adequate state remedy to test validity of statute existed. *Mid-Continent Airlines v. Nebraska State Board of Equalization*, 105 F.Supp. 188 (D. Neb. 1952).

77-1245 Taxation of air carriers; assessment; collection; disbursement; allocation to this state; petition to Property Tax Administrator, when.

Any tax upon or measured by the value of flight equipment of air carriers incorporated or doing business in this state shall be assessed, collected by the Property Tax Administrator, and disbursed as provided in section 77-1250. The proportion of flight equipment allocated to this state for purposes of taxation shall be the arithmetical average of the following three ratios: (1) The ratio which the aircraft arrivals and departures within this state scheduled by such air carrier during the preceding calendar year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period, except that in the case of nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures; (2) the ratio which the revenue tons handled by such air carrier at airports within this state during the preceding calendar year bears to the total revenue tons handled by such carrier at airports within and without this state during the same period; and (3) the ratio which such air carrier's originating revenue

within this state for the preceding calendar year bears to the total originating revenue of such carrier within and without this state for the same period.

If allocation in accordance with the provisions of this section does not fairly represent the proportion of flight equipment properly allocable to this state, the taxpayer may petition for, or the Property Tax Administrator may require, the inclusion of one or more additional ratios or the employment of any other method to effectuate an equitable allocation of the taxpayer's flight equipment for purposes of taxation.

Source: Laws 1947, c. 266, § 2, p. 859; Laws 1965, c. 478, § 9, p. 1543; Laws 1972, LB 625, § 1; Laws 1995, LB 490, § 99.

Levy of tax on allocation basis was constitutional. *Mid-Continent Airlines v. State Board of Equalization & Assessment*, 157 Neb. 425, 59 N.W.2d 746 (1953).

This section sets out basis of valuation upon which tax is laid. *Mid-Continent Airlines v. Nebraska State Board of Equalization*, 105 F.Supp. 188 (D. Neb. 1952).

77-1246 Taxation of air carriers; real and personal property other than flight equipment.

Real property and personal property, except flight equipment, of an air carrier shall be taxed in the political subdivisions of the state in accordance with the applicable laws of this state.

Source: Laws 1947, c. 266, § 3, p. 860; Laws 1965, c. 478, § 10, p. 1544.

77-1247 Taxation of air carriers; annual report; contents; failure to furnish report or information; penalty; waiver.

(1) Each air carrier, as defined in section 77-1244, shall on or before June 1 in each year make to the Property Tax Administrator 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. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such report. Such extension shall not exceed thirty days after June 1.

(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 and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1949, c. 231, § 1, p. 641; Laws 1965, c. 478, § 11, p. 1544; Laws 1986, LB 817, § 8; Laws 1995, LB 490, § 100; Laws 1997, LB 270, § 59; Laws 1999, LB 36, § 19; Laws 2007, LB334, § 54.

Each affected carrier is required to make report. *Mid-Continent Airlines v. Nebraska State Board of Equalization*, 105 F.Supp. 188 (D. Neb. 1952).

77-1248 Taxation of air carriers; taxable value; allocation.

The Property Tax Administrator shall ascertain from the reports made and from any other information obtained by him or her the taxable value of the

flight equipment of air carriers and the proportion allocated to this state for the purposes of taxation as provided in section 77-1245.

Source: Laws 1949, c. 231, § 2, p. 641; Laws 1969, c. 669, § 1, p. 2591; Laws 1992, LB 1063, § 109; Laws 1992, Second Spec. Sess., LB 1, § 82; Laws 1995, LB 490, § 101.

77-1249 Taxation of air carriers; tax rate; appeal.

The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in section 77-1248 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each air carrier a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that the tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If an air carrier feels aggrieved, such carrier may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the carrier within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1949, c. 231, § 3, p. 641; Laws 1965, c. 478, § 12, p. 1544; Laws 1969, c. 669, § 2, p. 2591; Laws 1983, LB 193, § 9; Laws 1992, LB 1063, § 110; Laws 1992, Second Spec. Sess., LB 1, § 83; Laws 1995, LB 490, § 102; Laws 1997, LB 270, § 60; Laws 2000, LB 968, § 45; Laws 2004, LB 973, § 17; Laws 2007, LB334, § 55.

77-1249.01 Taxation of air carriers; delinquency; interest; collection.

One-half of the taxes levied and due under sections 77-1249 and 77-1250 shall become delinquent March 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 required of county treasurers and county sheriffs in like cases.

Source: Laws 1983, LB 193, § 11; Laws 1989, Spec. Sess., LB 7, § 4; Laws 1995, LB 490, § 103; Laws 1997, LB 270, § 61; Laws 2007, LB334, § 56.

77-1250 Taxation of air carriers; when due; lien; distribution to counties; collection fee.

The tax levied pursuant to section 77-1249 shall, on January 31 next following the date of levy, be a first lien from that date on the personal property, both

tangible and intangible, of the person assessed until the liability is satisfied or otherwise released or discharged. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act. The Property Tax Administrator shall remit the tax paid to the State Treasurer, and the tax collected, less a three percent collection fee, shall be distributed to the counties to the credit of the county general fund proportionate to the amount the total property taxes levied in the county bears to the total property taxes levied in the state as a whole, as certified pursuant to section 77-1613.01. The collection fee shall be credited by the State Treasurer to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1949, c. 231, § 4, p. 641; Laws 1965, c. 478, § 13, p. 1544; Laws 1973, LB 132, § 3; Laws 1979, LB 159, § 4; Laws 1979, LB 187, § 203; Laws 1980, LB 599, § 13; Laws 1983, LB 193, § 10; Laws 1986, LB 1027, § 202; Laws 1995, LB 490, § 104; Laws 1997, LB 270, § 62; Laws 1999, LB 36, § 20; Laws 2007, LB334, § 57.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.01 Repealed. Laws 1971, LB 26, § 3.

77-1250.02 Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty.

The owner, lessee, or manager of any aircraft hangar or land upon which is parked or located any aircraft as defined by section 3-101 shall report by February 1 of each year to the county assessor in the county in which such aircraft hangar or land is located all aircraft as defined by section 3-101 located thereon in such hangar or on such land as of January 1 of each year on a form prescribed by the Tax Commissioner. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than fifty dollars.

Source: Laws 1971, LB 26, § 2; Laws 1995, LB 490, § 105; Laws 2007, LB334, § 58.

77-1250.03 Taxation of air carriers; taxes; delinquent; lien; collection.

If any 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 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 air carriers. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1959, c. 360, § 2, p. 1277; Laws 1983, LB 193, § 8; Laws 1986, LB 1027, § 201; R.S.1943, (1986), § 77-631.02; Laws 1989, Spec. Sess., LB 7, § 5; Laws 1995, LB 490, § 106; Laws 2007, LB334, § 59.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.04 Taxation of air carriers; money and credits; surrender to Tax Commissioner.

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.

Source: Laws 1959, c. 360, § 3, p. 1277; R.S.1943, (1986), § 77-631.03; Laws 1989, Spec. Sess., LB 7, § 6; Laws 1995, LB 490, § 107; Laws 2007, LB334, § 60.

77-1250.05 Taxation of air carriers; disposition of funds collected.

The money realized from any levy under sections 77-1250.03 and 77-1250.04 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.

Source: Laws 1959, c. 360, § 4, p. 1277; R.S.1943, (1986), § 77-631.04; Laws 1989, Spec. Sess., LB 7, § 7; Laws 1995, LB 490, § 108; Laws 2007, LB334, § 61.

77-1251 Repealed. Laws 1977, LB 518, § 14.

77-1252 Repealed. Laws 1977, LB 518, § 14.

77-1253 Repealed. Laws 1977, LB 518, § 14.

77-1254 Repealed. Laws 1977, LB 518, § 14.

77-1255 Repealed. Laws 1977, LB 518, § 14.

77-1256 Repealed. Laws 1977, LB 518, § 14.

77-1257 Repealed. Laws 1977, LB 518, § 14.

77-1258 Repealed. Laws 1977, LB 518, § 14.

77-1259 Repealed. Laws 1977, LB 518, § 14.

77-1260 Repealed. Laws 1977, LB 518, § 14.

77-1261 Repealed. Laws 1977, LB 518, § 14.

77-1262 Repealed. Laws 1977, LB 518, § 16.

77-1263 Repealed. Laws 1977, LB 518, § 16.

77-1264 Repealed. Laws 1977, LB 518, § 16.

77-1265 Repealed. Laws 1977, LB 518, § 16.

- 77-1266 Repealed. Laws 1977, LB 518, § 16.**
- 77-1267 Repealed. Laws 1977, LB 518, § 16.**
- 77-1268 Repealed. Laws 1977, LB 518, § 16.**
- 77-1269 Repealed. Laws 1971, LB 30, § 1.**
- 77-1270 Repealed. Laws 1971, LB 30, § 1.**
- 77-1271 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1272 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1273 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1274 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1275 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1276 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1277 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1278 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1279 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1280 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1281 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1282 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**
- 77-1283 Repealed. Laws 1992, Second Spec. Sess., LB 1, § 181.**

ARTICLE 13

ASSESSMENT OF PROPERTY

Cross References

Mineral interest, severed, place on tax list, see sections 57-235 to 57-239.

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- 77-1301. Real property; assessment date.
- 77-1301.01. Appraisal; standards; establishment by Tax Commissioner; contracts; approval.
- 77-1301.02. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.03. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.04. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.05. Repealed. Laws 1969, c. 672, § 5.
- 77-1301.06. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.07. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.08. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.09. Repealed. Laws 1987, LB 508, § 50.
- 77-1301.10. Repealed. Laws 1987, LB 508, § 50.
- 77-1301.11. Repealed. Laws 1987, LB 508, § 50.
- 77-1301.12. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.13. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.14. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.15. Repealed. Laws 1997, LB 270, § 110.
- 77-1301.16. Repealed. Laws 1997, LB 270, § 110.

ASSESSMENT OF PROPERTY

- Section
77-1302. Repealed. Laws 1959, c. 370, § 6.
77-1303. Assessment roll.
77-1304. Repealed. Laws 1997, LB 270, § 110.
77-1305. Certificate of assessment; contents; effect.
77-1306. Repealed. Laws 1959, c. 370, § 6.
77-1306.01. Lands adjacent to rivers and streams; survey; report.
77-1307. Repealed. Laws 1959, c. 370, § 6.
77-1308. Repealed. Laws 1959, c. 370, § 6.
77-1309. Repealed. Laws 1947, c. 251, § 42.
77-1310. Repealed. Laws 1947, c. 251, § 42.
77-1311. County assessor; duties.
77-1311.01. Valuation of property; rounding numbers.
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77-1314. Repealed. Laws 1997, LB 397, § 51.
77-1315. Adjustment to real property assessment roll; county assessor; duties; publication.
77-1315.01. Overvaluation or undervaluation; county assessor; report.
77-1316. Repealed. Laws 1997, LB 270, § 110.
77-1316.01. Correction of tax rolls.
77-1317. Real property; assessment; omitted lands; correction; exceptions.
77-1318. Real property taxes; back interest and penalties; when; appeal.
77-1318.01. Improvements to real property; information statement filed with county assessor; forms; contents.
77-1318.02. Repealed. Laws 1984, LB 835, § 18.
77-1319. Repealed. Laws 1959, c. 370, § 6.
77-1320. Repealed. Laws 1965, c. 489, § 1.
77-1320.01. Repealed. Laws 1965, c. 475, § 7.
77-1320.02. Repealed. Laws 1987, LB 508, § 50.
77-1320.03. Repealed. Laws 1987, LB 508, § 50.
77-1320.04. Transferred to section 77-412.01.
77-1320.05. Repealed. Laws 1987, LB 508, § 50.
77-1320.06. Repealed. Laws 1987, LB 508, § 50.
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77-1322. Assessment of property; Board of Equalization; special assessments; invalid assessments for want of adequate notice; reassessment and relevy authorized.
77-1323. Public improvement; furnishing labor or material; certificate that equipment has been assessed.
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77-1325. Repealed. Laws 1999, LB 36, § 41.
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77-1334. Property Tax Administrator; inspections, investigations, and studies; administration of tax laws.
77-1335. Repealed. Laws 1986, LB 817, § 15.

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77-1337. Transferred to section 77-429.
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77-1347. Agricultural or horticultural lands; special valuation; disqualification.
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77-1348. Repealed. Laws 2009, LB 166, § 23.
77-1349. Unconstitutional.
77-1350. Unconstitutional.
77-1351. Unconstitutional.
77-1352. Unconstitutional.
77-1353. Unconstitutional.
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77-1357. Repealed. Laws 1985, LB 22, § 1.
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77-1360. Repealed. Laws 1997, LB 270, § 110.
77-1360.01. Repealed. Laws 2006, LB 808, § 52.
77-1361. Repealed. Laws 2006, LB 808, § 52.
77-1362. Repealed. Laws 2006, LB 808, § 52.
77-1363. Agricultural and horticultural land; classes and subclasses.
77-1364. Repealed. Laws 1997, LB 270, § 110.
77-1365. Repealed. Laws 1997, LB 270, § 110.
77-1366. Repealed. Laws 1996, LB 934, § 7.
77-1367. Repealed. Laws 1996, LB 934, § 7.
77-1368. Repealed. Laws 1989, LB 361, § 25.
77-1369. Repealed. Laws 1991, LB 320, § 13.
77-1370. Repealed. Laws 1991, LB 320, § 13.
77-1371. Comparable sales; use; guidelines.
77-1372. Repealed. Laws 2001, LB 170, § 30.
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77-1377.	Statewide file of real property sales; creation; use.
77-1378.	Repealed. Laws 2005, LB 261, § 13.
77-1379.	Repealed. Laws 2005, LB 261, § 13.
77-1380.	Repealed. Laws 2005, LB 261, § 13.
77-1381.	Repealed. Laws 2005, LB 261, § 13.
77-1381.01.	Repealed. Laws 2005, LB 261, § 13.
77-1382.	Repealed. Laws 2005, LB 261, § 13.
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77-1384.	Repealed. Laws 2005, LB 261, § 13.
77-1385.	Historically significant real property; qualification.
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77-1390.	Historically significant real property; final certificate of rehabilitation; issuance.
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77-1392.	Historically significant real property; Tax Commissioner; rules and regulations.
77-1393.	Historically significant real property; State Historic Preservation Officer; rules and regulations.
77-1394.	Historically significant real property; protests; procedure; appeal.

77-1301 Real property; assessment date.

(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment.

(2) The county assessor shall complete the assessment of real property on or before March 19 of each year.

Source: Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p. 439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB 742, § 1; Laws 1984, LB 833, § 1; Laws 1987, LB 508, § 36; Laws 1992, LB 1063, § 114; Laws 1992, Second Spec. Sess., LB 1, § 87; Laws 1997, LB 270, § 63; Laws 1999, LB 194, § 15; Laws 2004, LB 973, § 18.

1. Classification and reappraisal committee
2. Determination of value
3. Miscellaneous

1. Classification and reappraisal committee

Objective of this section and succeeding sections is a comprehensive and uniform system of scientific reappraisal of real estate. *Carpenter v. State Board of Equalization & Assessment*, 178 Neb. 611, 134 N.W.2d 272 (1965).

Real estate and classification committee merely makes recommendations to county assessor. *Collier v. County of Logan*, 169 Neb. 1, 97 N.W.2d 879 (1959); *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956).

County board may establish real estate classification and reappraisal committee. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

Tax Appraisal Board Act sustained as constitutional. *Midwest Popcorn Co. v. Johnson*, 152 Neb. 867, 43 N.W.2d 174 (1950).

2. Determination of value

While on the date for determining assessed value, the conditions of a use permit had not been carried out, the mere rezoning and issuance of the conditional use permit were sufficient with other factors to justify the reappraisal. *Nash Finch Co. v. County Board of Equalization of Hall County*, 191 Neb. 645, 217 N.W.2d 170 (1974).

A county reappraisal, state approved, was not conclusive as to value for tax purposes. *Hanna v. State Board of Equalization & Assessment*, 181 Neb. 725, 150 N.W.2d 878 (1967).

Legislature used terms liable to taxation, subject to taxation, and taxable as generally meaning one and the same thing. *Hanson v. City of Omaha*, 154 Neb. 72, 46 N.W.2d 896 (1951).

Decree fixing value of property under prior assessment is not admissible to prove value under subsequent assessment. *DeVore v. Board of Equalization*, 144 Neb. 351, 13 N.W.2d 451 (1944).

Farm lands, for the purpose of taxation, should be valued and assessed at their actual cash value, which is their value in the market in the ordinary course of trade. *Schulz v. Dixon County*, 134 Neb. 549, 279 N.W. 179 (1938).

Taxpayer complaining that real property is assessed too high should first apply for relief to board of equalization and, if denied relief, should appeal to courts. *Power v. Jones*, 126 Neb. 529, 253 N.W. 867 (1934).

3. Miscellaneous

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax roles separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax roles. *State ex rel. Svoboda v. Weiler*, 205 Neb. 799, 290 N.W.2d 456 (1980).

Current professional reappraisals under statutes and rules of State Tax Commissioner, and approved by him, may be relied on by State Board of Equalization and Assessment in absence of clear evidence they are erroneous or fail to establish equality and uniformity. *County of Sioux v. State Board of Equalization & Assessment*, 190 Neb. 198, 207 N.W.2d 219 (1973).

Assessment date is fixed by this section as to real estate. *H/K Company v. Board of Equalization of Lancaster County*, 175 Neb. 268, 121 N.W.2d 382 (1963).

Status of real estate as being exempt is determined by when the tax is levied and not when it is valued by the assessor. *American Province of Servants of Mary Real Estate Corp. v. County of Douglas*, 147 Neb. 485, 23 N.W.2d 714 (1946).

77-1301.01 Appraisal; standards; establishment by Tax Commissioner; contracts; approval.

The Tax Commissioner shall adopt and promulgate rules and regulations to establish standards for the appraisal of classes or subclasses of real property in a county. The standards established shall require that the appraisal shall be based upon the use of manuals developed pursuant to section 77-1330 and shall arrive at a determination of taxable value on a consistent basis in accordance with the methods prescribed in sections 77-112 and 77-201. The Tax Commissioner shall also establish standards for appraisal contracts which shall, among other provisions, require that all such contracts shall require the use of manuals developed pursuant to section 77-1330. No appraisal contract shall be valid until approved in writing by the Tax Commissioner.

Source: Laws 1963, c. 450, § 2, p. 1474; Laws 1969, c. 672, § 1, p. 2594; Laws 1979, LB 159, § 5; Laws 1985, LB 30, § 3; Laws 1986, LB 817, § 9; Laws 1989, LB 361, § 7; Laws 1991, LB 320, § 3; Laws 1992, LB 1063, § 115; Laws 1992, Second Spec. Sess., LB 1, § 88; Laws 1995, LB 490, § 109; Laws 1997, LB 270, § 64; Laws 2007, LB334, § 62.

Application of Department of Revenue guidelines for allowance of economic depreciation raises a presumption that the resulting assessment is correct; however, the guidelines must give way to evidence showing that such application will violate

the constitutional requirement of uniform and proportionate taxation or the statutory requirement of taxation at actual value. *Farmers Co-op Assn. v. Boone County*, 213 Neb. 763, 332 N.W.2d 32 (1983).

77-1301.02 Repealed. Laws 1997, LB 270, § 110.

77-1301.03 Repealed. Laws 1997, LB 270, § 110.

77-1301.04 Repealed. Laws 1997, LB 270, § 110.

77-1301.05 Repealed. Laws 1969, c. 672, § 5.

77-1301.06 Repealed. Laws 1997, LB 270, § 110.

77-1301.07 Repealed. Laws 1997, LB 270, § 110.

77-1301.08 Repealed. Laws 1997, LB 270, § 110.

77-1301.09 Repealed. Laws 1987, LB 508, § 50.

77-1301.10 Repealed. Laws 1987, LB 508, § 50.

77-1301.11 Repealed. Laws 1987, LB 508, § 50.

77-1301.12 Repealed. Laws 1997, LB 270, § 110.

77-1301.13 Repealed. Laws 1997, LB 270, § 110.

77-1301.14 Repealed. Laws 1997, LB 270, § 110.

77-1301.15 Repealed. Laws 1997, LB 270, § 110.

77-1301.16 Repealed. Laws 1997, LB 270, § 110.

77-1302 Repealed. Laws 1959, c. 370, § 6.

77-1303 Assessment roll.

(1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county.

(2) The county assessor or county clerk shall enter in the proper column, opposite each respective parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands and the value and owner thereof and such other columns as may be required.

Source: Laws 1903, c. 73, § 106, p. 422; Laws 1905, c. 111, § 1, p. 510; R.S.1913, § 6421; Laws 1919, c. 137, § 1, p. 314; C.S.1922, § 5956; C.S.1929, § 77-1602; Laws 1943, c. 175, § 1, p. 609; R.S.1943, § 77-1303; Laws 1945, c. 189, § 1, p. 583; Laws 1947, c. 250, § 22, p. 795; Laws 1947, c. 251, § 32, p. 824; Laws 1951, c. 264, § 1, p. 892; Laws 1953, c. 270, § 2, p. 893; Laws 1955, c. 288, § 20, p. 915; Laws 1959, c. 355, § 21, p. 1265; Laws 1979, LB 187, § 204; Laws 1981, LB 179, § 10; Laws 1987, LB 508, § 42; Laws 1988, LB 842, § 1; Laws 1992, LB 1063, § 118; Laws 1992, Second Spec. Sess., LB 1, § 91; Laws 1997, LB 270, § 65; Laws 1999, LB 194, § 16; Laws 2004, LB 973, § 19; Laws 2005, LB 263, § 7.

County assessor is required annually to supply a list of the taxable lands and lots in the county. *County of Douglas v. OEA Senior Citizens, Inc.*, 172 Neb. 696, 111 N.W.2d 719 (1961).

Continued assessment of portion of tract of land under contract of sale, in the name of vendor, along with other land in tract at one aggregate amount, does not render entire tax based thereon void. *Haarmann Vinegar & Pickle Co. v. Douglas County*, 122 Neb. 643, 241 N.W. 117 (1932).

The presumption of law is that officer making assessment performed his full duty. *Pettibone v. Fitzgerald*, 62 Neb. 869, 88 N.W. 143 (1901).

Assessment of real estate in name of rightful owner is not essential to validity of tax. *Carman v. Harris*, 61 Neb. 635, 85 N.W. 848 (1901).

Tax is void for uncertainty which is assessed and levied against an entire city lot under the description part of lot 5, in block 41. *Spiech v. Tierney*, 56 Neb. 514, 76 N.W. 1090 (1898).

Description is sufficient if it affords notice and protects owner's rights, and it need not refer to plat in city. *Kershaw v. Jansen*, 49 Neb. 467, 68 N.W. 616 (1896).

A county assessor shall prepare a list, ledger, or computer file of all taxable lands in the county. This list shall include in one description all contiguous lots in the same tract or block which belong to one owner. The real estate tax list shall show the name of the owner and shall contain columns in which may be shown the number of acres, the value of the land, the improvements, and the total value. The tax list must be under the separate owner's name, and after the levy is made, the list must show delinquent taxes. *County of Sarpy v. Jansen Real Estate Co.*, 7 Neb. App. 676, 584 N.W.2d 824 (1998).

77-1304 Repealed. Laws 1997, LB 270, § 110.**77-1305 Certificate of assessment; contents; effect.**

The county assessor, when requested by any person, shall give a certificate of assessment of real property showing the amount, kind, location, and taxable value of property assessed, and such certificate shall be evidence of the legal assessment of such property for the year.

Source: Laws 1997, LB 270, § 66.

77-1306 Repealed. Laws 1959, c. 370, § 6.**77-1306.01 Lands adjacent to rivers and streams; survey; report.**

In all counties where land ownership may from time to time be altered to add new lands to the tax rolls due to the activity of any river, stream, or other body of water along or bordering state lines, whether by accretion or avulsion, it shall be the duty of the county surveyor prior to June 1, 1960, and at least once within each five-year period thereafter either to cause to be surveyed any lands believed to have been altered in such manner or to certify in writing that it is his or her opinion that no alteration of ownership of any land in the county from that shown by the then current tax rolls has occurred due to the action of any river, stream, or other body of water along or bordering state lines. A report of such survey or surveys, showing the extent of any probable alteration of ownership due to the action of a river, stream, or other body of water along or bordering state lines, or a certificate of no change as provided shall be filed with the county assessor within the periods hereinbefore stated. In any county where there is no regularly elected or appointed county surveyor the county board shall appoint a qualified surveyor to carry out the provisions of this section. In the event of a failure of county officials to act as directed by this section, within the periods stated, the Property Tax Administrator may appoint a qualified surveyor to act as provided by this section, and all costs incurred shall be paid by the county. In all counties where land ownership may from time to time be altered due to the activity of any river, stream, or other body of water not along or bordering state lines, whether by accretion or avulsion, it shall be the duty of the county surveyor to cause to be surveyed any lands believed to have been altered when directed by the county board of equalization or when requested by the Property Tax Administrator. If such a survey is ordered by the county board of equalization or requested by the Property Tax Administrator, the county surveyor shall perform the same duties as when a river, stream, or other body of water is along or borders state lines.

Source: Laws 1959, c. 370, § 5, p. 1305; Laws 1995, LB 490, § 120.

77-1307 Repealed. Laws 1959, c. 370, § 6.**77-1308 Repealed. Laws 1959, c. 370, § 6.****77-1309 Repealed. Laws 1947, c. 251, § 42.**

77-1310 Repealed. Laws 1947, c. 251, § 42.**77-1311 County assessor; duties.**

The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

- (1) Annually revise the real property assessment for the correction of errors;
- (2) When a parcel has been assessed and thereafter part or parts are transferred to a different ownership, set off and apportion to each its just and equitable portion of the assessment;
- (3) Obey all rules and regulations made under Chapter 77 and the instructions and orders sent out by the Tax Commissioner and the Tax Equalization and Review Commission;
- (4) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether the property described in producing mineral leases, contracts, and bills of sale, have been fully and correctly listed and add to the assessment roll any property which has been omitted; and
- (5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303.

Source: Laws 1903, c. 73, § 113, p. 425; Laws 1905, c. 111, § 3, p. 512; Laws 1909, c. 111, § 1, p. 442; Laws 1911, c. 104, § 12, p. 377; R.S.1913, § 6428; Laws 1921, c. 137, § 1, p. 602; C.S.1922, § 5963; C.S.1929, § 77-1609; Laws 1935, c. 133, § 4, p. 481; Laws 1935, Spec. Sess., c. 14, § 5, p. 91; Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1311; Laws 1947, c. 250, § 24, p. 796; Laws 1951, c. 257, § 2, p. 882; Laws 1959, c. 370, § 2, p. 1303; Laws 1972, LB 1069, § 3; Laws 1979, LB 187, § 205; Laws 1986, LB 1177, § 33; Laws 1990, LB 821, § 49; Laws 1992, LB 719A, § 165; Laws 1994, LB 1275, § 10; Laws 1995, LB 490, § 121; Laws 1997, LB 270, § 67; Laws 1997, LB 397, § 13; Laws 2001, LB 170, § 5; Laws 2003, LB 292, § 11; Laws 2005, LB 263, § 8; Laws 2007, LB334, § 63.

Under this section, the county assessor has authority to correct valuations which have become erroneous by reason of a judicial declaration of invalidity of an increase ordered by the State Board of Equalization and Assessment. *Hansen v. County of Lincoln*, 188 Neb. 461, 197 N.W.2d 651 (1972).

County assessor has the duty of assessing real estate. *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956).

County assessor is given direct charge and full control over assessment of property in county, and is competent witness to

value of real estate. *Beebe & Runyan Furniture Co. v. Board of Equalization*, 139 Neb. 158, 296 N.W. 764 (1941).

County assessor, upon due notice to taxpayer, is authorized to change schedule of a taxpayer by adding thereto taxable property omitted. *Bankers Life Ins. Co. v. Bd. of Equalization of Lancaster County*, 89 Neb. 469, 131 N.W. 1034 (1911).

77-1311.01 Valuation of property; rounding numbers.

The county assessor may, in extending a value on any item of real property, reject all values that fall below two dollars and fifty cents and extend all values of two dollars and fifty cents or more to the next higher five dollars or multiples thereof, making all valuations end in zero or five.

Source: Laws 1987, LB 508, § 14; R.S.Supp.,1988, § 77-430; Laws 1990, LB 821, § 50; Laws 1992, LB 1063, § 119; Laws 1992, Second Spec. Sess., LB 1, § 92.

77-1311.02 Plan of assessment; preparation.

The county assessor shall, on or before June 15 each year, prepare a plan of assessment which shall describe the assessment actions the county assessor

plans to make for the next assessment year and two years thereafter. The plan shall indicate the classes or subclasses of real property that the county assessor plans to examine during the years contained in the plan of assessment. The plan shall describe all the assessment actions necessary to achieve the levels of value and quality of assessment practices required by law and the resources necessary to complete those actions. The plan shall be presented to the county board of equalization on or before July 31 each year. The county assessor may amend the plan, if necessary, after the budget is approved by the county board. A copy of the plan and any amendments thereto shall be mailed to the Department of Revenue on or before October 31 each year.

Source: Laws 2005, LB 263, § 9; Laws 2007, LB334, § 64.

77-1311.03 County assessor; systematic inspection and review; adjustment required.

On or before March 19 of each year, each county assessor shall conduct a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for the purpose of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property. The county assessor shall adjust the value of all other taxable real property parcels by class or subclass in the county so that the value of all real property is uniform and proportionate. The county assessor shall determine the portion to be inspected and reviewed each year to assure that all parcels of real property in the county have been inspected and reviewed no less frequently than every six years.

Source: Laws 2007, LB334, § 100.

77-1312 County assessor; duty to file annual inventory of county personal property.

The county assessor shall prepare and file the annual inventory statement with the county board of his county with respect to all the county personal property in his custody or possession as provided in sections 23-346 to 23-350.

Source: Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1312.

77-1313 Property; assessment; duty of county officer to assist; penalty.

It shall be the duty of the register of deeds, county clerk, county judge, clerk of the district court and all other county officers to assist the county assessor, in the examination of the records of their respective offices, and they shall give to the county assessor any information in their possession that will assist him in the assessment of property. Any county officer, who shall fail, neglect or refuse to perform any of the duties imposed upon him by this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than fifty dollars nor more than five hundred dollars for each offense.

Source: Laws 1903, c. 73, § 144, p. 427; R.S.1913, § 6429; C.S.1922, § 5964; C.S.1929, § 77-1610; R.S.1943, § 77-1313.

77-1314 Repealed. Laws 1997, LB 397, § 51.**77-1315 Adjustment to real property assessment roll; county assessor; duties; publication.**

(1) The county assessor shall, after March 19 and on or before June 1, implement adjustments to the real property assessment roll for actions of the Tax Equalization and Review Commission.

(2) On or before June 1, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, the dates for filing a protest, and the average level of value of all classes and subclasses of real property in the county as determined by the Tax Equalization and Review Commission.

(3) Immediately upon completion of the assessment roll, the county assessor shall cause to be published in a newspaper of general circulation in the county a certification that the assessment roll is complete and notices of valuation changes have been mailed and provide the final date for filing valuation protests with the county board of equalization.

(4) The county assessor shall annually, on or before June 6, post in his or her office and, as designated by the county board, mail to a newspaper of general circulation and to licensed broadcast media in the county the assessment ratios as found in his or her county as determined by the Tax Equalization and Review Commission and any other statistical measures, including, but not limited to, the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

Source: Laws 1903, c. 73, § 116, p. 427; Laws 1909, c. 111, § 1, p. 444; R.S.1913, § 6431; C.S.1922, § 5966; Laws 1927, c. 179, § 1, p. 519; C.S.1929, § 77-1612; R.S.1943, § 77-1315; Laws 1947, c. 250, § 26, p. 798; Laws 1947, c. 251, § 34, p. 825; Laws 1953, c. 271, § 1, p. 896; Laws 1953, c. 270, § 4, p. 894; Laws 1953, c. 272, § 1, p. 897; Laws 1959, c. 355, § 22, p. 1266; Laws 1959, c. 370, § 4, p. 1305; Laws 1971, LB 209, § 1; Laws 1979, LB 187, § 206; Laws 1984, LB 660, § 1; Laws 1992, LB 1063, § 120; Laws 1992, Second Spec. Sess., LB 1, § 93; Laws 1994, LB 902, § 16; Laws 1995, LB 452, § 18; Laws 1997, LB 270, § 68; Laws 1999, LB 194, § 17; Laws 2001, LB 156, § 1; Laws 2001, LB 170, § 6; Laws 2002, LB 994, § 12; Laws 2004, LB 973, § 20; Laws 2005, LB 261, § 2.

Cross References

For date of convening the county board of equalization, see section 77-1502.

1. Notice
2. Miscellaneous

1. Notice

Increased assessment of property held void where notice requirement not met. *Reed v. County of Hall*, 199 Neb. 134, 256 N.W.2d 861 (1977).

Notice to landowner by an assessor of an increase in assessment of property for taxation is required. *Keller v. Keith County*, 179 Neb. 111, 136 N.W.2d 441 (1965).

Requirement of notice to landowner of any increase in value of realty is mandatory. *Babin v. County of Madison*, 161 Neb. 536, 73 N.W.2d 807 (1955); *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

Where improvements are added to realty and assessed in a year when real estate is not required to be assessed, notice

under this section is not required. *Watson Bros. Realty Co. v. County of Douglas*, 149 Neb. 799, 32 N.W.2d 763 (1948).

Provision requiring notice to landowner of any increase in assessed value of his realty over last previous assessment is mandatory. Tax levied on such increase, made without notice to owner, is void, and collection may be enjoined. *Rosenbery v. Douglas County*, 123 Neb. 803, 244 N.W. 398 (1932).

County board of equalization cannot raise the assessed valuation of an individual taxpayer without a complaint and without notice to taxpayer. *Brown v. Douglas County*, 98 Neb. 299, 152 N.W. 545 (1915).

2. Miscellaneous

When a county board of equalization exercises its direct authority under section 77-1502 to add omitted property or to increase the assessment of undervalued property, the April 1 notice deadline under this section is not applicable, and the board may meet at any time. *Farmers Co-op Assn. v. Boone County*, 213 Neb. 763, 332 N.W.2d 32 (1983).

This section does not apply to increases in valuation ordered by the State Board of Equalization and Assessment under section 77-508.01, R.R.S.1943. *Hansen v. County of Lincoln*, 188 Neb. 461, 197 N.W.2d 651 (1972).

State Board of Equalization and Assessment has authority to make rules and regulations. *County of Brown v. State Board of Equalization and Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Kimball v. State Board of Equalization and Assessment*, 180 Neb. 482, 143 N.W.2d 893 (1966); *County of Blaine v. State Board of Equalization and Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

County assessor must prepare and forward revision of returns filed with him. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

Procedure when real estate is assessed at a higher figure than at last previous assessment stated. *Radium Hospital v. Greenleaf*, 118 Neb. 136, 223 N.W. 667 (1929).

77-1315.01 Overvaluation or undervaluation; county assessor; report.

After March 19 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the county assessor shall report to the county board of equalization any overvaluation or undervaluation of any real property. The county board of equalization shall consider the report in accordance with section 77-1504.

The current year's assessed valuation of any real property shall not be changed by the county assessor after March 19 except by action of the Tax Equalization and Review Commission or the county board of equalization.

Source: Laws 1997, LB 270, § 69; Laws 1999, LB 194, § 18; Laws 2004, LB 973, § 21; Laws 2005, LB 261, § 3; Laws 2005, LB 283, § 1.

77-1316 Repealed. Laws 1997, LB 270, § 110.

77-1316.01 Correction of tax rolls.

The county assessor of any county shall, at any time, correct the tax rolls as provided in section 77-1613.02 for any real property listed on the assessment roll but omitted from the tax roll.

Source: Laws 1921, c. 133, art. XI, § 6, p. 592; C.S.1922, § 5903; C.S.1929, § 77-1006; Laws 1939, c. 100, § 1, p. 457; C.S.Supp.,1941, § 77-1006; R.S.1943, § 77-518; Laws 1947, c. 250, § 11, p. 791; Laws 1949, c. 226, § 1, p. 631; R.S.1943, (1986), § 77-518; Laws 1997, LB 270, § 70.

County board may equalize assessments of omitted property. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

Under this section, county assessors are authorized to add omitted property to the tax rolls for the current year. In re *Estate of Rogers*, 147 Neb. 1, 22 N.W.2d 297 (1946).

77-1317 Real property; assessment; omitted lands; correction; exceptions.

It shall be the duty of the county assessor to report to the county board of equalization all real property in his or her county that, for any reason, was omitted from the assessment roll for the current year, after March 19, or any former year. The assessment shall be made by the county board of equalization in accordance with sections 77-1504 and 77-1507. After county board of equalization action pursuant to section 77-1504 or 77-1507, the county assessor shall correct the assessment and tax rolls as provided in section 77-1613.02. No real property shall be assessed for any prior year under this section when such

real property has changed ownership otherwise than by will, inheritance, or gift.

Source: Laws 1903, c. 73, § 118, p. 428; R.S.1913, § 6433; C.S.1922, § 5968; C.S.1929, § 77-1614; R.S.1943, § 77-1317; Laws 1947, c. 250, § 28, p. 798; Laws 1949, c. 232, § 1, p. 643; Laws 1992, LB 1063, § 121; Laws 1992, Second Spec. Sess., LB 1, § 94; Laws 1997, LB 270, § 71; Laws 1999, LB 194, § 19; Laws 2004, LB 973, § 22.

This section does not require formal notice from the county assessor to the landowner that valuation of real estate has been changed as a result of improvements undisclosed at the time of a previous assessment. *Ganser v. County of Lancaster*, 215 Neb. 313, 338 N.W.2d 609 (1983).

Question raised but not decided as to whether notice was required under this section. *Keller v. Keith County*, 179 Neb. 111, 136 N.W.2d 441 (1965).

Legislature used terms liable to taxation, subject to taxation, and taxable as generally meaning one and the same thing. *Hanson v. City of Omaha*, 154 Neb. 72, 46 N.W.2d 896 (1951).

Under former law, it was duty of county clerk to assess lands which had not been assessed or had escaped taxation. *Radium Hospital v. Greenleaf*, 118 Neb. 136, 223 N.W. 667 (1929); *Elkhorn Land & Town Lot Co. v. Dixon County*, 35 Neb. 426, 53 N.W. 382 (1892).

77-1318 Real property taxes; back interest and penalties; when; appeal.

All taxes charged under section 77-1317 shall be exempt from any back interest or penalty and shall be collected in the same manner as other taxes levied upon real estate, except for taxes charged on improvements to real property made after September 1, 1980. Interest at the rate provided in section 77-207 and the following penalties and interest on penalties for late reporting or failure to report such improvements pursuant to section 77-1318.01 shall be collected in the same manner as other taxes levied upon real property. The penalty for late reporting or failure to report improvements made to real property after September 1, 1980, shall be as follows: (1) A penalty of twelve percent of the tax due on the improvements for each taxing period for improvements voluntarily filed or reported after March 19 has passed; and (2) a penalty of twenty percent of the tax due on improvements for each taxing period for improvements not voluntarily reported for taxation purposes after March 19 has passed. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be assessed upon such penalty from the date of delinquency of the tax until paid. No penalty excluding interest shall be charged in excess of one thousand dollars per year. For purposes of this section, improvement shall mean any new construction of or change to an item of real property as defined in section 77-103.

Any additional taxes, penalties, or interest on penalties imposed pursuant to this section may be appealed in the same manner as appeals are made under section 77-1233.06.

Source: Laws 1903, c. 73, § 119, p. 428; R.S.1913, § 6434; C.S.1922, § 5969; C.S.1929, § 77-1615; R.S.1943, § 77-1318; Laws 1980, LB 689, § 2; Laws 1984, LB 835, § 7; Laws 1987, LB 508, § 43; Laws 1990, LB 821, § 51; Laws 1997, LB 270, § 72; Laws 1999, LB 194, § 20; Laws 2004, LB 973, § 23.

77-1318.01 Improvements to real property; information statement filed with county assessor; forms; contents.

(1) In order that improvements to real property are properly assessed for property tax purposes, no building amounting to a value of two thousand five hundred dollars or more shall hereafter be erected, or structurally altered or

repaired, and no electrical, heating, plumbing, or other installation or connection, or other improvement to real property, amounting to a value of two thousand five hundred dollars or more, shall hereafter be made until an information statement has been filed with the county assessor in the county in which the improvement is to be made. Common carriers and public utilities regulated either by the State of Nebraska or the federal government, or owned, operated, or leased by a political subdivision thereof, shall not be required to file an information statement for the structural alteration, or repair of a building, or for the electrical, heating, plumbing, or other installation or connection, or other improvement to real property owned by it or pursuant to a contract or a service agreement. Any building permit required and issued by a county or municipal officer shall fulfill the requirements of this section if it contains the information required by this section and if a copy is provided to the county assessor by the officer.

(2) If the county or municipality does not require a permit under its zoning laws, the information statement shall be filed with the county assessor. The form for the information statement shall be provided by the county assessor and shall be filed on or before December 31 of the year of construction, repair, alteration, or improvement.

(3) The information statement shall show the following: (a) Name and address of the owner of the property; (b) name and address of the applicant, if different than owner; (c) name of prime contractor for the project, if there is one; (d) location of the property, size, nature, intended use, and approximate material cost of the improvement; and (e) the estimated period of construction.

Source: Laws 1969, c. 624, § 1, p. 2522; Laws 1997, LB 270, § 73; Laws 2002, LB 994, § 13.

77-1318.02 Repealed. Laws 1984, LB 835, § 18.

77-1319 Repealed. Laws 1959, c. 370, § 6.

77-1320 Repealed. Laws 1965, c. 489, § 1.

77-1320.01 Repealed. Laws 1965, c. 475, § 7.

77-1320.02 Repealed. Laws 1987, LB 508, § 50.

77-1320.03 Repealed. Laws 1987, LB 508, § 50.

77-1320.04 Transferred to section 77-412.01.

77-1320.05 Repealed. Laws 1987, LB 508, § 50.

77-1320.06 Repealed. Laws 1987, LB 508, § 50.

77-1321 Repealed. Laws 1965, c. 489, § 1.

77-1322 Assessment of property; Board of Equalization; special assessments; invalid assessments for want of adequate notice; reassessment and relevy authorized.

The governing body of all cities, including cities which have adopted or which hereafter adopt a home rule charter under and pursuant to sections 2 to 5, inclusive, of Article XI of the Constitution of this state, villages, public corporations, and political subdivisions of the State of Nebraska, sitting as a

board of equalization and assessment shall have power in all cases where special assessments heretofore made or which may hereafter be made for any purpose have been or may be declared void or invalid, for want of adequate notice, to reassess and relevy a new assessment equal to the special benefits and not exceeding the cost of the improvement for which the assessment was made upon the property originally assessed, and such reassessment and relevy shall be made substantially in the manner provided for making original assessments of like nature, and when so made shall constitute a lien upon the property prior and superior to all other liens except liens for taxes or other special assessments, and taxes so reassessed shall be enforced and collected as other special taxes; and in making such reassessment the governing body sitting as a board of equalization and assessment shall take into consideration payments, if any, made on behalf of the property reassessed, under such prior void assessment; and if such prior payments exceed the special assessment on the given property as finally determined, the excess, with lawful interest thereon, shall be refunded to the party paying the same.

Source: Laws 1957, c. 332, § 1, p. 1165.

77-1323 Public improvement; furnishing labor or material; certificate that equipment has been assessed.

Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Source: Laws 1963, c. 436, § 1, p. 1453; Laws 1993, LB 121, § 496.

77-1324 Public improvement; furnishing labor or material; falsifying certificate that equipment has been assessed; violation; penalty.

Any person, partnership, limited liability company, association, or corporation falsifying any statement required by section 77-1323 shall be guilty of a Class IV misdemeanor.

Source: Laws 1963, c. 436, § 2, p. 1453; Laws 1977, LB 39, § 223; Laws 1993, LB 121, § 497.

77-1325 Repealed. Laws 1999, LB 36, § 41.

77-1326 Repealed. Laws 1986, LB 817, § 15.

77-1327 Legislative intent; Property Tax Administrator; sales file; studies; powers and duties.

(1) It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file by the

Property Tax Administrator. All transactions with stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.

(4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.

(5) The Property Tax Administrator may require assessors and other taxing officials to report data on the assessed valuation and other features of the property assessment for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts, as well as intercounty comparisons of assessed valuation, including school districts. The Property Tax Administrator shall include analysis of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.

Source: Laws 1969, c. 622, § 3, p. 2513; Laws 1979, LB 187, § 207; Laws 1980, LB 834, § 61; Laws 1992, LB 719A, § 166; Laws 1994, LB 1275, § 11; Laws 1995, LB 452, § 19; Laws 1995, LB 490, § 124; Laws 1999, LB 36, § 29; Laws 1999, LB 194, § 21; Laws 2001, LB 170, § 7; Laws 2002, LB 994, § 14; Laws 2005, LB 40, § 8; Laws 2007, LB334, § 65; Laws 2009, LB166, § 8.

The real property transactions eligible for inclusion in the sales file are those transactions for which the statement required by section 76-214 is filed. For those transactions initially eligible for inclusion in the sales file, the price to be included in the sales file is the total consideration paid as listed on the

statement described in subsection (1) of section 76-214. Section 77-1371 does not pertain to a compilation of a sales file under subsection (2) of this section. *Shaul v. Lang*, 263 Neb. 499, 640 N.W.2d 668 (2002).

77-1328 Repealed. Laws 1987, LB 508, § 50.**77-1329 Tax maps; county assessor; maintain.**

The Property Tax Administrator shall require each county assessor to maintain tax maps in accordance with standards specified by the Property Tax Administrator. Whenever necessary to correct mapping deficiencies, the Property Tax Administrator shall install standard maps or approve mapping plans and supervise map production. The Property Tax Administrator may require the county to reimburse the state for tax maps installed.

Source: Laws 1969, c. 622, § 5, p. 2514; Laws 1995, LB 490, § 125.

77-1330 Property Tax Administrator and Tax Commissioner; guides for assessors; prepare; issue; failure to implement guide; corrective measures; procedures; cost; payment; State Treasurer; duties; removal of county assessor or deputy from office; appeal.

(1) The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the materials in the performance of their duties. The standards shall not require the implementation of a specific computer software or hardware system if the existing software or system produces data and reports in compliance with the standards.

(2) The Property Tax Administrator, or his or her agent or representative, may examine or cause to have examined any books, papers, records, or memoranda of any county relating to the assessment of property to determine compliance with the laws, rules, regulations, manuals, and directives described in subsection (1) of this section. Such production of records shall not include the photocopying of records between January 1 and April 1. Failure to provide such records to the Property Tax Administrator may constitute grounds for the suspension of the assessor's certificate of any county assessor who willfully fails to make requested records available to the Property Tax Administrator.

(3) After an examination the Property Tax Administrator shall provide a written report of the results to the county assessor and county board. If the examination indicates a failure to meet the standards contained in the laws, rules, regulations, manuals, and directives, the Property Tax Administrator shall, in the report, set forth the facts and cause of such failures as well as corrective measures the county or county assessor may implement to correct those failures.

(4) After the issuance of the report of the results of the examination, the Property Tax Administrator may seek to order a county or county assessor to take corrective measures to remedy any failure to comply with the materials described in subsection (1) of this section. Such corrective orders may only be issued after written notice and a hearing before the Tax Commissioner conducted at least ten days after the issuance of the written notice of hearing. The performance of such corrective measures shall be implemented by the county to

which the order is issued. If the county fails to implement such corrective measures, the Property Tax Administrator may seek to suspend the assessment function of the county under the terms of subsection (5) of this section and shall implement the corrective measures pursuant to subsection (6) of this section. The performance of such corrective measures shall be a charge on the county, and upon completion, the Property Tax Administrator shall notify the county board of the cost and make demand for such cost. If payment is not received within one hundred twenty days after the start of the next fiscal year, the Tax Commissioner shall report such fact to the State Treasurer. The State Treasurer shall immediately make payment to the Department of Revenue for the costs incurred by the department for such corrective measures. The payment shall be made out of any money to which such county may be entitled under Chapter 77, articles 27 and 35, and Chapter 66, articles 4 and 6.

(5) If, within one year from the service of the order, the measures in the corrective order have not been taken, the Tax Commissioner (a) may, at any time during the continuance of such failure, issue an order requiring the county assessor and county board to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, (b) shall set a time and place at which the Tax Commissioner or his or her representative shall hear the county assessor and county board on the question of compliance by the county assessor or county with the laws, rules, regulations, manuals, directives, or corrective orders described in this section, and (c) after such hearing shall determine whether and to what extent the assessment function of the county shall be so suspended. Such hearing shall be held at least ten days after the issuance of such notice in the county.

(6) During the continuance of a suspension pursuant to subsection (5) of this section, the Property Tax Administrator shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the Tax Commissioner finds that the conditions responsible for the failure to meet the minimum standards contained in the laws, rules, regulations, manuals, and directives have been corrected.

(7) The Property Tax Administrator, subject to rules and regulations to be published and furnished to every county assessor and county board, shall have the power to petition the Tax Commissioner to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his or her duties in accordance with the laws, rules, regulations, manuals, and orders issued by the Tax Commissioner governing the assessment of property and the duties of each assessor and deputy assessor. No certificate shall be revoked or suspended except after notice and a hearing before the Tax Commissioner or his or her designee. Such hearing shall be held at least ten days after the issuance of such notice in the county. Prior to revocation, a one-year probationary period, subject to oversight by the Tax Commissioner, shall be imposed. At the end of the one-year probationary period, a second hearing shall be held. If assessment practices have improved, the probationary period shall end and no revocation shall be made. If assessment practices have not improved, the assessor certificate shall be revoked. If during the probationary period, the assessor continues to willfully fail or refuse to diligently perform his or her duties, the Tax Commissioner may immediately hold the second hearing. If the county assessor certificate of a person serving as assessor or deputy

assessor is revoked, such person shall be removed from office by the Tax Commissioner, the office shall be declared vacant, and such person shall not be eligible to hold that office for a period of five years after the date of removal. The Tax Commissioner shall mail a copy of his or her written order to the affected party within seven days after the date of the order.

(8) All hearings described in this section shall be governed by the Administrative Procedure Act. Any county aggrieved by a determination of the Tax Commissioner after a hearing pursuant to subsections (4) and (5) of this section or alleging that its suspension is no longer justified or any assessor or deputy assessor whose county assessor certificate has been revoked may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1969, c. 622, § 6, p. 2514; Laws 1979, LB 159, § 7; Laws 1981, LB 479, § 1; Laws 1984, LB 833, § 3; Laws 1985, LB 271, § 14; Laws 1995, LB 490, § 126; Laws 1999, LB 36, § 30; Laws 1999, LB 194, § 22; Laws 2004, LB 973, § 24; Laws 2007, LB334, § 66.

Cross References

Administrative Procedure Act, see section 84-920.

The guides referred to herein are necessarily no more than guidelines to be employed in arriving at an ultimate assessment against a particular taxable unit which meets the constitutional and statutory requirements that property be taxed uniformly and proportionately, at an amount which does not exceed actual value; the same is true of all things except constitutionally valid property tax laws per se. *Beynon Farm Products v. Bd. of Equalization*, 213 Neb. 815, 331 N.W.2d 531 (1983).

Application of Department of Revenue guidelines for allowance of economic depreciation raises a presumption that the resulting assessment is correct; however, the guidelines must give way to evidence showing that such application will violate the constitutional requirement of uniform and proportionate taxation or the statutory requirement of taxation at actual value. *Farmers Co-op Assn. v. Boone County*, 213 Neb. 763, 332 N.W.2d 32 (1983).

77-1331 Property Tax Administrator; tax records; duties.

Pursuant to rules and regulations, the Property Tax Administrator shall, on or before July 1, 2007, develop, maintain, and enforce a uniform statewide structure for record identification codes, property record cards, property record files, and other administrative reports required for the administration of the property assessment process. The Property Tax Administrator shall not require the use of specific computer software or hardware if an existing system produces data and reports in compliance with the rules and regulations of the Tax Commissioner.

Source: Laws 1969, c. 622, § 7, p. 2514; Laws 1971, LB 155, § 1; Laws 1995, LB 490, § 127; Laws 2000, LB 968, § 46; Laws 2005, LB 263, § 10; Laws 2007, LB334, § 67.

77-1332 Appraisal of commercial or industrial property; Property Tax Administrator; powers.

Whenever a county by or pursuant to action of its county board requests the Property Tax Administrator to provide engineering, professional, or technical services for the appraisal of major commercial or industrial properties, the Property Tax Administrator may, within his or her available resources, provide such services. The county shall pay to the Property Tax Administrator the actual cost of such services.

Source: Laws 1969, c. 622, § 8, p. 2514; Laws 1995, LB 490, § 128; Laws 2000, LB 968, § 47.

77-1333 Rent-restricted housing projects; county assessor; perform income-approach calculation; owner; duties.

(1) The county assessor shall perform an income-approach calculation for all rent-restricted housing projects constructed to allow an allocation of low-income housing tax credits under section 42 of the Internal Revenue Code and approved by the Nebraska Investment Finance Authority when considering the assessed valuation to place on the property for each assessment year. The income-approach calculation shall be consistent with any rules and regulations adopted and promulgated by the Tax Commissioner and shall comply with professionally accepted mass appraisal techniques. Any low-income housing tax credits authorized under section 42 of the Internal Revenue Code that were granted to owners of the project shall not be considered income for purposes of the calculation but may be considered in determining the capitalization rate to be used when capitalizing the income stream. The county assessor, in determining the actual value of any specific property, may consider other methods of determining value that are consistent with professionally accepted mass appraisal methods described in section 77-112.

(2) The owner of a rent-restricted housing project shall file a statement with the county assessor on or before October 1 of each year that details income and expense data for the prior year, a description of any land-use restrictions, and such other information as the county assessor may require.

Source: Laws 2005, LB 263, § 6; Laws 2007, LB334, § 68.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

77-1334 Property Tax Administrator; inspections, investigations, and studies; administration of tax laws.

The Property Tax Administrator may make such inspections, investigations, and studies as may be necessary for the adequate administration of his or her responsibilities pursuant to the provisions of sections 77-701 to 77-706 and 77-1327 to 77-1342. Such inspections, investigations, and studies may be made in cooperation with other state agencies, and, in connection therewith, the Property Tax Administrator may utilize reports and data of other state agencies.

Source: Laws 1969, c. 622, § 10, p. 2515; Laws 1995, LB 490, § 130; Laws 1999, LB 36, § 31; Laws 2007, LB334, § 69.

77-1335 Repealed. Laws 1986, LB 817, § 15.

77-1336 Repealed. Laws 1999, LB 194, § 40.

77-1337 Transferred to section 77-429.

77-1338 Values established; effect.

The county and all political subdivisions within the county shall be bound by the values established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission for all property subject to its taxing power.

Source: Laws 1969, c. 622, § 14, p. 2517; Laws 1979, LB 187, § 208; Laws 1992, LB 1063, § 122; Laws 1992, Second Spec. Sess., LB 1, § 95; Laws 1994, LB 902, § 17; Laws 1997, LB 397, § 15; Laws 2005, LB 261, § 4.

77-1339 Joint or cooperative performance of assessment function; two or more counties; agreement; contents; approval by Tax Commissioner.

(1) Any two or more counties may enter into an agreement for joint or cooperative performance of the assessment function.

(2) Such agreement shall provide for:

(a) The division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(b) The financing of the joint or cooperative undertaking;

(c) The rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(d) The duration of the agreement and procedures for amendment or termination thereof; and

(e) Any other necessary or appropriate matters.

(3) The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

(4) Unless the agreement provides for the performance of the assessment function by the assessor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe the manner of electing the assessor, and the employees of the office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing such assessor. No person shall be appointed assessor pursuant to an agreement who could not be so appointed for a single county. Except to the extent made necessary by the multicounty character of the assessment agency, qualifications for employment as assessor or in the assessment agency and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an assessor serving pursuant to an agreement made under this section and the employees of the assessment agency. As nearly as practicable, such inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(5) No agreement made pursuant to the provisions of this section shall take effect until it has been approved in writing by the Tax Commissioner.

(6) Copies of any agreement made pursuant to the provisions of this section, and of any amendment thereto, shall be filed in the office of the Tax Commissioner and county board of the counties involved.

Source: Laws 1969, c. 622, § 15, p. 2517; Laws 1995, LB 490, § 132; Laws 2007, LB334, § 70; Laws 2009, LB121, § 5.
Operative date July 1, 2013.

77-1340 County assessment function by Property Tax Administrator; procedure; cost; effect; billing of county; county board reassume assessment function; appointment of county assessor; transfer of property; employees.

(1) The county board of a county may, by resolution, request the Property Tax Administrator to assume the duties, responsibilities, and authority of the county

assessor and to perform the same in and for the county. Such a resolution must be adopted on or before October 31, 2006, and every other year thereafter.

(2) If the Property Tax Administrator finds that direct state performance of the duties, responsibilities, and authority of the county assessor will be either (a) necessary or desirable for the economic and efficient performance thereof or (b) necessary or desirable for improving the quality of assessment in the state, he or she may recommend assumption of such duties, responsibilities, and authority. The Tax Commissioner shall decide whether to recommend assumption and deliver such recommendation to the Governor and the Legislature by December 15, 2006, and every other year thereafter.

(3) The Tax Commissioner may recommend assuming the duties, responsibilities, and authority of the county assessor or reject assuming such duties, responsibilities, and authority. If the Tax Commissioner rejects the request, the assessment function shall not be transferred and the county may make another request.

(4) Upon a recommendation by the Tax Commissioner that the assumption of the assessment function should be undertaken according to the criteria in subsection (2) of this section, the Tax Commissioner shall request from the Legislature a sufficient appropriation in the next regular session of the Legislature following the recommendation to assume the assessment function. If the appropriation is not made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will not be undertaken. If a sufficient appropriation is made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will be undertaken beginning the next following July 1.

(5) If the Tax Commissioner recommends assumption of the assessment function and the Legislature makes an appropriation which the Tax Commissioner determines is sufficient to undertake the assumption, then commencing on the second July 1 after the adoption of the resolution by the county board, (a) the Property Tax Administrator shall undertake and perform the assessment function and all other duties and functions of the county assessor's office, including appraisal and reappraisal, (b) the office and functions of the county assessor shall be suspended, and (c) the performance of the assessment function by the Property Tax Administrator shall be deemed performance by the county assessor. Upon the assumption of the assessment function by the Property Tax Administrator, the term of office of the incumbent county assessor shall terminate and the county need no longer elect a county assessor pursuant to section 32-519. At that time, the county assessor and the employees of the county assessor's office shall become state employees with the status of newly hired employees except as provided in section 77-1340.02. No transferred county assessor or employee shall incur a loss of income or the right to participate in state-sponsored benefits as a result of becoming a state employee with the status of a newly hired employee pursuant to this section.

(6) Beginning July 1, 2010, the Property Tax Administrator shall bill each county for which the Property Tax Administrator has assumed the assessment function under this section for the services rendered on a quarterly basis. Beginning July 1, 2010, through June 30, 2011, the Property Tax Administrator shall bill twenty-five percent of the cost of the services rendered; beginning July 1, 2011, through June 30, 2012, the Property Tax Administrator shall bill fifty percent of the cost of the services rendered; and beginning July 1, 2012,

through June 30, 2013, the Property Tax Administrator shall bill seventy-five percent of the cost of the services rendered. Reimbursements to the Department of Revenue shall be credited to the Department of Revenue Property Assessment Division Cash Fund.

(7) The county board of a county may, by resolution, reassume the assessment function prior to November 1, 2009, for fiscal year 2010-11, prior to September 1, 2010, for fiscal year 2011-12, and prior to September 1, 2011, for fiscal year 2012-13. The county board shall appoint an individual with a valid assessor's certificate to the position of county assessor. The appointment shall be effective July 1 of the year following the adoption of the resolution. On July 1 of such year, the appointed county assessor shall assume the title and perform the assessment functions and any other duties mandated of the office of county assessor. The appointed assessor shall continue to perform the county assessor's duties until an assessor is elected at the next election. At the close of business on June 30 of the year following the adoption of the resolution, the Property Tax Administrator shall cease his or her performance of the county assessment function. The Property Tax Administrator shall at that time transfer all books, files, and similar records with regard to the county assessment function of the county and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles, to the county assessor. All contracts of the Department of Revenue pertaining to the operation of the county assessment function shall be assumed by the county until the expiration of the contract. On July 1 of the year following the adoption of the resolution, the employees of the Department of Revenue involved in the performance of the county assessment function in that county shall become county employees by operation of law.

Source: Laws 1969, c. 622, § 16, p. 2519; Laws 1995, LB 490, § 133; Laws 1996, LB 1085, § 53; Laws 1997, LB 269, § 37; Laws 2002, LB 994, § 15; Laws 2005, LB 291, § 1; Laws 2007, LB334, § 71; Laws 2009, LB121, § 6.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.01 Transfer of assessment function; county maintain facilities.

When a transfer of the assessment function has been made pursuant to section 77-1340, the county shall maintain, at no additional cost to the state, office and service facilities used for the office of the county assessor and assessment functions as such facilities existed at the time of the county board resolution authorizing a transfer. All furniture, computers, and equipment used by the county to perform the assessment function prior to the transfer shall remain the property of the county. All books, files, and similar records shall be transferred to the Property Tax Administrator.

Source: Laws 1997, LB 269, § 38.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.02 Transfer of assessment function; transferred employee; retirement rights.

(1) On the date of employment transfer, all transferred employees shall immediately have the right to participate in the State Employees Retirement System of the State of Nebraska and shall have any retirement funds trans-

ferred from the retirement system of the county for which they work to the State Employees Retirement System as follows:

(a) For transferred employees who are transferring from a county which participates in the Retirement System for Nebraska Counties under the County Employees Retirement Act and who participate in such system, the amount transferred shall equal the employee and employer accounts of the transferring employee plus earnings on those amounts during the period of employment with the county; and

(b) For transferred employees who are transferring from a county which has established a separate retirement system pursuant to section 23-1118, the amount transferred shall be calculated as follows:

(i) If the retirement system of the county is a defined benefit system, a benefit transfer value of the employee's accrued benefit shall be determined by calculating the present value of the employee's retirement benefit based on the employee's years of service as of the date of transfer and the other actuarial assumptions of the retirement system of the county so that the effect on the retirement system of the county will be actuarially neutral; and

(ii) The amount transferred to the State Employees Retirement System shall equal one of the following: If the retirement system of the transferring county is a defined benefit system, an amount equal to the benefit transfer value; if the retirement system of the transferring county is a defined contribution system, the value of the employer and employee accounts of the employee plus earnings on those amounts during the period of employment with the county.

(2) Upon the completion of the transfer of funds pursuant to subsection (1) of this section, the transferred employee shall receive vesting credit for such employee's years of participation in the retirement system of the county from which the employee was transferred.

(3) For purposes of this section, employee means a county assessor and employees of the county assessor's office transferred to the state pursuant to section 77-1340.

Source: Laws 1997, LB 269, § 39.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

Cross References

County Employees Retirement Act, see section 23-2331.

State Employees Retirement Act, see section 84-1331.

77-1340.03 Transfer of assessment function; transferred employee; leave and insurance rights.

(1) A county shall transfer all accrued sick leave of a transferred employee up to the maximum number of accumulated hours for sick leave allowed by the State Personnel System. The county shall reimburse the state for twenty-five percent of the value of the accrued sick leave hours based on the straight-time rate of pay for each employee. A county assessor who becomes a state employee and who does not have any accrued sick leave shall be granted one hundred sixty hours of sick leave. The county shall reimburse the state for twenty-five percent of the value of the sick leave hours based on the straight-time rate of pay for the county assessor.

(2) The transferred employee may transfer the maximum amount of accrued annual leave earned as an employee of the county allowed by the State Personnel System. The county shall reimburse the state for one hundred

percent of the value of the hours of accrued annual leave transferred. A county assessor who becomes a state employee and who does not have any accrued annual leave shall be granted ninety-six hours of vacation leave. The county shall reimburse the state for one hundred percent of the value of the hours of annual leave based on the straight-time rate of pay for the county assessor.

(3) No transferred employee shall lose any accrual rate value of his or her sick leave and vacation leave as a result of becoming a state employee, and a transferred employee may credit years of service with the county toward the accrual rate for sick leave and vacation leave plans. When accrued sick leave and vacation leave for a transferred employee are at a greater rate value than allowed by the state's sick leave and vacation leave plans, the county shall pay the state the difference between the value of the benefits allowed by the county and the state based on, at the time of transfer, twenty-five percent of the employee's straight-time rate of pay for the sick leave and one hundred percent of the employee's straight-time rate of pay for vacation leave. A county shall reimburse the state not later than one year after the transfer is complete.

(4) The transferred employee shall not receive any additional accrual rate value for state benefits until the employee meets the qualifications for the increased accrual rates pursuant to the state's requirements.

(5) The transferred employee may participate in and be covered by the insurance program established by sections 84-1601 to 84-1615. The waiting period for medical insurance coverage of transferred employees shall be waived.

(6) For purposes of this section:

(a) Employee means a county assessor and employees of the county assessor's office transferred to the state pursuant to section 77-1340; and

(b) Straight-time rate of pay means the rate of pay in effect at the time of adoption of the resolution by the county board authorizing the transfer.

Source: Laws 1997, LB 269, § 40.

Note: This section was repealed by Laws 2009, LB121, section 15, operative on July 1, 2013.

77-1340.04 Property Tax Administrator; relinquish property tax function; employees; transfer of property; appointment of county assessor; allocation of costs; contracts.

(1) On July 1, 2013, the Property Tax Administrator shall relinquish the property assessment function in all counties that transferred the assessment function to the Property Tax Administrator and have not reassumed the assessment function prior to such date.

(2) On July 1, 2013, the employees of the Department of Revenue involved in the performance of the county assessment function shall become county employees by operation of law.

(3) At the close of business on June 30, 2013, the Property Tax Administrator shall cease his or her performance of the county assessment function and the county assessor appointed pursuant to subsection (4) of this section shall assume the county assessment function. The Property Tax Administrator shall at that time transfer all books, files, and similar records with regard to the county assessment function of the county and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles, to the county assessor.

(4) In such counties, the county board shall appoint an individual with a valid assessor's certificate to the position of county assessor. The appointment shall be effective July 1, 2013. On July 1, 2013, the appointed county assessor shall assume the title and perform the assessment functions and any other duties mandated of the office of county assessor. The appointed assessor shall continue to perform the county assessor's duties until an assessor is elected at the next election.

(5) The Property Tax Administrator shall provide to each county board of a county that transferred the assessment function to the Property Tax Administrator on or before October 1, 2009, a line-item allocation of its total cost of the assessment function for the fiscal year ending June 30, 2009. This allocation of costs shall also identify the costs attributable to those employees that perform duties in more than one county.

(6) All contracts of the Department of Revenue pertaining to the operation of the county assessment function shall be assumed by the county until the expiration of the contract.

(7) Counties in which there are employees of the department who provide services to more than one county shall enter into an agreement pursuant to section 77-1339 for the continued performance of the services provided by the employee. No agreement pursuant to section 77-1339 is necessary if one of the counties in which the employee is providing services agrees to retain the employee as a permanent full-time employee.

Source: Laws 2009, LB121, § 8.

77-1340.05 Transfer of assessment function to county; transferred employee; retirement rights.

(1)(a) On the date of employment transfer, all employees of the Department of Revenue transferred to a county pursuant to section 77-1340 or 77-1340.04 shall immediately have the right to participate in the particular county employees retirement plan and shall have all retirement funds transferred from the State Employees Retirement System of the State of Nebraska.

(b) For transferred employees who are transferring retirement funds, the amount transferred shall equal the employee and employer accounts of the transferring employee plus earnings on those amounts during the period of employment with the state.

(2) Upon the completion of the transfer of funds pursuant to subsection (1) of this section, the transferred employee shall receive vesting credit for such employee's years of participation in the retirement system of the county from which the employee was transferred, if any, plus all years of participation in the State Employees Retirement System. Each employee that was employed by the department after the assessment function was transferred from the county shall receive vesting credit for such employee's years of participation in the State Employees Retirement System.

Source: Laws 2009, LB121, § 9.

77-1340.06 Transfer of assessment function to county; transferred employee; leave and insurance rights.

(1) Each employee of the Department of Revenue transferred to a county pursuant to section 77-1340 or 77-1340.04 shall be paid for his or her accrued

vacation leave hours based on his or her straight-time rate of pay and, notwithstanding section 81-1324, for twenty-five percent of the value of his or her accrued sick leave hours based on his or her straight-time rate of pay. For purposes of this subsection, straight-time rate of pay means the rate of pay in effect on June 30 of the year of transfer. The state shall reimburse employees on the date of employment transfer.

(2) A transferred employee may credit years of service with both the county and state toward the accrual rate for sick leave and vacation leave plans. The transferred employee shall not receive any additional accrual rate value for county benefits until the employee meets the qualifications for the increased accrual rates pursuant to the county's requirements.

(3) The transferred employee may participate in and be covered by the county's insurance program. The waiting period for medical insurance coverage of a transferred employee shall be waived, and any preexisting condition clause in the county's insurance program shall be waived if the transferred employee has health insurance under the Nebraska State Insurance Program or comparable health insurance coverage immediately prior to the date of employment transfer.

Source: Laws 2009, LB121, § 10.

77-1341 Repealed. Laws 1990, LB 821, § 56.

77-1342 Department of Revenue Property Assessment Division Cash Fund; created; use; investment.

There is hereby created a fund to be known as the Department of Revenue Property Assessment Division Cash Fund to which shall be credited all money received by the Department of Revenue for services performed for county and multicounty assessment districts, for charges for publications, manuals, and lists, as an assessor's examination fee authorized by section 77-421, and under the provisions of sections 60-3,202, 77-684, 77-1250, and 77-1340. The fund shall be used to carry out any duties and responsibilities of the department. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the department shall be credited to the fund, and expenditures therefrom shall be made only when such funds are available. The department shall only bill for the actual amount expended in performing the service.

The fund shall not, at the close of each year, be lapsed to the General Fund. Any money in the Department of Revenue Property Assessment Division Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 622, § 18, p. 2519; Laws 1971, LB 158, § 1; Laws 1971, LB 53, § 8; Laws 1973, LB 132, § 4; Laws 1985, LB 273, § 38; Laws 1989, Spec. Sess., LB 7, § 8; Laws 1992, LB 1063, § 123; Laws 1992, Second Spec. Sess., LB 1, § 96; Laws 1994, LB 1066, § 82; Laws 1995, LB 490, § 134; Laws 1997, LB 270, § 75; Laws 1997, LB 271, § 50; Laws 1999, LB 36, § 32; Laws 2001, LB 170, § 8; Laws 2002, LB 1310, § 9; Laws 2003, LB 563, § 42; Laws 2005, LB 274, § 272; Laws 2007, LB334, § 72; Laws 2009, LB121, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-1343 Agricultural or horticultural land; terms, defined.

The purpose of sections 77-1343 to 77-1347.01 is to provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses. For purposes of sections 77-1343 to 77-1347.01:

(1) Agricultural or horticultural land means that land as defined in section 77-1359;

(2) Applicant means an owner or lessee;

(3) Lessee means a person leasing agricultural or horticultural land from a state or governmental subdivision which is an owner that is subject to taxation under section 77-202.11;

(4) Owner means an owner of record of agricultural or horticultural land or the purchaser of agricultural or horticultural land under a contract for sale; and

(5) Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.

Source: Laws 1974, LB 359, § 1; Laws 1983, LB 26, § 1; Laws 1985, LB 271, § 15; Laws 1989, LB 361, § 9; Laws 2000, LB 968, § 48; Laws 2001, LB 170, § 9; Laws 2002, LB 994, § 16; Laws 2004, LB 973, § 25; Laws 2006, LB 808, § 27; Laws 2009, LB166, § 9.

77-1344 Agricultural or horticultural land; special valuation; when applicable.

(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. If the land so qualified becomes disqualified on or before December 31 of that year, it shall continue to receive the special valuation until January 1 of the year following.

(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.

Source: Laws 1974, LB 359, § 2; Laws 1983, LB 26, § 2; Laws 1985, LB 271, § 16; Laws 1989, LB 361, § 10; Laws 1991, LB 320, § 5; Laws 1996, LB 934, § 2; Laws 1996, LB 1039, § 1; Laws 1997, LB 270, § 76; Laws 1998, LB 611, § 3; Laws 2000, LB 968, § 49; Laws 2001, LB 170, § 10; Laws 2004, LB 973, § 26; Laws 2005, LB 261, § 5; Laws 2006, LB 808, § 28; Laws 2007, LB166, § 6; Laws 2009, LB166, § 10.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1345 Agricultural or horticultural lands; special valuation; application.

(1) An applicant seeking special valuation under section 77-1344 shall make application to the county assessor on or before June 30 of the first year in which such valuation is requested.

(2)(a) The application shall be made upon forms prescribed by the Tax Commissioner and available from the county assessor and shall include such information as may reasonably be required to determine the eligibility of the applicant and the land.

(b) The application shall be signed by any one of the following:

- (i) The applicant;
- (ii) Any person of legal age duly authorized in writing to sign an application on behalf of the applicant; or
- (iii) The guardian or conservator of the applicant or the executor or administrator of the applicant's estate.

(c) The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record in the county unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney, lease, or other appropriate instrument evidencing the signer's qualification pursuant to subdivision (2)(b) of this section.

(3) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507, the applicant may file an application for special valuation within thirty days after the mailing of the valuation notice issued by the county board of equalization pursuant to section 77-1504 or 77-1507.

Source: Laws 1974, LB 359, § 3; Laws 1983, LB 26, § 3; Laws 1985, LB 271, § 17; Laws 1997, LB 397, § 16; Laws 2000, LB 968, § 50; Laws 2002, LB 994, § 17; Laws 2004, LB 973, § 27; Laws 2006, LB 808, § 29; Laws 2007, LB334, § 73.

77-1345.01 Agricultural or horticultural lands; special valuation; approval or denial; protest; appeal; failure to give notice; effect.

(1) On or before July 15 in the year of application, the county assessor shall approve or deny the application for special valuation filed pursuant to section 77-1345. On or before July 22, the county assessor shall issue notice of approval or denial.

(2) If the application is approved by the county assessor, the land shall be valued as provided in section 77-1344 and, on or before July 22, the county board of equalization shall send a property valuation notice for special value to the owner and, if not the same, the applicant. Within thirty days after the mailing of the notice, a written protest of the special value may be filed.

(3)(a) If the application is denied by the assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial.

(b) If the denial of an application for special valuation is reversed on appeal and the application is approved, the land shall be valued as provided in section 77-1344 and the county board of equalization shall send the property valuation notice for special value to the owner and, if not the same, the applicant or his or her successor in interest, within fourteen days after the date of the final order. Within thirty days after the mailing of the notice, a written protest of the special value may be filed.

(4) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507 and the applicant filed an application for special valuation pursuant to subsection (3) of section 77-1345, the county assessor shall approve or deny the application within fifteen days after the filing of the application and issue notice of the approval or denial as prescribed in subsection (1) of this section. If the application is denied by the county assessor, a written protest of the denial may be filed within thirty days of the mailing of the denial.

(5) The assessor shall mail notice of any action taken by him or her on an application to the owner and the applicant if different than the owner.

(6) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(7) The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest.

(8) The clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the owner and the applicant if different than the owner within seven days after the board's decision.

(9) Any 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.

(10) If a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section, any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the land will receive special valuation for that year or to determine special value for that year.

Source: Laws 2000, LB 968, § 51; Laws 2004, LB 973, § 28; Laws 2005, LB 15, § 4; Laws 2005, LB 263, § 11; Laws 2006, LB 808, § 30; Laws 2008, LB965, § 14; Laws 2009, LB166, § 11.

77-1346 Agricultural or horticultural lands; eligibility for special valuation; rules and regulations.

The Tax Commissioner shall adopt and promulgate rules and regulations to be used by county assessors in determining eligibility for special valuation under section 77-1344 and in determining the special valuation of such land for agricultural or horticultural purposes under section 77-1344.

Source: Laws 1974, LB 359, § 4; Laws 1985, LB 271, § 18; Laws 1989, LB 361, § 11; Laws 1995, LB 490, § 135; Laws 2000, LB 968, § 52; Laws 2007, LB334, § 74.

77-1347 Agricultural or horticultural lands; special valuation; disqualification.

Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:

- (1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;
- (2) Sale or transfer to an ownership making it exempt from property taxation;
- (3) Sale or transfer to the state or its political subdivisions, unless the land continues to qualify as agricultural or horticultural land;
- (4) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or
- (5) The land no longer qualifying as agricultural or horticultural land.

Source: Laws 1974, LB 359, § 5; Laws 1983, LB 26, § 4; Laws 1985, LB 271, § 19; Laws 1989, LB 361, § 12; Laws 2000, LB 968, § 53; Laws 2001, LB 170, § 11; Laws 2002, LB 994, § 18; Laws 2005, LB 263, § 12; Laws 2006, LB 808, § 31.

77-1347.01 Agricultural or horticultural lands; special valuation; disqualification; procedure; protest; decision; appeal.

At any time, the county assessor may determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. If 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.

Source: Laws 2006, LB 808, § 32; Laws 2007, LB166, § 7.

77-1348 Repealed. Laws 2009, LB 166, § 23.**77-1349 Unconstitutional.**

Note: Pursuant to section 49-705(2)(d) the Revisor of Statutes has omitted sections 77-1349 to 77-1354. These sections passed in 1977 as LB 131. The Supreme Court in *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980) held section 77-1350(1) to be unconstitutional and also held such section was not severable and therefor the whole act was unconstitutional.

77-1350 Unconstitutional.

Note: Pursuant to section 49-705(2)(d) the Revisor of Statutes has omitted sections 77-1349 to 77-1354. These sections passed in 1977 as LB 131. The Supreme Court in *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980) held section 77-1350(1) to be unconstitutional and also held such section was not severable and therefor the whole act was unconstitutional.

77-1351 Unconstitutional.

Note: Pursuant to section 49-705(2)(d) the Revisor of Statutes has omitted sections 77-1349 to 77-1354. These sections passed in 1977 as LB 131. The Supreme Court in *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980) held section 77-1350(1) to be unconstitutional and also held such section was not severable and therefor the whole act was unconstitutional.

77-1352 Unconstitutional.

Note: Pursuant to section 49-705(2)(d) the Revisor of Statutes has omitted sections 77-1349 to 77-1354. These sections passed in 1977 as LB 131. The Supreme Court in *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980) held section 77-1350(1) to be unconstitutional and also held such section was not severable and therefor the whole act was unconstitutional.

77-1353 Unconstitutional.

Note: Pursuant to section 49-705(2)(d) the Revisor of Statutes has omitted sections 77-1349 to 77-1354. These sections passed in 1977 as LB 131. The Supreme Court in *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980) held section 77-1350(1) to be unconstitutional and also held such section was not severable and therefor the whole act was unconstitutional.

77-1354 Unconstitutional.

Note: Pursuant to section 49-705(2)(d) the Revisor of Statutes has omitted sections 77-1349 to 77-1354. These sections passed in 1977 as LB 131. The Supreme Court in *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980) held section 77-1350(1) to be unconstitutional and also held such section was not severable and therefor the whole act was unconstitutional.

77-1355 Greenbelt Advisory Committee; established; members; terms; duties; expenses.

(1) The Greenbelt Advisory Committee is established to assist and advise the Property Tax Administrator in developing uniform and proportionate special valuation of agricultural land and horticultural land which is subject to land-use controls provided for in sections 77-1343 to 77-1347.01. The advisory committee shall provide advice to the Tax Commissioner 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 Tax Commissioner 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 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.

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 77-1347.01, 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 77-1347.01 as the committee deems important for uniform enforcement of such sections and uniform special valuation of agricultural 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.

Source: Laws 2000, LB 1124, § 1; Laws 2001, LB 170, § 12; Laws 2005, LB 261, § 6; Laws 2006, LB 778, § 71; Laws 2006, LB 808, § 34; Laws 2007, LB166, § 9; Laws 2007, LB334, § 75; Laws 2009, LB166, § 12.

77-1356 Transferred to section 77-3431.

77-1357 Repealed. Laws 1985, LB 22, § 1.

77-1358 Repealed. Laws 1989, LB 361, § 25.**77-1359 Agricultural and horticultural land; legislative findings; terms, defined.**

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of sections 77-1359 to 77-1363:

(1) Agricultural land and horticultural land means a parcel of land, excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;

(2) Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production;

(3) Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

Source: Laws 1985, LB 271, § 4; Laws 1986, LB 817, § 11; Laws 1988, LB 1207, § 3; Laws 1989, LB 361, § 14; Laws 1991, LB 320, § 7; Laws 1996, LB 934, § 3; Laws 1997, LB 270, § 77; Laws 2000, LB 419, § 1; Laws 2006, LB 808, § 35; Laws 2008, LB777, § 1.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1360 Repealed. Laws 1997, LB 270, § 110.**77-1360.01 Repealed. Laws 2006, LB 808, § 52.****77-1361 Repealed. Laws 2006, LB 808, § 52.****77-1362 Repealed. Laws 2006, LB 808, § 52.****77-1363 Agricultural and horticultural land; classes and subclasses.**

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feed-lots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by

subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize and implement soil surveys in the assessment year after the soil survey maps become available from the Natural Resources Conservation Service of the United States Department of Agriculture. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.

Source: Laws 1985, LB 271, § 8; Laws 1988, LB 1207, § 5; Laws 1989, LB 361, § 17; Laws 1991, LB 320, § 9; Laws 1994, LB 902, § 19; Laws 1995, LB 490, § 139; Laws 1997, LB 270, § 81; Laws 1999, LB 403, § 7; Laws 2001, LB 170, § 15; Laws 2004, LB 973, § 30; Laws 2006, LB 808, § 36; Laws 2006, LB 1115, § 31.

A "market area" does not constitute a class or subclass of agricultural land as defined by this section. *Bartlett v. Dawes Cty. Bd. of Equal.*, 259 Neb. 954, 613 N.W.2d 810 (2000).

Neb. Const. art. VIII requires uniform and proportionate assessment within the class of agricultural land; agricultural

land is then divided into "categories" such as irrigated cropland, dry cropland, and grassland. *Schmidt v. Thayer Cty. Bd. of Equal.*, 10 Neb. App. 10, 624 N.W.2d 63 (2001).

77-1364 Repealed. Laws 1997, LB 270, § 110.

77-1365 Repealed. Laws 1997, LB 270, § 110.

77-1366 Repealed. Laws 1996, LB 934, § 7.

77-1367 Repealed. Laws 1996, LB 934, § 7.

77-1368 Repealed. Laws 1989, LB 361, § 25.

77-1369 Repealed. Laws 1991, LB 320, § 13.

77-1370 Repealed. Laws 1991, LB 320, § 13.

77-1371 Comparable sales; use; guidelines.

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale:

(1) Whether the sale was financed by the seller and included any special financing considerations or the value of improvements;

(2) Whether zoning affected the sale price of the property;

(3) For sales of agricultural land or horticultural land as defined in section 77-1359, whether a premium was paid to acquire nearby property. Land within one mile of currently owned property shall be considered nearby property;

(4) Whether sales or transfers made in connection with foreclosure, bankruptcy, or condemnations, in lieu of foreclosure, or in consideration of other legal actions should be excluded from comparable sales analysis as not reflecting current market value;

(5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;

(6) Whether sales to or from federal or state agencies or local political subdivisions reflect current market value;

(7) Whether sales of undivided interests in real property or parcels less than forty acres or sales conveying only a portion of the unit assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other real estate, stocks, bonds, or other personal property reflect current market value;

(9) Whether deeds recorded for transfers of convenience, transfers of title to cemetery lots, mineral rights, and rights of easement reflect current market value;

(10) Whether sales or transfers of property involving railroads or other public utility corporations reflect current market value;

(11) Whether sales of property substantially improved subsequent to assessment and prior to sale should be adjusted to reflect current market value or eliminated from such analysis; and

(12) For agricultural land or horticultural land as defined in section 77-1359 which is or has been receiving the special valuation pursuant to sections 77-1343 to 77-1347.01, whether the sale price reflects a value which the land has for purposes or uses other than as agricultural land or horticultural land and therefor does not reflect current market value of other agricultural land or horticultural land.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.

Source: Laws 1989, LB 361, § 4; Laws 1995, LB 490, § 142; Laws 2000, LB 968, § 56; Laws 2001, LB 170, § 16; Laws 2003, LB 295, § 3; Laws 2009, LB166, § 13.

Subsection (3) of this section does not pertain to a compilation of a sales file under subsection (2) of section 77-1327. *Shaul v. Lang*, 263 Neb. 499, 640 N.W.2d 668 (2002).

77-1372 Repealed. Laws 2001, LB 170, § 30.

77-1373 Repealed. Laws 1995, LB 490, § 195.

77-1374 Improvements on leased public lands; assessment; collection of tax.

Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property. On or before March 1, following any construction thereof or any change in the improvements made on or before January 1, the owner of the improvements shall file with the county assessor an assessment application on a form prescribed by the Tax Commissioner. The taxes imposed on the improvements shall be collected in the same manner as in all other cases of collection of taxes on real property.

Source: Laws 1903, c. 73, § 35, p. 396; R.S.1913, § 6320; C.S.1922, § 5921; C.S.1929, § 77-1408; R.S.1943, § 77-1209; Laws 1963, c. 447, § 1, p. 1471; Laws 1974, LB 969, § 1; Laws 1987, LB 508,

§ 30; R.S.1943, (1990), § 77-1209; Laws 1992, LB 1063, § 111; Laws 1992, Second Spec. Sess., LB 1, § 84; Laws 1997, LB 270, § 82; Laws 2007, LB334, § 76.

Cited in background discussion relating to ownership of improvements on school lands. *State v. Rosenberger*, 187 Neb. 726, 193 N.W.2d 769 (1972).

Under facts in this case improvements on Missouri River port and terminal area held to be owned by city of Omaha and not taxable. *Sioux City & New Orleans Barge Lines, Inc. v. Board of Equalization of Douglas County*, 186 Neb. 690, 185 N.W.2d 866 (1971).

Improvements placed on leased public land are assessed to owner of the improvements. *Banks v. State*, 181 Neb. 106, 147 N.W.2d 132 (1966).

Leased public lands means lands belonging to public which have been leased as authorized by law. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Property of this description is to be listed in the locality where it is found. *Nye-Schneider-Fowler Co. v. Boone County*, 102 Neb. 742, 169 N.W. 436 (1918); *Nye-Schneider-Fowler Co. v. Boone County*, 99 Neb. 383, 156 N.W. 773 (1916).

Lessee's interest in housing project constructed on land owned by federal government was subject to taxation. *Offutt Housing Co. v. County of Sarpy*, 351 U.S. 253 (1956).

77-1375 Improvements on leased lands; how assessed; apportionment.

(1) If improvements on leased land are to be assessed separately to the owner of the improvements, the actual value of the real property shall be determined without regard to the fact that the owner of the improvements is not the owner of the land upon which such improvements have been placed.

(2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by reason of uncertainty in the term of his or her tenancy or because of the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by certified mail on the owner of the land before January 1 and shall at the same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land.

(3) If the county assessor finds, on the basis of the evidence submitted, that the claim is valid, he or she shall proceed to apportion the total value of the real property between the owner of the improvements and the owner of the land as their respective interests appear.

(4) The county assessor shall give notice to the parties of his or her findings by certified mail on or before June 1.

(5) The proportions so established shall continue from year to year unless changed by the county assessor after notice on or before June 1 or a claim is filed by either the owner of the improvements or the owner of the land in accordance with the procedure provided in this section.

Source: Laws 1959, c. 365, § 4, p. 1286; Laws 1979, LB 187, § 199; Laws 1987, LB 508, § 31; R.S.1943, (1990), § 77-1209.02; Laws 1992, LB 1063, § 112; Laws 1992, Second Spec. Sess., LB 1, § 85; Laws 1997, LB 270, § 83.

77-1376 Improvements on leased lands; how assessed; notice.

Improvements on leased lands, other than leased public lands, shall be assessed to the owner of the leased lands unless before March 1, following any construction thereof or change in the improvements made on or before January 1, the owner of the leased lands or the lessee thereof files with the county assessor, on a form prescribed by the Tax Commissioner, a request stating that specifically designated improvements on such leased lands are the property of the lessee. The improvements shall be assessed as real property, and the taxes imposed on the improvements shall be collected by levy and sale of the interest of the owner in the same manner as in all other cases of the collection of taxes on real property. When the request is filed by the owner of the leased lands,

notice shall be given by the county assessor to the lessee at the address on the request.

Source: Laws 1963, c. 434, § 1, p. 1451; Laws 1985, LB 268, § 27; Laws 1987, LB 508, § 32; R.S.1943, (1990), § 77-1209.03; Laws 1992, LB 1063, § 113; Laws 1992, Second Spec. Sess., LB 1, § 86; Laws 1995, LB 490, § 143; Laws 1997, LB 270, § 84; Laws 2007, LB334, § 77.

77-1377 Statewide file of real property sales; creation; use.

The Property Tax Administrator shall create a statewide file of real property sales to provide information regarding hard-to-assess property, including situations in which a local property may have few available comparable sales. The Property Tax Administrator shall make the file available to county assessors.

Source: Laws 1992, LB 734, § 1; Laws 1995, LB 490, § 144; Laws 2001, LB 170, § 17.

77-1378 Repealed. Laws 2005, LB 261, § 13.

77-1379 Repealed. Laws 2005, LB 261, § 13.

77-1380 Repealed. Laws 2005, LB 261, § 13.

77-1381 Repealed. Laws 2005, LB 261, § 13.

77-1381.01 Repealed. Laws 2005, LB 261, § 13.

77-1382 Repealed. Laws 2005, LB 261, § 13.

77-1383 Repealed. Laws 2005, LB 261, § 13.

77-1384 Repealed. Laws 2005, LB 261, § 13.

77-1385 Historically significant real property; qualification.

The following real property shall qualify as historically significant real property for purposes of the historic rehabilitation valuation authorized by section 77-1391 pursuant to the authority granted to the Legislature under subdivision (12) of Article VIII, section 2, of the Constitution of Nebraska:

(1) Real property individually listed in the National Register of Historic Places;

(2) Real property within a district listed in the National Register of Historic Places that is historically significant as determined by the State Historic Preservation Officer and approved under section 77-1387;

(3) Real property individually designated pursuant to a landmark ordinance or resolution that has been approved by the State Historic Preservation Officer pursuant to section 77-1386; and

(4) Real property within a district designated pursuant to a landmark ordinance or resolution that has been approved by the State Historic Preservation Officer pursuant to section 77-1386 that is historically significant as determined by the State Historic Preservation Officer and approved under section 77-1387.

Source: Laws 2005, LB 66, § 1.

77-1386 Historically significant real property; landmark ordinance or resolution; approval.

(1) A city, village, or county shall request the State Historic Preservation Officer's approval of any landmark ordinance or resolution which designates individual properties or districts before any such individual properties or historically significant properties within such districts receive historic rehabilitation valuation authorized by section 77-1391. The following documentation shall accompany the request:

(a) A copy of the ordinance or resolution for which approval is requested;

(b) A list, including the common addresses and common written boundary descriptions of all individual properties and historic districts designated or proposed to be designated under the ordinance or resolution;

(c) A description and statement of historical significance for all designated individual properties and historic districts, which includes representative photographic views; and

(d) A map indicating the location of individual landmarks and historic districts.

(2) Within forty-five days after receipt of the request and documentation, the State Historic Preservation Officer shall approve the ordinance or resolution if the documentation indicates compliance with the criteria for designation of landmarks and historic districts established by the United States Department of the Interior for the inclusion of properties in the National Register of Historic Places, 36 C.F.R. 60, as such regulation existed on January 1, 2005, and if the ordinance or resolution contains provisions for the following:

(a) Authorization for historic preservation under section 19-903;

(b) A statement of purpose;

(c) Establishment of a historic review commission which:

(i) Has no fewer than five members;

(ii) Has demonstrated expertise in the disciplines of history, architectural history, historic architecture, architecture, community planning, real estate, neighborhood conservation, historic preservation, or related fields;

(iii) Has staggered terms of office for members; and

(iv) Holds meetings at regular intervals at least four times a year;

(d) A process and criteria for designation of landmarks and historic districts that are consistent with those established by the United States Department of the Interior for the inclusion of properties in the National Register of Historic Places, 36 C.F.R. 60, as such regulation existed on January 1, 2005;

(e) A definition of actions that merit review by the historic review commission, which shall include demolitions and major alterations;

(f) Standards and criteria for review of actions within the jurisdiction of the historic review commission; and

(g) Procedural due process, such as notification, a hearing, and an appeal procedure.

Source: Laws 2005, LB 66, § 2.

77-1387 Historically significant real property; application by property owner; approval.

(1) A property owner or the legally designated representative of the property owner may submit an application to the State Historic Preservation Officer for a determination of whether the property owner's real property is qualified to receive historic rehabilitation valuation authorized by section 77-1391 on a form prescribed by the State Historic Preservation Officer. The application shall contain at least the following information:

- (a) The address and location of the property;
- (b) A map showing the location of the property;
- (c) Clear, current black and white or color photographs showing principal views of the property;
- (d) Designation authority, whether under the National Register of Historic Places or a landmark ordinance or resolution; and
- (e) If it is historically significant and located within a district listed in the National Register of Historic Places or designated under an ordinance or resolution that has been approved by the State Historic Preservation Officer under section 77-1386, the name of the district and a statement describing the contribution of the property to the significance of the district.

(2) Within thirty days after the receipt of an application, the State Historic Preservation Officer shall determine whether an individual property is eligible to be listed in the National Register of Historic Places and is therefor eligible for historic rehabilitation valuation. The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary.

(3) Within thirty days after the receipt of an application, the State Historic Preservation Officer shall determine whether a property located within a district on the National Register of Historic Places or designated under an ordinance or resolution that has been approved by the State Historic Preservation Officer under section 77-1386 is of historic significance to the district pursuant to the criteria in 36 C.F.R. 67.5, as such regulation existed on January 1, 2005, and inform the applicant of the decision in writing. The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary.

(4) Property shall not be eligible for historic rehabilitation valuation if the property has received a final certificate of rehabilitation within the twelve years prior to application.

Source: Laws 2005, LB 66, § 3.

77-1388 Historically significant real property; preliminary certificate of rehabilitation; filing with State Historic Preservation Officer.

(1) The owner of historically significant real property described in section 77-1385 may apply for a preliminary certificate of rehabilitation on a form prescribed by the State Historic Preservation Officer. The application shall be filed with the State Historic Preservation Officer prior to beginning rehabilitation. The application shall contain at least the following information:

- (a) The address or location of the historically significant real property;
- (b) Documentation of the cost of the rehabilitation, including estimated cost of architectural fees if applicable;

(c) A certification from the county assessor stating the assessed valuation of the historically significant real property that was last certified by the county assessor pursuant to section 13-509 or as finally determined if appealed;

(d) A description of the historic condition of the historically significant real property, when possible, and condition of the historically significant real property immediately prior to the rehabilitation; and

(e) A detailed description of the proposed rehabilitation work, including plans and specifications, if applicable.

(2) Within thirty days after receipt of an application for a preliminary certificate of rehabilitation, the State Historic Preservation Officer shall issue a preliminary certificate of rehabilitation to the applicant and transmit a copy to the county assessor if he or she determines that:

(a) The proposed work meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005; and

(b) The work is a substantial rehabilitation.

(3) The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary. The State Historic Preservation Officer shall determine the length of the rehabilitation period, which shall not exceed two years unless the State Historic Preservation Officer finds (a) it is economically infeasible to complete the rehabilitation in two years or (b) the magnitude of the project is such that a good faith attempt to complete the rehabilitation in two years would not succeed. The certificate shall identify the rehabilitation period.

(4) The State Historic Preservation Officer shall issue a preliminary certificate of rehabilitation to the owner if (a) the property was determined to be qualified for historic preservation valuation pursuant to subsection (2) of section 77-1387, (b) the proposed rehabilitation meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, and (c) the proposed rehabilitation is a substantial rehabilitation. The State Historic Preservation Officer shall transmit a copy of the preliminary certificate of rehabilitation to the county assessor within seven days after issuance of the certificate to the owner.

(5) For purposes of this section, substantial rehabilitation means interior or exterior rehabilitation work that preserves the historically significant real property in a manner that significantly improves its condition and that costs an amount equal to or greater than twenty-five percent of the assessed valuation certified by the county assessor and contained in the application.

Source: Laws 2005, LB 66, § 4.

77-1389 Historically significant real property; preliminary certificate of rehabilitation; filing with city, village, or county.

(1) A city, village, or county may receive and recommend approval of applications for preliminary certificates of rehabilitation within its corporate boundaries pursuant to subsection (4) of this section.

(2) Prior to exercising authority under subsection (1) of this section, a city, village, or county shall request the approval of the State Historic Preservation Officer. The request shall be accompanied by assurances that the city, village, or county:

- (a) Enforces laws for the designation of historically significant real property;
 - (b) Has a landmark ordinance or resolution that has been approved under section 77-1386;
 - (c) Maintains a historic review commission which has been approved by the State Historic Preservation Officer;
 - (d) Maintains a system for the survey and inventory of historically significant real property; and
 - (e) Maintains a system for reviewing applications for certifications of rehabilitations substantially the same as that provided in section 77-1388.
- (3) Within forty-five days after the receipt of the request and the assurances, the State Historic Preservation Officer shall approve the city, village, or county to exercise authority under subsection (1) of this section.
- (4)(a) The owner of historically significant real property described in section 77-1385 may apply for a preliminary certificate of rehabilitation on a form prescribed by the State Historic Preservation Officer. The application shall be filed with the city, village, or county prior to beginning rehabilitation, and the city, village, or county shall forward the application to the State Historic Preservation Officer with the following information:
- (i) Certification that the real property is designated pursuant to a landmark ordinance or resolution or is in a district so designated; and
 - (ii) Any comments or recommendations on the application.
- (b) The State Historic Preservation Officer shall process the application in accordance with subsection (4) of section 77-1388.

Source: Laws 2005, LB 66, § 5.

77-1390 Historically significant real property; final certificate of rehabilitation; issuance.

Upon completion of the rehabilitation the owner shall provide the following information to the State Historic Preservation Officer to obtain a final certificate of rehabilitation:

- (1) Documentation of the dates on which construction commenced and was completed;
- (2) Clear, current black and white or color photographs showing the completed rehabilitation work, the appearance of the structure immediately prior to the rehabilitation, and, if possible, the historic appearance of the historically significant real property;
- (3) A written description of the original condition of the historically significant real property;
- (4) A written description of the present condition of the historically significant real property; and
- (5) A written description and, if applicable, final plans and specifications of the rehabilitation.

The State Historic Preservation Officer shall issue a final certificate of rehabilitation to the owner if the rehabilitation meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January

1, 2005, and transmit a copy to the county assessor within seven days after issuance of the certificate to the owner.

Source: Laws 2005, LB 66, § 6.

77-1391 Historically significant real property; valuation.

(1) Commencing January 1, 2006, for all real property for which a final certificate of rehabilitation has been issued, the valuation for purposes of assessment shall be no more than the base-year valuation for eight years following issuance of the final certificate of rehabilitation.

(2) For the four years following the expiration of the eight-year period specified in subsection (1) of this section, the valuation for purposes of the assessment shall be as follows:

(a) For the first year, the base-year valuation plus twenty-five percent of the difference in the base-year valuation and the current year actual value;

(b) For the second year, the base-year valuation plus fifty percent of the difference in the base-year valuation and the current year actual value;

(c) For the third year, the base-year valuation plus seventy-five percent of the difference in the base-year valuation and the current year actual value; and

(d) For the fourth year, the current year actual value.

(3) For purposes of sections 77-1385 to 77-1394, base-year valuation means the assessed valuation of the historically significant real property in the assessment year the preliminary certificate of rehabilitation was issued as certified in subdivision (1)(c) of section 77-1388 or as finally determined if appealed.

(4) If, during the eight-year period and the four-year period specified in subsections (1) and (2) of this section, the State Historic Preservation Officer determines that historically significant real property for which a final certificate of rehabilitation has been issued (a) has been the subject of repair, renovation, remodeling, or improvement but not in accordance with the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, (b) is no longer of historical significance to a qualified historic district, or (c) no longer possesses the qualifications for listing in the National Register of Historic Places, he or she shall revoke the final certificate of rehabilitation by written notice to the owner and transmit a copy of the revocation to the county assessor.

(5) Upon disqualification of any real property receiving base-year valuation under sections 77-1385 to 77-1394, the county assessor shall change the value of such property to its actual value in the assessment year following the revocation of the final certificate of rehabilitation.

Source: Laws 2005, LB 66, § 7.

77-1392 Historically significant real property; Tax Commissioner; rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations regarding the base-year valuation of historically significant real property.

Source: Laws 2005, LB 66, § 8; Laws 2007, LB334, § 78.

77-1393 Historically significant real property; State Historic Preservation Officer; rules and regulations.

The State Historic Preservation Officer may adopt and promulgate rules and regulations to carry out sections 77-1385 to 77-1394, including, but not limited to, provisions that:

- (1) Preclude the issuance of a conditional, preliminary, or final certificate of rehabilitation for any owner-occupied single family residence if thirty percent or more of the dwelling space is new construction outside the existing structure;
- (2) Specify what costs are eligible to meet the twenty-five percent minimum specified costs and make ineligible those costs attributable to new construction outside the existing structure; and
- (3) Allow the issuance of a certificate of rehabilitation for a condominium.

Source: Laws 2005, LB 66, § 9.

77-1394 Historically significant real property; protests; procedure; appeal.

(1) Any decision of the State Historic Preservation Officer under sections 77-1385 to 77-1394 may be protested to the State Historic Preservation Officer within thirty days after the mailing of the written notice. If a protest is not filed, the action of the State Historic Preservation Officer shall be final. If a protest is filed, the State Historic Preservation Officer shall hear the protest within fourteen days after receipt of the protest.

(2) The State Historic Preservation Officer, within seven days after his or her final decision, shall mail written notice of his or her final decision to the owner and the county assessor of the county in which the real property is located.

(3) Any owner aggrieved by a final decision of the State Historic Preservation Officer may appeal the final decision to the district court within thirty days after mailing of the final decision by the State Historic Preservation Officer. The county assessor may appeal a final decision of the State Historic Preservation Officer to the district court within thirty days after mailing of the final decision by the State Historic Preservation Officer. The thirty-day period for filing such an appeal commences to run from the date of the mailing of the final decision. Upon receiving a copy of the final order on an appeal filed with the district court, the State Historic Preservation Officer shall mail a copy of the final order to the county assessor of the county in which the real property is located.

Source: Laws 2005, LB 66, § 10.

ARTICLE 14**MORTGAGES ON REAL ESTATE**

Section

- 77-1401. Repealed. Laws 1999, LB 194, § 40.
 77-1402. Repealed. Laws 1999, LB 194, § 40.
 77-1403. Repealed. Laws 1999, LB 194, § 40.
 77-1404. Repealed. Laws 1999, LB 194, § 40.
 77-1405. Repealed. Laws 1999, LB 194, § 40.
 77-1406. Repealed. Laws 1999, LB 194, § 40.
 77-1407. Repealed. Laws 1999, LB 194, § 40.
 77-1408. Repealed. Laws 1999, LB 194, § 40.
 77-1409. Repealed. Laws 1999, LB 194, § 40.

77-1401 Repealed. Laws 1999, LB 194, § 40.

77-1402 Repealed. Laws 1999, LB 194, § 40.

77-1403 Repealed. Laws 1999, LB 194, § 40.

77-1404 Repealed. Laws 1999, LB 194, § 40.

77-1405 Repealed. Laws 1999, LB 194, § 40.

77-1406 Repealed. Laws 1999, LB 194, § 40.

77-1407 Repealed. Laws 1999, LB 194, § 40.

77-1408 Repealed. Laws 1999, LB 194, § 40.

77-1409 Repealed. Laws 1999, LB 194, § 40.

ARTICLE 15

EQUALIZATION BY COUNTY BOARD

Cross References

Community Development Law payments in lieu of taxes, determine amount of, see section 18-2137.

Publication of proceedings, see section 23-122.

Severed mineral interest, appeal, see section 57-238.

Section

- 77-1501. County board of equalization; who constitutes; meetings; county officials; duties.
- 77-1502. Board; protests; report; notification.
- 77-1502.01. Board; referee; appointment; compensation; duties.
- 77-1503. Repealed. Laws 1987, LB 508, § 50.
- 77-1503.01. Property exempt from equalization.
- 77-1504. Equalization of property; board; powers and duties; protest; procedure; notice of decision.
- 77-1504.01. Adjustment to class or subclass of real property; procedure.
- 77-1505. Repealed. Laws 1959, c. 371, § 5.
- 77-1506. Repealed. Laws 1987, LB 508, § 50.
- 77-1506.01. Application for reduction in value; waiver of notice.
- 77-1506.02. Repealed. Laws 1995, LB 452, § 37; Laws 1995, LB 490, § 195.
- 77-1506.03. Repealed. Laws 1988, LB 1207, § 12.
- 77-1506.04. Unconstitutional.
- 77-1506.05. Unconstitutional.
- 77-1506.06. Unconstitutional.
- 77-1506.07. Unconstitutional.
- 77-1506.08. Unconstitutional.
- 77-1506.09. Repealed. Laws 1982, LB 592, § 2.
- 77-1506.10. Repealed. Laws 1986, LB 737, § 1.
- 77-1507. Board; duties; addition of omitted property; clerical errors; protest; procedure.
- 77-1507.01. Failure to give notice; effect.
- 77-1508. Board; examination of persons; production and inspection of records.
- 77-1509. Board; compelling attendance of witnesses; penalties; fees.
- 77-1510. Board; appeals, how taken.
- 77-1510.01. Board; powers; costs and fees.
- 77-1511. Repealed. Laws 2001, LB 465, § 12.
- 77-1512. Repealed. Laws 1959, c. 371, § 5.
- 77-1513. Repealed. Laws 2002, LB 994, § 33.
- 77-1514. Abstracts of property assessment rolls; prepared by county assessor; file with Tax Commissioner.
- 77-1515. Repealed. Laws 2006, LB 808, § 51.

77-1501 County board of equalization; who constitutes; meetings; county officials; duties.

The county board shall constitute the county board of equalization. The county board of equalization shall fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately.

The county assessor or his or her designee shall attend all meetings of the county board of equalization when such meetings pertain to the assessment or exemption of real and personal property. The county treasurer or designated county official pursuant to section 23-186 shall attend all meetings of the county board of equalization involving the exemption of motor vehicles from the motor vehicle tax. All records of the county assessor's office shall be available for the inspection and consideration of the county board of equalization. The county clerk, deputy, or designee pursuant to section 23-1302 shall attend all meetings of the county board of equalization and shall make a record of the proceedings of the county board of equalization.

Source: Laws 1903, c. 73, § 120, p. 428; R.S.1913, § 6436; C.S.1922, § 5971; C.S.1929, § 77-1701; R.S.1943, § 77-1501; Laws 1953, c. 273, § 1, p. 898; Laws 1997, LB 270, § 85; Laws 1999, LB 194, § 23; Laws 2005, LB 762, § 2; Laws 2009, LB166, § 14.

A complete and adequate remedy is provided for relief from an overassessment of property. *Scudder v. County of Buffalo*, 170 Neb. 293, 102 N.W.2d 447 (1960).

Individual discrepancies and inequalities in valuation are corrected and equalized by county board of equalization. *Le-Dioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956).

County board of equalization is an administrative agency of the county. *Speer v. Kratzenstein*, 143 Neb. 310, 12 N.W.2d 360 (1943).

This article prescribes duties of county board of equalization. *Peterson v. Brunzell*, 103 Neb. 250, 170 N.W. 905 (1919).

Board possesses no powers save those conferred by statute. *Brown v. Douglas County*, 98 Neb. 299, 152 N.W. 545 (1915).

Abolishment of office of county assessor does not oust county board and county clerk of their jurisdiction as board of equalization. *Hatcher & Co. v. Gosper County*, 95 Neb. 543, 145 N.W. 993 (1914).

77-1502 Board; protests; report; notification.

(1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description of each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement

of the reason or reasons for the protest or the description of the property, the protest shall be dismissed by the county board of equalization.

(3) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(4) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description of the property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

(5) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c. 355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB 1342, § 1; Laws 1975, LB 312, § 1; Laws 1984, LB 660, § 2; Laws 1986, LB 174, § 1; Laws 1986, LB 817, § 13; Laws 1987, LB 508, § 44; Laws 1992, LB 1063, § 124; Laws 1992, Second Spec. Sess., LB 1, § 97; Laws 1994, LB 902, § 21; Laws 1995, LB 452, § 23; Laws 1995, LB 490, § 147; Laws 1997, LB 270, § 86; Laws 2003, LB 292, § 12; Laws 2004, LB 973, § 33; Laws 2005, LB 283, § 2; Laws 2005, LB 299, § 1; Laws 2006, LB 808, § 37; Laws 2008, LB965, § 15; Laws 2009, LB166, § 15.

1. Time of meeting
2. Power of county board
3. Miscellaneous

1. Time of meeting

Power of county board of equalization to rectify returns and change assessments is limited to a set number of circumscribed days each year. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

When a county board of equalization exercises its direct authority under this section to add omitted property or to increase the assessment of undervalued property, the April 1 notice deadline under section 77-1315 is not applicable, and the board may meet at any time. This section contains no requirement for a hearing when a county board of equalization equalizes assessments of omitted or undervalued property, and due process is satisfied by the de novo review and opportunity to offer evidence available upon review by the district court. *Farmers Co-op Assn. v. Boone County*, 213 Neb. 763, 332 N.W.2d 32 (1983).

County board of equalization may meet at any time to equalize assessments of omitted or undervalued property. *Peter Kiewit Sons' Co. v. County of Douglas*, 161 Neb. 93, 72 N.W.2d 415 (1955); *Ewert Implement Co. v. Board of Equalization*, 160 Neb. 445, 70 N.W.2d 397 (1955).

Meeting date of county board of equalization is fixed by statute. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

Session of county board of equalization is continuous during period specified. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

2. Power of county board

A property owner's exclusive remedy for relief from overvaluation of property for tax purposes is by protest to the county board of equalization, and appeal therefrom to the district court. *Olson v. County of Dakota*, 224 Neb. 516, 398 N.W.2d 727 (1987).

The county board of equalization has never been given authority to impose or waive penalties. *Bachus v. Swanson*, 179 Neb. 1, 136 N.W.2d 189 (1965).

There is an omission to return property for taxation where a person reports property but does not list it for taxation. *Peter Kiewit Sons', Inc. v. County of Douglas*, 172 Neb. 710, 111 N.W.2d 734 (1961).

Assessment by county board of equalization should not be disturbed on appeal unless clearly erroneous. *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956).

Power of board to equalize is limited to time of sitting as board of equalization. *Sumner & Co. v. Colfax County*, 14 Neb. 524, 16 N.W. 756 (1883).

3. Miscellaneous

Failure by the county clerk to give notice to the taxpayer in strict accordance with this section is fatal to the tax levied on the increase in valuation of the property. *Falotico v. Grant Cty. Bd. of Equal.*, 262 Neb. 292, 631 N.W.2d 492 (2001).

A taxpayer who has not first filed a protest with the county board of equalization may not appeal to the district court a claimed overassessment of his or her own property. *JEMCO, Inc. v. Board of Equal. of Box Butte Cty.*, 242 Neb. 361, 495 N.W.2d 44 (1993).

This section and section 77-1504 were not repealed by section 77-1358. *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

Although the county board's procedures for holding protest hearings pursuant to this section were found unreasonable and arbitrary in this case, the court failed to set forth a blanket condemnation of the board's regular protest and hearing procedures in general. *J.C. Penney Co., Inc. v. Lancaster Cty. Bd. of Equal.*, 6 Neb. App. 838, 578 N.W.2d 465 (1998).

77-1502.01 Board; referee; appointment; compensation; duties.

In all counties the county board of equalization may appoint one or more suitable persons to act as referees. The compensation of a referee shall be fixed by the county board and shall be payable from the general fund of the county. The county board of equalization may direct that any protest filed in accordance with section 77-1502, shall be heard in the first instance by the referee in the manner provided for the hearing of protests by the county board of equalization. Upon the conclusion of the hearing in each case, the referee shall transmit to the county board of equalization all papers relating to the case, together with his or her findings and recommendations in writing. The county board of equalization, after considering all papers relating to the protest and the findings and recommendations of the referee, may make the order recommended by the referee or any other order in the judgment of the board of equalization required by the findings of the referee, or may hear additional testimony, or may set aside such findings and hear the protest anew.

Source: Laws 1969, c. 626, § 1, p. 2525; Laws 1980, LB 658, § 1.

77-1503 Repealed. Laws 1987, LB 508, § 50.**77-1503.01 Property exempt from equalization.**

Any property valued by the state shall not be subject to the jurisdiction of the county board of equalization.

Source: Laws 1971, LB 945, § 4; Laws 1984, LB 835, § 10; Laws 1987, LB 508, § 45; Laws 1992, LB 1063, § 125; Laws 1992, Second Spec. Sess., LB 1, § 98; Laws 1995, LB 452, § 24; Laws 1995, LB 490, § 148; Laws 1997, LB 270, § 87; Laws 1999, LB 194, § 24.

County board of equalization is statutorily empowered and authorized to equalize only those assessments of countywide property of which the county has the authority to assess the value. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

77-1504 Equalization of property; board; powers and duties; protest; procedure; notice of decision.

The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, to consider and correct the current year’s assessment of any real property which has been undervalued or overvalued. The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may only consider the report of the county assessor pursuant to section 77-1315.01.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15 or on or before September 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. Within seven days after the county board of equalization’s final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk’s or county assessor’s office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission on or before October 15 or on or before October 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1504; Laws 1947, c. 251, § 37, p. 826; Laws 1979, LB 187, § 210; Laws 1984, LB 835, § 11; Laws 1987, LB 508, § 46; Laws 1988, LB 1207, § 8; Laws 1989, LB 361, § 21; Laws 1991, LB 320, § 11; Laws 1992, LB 1063, § 126; Laws 1992, Second Spec. Sess., LB 1, § 99; Laws 1994, LB 902, § 22; Laws 1995, LB 452, § 25; Laws 1995, LB 490, § 149; Laws 1997, LB 270, § 88; Laws 1998, LB 1104, § 10; Laws 1999, LB 194, § 25; Laws 2005, LB 263, § 13; Laws 2005, LB 283, § 3; Laws 2006, LB 808, § 38; Laws 2007, LB167, § 2.

- 1. Power of county board
- 2. Procedures
- 3. Miscellaneous

1. Power of county board

Power of county board of equalization to rectify returns and change assessments is limited to a set number of circumscribed days each year. County board of equalization does not have jurisdiction to decrease the challenged assessed personal property values. County board of equalization is statutorily empowered and authorized to equalize only those assessments of countywide property of which the county has the authority to assess the value. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization. *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991).

This section provides for equalizing value of real estate of individual taxpayer. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

County boards of equalization deal with assessments of individuals and between townships, precincts or districts within county. *Scotts Bluff County v. State Board of Equalization and Assessment*, 143 Neb. 837, 11 N.W.2d 453 (1943).

County board of equalization has no authority to increase the valuation of an assessment of all the real estate in a precinct in the absence of a finding that the valuation of such real estate

does not bear a just relation to the valuation of the real estate in all townships, precincts or districts in the county. *Peterson v. Brunzell*, 103 Neb. 250, 170 N.W. 905 (1919).

2. Procedures

Notice to owner of intention to raise valuation is required. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

When taxpayer claims that real estate is assessed too high, he should first apply for relief to board of equalization, and, if denied, should appeal to the courts. *Power v. Jones*, 126 Neb. 529, 253 N.W. 867 (1934).

The several owners of different tracts of land may unite in petition for relief. *State ex rel. Mellor v. Grow*, 74 Neb. 850, 105 N.W. 898 (1905).

3. Miscellaneous

This section and section 77-1502 were not repealed by section 77-1358. *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

A decree of court fixing the value of real estate on a previous assessment is not competent evidence in a further suit affecting the assessment value of the property in a subsequent year. *DeVore v. Board of Equalization*, 144 Neb. 351, 13 N.W.2d 451 (1944).

Lands, city and village lots, and personal property are considered as separate classes for equalization. *State ex rel. Lincoln Land Co. v. Edwards*, 31 Neb. 369, 47 N.W. 1048 (1891).

77-1504.01 Adjustment to class or subclass of real property; procedure.

(1) Unless the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502, after completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law. At the hearing the commission may receive testimony from any interested person.

(3) After a hearing the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or

subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, an additional adjustment may be made so that total adjustments made are equal to the commission's ordered adjustment and no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Source: Laws 1995, LB 452, § 26; Laws 1997, LB 397, § 22; Laws 1998, LB 306, § 22; Laws 1999, LB 140, § 1; Laws 1999, LB 194, § 26; Laws 2000, LB 968, § 58; Laws 2003, LB 291, § 2; Laws 2004, LB 973, § 34; Laws 2005, LB 283, § 4; Laws 2008, LB965, § 16.

Pursuant to this section, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of property. *Bartlett v. Dawes Cty. Bd. of Equal.*, 259 Neb. 954, 613 N.W.2d 810 (2000).

Pursuant to subsection (2) of section 77-5019, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to this section or section 77-5023, the commission is not a proper party to a proceeding for judicial review of an order of the commission. *Widfeldt v. Holt Cty. Bd. of Equal.*, 12 Neb. App. 499, 677 N.W.2d 521 (2004).

A claim brought pursuant to this section and which was denied by the Nebraska Tax Equalization and Review Commission was not entitled to judicial review because no statutory right of appeal exists for such claims. The Nebraska Court of Appeals did not have jurisdiction under subsection (1) of section 77-5019 to hear county's appeal of a claim brought pursuant to this section because the claim was not a decision appealed to the Nebraska Tax Equalization and Review Commission and was not brought pursuant to section 77-5028. *Boone Cty. Bd. of Equal. v. Nebraska Tax Equal. and Rev. Comm.*, 9 Neb. App. 298, 611 N.W.2d 119 (2000).

77-1505 Repealed. Laws 1959, c. 371, § 5.

77-1506 Repealed. Laws 1987, LB 508, § 50.

77-1506.01 Application for reduction in value; waiver of notice.

Whenever any owner of real or personal property applies to the county board of equalization for a reduction in the taxable value of any such property, the owner shall be deemed to have waived notice of increase in the taxable value of such property which is found undervalued by the county board of equalization notwithstanding the provisions of any other statutes to the contrary.

Source: Laws 1969, c. 673, § 3, p. 2598; Laws 1979, LB 187, § 211; Laws 1992, LB 719A, § 167.

77-1506.02 Repealed. Laws 1995, LB 452, § 37; Laws 1995, LB 490, § 195.

77-1506.03 Repealed. Laws 1988, LB 1207, § 12.

77-1506.04 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 77-1506.04 to 77-1506.08 which the Supreme Court has held to be unconstitutional. *State ex rel. Meyer v. Peters*, 191 Neb 330, 215 N.W.2d 520 (1974).

77-1506.05 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 77-1506.04 to 77-1506.08 which the Supreme Court has held to be unconstitutional. *State ex rel. Meyer v. Peters*, 191 Neb 330, 215 N.W.2d 520 (1974).

77-1506.06 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 77-1506.04 to 77-1506.08 which the Supreme Court has held to be unconstitutional. *State ex rel. Meyer v. Peters*, 191 Neb 330, 215 N.W.2d 520 (1974).

77-1506.07 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 77-1506.04 to 77-1506.08 which the Supreme Court has held to be unconstitutional. State ex rel. Meyer v. Peters, 191 Neb 330, 215 N.W.2d 520 (1974).

77-1506.08 Unconstitutional.

Note: The Revisor of Statutes, as authorized by section 49-705, has omitted sections 77-1506.04 to 77-1506.08 which the Supreme Court has held to be unconstitutional. State ex rel. Meyer v. Peters, 191 Neb 330, 215 N.W.2d 520 (1974).

77-1506.09 Repealed. Laws 1982, LB 592, § 2.**77-1506.10 Repealed. Laws 1986, LB 737, § 1.****77-1507 Board; duties; addition of omitted property; clerical errors; protest; procedure.**

(1) The county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 and for correction of clerical errors as defined in section 77-128 that result in a change of assessed value. The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address. For real property which has been omitted in the current year, the county board of equalization shall not send notice pursuant to this section on or before June 1.

Protests of the assessed value proposed for omitted real property pursuant to this section or a correction for clerical errors shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.

(2) The county clerk shall, within seven days after the board's final decision, send:

(a) For protested action, a notification to the protester of the board's final action advising the protester that a report of the board's final decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission; and

(b) For protested and nonprotested action, a report to the Property Tax Administrator which shall state the description of the property, the reason such property was not assessed pursuant to section 77-1301, and a statement of the board's justification for its action. A copy of the report shall be available for public inspection in the office of the county clerk.

(3) The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.

(4) Improvements to real property which were properly reported to the county assessor pursuant to section 77-1318.01 for the current year and were not added to the assessment roll by the county assessor on or before March 19 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25. In counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the deadline of July 25 shall be extended to August 10.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379;

R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1507; Laws 1987, LB 508, § 48; Laws 1995, LB 490, § 150; Laws 1997, LB 270, § 89; Laws 1999, LB 194, § 27; Laws 2005, LB 263, § 14; Laws 2005, LB 283, § 5; Laws 2006, LB 808, § 39.

County board of equalization may equalize omitted property subsequent to regular time. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

County board of equalization may assess omitted or unassessed real property without previous notice to owner. *Radium Hospital v. Greenleaf*, 118 Neb. 136, 223 N.W. 667 (1929).

County board of equalization must give notice when assessing omitted personal property. *Farmers Co-op. Creamery & Supply Co. v. McDonald*, 100 Neb. 33, 158 N.W. 369 (1916); *Farmers*

Co-op. Creamery & Supply v. McDonald, 97 Neb. 510, 150 N.W. 640 (1915), on rehearing 97 Neb. 512, 150 N.W. 656 (1915).

It is the duty of county board of equalization to assess the value of omitted property, and its action in that regard cannot be controlled by state board. *State ex rel. Mickey v. Drexel*, 75 Neb. 751, 107 N.W. 110 (1906).

Omission made in the belief that the property is not taxable does not invalidate tax upon other property. *Burlington & M. R. R. Co. v. Seward County*, 10 Neb. 211, 4 N.W. 1016 (1880).

77-1507.01 Failure to give notice; effect.

Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.

Source: Laws 2005, LB 15, § 5; Laws 2007, LB167, § 3; Laws 2009, LB166, § 16.

77-1508 Board; examination of persons; production and inspection of records.

Whenever any county board of equalization shall have reason to believe that any person, company or corporation has not listed all of his or its property for taxation, or that any property has not been fairly valued and assessed, it shall be lawful for such board to call before it any such person, or any agent or officer of any such corporation, and require the production of any books, records or papers. The person so called shall be sworn, and shall answer under oath, and give all information which he may possess, touching the existence, location and value of any property sought to be listed, valued and assessed, and no person so called shall be excused from answering any question put to him on the ground that his answer might tend to criminate him, but no answer he shall make or testimony he may give shall be used against him in any criminal prosecution.

Source: Laws 1903, c. 73, § 122, p. 430; R.S.1913, § 6438; C.S.1922, § 5973; C.S.1929, § 77-1703; R.S.1943, § 77-1508.

Power conferred by this section is not exclusive. *Speer v. Kratzenstein*, 143 Neb. 310, 12 N.W.2d 360 (1943), vacating 143 Neb. 300, 9 N.W.2d 306 (1943).

77-1509 Board; compelling attendance of witnesses; penalties; fees.

The county board of equalization may issue process to compel the attendance before it of any person with books, records and papers, if necessary, which process shall be served by the sheriff the same as a summons from the district court, and he shall receive the same fees therefor. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by the board, shall forfeit the sum of five hundred dollars, to be recovered in a civil action in the name of the county. Witnesses shall receive the

same fees as witnesses in the district court to be paid by the person, the valuation of whose property is being investigated, in case the board finds that such person has willfully concealed or undervalued his property; otherwise, by the county.

Source: Laws 1903, c. 73, § 123, p. 430; R.S.1913, § 6439; C.S.1922, § 5974; C.S.1929, § 77-1704; R.S.1943, § 77-1509.

This section is a statute imposing a penalty or forfeiture. Such statutes are strictly construed and will not be construed to include anything beyond their letter even though it may be within their spirit. *County of Merrick v. Beck*, 205 Neb. 829, 290 N.W.2d 642 (1980).

This and preceding section apply to the power to review and correct individual assessments. *Speer v. Kratzenstein*, 143 Neb. 310, 12 N.W.2d 360 (1943), vacating 143 Neb. 300, 9 N.W.2d 306 (1943).

77-1510 Board; appeals, how taken.

Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 124, p. 430; R.S.1913, § 6440; C.S.1922, § 5975; C.S.1929, § 77-1705; R.S.1943, § 77-1510; Laws 1947, c. 251, § 38, p. 827; Laws 1959, c. 371, § 2, p. 1308; Laws 1969, c. 673, § 1, p. 2597; Laws 1979, LB 187, § 213; Laws 1986, LB 174, § 2; Laws 1988, LB 1207, § 10; Laws 1989, LB 653, § 3; Laws 1989, LB 762, § 1; Laws 1991, LB 732, § 141; Laws 1991, LB 829, § 9; Laws 1992, LB 360, § 35; Laws 1992, LB 1063, § 128; Laws 1992, Second Spec. Sess., LB 1, § 101; Laws 1992, Fourth Spec. Sess., LB 1, § 15; Laws 1995, LB 452, § 27; Laws 1995, LB 490, § 151; Laws 1996, LB 1040, § 4; Laws 1997, LB 270, § 90; Laws 1997, LB 397, § 23; Laws 2001, LB 170, § 18; Laws 2001, LB 465, § 2; Laws 2003, LB 291, § 3; Laws 2004, LB 973, § 35; Laws 2005, LB 283, § 6.

1. Rebuttable presumption
2. Right of appeal
3. Appellate procedures
4. Standard of review
5. Equitable remedies

1. Rebuttable presumption

There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board. *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 437 N.W.2d 501 (1989).

2. Right of appeal

A taxpayer who has not first filed a protest with the county board of equalization may not appeal to the district court a claimed overassessment of his or her own property. *JEMCO, Inc. v. Board of Equal. of Box Butte Cty.*, 242 Neb. 361, 495 N.W.2d 44 (1993).

One aggrieved by the action of a county board of equalization may appeal to the district court pursuant to this section. A taxpayer who fails to pursue this remedy may not object to the

valuation of his separate property for taxation purposes, and a collateral attack may not be made thereon unless the assessment is void, willfully discriminatory, or the result of fraud. *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991).

An appeal from a decision by a county board of equalization is authorized by this section and controlled by section 77-1511. *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

A property owner's exclusive remedy for relief from overvaluation of property for tax purposes is by protest to the county board of equalization, and appeal therefrom to the district court. *Olson v. County of Dakota*, 224 Neb. 516, 398 N.W.2d 727 (1987); *Power v. Jones*, 126 Neb. 529, 253 N.W. 867 (1934).

An appeal from a tax exemption may be taken pursuant to section 77-202.04 only. *Bemis v. Board of Equalization of Douglas County*, 197 Neb. 175, 247 N.W.2d 447 (1976).

Cited in appeal from county board of equalization regarding valuation. *Boss Hotels Co. v. County of Hall*, 183 Neb. 19, 157 N.W.2d 868 (1968).

Taxpayer may appeal from county board of equalization to district court. *L. J. Messer Co. v. Board of Equalization*, 171 Neb. 393, 106 N.W.2d 478 (1960); *Collier v. County of Logan*,

169 Neb. 1, 97 N.W.2d 879 (1959); *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956); *Scotts Bluff County v. State Board of Equalization and Assessment*, 143 Neb. 837, 11 N.W.2d 453 (1943).

Appeal lies from assessment of omitted or undervalued property. *Ewert Implement Co. v. Board of Equalization*, 160 Neb. 445, 70 N.W.2d 397 (1955).

Remedy of appeal is provided for owners who appeared before county board of equalization. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

State Board of Equalization has right to appeal from action of county board of equalization in exempting property. *State v. Odd Fellows Hall Assn.*, 123 Neb. 440, 243 N.W. 616 (1932).

A taxpayer may appeal from order, sustaining another's complaint that his property is assessed too high, without appearance before board of equalization. In re assessment of *Bankers Life Ins. Co.*, 88 Neb. 43, 128 N.W. 661 (1910).

3. Appellate procedures

The Tax Equalization and Review Commission's jurisdiction is limited to those appeals filed within the statutory 30-day period, and it does not have the authority to adopt the mailbox rule or the doctrine of unique circumstances because such rules and doctrines would expand its jurisdiction beyond what the Legislature provided in this section. *Falotico v. Grant Cty. Bd. of Equal.*, 262 Neb. 292, 631 N.W.2d 492 (2001).

In an appeal made pursuant to this section, it is the responsibility of the taxpayer to file in the district court a transcript of the proceedings held before the county board of equalization. No proceedings on appeal to the district court shall be held in the absence of the transcript of the proceedings held before the county board of equalization. *Future Motels, Inc. v. Custer Cty. Bd. of Equal.*, 247 Neb. 436, 527 N.W.2d 861 (1995).

Declaratory judgment action held not the appropriate remedy to attack action by county board of equalization. *Ryan v. Douglas County Board of Equalization*, 199 Neb. 291, 258 N.W.2d 626 (1977).

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-

five days of the adjournment of the board. *Knoefler Honey Farms v. County of Sherman*, 193 Neb. 95, 225 N.W.2d 855 (1975).

Procedure for appeal is that prescribed for an appeal from a judgment of a justice of the peace to the district court. *Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall*, 166 Neb. 588, 90 N.W.2d 50 (1958).

Taxpayer having direct interest must give notice of appeal within twenty days, and one having indirect interest must give notice within ten days. *Sommerville v. Board of Commissioners of Douglas County*, 117 Neb. 507, 221 N.W. 433 (1928).

To perfect an appeal to the Tax Equalization and Review Commission, one must file his or her notice of appeal within 30 days of a board of equalization's final order. *Washington Cty. Bd. of Equal. v. Rushmore Borglum*, 11 Neb. App. 377, 650 N.W.2d 504 (2002).

4. Standard of review

On appeal to the Supreme Court, an equity case involving an action by a county board of equalization is a trial of factual questions de novo on the record, requiring the Supreme Court to reach a conclusion independent of the findings of the trial court. *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 437 N.W.2d 501 (1989).

5. Equitable remedies

Resort cannot be had to injunction when appeal will afford plain and direct remedy at law. *Radium Hospital v. Greenleaf*, 118 Neb. 136, 223 N.W. 667 (1929).

Suit in equity will not lie to correct assessment as appeal affords remedy for excessive valuation. *Hahn System v. Stroud*, 109 Neb. 181, 190 N.W. 572 (1922); *Western Union Tel. Co. v. Douglas County*, 76 Neb. 666, 107 N.W. 985 (1906).

Where assessment is increased without jurisdiction of board of equalization, its collection may be enjoined. *Farmers Co-op. Creamery & Supply Co. v. McDonald*, 100 Neb. 33, 158 N.W. 369 (1916).

Mandamus will not lie to correct errors of board of equalization. *State ex rel. Mickey v. Drexel*, 75 Neb. 751, 107 N.W. 110 (1906).

77-1510.01 Board; powers; costs and fees.

After the Tax Equalization and Review Commission obtains exclusive jurisdiction of an appeal from a decision, order, determination, or action of a county board of equalization pursuant to section 77-5013, the board shall have no power or authority to compromise, settle, or otherwise change the decision, order, determination, or action it has taken. The board may, with approval of the Tax Equalization and Review Commission, offer to confess judgment for part of the value claimed or part of the causes involved in the action. If (1) the appellant is present and refuses to accept such confession of judgment in full of the appellant's demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its terms, and the time of making it and (2) at hearing the appellant does not obtain more relief than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. The offer shall not be deemed to be an admission of the cause of action or relief to which the appellant is entitled, and the offer shall not be given in evidence at the hearing.

Source: Laws 1989, LB 653, § 4; Laws 1995, LB 490, § 152; Laws 2004, LB 973, § 36.

77-1511 Repealed. Laws 2001, LB 465, § 12.

77-1512 Repealed. Laws 1959, c. 371, § 5.

77-1513 Repealed. Laws 2002, LB 994, § 33.

77-1514 Abstracts of property assessment rolls; prepared by county assessor; file with Tax Commissioner.

The county assessor shall prepare abstracts of the property assessment rolls of locally assessed property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the real property abstract with the Property Tax Administrator on or before March 19 and the personal property abstract on or before June 15. The abstracts shall show the taxable value of real or personal property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the real property abstract and the statutory deadlines provided in section 77-5027. The Property Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county.

Source: Laws 1903, c. 73, § 125, p. 431; R.S.1913, § 6442; C.S.1922, § 5977; C.S.1929, § 77-1707; R.S.1943, § 77-1514; Laws 1945, c. 190, § 1, p. 590; Laws 1947, c. 251, § 39, p. 827; Laws 1959, c. 371, § 4, p. 1309; Laws 1987, LB 508, § 49; Laws 1992, LB 1063, § 129; Laws 1992, Second Spec. Sess., LB 1, § 102; Laws 1994, LB 902, § 24; Laws 1995, LB 452, § 28; Laws 1995, LB 490, § 155; Laws 1997, LB 270, § 91; Laws 1999, LB 194, § 28; Laws 2000, LB 968, § 59; Laws 2004, LB 973, § 37; Laws 2005, LB 15, § 6; Laws 2005, LB 261, § 7; Laws 2007, LB334, § 79.

Power of county board of equalization to rectify returns and change assessments is limited to a set number of circumscribed days each year. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

County assessor should forward abstract of assessment rolls by July 1. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954); *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63 N.W.2d 441 (1954); *County of Douglas v. State Board of Equalization and Assessment*, 158

Neb. 325, 63 N.W.2d 449 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954).

County assessor is required to prepare abstract of assessment and forward to state board. *Adair v. Miller*, 109 Neb. 295, 190 N.W. 865 (1922).

Actual levy of taxes cannot occur until after completion of the work of State Board of Equalization and Assessment. *United States v. Thurston County*, 54 F.Supp. 201 (D. Neb. 1944).

77-1515 Repealed. Laws 2006, LB 808, § 51.

ARTICLE 16

LEVY AND TAX LIST

Section

- 77-1601. County tax levy; by whom made; when; what included; correction of clerical error; procedure.
- 77-1601.01. Repealed. Laws 1998, LB 306, § 51.
- 77-1601.02. Property tax request; procedure.
- 77-1602. Repealed. Laws 1996, LB 1085, § 60.
- 77-1603. Repealed. Laws 1996, LB 1085, § 60.
- 77-1604. Repealed. Laws 1979, LB 80, § 116.
- 77-1605. Repealed. Laws 1996, LB 1085, § 60.
- 77-1605.01. Repealed. Laws 1996, LB 1085, § 60.
- 77-1605.02. Repealed. Laws 1955, c. 295, § 3.
- 77-1605.03. Repealed. Laws 1996, LB 1085, § 60.
- 77-1606. County tax levy; appeal by taxpayer; when taken; does not suspend collection.

Section	
77-1607.	Repealed. Laws 2004, LB 973, § 72.
77-1608.	County tax levy; appeal by taxpayer; proceedings.
77-1609.	Repealed. Laws 2004, LB 973, § 72.
77-1610.	Return of taxes paid; correction of tax rolls.
77-1611.	Repealed. Laws 1967, c. 504, § 1.
77-1611.01.	Repealed. Laws 1967, c. 504, § 1.
77-1612.	Repealed. Laws 1996, LB 1085, § 60.
77-1613.	Tax list; preparation; when and by whom; form and contents.
77-1613.01.	Certification by county official to Tax Commissioner; contents.
77-1613.02.	Tax list; corrections; prohibited acts; violation; penalty.
77-1613.03.	Repealed. Laws 2006, LB 808, § 51.
77-1613.04.	Assessment roll and tax list; corrections.
77-1614.	Tax list; consolidated tax; how entered.
77-1615.	Tax list; completion; controlling account.
77-1615.01.	Tax list; use of electronic data processing equipment; levy and collection of taxes.
77-1616.	Tax list; delivery to county treasurer; when; warrant for collection.
77-1617.	Tax list; property of county; form.
77-1618.	Tax list; entry of amount.
77-1619.	Judgments against public corporations; payment by tax levy.
77-1620.	Judgments against public corporations; payment by levy in addition to levy for ordinary purposes.
77-1621.	Judgments against public corporations; special tax levy; how collected.
77-1622.	Judgments against public corporations; duty of corporate authorities to make levy.
77-1623.	Judgments against public corporations; failure or refusal of corporate authorities to levy; action against officers; mandamus.
77-1624.	Taxes delinquent five or more years; collection; receipts; proration; remittance of state taxes to State Treasurer; how credited.
77-1625.	Repealed. Laws 1963, c. 454, § 2.
77-1626.	Repealed. Laws 1963, c. 454, § 2.
77-1627.	Repealed. Laws 1996, LB 1085, § 60.
77-1628.	Repealed. Laws 1972, LB 1044, § 1.
77-1629.	Repealed. Laws 1945, c. 192, § 3.

77-1601 County tax levy; by whom made; when; what included; correction of clerical error; procedure.

(1) The county board of equalization shall each year, on or before October 15, levy the necessary taxes for the current year if within the limit of the law. The levy shall include an amount for operation of all functions of county government and shall also include all levies necessary to fund tax requests certified under section 77-1601.02 that are authorized as provided in sections 77-3442 to 77-3444.

(2) On or before November 5, the county board of equalization upon its own motion may act to correct a clerical error which has resulted in the calculation of an incorrect levy by any entity otherwise authorized to certify a tax request under section 77-1601.02. The county board of equalization shall hold a public hearing to determine what adjustment to the levy is proper, legal, or necessary. Notice shall be provided to the governing body of each political subdivision affected by the error. Notice of the hearing as required by section 84-1411 shall include the following: (a) The time and place of the hearing, (b) the dollar amount at issue, and (c) a statement setting forth the nature of the error.

(3) Upon the conclusion of the hearing, the county board of equalization shall issue a corrected levy if it determines that an error was made in the original levy which warrants correction. The county board of equalization shall then order (a) the county assessor, county clerk, and county treasurer to revise

assessment books, unit valuation ledgers, tax statements, and any other tax records to reflect the correction made and (b) the recertification of the information provided to the Property Tax Administrator pursuant to section 77-1613.01.

Source: Laws 1903, c. 73, § 136, p. 436; Laws 1905, c. 111, § 4, p. 513; Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 257; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1601; Laws 1947, c. 250, § 30, p. 799; Laws 1947, c. 251, § 40, p. 828; Laws 1949, c. 234, § 1, p. 645; Laws 1953, c. 275, § 1, p. 900; Laws 1965, c. 470, § 1, p. 1517; Laws 1965, c. 477, § 2, p. 1538; Laws 1969, c. 656, § 2, p. 2574; Laws 1980, LB 766, § 1; Laws 1992, LB 1063, § 130; Laws 1992, Second Spec. Sess., LB 1, § 103; Laws 1993, LB 734, § 49; Laws 1995, LB 167, § 1; Laws 1995, LB 452, § 29; Laws 1995, LB 490, § 157; Laws 1996, LB 693, § 11; Laws 1996, LB 1085, § 56; Laws 1997, LB 269, § 41; Laws 1998, LB 306, § 23; Laws 2003, LB 191, § 1.

1. Levy by board
2. Miscellaneous

1. Levy by board

County board of equalization is by-passed in making levy of taxes for educational service units. *Frye v. Haas*, 182 Neb. 73, 152 N.W.2d 121 (1967).

The duties of a county board of equalization in making a tax levy for a home rule charter city under this section are ministerial. *State ex rel. City of Omaha v. Lynch*, 181 Neb. 810, 151 N.W.2d 278 (1967).

Levy of taxes is not made by school district, but is made by the county board of equalization. *C. R. T. Corp. v. Board of Equalization of Douglas County*, 172 Neb. 540, 110 N.W.2d 194 (1961).

Effect of failure to make levy on or before August 10 raised but not decided. *State ex rel. School Dist. v. Board of Equalization*, 166 Neb. 785, 90 N.W.2d 421 (1958).

County board of equalization levies taxes between August 2 and August 10. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

County is required to levy the taxes certified to the county clerk by cities of first class, townships, school districts and road districts, and is the political subdivision against which action to recover money paid for void tax sale certificate lies. *McDonald v. County of Lincoln*, 141 Neb. 741, 4 N.W.2d 903 (1942).

County board is required to levy the amount of taxes adopted by the several school districts of the county. *Schulz v. Dixon County*, 134 Neb. 549, 279 N.W. 179 (1938).

Irregularity in levy not a valid objection to tax. *Hull v. Kearney County*, 13 Neb. 539, 14 N.W. 529 (1882).

Informality in the levy does not invalidate school taxes. *Burlington & M. R. R. Co. v. Lancaster County*, 12 Neb. 324, 11 N.W. 332 (1882).

County commissioners who in good faith but by mistake levy a less tax than that voted are not personally liable to school district. *School Dist. No. 80 of Nemaha County v. Burress*, 2 Neb. Unof. 554, 89 N.W. 609 (1902).

Levy is made ordinarily after first of August. *United States v. Thurston County*, 54 F.Supp. 201 (D. Neb. 1944).

2. Miscellaneous

This section contained no limitations on the amount that could be levied. *Chicago, B. & Q. R.R. Co. v. County of Box Butte*, 166 Neb. 603, 90 N.W.2d 72 (1958).

Medical, surgical, and hospital care of poor person should be provided by the county. *Marshall v. County of Nance*, 163 Neb. 252, 79 N.W.2d 417 (1956).

Property is taxed when the tax is levied and not when it is valued by the assessor. *American Province of Servants of Mary Real Estate Corp. v. County of Douglas*, 147 Neb. 485, 23 N.W.2d 714 (1946).

County board of equalization may adopt such means as, in its judgment, is necessary to carry out duties imposed. *Speer v. Kratzenstein*, 143 Neb. 310, 12 N.W.2d 360 (1943), vacating 143 Neb. 300, 9 N.W.2d 306 (1943).

Appropriation bill of municipality should in order of time precede levy of municipal tax. *LeBarron v. City of Harvard*, 129 Neb. 460, 262 N.W. 26 (1935).

County clerk has no power to make levy for additionally certified taxes after he has completed main tax list and delivered same to county treasurer, writ of mandamus is denied. *State ex rel. Long v. Barstler*, 122 Neb. 167, 240 N.W. 273 (1931).

City and village taxes, levied after usual time, are valid and afford no ground for injunction. *Hallo v. Helmer*, 12 Neb. 87, 10 N.W. 568 (1881).

77-1601.01 Repealed. Laws 1998, LB 306, § 51.

77-1601.02 Property tax request; procedure.

(1) The property tax request for the prior year shall be the property tax request for the current year for purposes of the levy set by the county board of

equalization in section 77-1601 unless the governing body of the county, municipality, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college passes by a majority vote a resolution or ordinance setting the tax request at a different amount. Such resolution or ordinance shall only be passed after a special public hearing called for such purpose is held and after notice is published in a newspaper of general circulation in the area of the political subdivision at least five days prior to the hearing. The hearing notice shall contain the following information: The dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request; the property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation; and the proposed dollar amount of the tax request for the current year and the property tax rate that will be necessary to fund that tax request. Any resolution setting a tax request under this section shall be certified and forwarded to the county clerk on or before October 13 of the year for which the tax request is to apply.

(2) Any levy which is not in compliance with this section and section 77-1601 shall be construed as an unauthorized levy under section 77-1606.

Source: Laws 1996, LB 693, § 10; Laws 1996, LB 1085, § 55; Laws 1997, LB 269, § 43; Laws 1998, LB 306, § 24; Laws 2001, LB 797, § 3; Laws 2006, LB 1024, § 5.

77-1602 Repealed. Laws 1996, LB 1085, § 60.

77-1603 Repealed. Laws 1996, LB 1085, § 60.

77-1604 Repealed. Laws 1979, LB 80, § 116.

77-1605 Repealed. Laws 1996, LB 1085, § 60.

77-1605.01 Repealed. Laws 1996, LB 1085, § 60.

77-1605.02 Repealed. Laws 1955, c. 295, § 3.

77-1605.03 Repealed. Laws 1996, LB 1085, § 60.

77-1606 County tax levy; appeal by taxpayer; when taken; does not suspend collection.

Any taxpayer may appeal from the action of the county board of equalization in making the levy, if in the judgment of such taxpayer the levy is for an unlawful or unnecessary purpose or in excess of the requirements of a political subdivision, to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the county board of equalization's action. The appeal shall set forth the levy appealed from and the amount or extent to which the appellant claims the levy is for an unlawful or unnecessary purpose or in excess of the requirements of a political subdivision, and to that extent and no further shall such levy be affected by such appeal. It shall not be necessary for such taxpayer to appear before the county board of equalization at the time of the making of the levy or prior thereto in order to entitle him or her to such appeal.

No appeal shall in any manner suspend the collection of any tax, nor the duties of the officers relating thereto during the pendency of the appeal, however, all taxes received based on the appealed levy or portion thereof

appealed shall be kept by the treasurer in a special fund without distribution. The commission shall give notice of the appeal to the county board of equalization, county clerk, county assessor, and county treasurer of each county in which the tax is levied. The county board of equalization, county clerk, county assessor, or county treasurer shall not be charged with notice of the appeal until notice is served by the commission.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1606; Laws 1947, c. 250, § 34, p. 801; Laws 1995, LB 490, § 158; Laws 1997, LB 269, § 44; Laws 2004, LB 973, § 38.

This section is a general statute which prescribes a procedure for taking an appeal from a levy made by the county board. In re 1983-84 County Tax Levy, 220 Neb. 897, 374 N.W.2d 235 (1985).

A taxpayer objecting to the setting of a nonresident high school tuition levy must give notice of appeal within ten days after the setting of the levy by the county board of equalization pursuant to section 79-436. In re 1981-82 County Tax Levy, 214 Neb. 624, 335 N.W.2d 299 (1983).

A plaintiff taxpayer appealing under the provisions of this section has the burden of proving that the levy complained of is

in fact excessive and illegal. Werth v. Buffalo County Board of Equalization, 187 Neb. 119, 188 N.W.2d 442 (1971).

Levy and collection of tax for educational service unit may be tested by appeal but collection of tax may not be impeded. Frye v. Haas, 182 Neb. 73, 152 N.W.2d 121 (1967).

Individual taxpayer may appeal from action of county board of equalization in making levy of taxes on behalf of school district. C. R. T. Corp. v. Board of Equalization of Douglas County, 172 Neb. 540, 110 N.W.2d 194 (1961).

Question of proper boundaries of cemetery district could not be raised on appeal under this section. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

77-1607 Repealed. Laws 2004, LB 973, § 72.

77-1608 County tax levy; appeal by taxpayer; proceedings.

The Tax Equalization and Review Commission shall hear the appeal and determine whether or not the levy appealed from or any part thereof is for an unlawful or unnecessary purpose or in excess of the requirements of the political subdivision. The decision of the commission shall be certified to the county assessor, county clerk, and county treasurer of each county in which the tax was levied to revise all tax records to reflect the corrected levy.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1608; Laws 1947, c. 250, § 35, p. 802; Laws 1997, LB 269, § 46; Laws 2004, LB 973, § 39.

Question as to power of court to determine amount of levy, and to change levy accordingly, raised but not decided. C. R. T. Corp. v. Board of Equalization of Douglas County, 172 Neb. 540, 110 N.W.2d 194 (1961).

77-1609 Repealed. Laws 2004, LB 973, § 72.

77-1610 Return of taxes paid; correction of tax rolls.

If the tax books have been delivered to the county treasurer for collection of the taxes before the determination of the appeal by the Tax Equalization and Review Commission, then the county treasurer shall, upon receipt of the certified final decision of the commission, distribute or return to the taxpayers

in accordance with such decision the appropriate amount of taxes paid and held pursuant to section 77-1606 and, if necessary, correct the tax rolls in his or her office to conform to such decision unless a further appeal is taken, in which case the county treasurer shall hold the taxes until the final determination of the appeal and thereupon distribute or return the same in conformity to such decision and, if necessary, correct the tax rolls.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1610; Laws 1991, LB 732, § 143; Laws 1992, LB 360, § 37; Laws 1997, LB 269, § 48; Laws 1998, LB 306, § 26; Laws 2004, LB 973, § 40.

77-1611 Repealed. Laws 1967, c. 504, § 1.

77-1611.01 Repealed. Laws 1967, c. 504, § 1.

77-1612 Repealed. Laws 1996, LB 1085, § 60.

77-1613 Tax list; preparation; when and by whom; form and contents.

After the levy of taxes has been made and before November 20, the county assessor shall transcribe the assessments into a suitable book to be provided at the expense of the county, properly ruled and headed with the distinct columns in which shall be entered the description of the lands, number of acres and value, number of city and village lots and their value, taxable value of taxable personal property, delinquent taxes of previous years, the amount of taxes due on the day the first installment becomes due, and the amount of delinquent taxes due on the day the second installment thereof becomes due, as provided by law, in the event the taxpayer elects to pay taxes in two equal semiannual installments.

Source: Laws 1903, c. 73, § 139, p. 437; R.S.1913, § 6459; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5982; C.S.1929, § 77-1804; Laws 1931, c. 65, § 10, p. 184; Laws 1933, c. 136, § 1, p. 516; C.S.Supp.,1941, § 77-1804; Laws 1943, c. 175, § 2, p. 610; R.S. 1943, § 77-1613; Laws 1945, c. 191, § 1, p. 591; Laws 1945, c. 189, § 2, p. 584; Laws 1947, c. 250, § 36, p. 802; Laws 1992, LB 1063, § 132; Laws 1992, Second Spec. Sess., LB 1, § 105; Laws 1997, LB 269, § 49; Laws 1997, LB 270, § 92; Laws 1998, LB 306, § 27.

As to precincts, taxation is matter of allocation by the supervisor or county clerk, after equalization by the county and state boards of equalization, and after levy has been made by the county board. *McDonald v. County of Lincoln*, 141 Neb. 741, 4 N.W.2d 903 (1942).

After the levy is made, the county assessor shall transcribe the assessment into a suitable book which shall contain several specific columns for delinquent taxes of previous years. *County of Sarpy v. Jansen Real Estate Co.*, 7 Neb. App. 676, 584 N.W.2d 824 (1998).

77-1613.01 Certification by county official to Tax Commissioner; contents.

The county assessor or county clerk shall certify to the Property Tax Administrator, on or before December 1 of each year, the total taxable valuation and the Certificate of Taxes Levied. The certificate shall be used for statistical

purposes and shall specify the information necessary to determine the total taxable value, tax levies, and total property taxes requested by the political subdivisions for the current year on forms prescribed and furnished by the Tax Commissioner. The certificate shall include for each political subdivision a statement of the amount of property taxes sought and the tax levy made for (1) the payment of principal or interest on bonds issued by the political subdivision and (2) all other purposes.

Source: Laws 1913, c. 173, § 1, p. 525; R.S.1913, § 6389; Laws 1921, c. 133, art. VI, § 15, p. 560; C.S.1922, § 5853; C.S.1929, § 77-515; R.S.1943, § 77-628; Laws 1949, c. 227, § 3, p. 632; Laws 1951, c. 259, § 2, p. 885; Laws 1965, c. 478, § 4, p. 1541; Laws 1983, LB 193, § 3; Laws 1985, LB 268, § 24; R.S.1943, (1986), § 77-628; Laws 1989, Spec. Sess., LB 7, § 3; Laws 1991, LB 829, § 10; Laws 1992, LB 719A, § 172; Laws 1995, LB 490, § 159; Laws 1996, LB 1362, § 7; Laws 1997, LB 269, § 50; Laws 1998, LB 306, § 28; Laws 2001, LB 275, § 1; Laws 2007, LB334, § 80.

77-1613.02 Tax list; corrections; prohibited acts; violation; penalty.

The county assessor or county clerk shall correct the assessment and tax rolls after action of the county board of equalization. Each correction 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 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 office of the county assessor. 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.

Source: Laws 1921, c. 133, art. XI, § 6, p. 592; C.S.1922, § 5903; C.S.1929, § 77-1006; Laws 1939, c. 100, § 1, p. 457; C.S.Supp.,1941, § 77-1006; R.S.1943, § 77-519; Laws 1947, c. 250, § 12, p. 791; Laws 1951, c. 261, § 1, p. 887; R.S.1943, (1986), § 77-519; Laws 1995, LB 490, § 160; Laws 1997, LB 270, § 93; Laws 2007, LB166, § 10.

The purpose of this statute is to permit the county assessor to correct clerical errors in the tax list, not to correct alleged errors in valuation of property. *Olson v. County of Dakota*, 224 Neb. 516, 398 N.W.2d 727 (1987).

77-1613.03 Repealed. Laws 2006, LB 808, § 51.

77-1613.04 Assessment roll and tax list; corrections.

The county assessor after July 25, or after August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section

77-1502, and with approval of the county board of equalization shall correct the assessment roll and the tax list, if necessary, in the case of a clerical error as defined in section 77-128 that results in a change in the value of the real property. Clerical errors that do not result in a change of value on the assessment roll may be corrected at any time by the county assessor. All corrections to the tax list shall be made as provided in section 77-1613.02.

Source: Laws 1999, LB 194, § 30; Laws 2005, LB 283, § 7.

77-1614 Tax list; consolidated tax; how entered.

All taxes which are uniform, throughout any precinct, township, school district, learning community, village, city, county, or other taxing subdivision of a county, shall be formed into a single tax, be entered upon the tax list in a double column, and be denominated a consolidated tax.

Source: Laws 1903, c. 73, § 140, p. 438; R.S.1913, § 6460; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5983; C.S.1929, § 77-1805; Laws 1933, c. 136, § 2, p. 517; C.S.Supp.,1941, § 77-1805; Laws 1943, c. 175, § 3(1), p. 611; R.S.1943, § 77-1614; Laws 1957, c. 334, § 1, p. 1168; Laws 1997, LB 270, § 94; Laws 2006, LB 1024, § 6.

As to precincts, taxation is matter of allocation by the supervisor or county clerk, after equalization by the county and state boards of equalization, and after levy has been made by the county board. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

77-1615 Tax list; completion; controlling account.

The tax list shall be completed by the county assessor, except that the tax list shall be completed by the county clerk in all counties having a population of more than two hundred thousand inhabitants. The tax lists shall be completed by carrying out in a column by itself the consolidated tax as provided in section 77-1614, with the labor tax, and any irregular tax, each in separate columns and, after adding up each column of taxes, the officer preparing same shall, in an abstract at the end of each precinct, township, city, and village list, or other subdivisions of a county, apportion the consolidated tax among the respective funds to which it belongs, according to the tax levied for each of such funds, showing a summary of each distinct tax. The officer preparing the same, before transmission of the tax lists to the county treasurer, shall set up on his or her records a controlling account, which shall reflect the total tax assessed, against which the preparing officer shall record the monthly tax collections, as shown by the county treasurer's records.

Source: Laws 1903, c. 73, § 140, p. 438; R.S.1913, § 6460; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5983; C.S.1929, § 77-1805; Laws 1933, c. 136, § 2, p. 517; C.S.Supp.,1941, § 77-1805; Laws 1943, c. 175, § 3(2), p. 611; R.S.1943, § 77-1615; Laws 1945, c. 189, § 3, p. 585; Laws 1947, c. 250, § 37, p. 803; Laws 1949, c. 237, § 1, p. 648; Laws 1979, LB 187, § 217; Laws 1997, LB 270, § 95.

77-1615.01 Tax list; use of electronic data processing equipment; levy and collection of taxes.

The county board of any county is authorized to direct that for all purposes of assessment of property, and for the levy and collection of taxes and special assessments, there shall be used tax records or random access devices suitable for use in connection with electronic data processing equipment or other

mechanical office equipment, in accordance with procedures to be approved by the Property Tax Administrator. Such county board is also authorized to direct that a statement of taxes and special assessments be mailed or otherwise delivered to the person, firm, association, or corporation against whom such taxes are assessed. Failure to receive such statement shall not relieve the taxpayer from any liability to pay such taxes or assessments and penalties accrued thereon.

Source: Laws 1965, c. 464, § 1, p. 1475; Laws 1969, c. 676, § 1, p. 2601; Laws 1995, LB 490, § 161.

77-1616 Tax list; delivery to county treasurer; when; warrant for collection.

The tax list shall be completed and delivered to the county treasurer on or before November 22. At the same time the county assessor or county clerk shall transmit a warrant, which warrant shall be signed by the county assessor or county clerk and shall in general terms command the treasurer to collect taxes therein mentioned according to law. No informality therein, and no delay in the transmitting of the same after the time above specified, shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this chapter. Whenever it shall be discovered that the warrant provided for in this section was not at the proper time attached to any tax list, or was not transmitted as herein provided for any preceding year or years, in the hands of the county treasurer, the county assessor shall forthwith attach or transmit such warrant, which shall be in the same form and have the same force and effect as if it had been attached to such tax list, or transmitted as herein provided, before the delivery thereof to the county treasurer.

Source: Laws 1903, c. 73, § 141, p. 438; R.S.1913, § 6461; C.S.1922, § 5984; C.S.1929, § 77-1806; Laws 1943, c. 175, § 4, p. 612; R.S.1943, § 77-1616; Laws 1945, c. 189, § 4, p. 586; Laws 1951, c. 265, § 1, p. 893; Laws 1969, c. 677, § 1, p. 2602; Laws 1997, LB 269, § 52; Laws 1997, LB 270, § 96; Laws 1998, LB 306, § 29.

Informality in certificate of clerk to tax list could be supplied upon discovery of deficiency. *Belza v. Village of Emerson*, 159 Neb. 651, 68 N.W.2d 272 (1955).

County clerk has no power to make levy for additionally certified taxes after he has completed main tax list and delivered same to county treasurer. *State ex rel. Long v. Barstler*, 122 Neb. 167, 240 N.W. 273 (1931).

Collection of taxes on real estate cannot be enforced until May 1 following the time the tax list is placed in the hands of the

county treasurer. *Cornell v. Maverick Loan & Trust Co.*, 95 Neb. 9, 144 N.W. 1072 (1914).

Warrant is necessary to create a lien upon personal property. *Platte Valley Milling Co. v. Malmsten*, 79 Neb. 730, 113 N.W. 229 (1907).

Warrant must be attached to give treasurer jurisdiction to seize personal property, but is not essential to sale of real estate for taxes. *Grant v. Bartholomew*, 57 Neb. 673, 78 N.W. 314 (1899); *Reynolds v. Fisher*, 43 Neb. 172, 61 N.W. 695 (1895).

77-1617 Tax list; property of county; form.

The tax list shall be the property of the county and shall be substantially in the form set forth in this section, with such additions and amendments thereto as may be necessary to make it conform to law.

Owners' Names	
Part of section or part of town	Description of Lands or Town Lots
Section or lot	
Town or block	
Improvements on leased lands	
Range	
Acres	
Value	
No. School District	
No. Road District	
State and County Consolidated Tax	
Road Tax	County and District Taxes
Sch. Dist. Tax	
Sch. Dist. Bond Tax	
Precinct Tax	
Advertising	
Total	
No. of Receipt	
Remarks	

Source: Laws 1903, c. 73, § 142, p. 438; R.S.1913, § 6462; C.S.1922, § 5985; C.S.1929, § 77-1807; Laws 1943, c. 175, § 5, p. 612; R.S.1943, § 77-1617; Laws 1945, c. 189, § 5, p. 587; Laws 1949, c. 238, § 1, p. 650; Laws 1957, c. 334, § 2, p. 1169; Laws 1992, LB 1063, § 133; Laws 1992, Second Spec. Sess., LB 1, § 106; Laws 1997, LB 270, § 97.

Tax list made in conformity with statute is prima facie evidence that levy is as made, and conclusive as against claim of irregularities in making such levy. *Holthaus v. Adams County*, 74 Neb. 861, 105 N.W. 632 (1905).

Assessments being regularly entered, presumption is that officers did their duty and corrected errors and irregularities in manner provided by law. *Chamberlain Banking House v. Woolsey*, 60 Neb. 516, 83 N.W. 729 (1900).

77-1618 Tax list; entry of amount.

As soon as the county treasurer receives the tax lists of the county, he or she shall enter in the column opposite the description of the property the amount of unpaid taxes with the year or years in which such taxes were due and the date of unredeemed sales, if any, for previous years on such property.

Source: Laws 1903, c. 73, § 143, p. 439; R.S.1913, § 6463; C.S.1922, § 5986; C.S.1929, § 77-1808; R.S.1943, § 77-1618; Laws 1992, LB 1063, § 134; Laws 1992, Second Spec. Sess., LB 1, § 107.

Failure to enter delinquent taxes will not invalidate sale for taxes assessed for subsequent year. *Carman v. Harris*, 61 Neb. 635, 85 N.W. 848 (1901).

description. *County of Sarpy v. Jansen Real Estate Co.*, 7 Neb. App. 676, 584 N.W.2d 824 (1998).

As soon as the county treasurer receives the tax lists, the treasurer shall enter the amount of unpaid taxes opposite each

77-1619 Judgments against public corporations; payment by tax levy.

Whenever any judgment shall be obtained in any court of competent jurisdiction in this state for the payment of a sum of money against any county,

township, school district, road district, town or city board of education, or against any municipal corporation, or when any such judgment has been recovered and now remains unpaid, it shall be the duty of the county board, school district board of education, city council or other corporate officers, as the case may require, to make provision for the prompt payment of the same.

Source: Laws 1867 (Ter.), § 1, p. 13; R.S.1913, § 6464; C.S.1922, § 5987; C.S.1929, § 77-1809; R.S.1943, § 77-1619.

Irrigation district is not a municipal corporation, and levy of taxes to pay judgment against it could not be made under this section. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

Remedy is furnished to compel payment of judgments secured against governmental subdivisions. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

By providing a method of payment of judgment against county, policy of state is shown that judgment should not be a lien on specific county property. Fremont Foundry & Machine Co. v. Saunders County, 136 Neb. 101, 285 N.W. 115 (1939).

This section is not repealed by Omaha charter. Benner v. County Board of Douglas County, 121 Neb. 773, 238 N.W. 735 (1931).

Judgment for damages for breach of contract with school teacher must be collected from special levy. State ex rel. Hadsell v. Putnam, 103 Neb. 846, 174 N.W. 609 (1919).

Judgment becomes dormant after five years, if no levy is made and no proceedings begun to compel levy. Levy of tax to pay judgment will not revive it. Alter v. State of Nebraska, ex rel. Kountze Bros., 62 Neb. 239, 86 N.W. 1080 (1901).

Where judgments are rendered subsequent to general levy, it is duty of county board to make special levy. Jackson v. Washington County, 34 Neb. 680, 52 N.W. 169 (1892).

77-1620 Judgments against public corporations; payment by levy in addition to levy for ordinary purposes.

If the amount of revenue derived from taxes levied and collected for ordinary purposes shall be insufficient to meet and pay the current expenses for the year in which the levy is made, and also to pay the judgments remaining unpaid, it shall be the duty of the proper officers of the corporation, against which any such judgments shall have been obtained and remain unsatisfied, to at once proceed and levy and collect a sufficient amount of money to pay off and discharge such judgments.

Source: Laws 1867 (Ter.), § 2, p. 13; R.S.1913, § 6465; C.S.1922, § 5988; C.S.1929, § 77-1810; R.S.1943, § 77-1620.

A levy of tax for payment of judgment is unauthorized if no judgment exists at time of levy. Custer County v. Chicago, B. & Q. R. R. Co., 62 Neb. 657, 87 N.W. 341 (1901).

Board of equalization has power to levy tax on village or city of less than 5,000 inhabitants in excess of maximum rate for general purposes, to pay judgment, but not in school district. Dawson County v. Clark, 58 Neb. 756, 79 N.W. 822 (1899).

This section does not permit levy to pay judgment against county in excess of constitutional limit. Chase County v. Chicago, B. & Q. R. R. Co., 58 Neb. 274, 78 N.W. 502 (1899).

Courts will not control action of board of equalization in levying taxes to pay judgment where constitutional limit has been levied. State of Nebraska ex rel. Rock County v. Sheldon, 53 Neb. 365, 73 N.W. 694 (1898).

Municipality is required to levy tax to pay judgment for cost of utility plants in excess of bond issue, notwithstanding limitation of tax for general purposes. Village of Oshkosh v. State, 20 F.2d 621 (8th Cir. 1927).

77-1621 Judgments against public corporations; special tax levy; how collected.

The tax shall be levied upon all the taxable property in the district, county, township, town or city bound by the judgment, and shall be collected in the same manner and at the same time provided by law for the collection of other taxes.

Source: Laws 1867 (Ter.), § 3, p. 13; R.S.1913, § 6466; C.S.1922, § 5989; C.S.1929, § 77-1811; R.S.1943, § 77-1621.

77-1622 Judgments against public corporations; duty of corporate authorities to make levy.

The corporate officers whose duty it is to levy and collect taxes for the payment of the current expenses of any such corporation, against which a

judgment may be so obtained, shall also be required to levy and collect the special tax herein provided for, for the payment of judgments.

Source: Laws 1867 (Ter.), § 4, p. 13; R.S.1913, § 6467; C.S.1922, § 5990; C.S.1929, § 77-1812; R.S.1943, § 77-1622.

Mandamus will not lie to compel school officers to report amount of taxes necessary to pay judgment, while dormant. State of Nebraska ex rel. Craig v. School Dist. No. 2 of Phelps County, 25 Neb. 301, 41 N.W. 155 (1888).

Municipality is required to levy tax to pay judgment for cost of utility plants in excess of bond issue. Village of Oshkosh v. State, 20 F.2d 621 (8th Cir. 1927).

77-1623 Judgments against public corporations; failure or refusal of corporate authorities to levy; action against officers; mandamus.

If any such corporate authorities, whose duty it is, under the provisions of sections 77-1601 to 77-1624, to so levy and collect the tax necessary to pay off any such judgment, fail, refuse, or neglect to make provision for the immediate payment of such judgments, after request made by the owner or any person having an interest therein, such officers shall become personally liable to pay such judgments, and the party or parties interested may have an action against such defaulting officers to recover the money due on the judgment, or he, she, or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in such sections. When a proper showing is made by the applicant for the writ, it shall be the duty of the district court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises shall conform to the rules and practice of the court, and the laws in such cases made and provided.

Source: Laws 1867 (Ter.), § 5, p. 13; R.S.1913, § 6468; C.S.1922, § 5991; C.S.1929, § 77-1813; R.S.1943, § 77-1623; Laws 1995, LB 490, § 162; Laws 2004, LB 973, § 41.

Mandamus will not lie to compel the issuance of a warrant upon the current funds of a school district to pay judgment for breach of contract with a school teacher. State ex rel. Hadsell v. Putnam, 103 Neb. 846, 174 N.W. 609 (1919).

to compel performance. State ex rel. State Journal Co. v. Knievel, 5 Neb. Unof. 219, 97 N.W. 798 (1903).

Mandamus will not lie to enforce the levy of a tax in excess of constitutional or statutory limit. State of Nebraska ex rel. Young v. Royse, 71 Neb. 1, 98 N.W. 459 (1904).

Mandamus will lie to compel village to levy tax to pay judgment against village. Village of Oshkosh v. State of Nebraska, 20 F.2d 621 (8th Cir. 1927).

Payment of judgment is by warrant. Mandamus will lie to enforce payment. State of Nebraska ex rel. Clark & Leonard Investment Co. v. Scotts Bluff County, 64 Neb. 419, 89 N.W. 1063 (1902).

No demand upon the officers of a municipality to levy a tax is necessary before instituting proceedings for mandamus. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

Where county board has over a period of years failed to include judgments in annual estimate and levy, mandamus lies

Federal courts may issue writs of mandamus to compel the levy of a tax to pay judgments. Deuel County v. First National Bank of Buchanan County, Mo., 86 F. 264 (8th Cir. 1898).

77-1624 Taxes delinquent five or more years; collection; receipts; proration; remittance of state taxes to State Treasurer; how credited.

It shall be the duty of the county treasurer for each and every county, when collecting personal and real estate taxes being delinquent five years or more, to receipt for such taxes on a receipt for the fifth delinquent year. Such taxes so collected shall be prorated in proportion to the levies applicable for the year levied. All state taxes when collected shall be remitted to the State Treasurer and by him or her credited to the fund or funds for which the levy or levies were made, and all county funds when collected shall be placed to the credit of the county general fund; all municipal, school district, learning community,

township, precinct, and special funds shall be entered in separate columns. All taxes so consolidated shall be paid in order of priority of delinquency.

Source: Laws 1913, c. 235, § 1, p. 738; R.S.1913, § 6469; C.S.1922, § 5992; C.S.1929, § 77-1814; R.S.1943, § 77-1624; Laws 1963, c. 454, § 1, p. 1480; Laws 2006, LB 1024, § 7.

77-1625 Repealed. Laws 1963, c. 454, § 2.

77-1626 Repealed. Laws 1963, c. 454, § 2.

77-1627 Repealed. Laws 1996, LB 1085, § 60.

77-1628 Repealed. Laws 1972, LB 1044, § 1.

77-1629 Repealed. Laws 1945, c. 192, § 3.

ARTICLE 17 COLLECTION OF TAXES

Cross References

Collection agencies, delinquent tax collection, see sections 77-377.01 to 77-377.04.

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- 77-1701. Collection of taxes; county treasurer tax collector; statements; contents; special assessments; de minimis amount; how treated.
- 77-1702. Collection of taxes; medium of payment.
- 77-1703. Collection of taxes; separate payments; special assessments.
- 77-1704. Collection of taxes; entry of payment; receipt.
- 77-1704.01. Collection of taxes; notice or receipt; statement; contents.
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- 77-1715. Collection of taxes; personal tax roll; publication fees.
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- 77-1717. Collection of taxes; procedure.
- 77-1718. Collection of taxes; notice; issuance of distress warrant; affidavit of poverty; interest.
- 77-1719. Collection of taxes, personal; service and return of distress warrants; time allowed.
- 77-1719.01. Collection of taxes, personal; sheriff; report.
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COLLECTION OF TAXES

- Section
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- 77-1734.01. Refund of tax paid; claim; verification required; county board approval.
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- 77-1736.01. Repealed. Laws 1959, c. 264, § 1.
- 77-1736.02. Repealed. Laws 1959, c. 264, § 1.
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- 77-1736.04. Repealed. Laws 1992, Fourth Spec. Sess., LB 1, § 44.
- 77-1736.05. Repealed. Laws 1989, LB 762, § 11.
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- 77-1742. Collection of taxes, personal; statement of uncollected taxes filed by county treasurer; list of assessment errors.
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- 77-1745. Collection of taxes; settlement of county treasurer; made with county board; when made.
- 77-1746. Collection of taxes; settlement of county treasurer; with county clerk when board not in session.
- 77-1747. Repealed. Laws 1995, LB 490, § 195.
- 77-1748. Collection of taxes; settlement of county treasurer; certificate to local authorities.
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77-1751.	Repealed. Laws 1995, LB 490, § 195.
77-1752.	Repealed. Laws 1995, LB 490, § 195.
77-1753.	Repealed. Laws 1995, LB 490, § 195.
77-1754.	Repealed. Laws 1995, LB 490, § 195.
77-1755.	Repealed. Laws 1995, LB 490, § 195.
77-1755.01.	Repealed. Laws 1995, LB 490, § 195.
77-1756.	Repealed. Laws 1995, LB 490, § 195.
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77-1759.	Collection of taxes; report to and payment of taxes and special assessment to taxing units; when required.
77-1760.	Collection of taxes; failure to report and pay taxes collected by county treasurer; suit on bond.
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77-1766.	Collection of taxes; suit by aggrieved municipal corporations.
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77-1768.	Repealed. Laws 1995, LB 490, § 195.
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77-1771.	Collection of taxes; claim against governmental subdivision; deduction of personal taxes.
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77-1783.	Repealed. Laws 1996, LB 1041, § 11.
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77-1784.	Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

77-1701 Collection of taxes; county treasurer tax collector; statements; contents; special assessments; de minimis amount; how treated.

(1) The county treasurer shall be ex officio county collector of all taxes levied within the county. The county board shall designate a county official to mail or otherwise deliver a statement of the amount of taxes due and a notice that special assessments are due, to the last-known address of the person, firm, association, or corporation against whom such taxes or special assessments are

assessed or to the lending institution or other party responsible for paying such taxes or special assessments. Such statement shall clearly indicate, for each political subdivision, the levy rate and the amount of taxes due as the result of principal or interest payments on bonds issued by the political subdivision and shall show such rate and amount separate from any other levy. Beginning with tax year 2000, when taxes on real property are delinquent for a prior year, the county treasurer shall indicate this information on the current year tax statement in bold letters. The information provided shall inform the taxpayer that delinquent taxes and interest are due for the prior year or years and shall indicate the specific year or years for which such taxes and interest remain unpaid. The language shall read "Back Taxes and Interest Due For", followed by numbers to indicate each year for which back taxes and interest are due. Failure to receive such statement or notice shall not relieve the taxpayer from any liability to pay such taxes or special assessments and any interest or penalties accrued thereon. In any county in which a city of the metropolitan class is located, all statements of taxes shall also include notice that special assessments for cutting weeds, removing litter, and demolishing buildings are due.

(2) Notice that special assessments are due shall not be required for special assessments levied by sanitary and improvement districts organized under Chapter 31, article 7, except that such notice may be provided by the county at the discretion of the county board or by the sanitary and improvement district with the approval of the county board.

(3) A statement of the amount of taxes due and a notice that special assessments are due shall not be required to be mailed or otherwise delivered pursuant to subsection (1) of this section if the total amount of the taxes and special assessments due is less than two dollars. Failure to receive the statement or notice shall not relieve the taxpayer from any liability to pay the taxes or special assessments but shall relieve the taxpayer from any liability for interest or penalties. Taxes and special assessments of less than two dollars shall be added to the amount of taxes and special assessments due in subsequent years and shall not be considered delinquent until the total amount is two dollars or more.

Source: Laws 1903, c. 73, § 144, p. 439; R.S.1913, § 6473; C.S.1922, § 5996; C.S.1929, § 77-1901; R.S.1943, § 77-1701; Laws 1969, c. 678, § 1, p. 2604; Laws 1979, LB 150, § 1; Laws 1981, LB 179, § 12; Laws 1983, LB 391, § 4; Laws 1995, LB 412, § 1; Laws 1996, LB 1362, § 8; Laws 1999, LB 194, § 31; Laws 1999, LB 881, § 7; Laws 2000, LB 968, § 60.

A valid claim for personal taxes is a lien against the assets of an estate and has priority over the preferred claims provided for under the decedent act. In re Estate of Badberg, 130 Neb. 216, 264 N.W. 467 (1936).

Notice to county treasurer is not demand on treasurer of district required as condition precedent to bringing suit for refund of school taxes. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

State, county, and municipal taxes are a first lien upon the assets of an insolvent state bank in hands of receiver and claim need not be filed as ordinary claims of creditor. State ex rel.

Spillman v. Ord State Bank, 117 Neb. 189, 220 N.W. 265 (1928).

Taxes due to new county if paid to treasurer of old county, may be recovered back. Fremont, E. & M. V. R. R. Co. v. Holt County, 28 Neb. 742, 45 N.W. 163 (1890).

Taxes, levied and not due in unorganized county, are to be paid to treasurer of new county upon organization. Morse v. Hitchcock County, 19 Neb. 566, 27 N.W. 637 (1886).

Upon organization of a new county, all taxes due to it are to be paid to its treasurer. Fremont, E. & M. V. R. R. Co. v. Brown County, 18 Neb. 516, 26 N.W. 194 (1886).

77-1702 Collection of taxes; medium of payment.

State warrants are receivable for the amount payable into the state treasury on account of tax levied for general state purposes. County warrants are

receivable for the amount payable into the county treasury for general purposes. City warrants shall be received for the city general tax, village warrants for the village general tax, and town warrants for the town general tax. State, city, village, or township taxes, levied for other special purposes, may be paid by warrants drawn and payable out of the particular fund on account of which they are tendered. Lawful money of the United States, checks, drafts, credit cards, charge cards, debit cards, money orders, electronic funds transfers, or other bills of exchange may be accepted in payment of any state, county, village, township, school district, learning community, or other governmental subdivision tax, levy, excise, duty, custom, toll, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special.

Source: Laws 1903, c. 73, § 145, p. 440; R.S.1913, § 6474; C.S.1922, § 5997; C.S.1929, § 77-1902; R.S.1943, § 77-1702; Laws 1959, c. 353, § 3, p. 1245; Laws 1965, c. 492, § 1, p. 1578; Laws 1997, LB 70, § 5; Laws 2002, LB 994, § 21; Laws 2006, LB 1024, § 8.

Treasurer has no authority to receive anything but lawful money, and may refuse check or draft, but, if accepted and paid, will operate as payment. *Richards v. Hatfield*, 40 Neb. 879, 59 N.W. 777 (1894).

77-1703 Collection of taxes; separate payments; special assessments.

The treasurer shall receive taxes on part of any real property charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such real property remains unpaid, the treasurer shall enter such specification in his or her return so that the part on which the tax remains unpaid may be clearly known.

The tax may be paid on an undivided share of real property. In such case the treasurer shall designate on the record upon whose undivided share the tax has been paid.

The treasurer shall receive from any taxpayer at any time the amount due on account of special assessments of any kind including those levied for the use of any irrigation district whether other taxes on the same real property are paid or not. In such case, the tax receipt shall plainly show exactly what assessments have been paid and that no other tax on the real property has been received by the treasurer.

Source: Laws 1903, c. 73, § 146, p. 440; R.S.1913, § 6475; C.S.1922, § 5998; Laws 1927, c. 181, § 1, p. 522; C.S.1929, § 77-1903; Laws 1937, c. 167, § 31, p. 660; Laws 1939, c. 98, § 31, p. 447; Laws 1941, c. 157, § 31, p. 631; C.S.Supp.,1941, § 77-1903; R.S.1943, § 77-1703; Laws 1992, LB 1063, § 135; Laws 1992, Second Spec. Sess., LB 1, § 108.

This section gives proper parties right to redeem in part, and right of county treasurer to accept the amount due on special assessments of any kind, but does not determine the right to reapportionment of special assessments. *Village of Winside v. Brune*, 133 Neb. 80, 274 N.W. 212 (1937).

Amendment made in 1927 indicated legislative intent in the matter of payment of special assessments. *State ex rel. Todd v. Thomas*, 127 Neb. 891, 257 N.W. 265 (1934).

Continued assessment of portion of tract of land under contract of sale in name of vendor, along with other land in tract, at one aggregate amount, does not render entire tax based thereon void. *Haarmann Vinegar & Pickle Co. v. Douglas County*, 122 Neb. 643, 241 N.W. 117 (1932).

Opportunity is preserved to taxpayer to pay and discharge taxes justly assessable on undivided share in land. *Matthews v. Guenther*, 120 Neb. 742, 235 N.W. 98 (1931).

77-1704 Collection of taxes; entry of payment; receipt.

Whenever any person pays some or all of the taxes charged on any property, the treasurer shall enter such payment in his or her books and give a receipt therefor specifying for whom paid, the amount paid, what year paid for, and

the property and value thereof on which the tax was paid, according to its description in the treasurer's books, in whole or in part of such description as the case may be. Such entry and receipts shall bear the county name and the name of the treasurer or his or her deputy receiving the payment. Whenever it appears that any receipt for the payment of taxes is lost or destroyed, the entry so made may be read in evidence in lieu thereof. The treasurer shall enter the name of the owner or of the person paying the tax opposite each tract or lot of land when he or she collects the tax thereon and the post office address of the person paying the tax. A statement shall be entered by the treasurer on such receipt showing the amount of unpaid taxes and the date of unredeemed tax sales, if any, for the previous year or years upon such land or town lot. If the treasurer fails or neglects to note on such receipt the unpaid taxes or the date of unredeemed tax sales as provided in this section, he or she shall be liable on his or her bond to the person injured thereby in the amount of the tax so omitted.

Source: Laws 1903, c. 73, § 147, p. 440; R.S.1913, § 6476; C.S.1922, § 5999; C.S.1929, § 77-1904; Laws 1937, c. 167, § 32, p. 660; Laws 1939, c. 98, § 32, p. 447; Laws 1941, c. 157, § 32, p. 631; C.S.Supp.,1941, § 77-1904; R.S.1943, § 77-1704; Laws 1992, LB 1063, § 136; Laws 1992, Second Spec. Sess., LB 1, § 109; Laws 1993, LB 346, § 18; Laws 2000, LB 968, § 61.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. *Foote v. County of Adams*, 163 Neb. 406, 80 N.W.2d 179 (1956).

Mistake of collector in not collecting all that is due does not release balance of tax. *Johnson v. Finley*, 54 Neb. 733, 74 N.W. 1080 (1898).

Demand upon officers to keep the books in lawful manner must be made before mandamus will lie to compel performance. *State ex rel. Tutton v. Eberhardt*, 14 Neb. 201, 15 N.W. 320 (1883).

77-1704.01 Collection of taxes; notice or receipt; statement; contents.

(1) The county treasurer shall include with each tax notice or receipt to every taxpayer the following information:

- (a) The total amount of aid from state sources appropriated to the county and each city, village, and school district in the county;
- (b) The net amount of property taxes to be levied by the county and each city, village, school district, and learning community in the county; and
- (c) Beginning with tax year 2000, for real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, learning community, and other subdivisions for the tax year and for the immediately past year on the same parcel.

(2) The necessary form for furnishing the information required by subdivisions (1)(a) and (b) of this section shall be prescribed by the Department of Revenue. The necessary information required by subdivision (1)(a) of this section shall be furnished to the county treasurer by the Department of Revenue prior to October 1 of each year. The form prescribed by the Department of Revenue shall contain the following statement:

THE AMOUNT OF STATE FUNDS SHOWN ABOVE WOULD HAVE BEEN ADDITIONAL PROPERTY TAXES IF NOT ALLOCATED TO THE COUNTY, CITY, VILLAGE, AND SCHOOL DISTRICT BY THE LEGISLATURE.

Source: Laws 1972, LB 674, § 1; Laws 1995, LB 490, § 163; Laws 1997, LB 270, § 98; Laws 1999, LB 881, § 8; Laws 2006, LB 1024, § 9.

77-1704.02 Collection of taxes; partial payments; when authorized.

(1) Any county board may pass a resolution to allow payments for the discharge of current or delinquent real property taxes, personal property taxes, or both or any charges for interest, publication, penalties, or other charges by reason of the delinquency of such taxes to be held in escrow by the county treasurer or may contract with another party to hold such payments in escrow. Upon passage of such a resolution or such other effective date as the resolution may provide, the county treasurer shall accept payments in accordance with the resolution or any subsequent amendments thereto and hold such amounts until the accumulated payments are sufficient to pay at least one-half the taxes currently due on the property or the full amount of delinquency and any interest, penalties, or other charges due to the delinquency. The resolution of the county board may require a minimum, limited, or periodic payment amount as a condition for acceptance of payments to be held in escrow. The resolution may also require that an escrow agreement be executed between the person making payment and the county treasurer as a condition for accepting payments.

(2) Payments held in escrow under this section may be held in a designated bank account or may be commingled with other county funds. Such amounts are the property of the person making payment and shall be held in trust for the benefit of such person and be accounted for with respect to the property for which the current or delinquent taxes are to be paid. The county may pay interest on amounts held in escrow at a rate to be determined by the county board or may retain any interest received. Upon sale of the property, any amounts held in escrow with respect to that property shall be returned to the person that made the payment or applied as directed by such person.

(3) Payments held in escrow for payment of delinquent taxes shall be applied to the oldest delinquencies first. Payments held in escrow for payment of delinquent taxes shall not affect any collection procedure that is underway or available to the county until the delinquency is fully satisfied.

Source: Laws 2000, LB 968, § 62.

77-1705 Collection of taxes; tax receipt; form; required information.

The tax receipt shall be substantially in the following form, with such additions and amendments thereto as may be necessary to make it conform to law:

\$..... Treasurer’s Office County, Nebraska
20....

Received of

In full or in part the taxes for the year 20.... on the following described property:

.....
..... Deputy Treasurer.

If the tax is paid upon real property or personal property, the receipt shall describe the same as described in the tax list and give the valuation thereof.

Source: Laws 1903, c. 73, § 148, p. 441; R.S.1913, § 6477; C.S.1922, § 6000; Laws 1929, c. 167, § 1, p. 576; C.S.1929, § 77-1905; R.S.1943, § 77-1705; Laws 1957, c. 334, § 3, p. 1170; Laws 1995, LB 490, § 164; Laws 2000, LB 968, § 63.

77-1706 Collection of taxes; receipts; how numbered and issued.

All receipts issued by the county treasurer for taxes paid to him or her shall be numbered consecutively and shall be issued in duplicate. The original shall be presented to the taxpayer upon payment, and the duplicate shall be retained by the county treasurer.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(1), p. 607; R.S.1943, § 77-1706; Laws 1945, c. 189, § 6, p. 589; Laws 1993, LB 346, § 19; Laws 1997, LB 269, § 53; Laws 1997, LB 270, § 99; Laws 2003, LB 292, § 13.

Tax receipt alone is not sufficient to establish fact of levy or assessment. Adams v. Osgood, 55 Neb. 766, 76 N.W. 446 (1898).

77-1707 Collection of taxes; receipts; accountability of county treasurer.

The county treasurer shall be held strictly accountable for all receipts, including receipts found missing at regular settlement, and also for all detached receipts, the duplicates of which do not show the entry of taxes paid. All irregularities in the issuance of receipts that render them worthless must be shown on the face of the original, which must in no case be detached from the duplicate.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(2), p. 608; R.S.1943, § 77-1707; Laws 2003, LB 292, § 14.

77-1708 Collection of taxes; county treasurer; cash book.

The county treasurer is required to keep a cash book in which he or she shall enter an account of all money received, specifying in proper columns provided for that purpose the date of payment, the number of the receipt issued therefor, and on account of what fund or funds the same was paid, whether state, county, school, learning community, road, sinking fund or otherwise, each in separate columns, and the total amount for which the receipt was given in another column. The treasurer shall keep the account of money received for and on account of taxes separate and distinct from money received on any other account. He or she shall also keep the account of money received for and on account of taxes levied and assessed for any one year separate and distinct from those levied and assessed for any other year. All entries in the cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

Source: Laws 1903, c. 73, § 151, p. 443; Laws 1913, c. 185, § 1, p. 561; R.S.1913, § 6480; C.S.1922, § 6003; C.S.1929, § 77-1908; Laws 1937, c. 167, § 33, p. 661; Laws 1937, c. 171, § 1, p. 678; Laws 1939, c. 98, § 33, p. 448; Laws 1941, c. 157, § 33, p. 632; C.S.Supp.,1941, § 77-1908; R.S.1943, § 77-1708; Laws 2006, LB 1024, § 10.

77-1709 Repealed. Laws 1947, c. 258, § 1.**77-1710 Collection of taxes; payments; how indicated on tax lists.**

Whenever any taxes are paid, the county treasurer shall enter on the tax lists, opposite the description of real estate or personal property whereon the same

was levied, the word “paid”, together with the date of such payment, and the name of the person paying the same, which entry shall be prima facie evidence of such payment.

Source: Laws 1903, c. 73, § 152, p. 443; R.S.1913, § 6481; C.S.1922, § 6004; C.S.1929, § 77-1909; R.S.1943, § 77-1710; Laws 2002, LB 994, § 22.

77-1711 Collection of taxes; personal property; chargeable to county treasurer; liability for collection.

Upon delivery to the county treasurer of the tax list, as herein provided, all personal taxes levied in the county shall be charged to him, and he and his bondsmen shall be liable therefor, unless the same are collected or he shall show a compliance with the duties imposed upon him by law for the collection thereof.

Source: Laws 1903, c. 73, § 153, p. 443; R.S.1913, § 6482; C.S.1922, § 6005; C.S.1929, § 77-1910; Laws 1937, c. 167, § 6, p. 640; Laws 1939, c. 98, § 6, p. 425; Laws 1941, c. 157, § 6, p. 611; C.S.Supp.,1941, § 77-1910; R.S.1943, § 77-1711.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

77-1712 Repealed. Laws 1996, LB 299, § 35.

77-1713 Repealed. Laws 1996, LB 299, § 35.

77-1714 Repealed. Laws 1996, LB 299, § 35.

77-1715 Collection of taxes; personal tax roll; publication fees.

Payment for publication of the personal tax roll shall be made in the same manner as the publication of commissioners’ proceedings; *Provided*, the total charge for publication shall not exceed the rate paid for publishing commissioners’ proceedings.

Source: Laws 1915, c. 226, § 4, p. 527; C.S.1922, § 6009; C.S.1929, § 77-1914; R.S.1943, § 77-1715; Laws 1959, c. 353, § 4, p. 1245; Laws 1961, c. 377, § 8, p. 1161.

Cross References

For legal rate for publications, see section 33-141.

77-1716 Collection of taxes; notification of delinquency.

The county treasurer may, at any time prior to January 1 of each year, send a notice to each person on the personal tax roll and each person owing real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, advising such taxpayer of the amount of such taxes owed for that year. At any time after May 1 and before September 1 next following, the county treasurer is required to notify by mail any taxpayer, whose personal or real estate tax under this section is delinquent, on account of such taxpayer not having paid the taxes, or the first installment thereof, on May 1, as required by law, of the amount of such delinquent tax.

The notice shall also recite that unless the entire tax is paid by September 1, next following, a distress warrant will be issued therefor.

Source: Laws 1903, c. 73, § 154, p. 443; R.S.1913, § 6483; C.S.1922, § 6010; C.S.1929, § 77-1915; Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1716; Laws 1995, LB 452, § 31; Laws 1995, LB 490, § 165; Laws 1998, LB 306, § 30; Laws 2000, LB 968, § 64.

77-1716.01 Repealed. Laws 1949, c. 239, § 1.

77-1716.02 Repealed. Laws 1949, c. 239, § 1.

77-1717 Collection of taxes; procedure.

After September 1 of each year next after the personal taxes and real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land for the last preceding year have become delinquent, the county treasurer shall collect the same, together with interest and costs of collection, by distress and sale of personal property, mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land belonging to the person against whom levied, in the manner provided by law, for the levy and sale of personal property on execution.

Source: Laws 1903, c. 73, § 154, p. 443; R.S.1913, § 6483; C.S.1922, § 6010; C.S.1929, § 77-1915; Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1717; Laws 1998, LB 306, § 31; Laws 2000, LB 968, § 65.

**1. Collection by distress warrant
2. Miscellaneous**

1. Collection by distress warrant

Property in possession of vendee under conditional sale contract is subject to distraint for unpaid personal taxes of vendee. *Landis Machine Co. v. Omaha Merchants Transfer Co.*, 142 Neb. 389, 9 N.W.2d 198 (1943).

Issuance of distress warrants for collection of taxes is a summary remedy provided by statute. *Krug v. Hopkins*, 132 Neb. 768, 273 N.W. 221 (1937).

Local officers cannot enforce collection of taxes on unused roadbed by distress warrant. *Chicago, B. & O. R. R. Co. v. Custer County*, 69 Neb. 429, 95 N.W. 859 (1903).

When statute provides remedy for collection of taxes, that remedy is exclusive. *Chamberlain v. Woolsey*, 66 Neb. 141, 92 N.W. 181 (1902), affirmed on rehearing 66 Neb. 149, 95 N.W. 38 (1903); *County Board of Dawes County v. Furay*, 5 Neb. Unof. 507, 99 N.W. 271 (1904).

Sale of property under distress warrant, upon which valid mortgage exists, is wrongful to extent and for the years that mortgage lien is superior to tax lien. *Chamberlain Banking House v. Woolsey*, 60 Neb. 516, 83 N.W. 729 (1900).

Statute of limitations is not applicable to the collection of delinquent taxes by distress. *Price v. Lancaster County*, 18 Neb. 199, 24 N.W. 705 (1885).

2. Miscellaneous

A valid claim for personal taxes is a lien against the assets of an estate derived from sale of personal property. *In re Estate of Badberg*, 130 Neb. 216, 264 N.W. 467 (1936).

Personal taxes may be paid in two equal installments, and if first installment is paid before delinquency, payment of second installment is deferred. *Lincoln Tel. & Tel. Co. v. Albers*, 126 Neb. 329, 253 N.W. 429 (1934).

Treasurer may maintain action of replevin to gain possession of property on which taxes are lien. *Reynolds v. Fisher*, 43 Neb. 172, 61 N.W. 695 (1895).

Local officers have no right to seize or sell personal property for real estate taxes. *State ex rel. Kinzer v. Cain*, 18 Neb. 631, 26 N.W. 371 (1886).

Tax upon personalty of decedent is claim against estate and should be filed with county judge. *Millett v. Early*, 16 Neb. 266, 20 N.W. 352 (1884).

77-1718 Collection of taxes; notice; issuance of distress warrant; affidavit of poverty; interest.

On or before November 1 of each year, the county treasurer shall issue and deliver to the sheriff of the county distress warrants against all persons having

delinquent personal tax or real estate tax on a mobile home, cabin trailer, manufactured home, or similar property assessed and taxed as improvements to leased land for that year (1) unless such a person shall have paid such delinquent taxes in full, on or before September 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 September 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 twenty 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 twenty days, a distress warrant will be issued. Each such distress warrant shall include all delinquent 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.

Source: Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S. 1943, § 77-1718; Laws 1947, c. 259, § 1, p. 846; Laws 1969, c. 646, § 2, p. 2564; Laws 1980, LB 689, § 3; Laws 1981, LB 167, § 43; Laws 1986, LB 817, § 14; Laws 1998, LB 306, § 32; Laws 2000, LB 968, § 66.

77-1719 Collection of taxes, personal; service and return of distress warrants; time allowed.

All distress warrants issued by the treasurer for the collection of taxes shall be served by the sheriff of the county in the same manner as an execution issued by the district court. Within nine months, except in counties having a population over one hundred thousand inhabitants and in those counties two years, after receiving the current distress warrants from the county treasurer, the sheriff shall make return of the distress warrants to the treasurer of the county. Such distress warrants shall bear an endorsement of the sheriff showing that (1) the taxes therein described have been collected, (2) upon diligent search no property could be found on which to levy, or (3) the delinquent taxpayer has filed an affidavit with the sheriff before making of return of such distress warrant that such taxpayer is unable by reason of poverty to pay such tax and the sheriff shall certify that the property, if any, of the delinquent taxpayer is not worth in value the cost of advertising such property for sale.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(1), p. 847; Laws 1963, c. 455, § 1, p. 1481; Laws 1991, LB 59, § 1.

Sheriff proceeds in same manner as upon execution from justice court, and there is a legal presumption that his official acts in selling personal property under a distress warrant are properly and rightfully done. *Krug v. Hopkins*, 132 Neb. 768, 273 N.W. 221 (1937).

77-1719.01 Collection of taxes, personal; sheriff; report.

On or before August 1 of each year, the sheriff shall report to the county board showing the total amount collected on current distress warrants and the amount remaining uncollected.

Source: Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(2), p. 847; Laws 1984, LB 835, § 14; Laws 1998, LB 306, § 33.

77-1719.02 Collection of taxes, personal; report of sheriff; county treasurer; verify; false return; notice; hearing; finding; penalty.

On or before October 1 of each year, the county treasurer shall verify this report to the county board, and shall make an itemized report covering the amount uncollected. Such itemized report shall include the number of the distress warrant, the name and address of the taxpayer, the amount involved, and the reason for failure to collect same, or the failure of the sheriff to make a legal return on same. If such report of the county treasurer to the county board shows any false return by the sheriff, or failure to make legal return, the county board shall direct the sheriff to appear at a public hearing at a time to be fixed by such board. Notice of the hearing shall be given to the sheriff at least ten days prior thereto. At such hearing, the board shall hear evidence and make its findings as to whether there has been willful neglect of duty on the part of the sheriff. If the board shall find that there has not been willful neglect of duty it shall enter an order finding that the sheriff should be absolved from any liability for failure to collect such distress warrants. If the board shall find there has been willful neglect of duty, it shall cause proceedings to be instituted under sections 23-2001 to 23-2009 to remove such sheriff from office. Failure of the sheriff to comply with the requirements of sections 77-1719 and 77-1719.01 shall be prima facie evidence of willful neglect of duty and willful maladministration in office. The failure or refusal of any member of the county board to carry out the provisions of sections 77-1718 to 77-1719.04 shall be deemed a Class III misdemeanor.

Source: Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(3), p. 847; Laws 1977, LB 39, § 224; Laws 1998, LB 306, § 34.

77-1719.03 Collection of taxes, personal; distress warrant; acceptance of partial payment.

In any case where any distress warrant includes taxes for one year or more, the sheriff may, in his or her discretion, accept partial payment and shall pay the same, as received, to the county treasurer, who shall accept the same and receipt the sheriff therefor. Pursuant to section 77-1704.02, the county treasurer may accept the partial payment and hold such amounts until the accumulated payments are sufficient to pay the full amount of the delinquency for one year and any interest, penalties, or other charges due to the delinquency. Notwithstanding any partial payment, the sheriff shall make levy and return thereof, on the distress warrant, as required by law.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(4), p. 848; Laws 1963, c. 456, § 1, p. 1482; Laws 2005, LB 18, § 1.

77-1719.04 Collection of taxes, personal; false return; damages.

For knowingly making a false return, the officer shall be liable for double the amount of taxes, with interest and costs, to be recovered in the name of the county.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(5), p. 848.

77-1719.05 Collection of taxes, personal; distress warrant; forwarding to another county.

When the sheriff of the county in which a distress warrant has been issued is unable to serve the same because the taxpayer has moved from the county he shall, if the taxpayer is known to him to be actually residing in some other county in this state, forward such distress warrant to the sheriff of such county. Such sheriff shall serve and return it in the same manner in all respects as though it had originated in his county, except that the return thereof shall be made to the sheriff of the originating county on or before June 1 next following its issuance. The sheriff actually serving such warrant shall be allowed the fees and mileage allowed by section 77-1720.

Source: Laws 1957, c. 335, § 1, p. 1172.

77-1720 Collection of taxes, personal; levy and return of distress warrants; fees and commissions; mileage.

All fees allowed for issuing distress warrants, levy, and return of the warrants, in the cases above provided, shall be two dollars for issuing each warrant, one dollar for levy, and mileage at the rate provided in section 33-117 for county sheriffs for each mile actually and necessarily traveled by such officer on each warrant. When the officer has more than one warrant in his or her hands for service, he or she shall charge only for the mileage actually and necessarily traveled in serving all of the warrants, in which case the mileage so charged shall be prorated among such warrants. Commission shall be allowed in addition on all taxes collected by distress and sale as follows: On all sums not exceeding one hundred dollars, ten cents on each dollar; and on all sums exceeding one hundred dollars, eight cents on each dollar. All fees, mileage, and commissions shall be taxed to the parties against whom the distress warrants run and shall be collected as the original tax. When the taxes are not collected by distress and sale, the mileage shall be paid as provided in section 33-117. When mileage has been paid as provided in section 33-117 and the tax, together with all fees, mileage, and commission are collected, then the amount collected as mileage shall be paid to the county treasurer with the fees and commission and credited by the county treasurer to the general fund of the county.

Source: Laws 1903, c. 73, § 156, p. 444; R.S.1913, § 6485; C.S.1922, § 6012; C.S.1929, § 77-1917; R.S.1943, § 77-1720; Laws 1947, c. 123, § 2, p. 361; Laws 1951, c. 266, § 2, p. 897; Laws 1957, c. 70, § 7, p. 300; Laws 1959, c. 84, § 4, p. 387; Laws 1965, c. 493, § 1, p. 1579; Laws 1981, LB 204, § 151; Laws 1989, LB 324, § 1.

Under former law, sheriff could not charge fee for a return upon distress warrant, "No property found". Red Willow County v. Smith, 67 Neb. 213, 93 N.W. 151 (1903).

Collector has no right to charge commission unless he has made distress and sale. Kane v. Union P. R. R. Co., 5 Neb. 105 (1876).

77-1721 Collection of taxes; distress warrants; record of county treasurer; exoneration from liability on bond.

The county treasurer shall, in a book containing the personal tax list and the list of all delinquent taxes levied on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land in columns provided therefor, keep a record of the date of issue of each distress warrant, and of the return thereon, showing in detail the amount collected, or the fact that no personal property, mobile home, cabin trailer, manufactured home, or similar property assessed and taxed as improvements to leased land belonging to the tax delinquent was found. All distress warrants shall upon their return be filed and kept by the treasurer as a part of the records of his or her office. The collection of any item of taxes, the showing by affidavit of poverty, duly approved, or the return of a distress warrant showing no property found shall relieve him or her and his or her bondsperson from responsibility of that item of taxes.

Source: Laws 1903, c. 73, § 157, p. 445; R.S.1913, § 6486; C.S.1922, § 6013; C.S.1929, § 77-1918; R.S.1943, § 77-1721; Laws 2000, LB 968, § 67.

77-1722 Collection of taxes, personal; distress warrant uncollected; suit by county treasurer.

Upon the return of any distress warrant uncollected it shall be the duty of the treasurer, when directed so to do by the county board, to commence suit and prosecute the same to judgment, and no property whatever shall be exempt from levy and sale upon process issued on such judgment.

Source: Laws 1903, c. 73, § 157, p. 445; R.S.1913, § 6486; C.S.1922, § 6013; C.S.1929, § 77-1918; R.S.1943, § 77-1722.

77-1723 Collection of taxes, personal; distress warrant; removal from county of taxpayer; alias distress warrants.

It shall be the duty of the sheriff or his deputy in making return of the distress warrant to note in such return the county to which any such delinquent taxpayer may have removed, with the date of his removal, if he shall be able to ascertain such fact, and it is made his duty to make diligent inquiry therefor. It shall be the duty of the several county treasurers in the state, immediately after the return of such distress warrant, to issue an alias distress warrant to the sheriff of any county in this state into which such taxpayer may have removed, or may reside, or in which his personal property may be found, who shall proceed to collect such taxes the same as upon execution, together with his costs, and after so collecting to forward the same with such warrant, and his return thereon, to the treasurer of the county wherein such distress warrant was issued.

Source: Laws 1903, c. 73, § 158, p. 445; Laws 1913, c. 225, § 1, p. 655; R.S.1913, § 6487; C.S.1922, § 6014; C.S.1929, § 77-1919; R.S. 1943, § 77-1723.

77-1724 Collection of taxes, personal; return of property to owner upon payment; sale; notice.

When any goods and chattels have been taken on any distress warrants, they shall be returned to the owner by the officer having distrained them immediately upon payment of the taxes due with interest and costs, but upon such owner's refusal or neglect to make such payment or to give a good and sufficient bond for the delivery of the goods and chattels, the officer distraining shall keep them at the expense of the owner and shall give notice of the time and place of their sale not less than twice prior to the date of the sale in the same manner as provided in section 25-1525 with the first notice given within nine days after the date of the taking. The time of sale shall not be more than twenty days from the date of taking, but the officer may adjourn the sale from time to time not exceeding five days in all. In case of adjournment he or she shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping the property, and fees for sale shall be returned to the owner, and the county treasurer shall on demand render an account in writing of the sale and charges.

Source: Laws 1903, c. 73, § 159, p. 446; R.S.1913, § 6488; C.S.1922, § 6015; C.S.1929, § 77-1920; R.S.1943, § 77-1724; Laws 1990, LB 844, § 1.

If sheriff receives no bid which, in his judgment, is adequate, he may either postpone the sale or make a return and secure an alias distress warrant. *Krug v. Hopkins*, 132 Neb. 768, 273 N.W. 221 (1937).

77-1725 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-1725.01 Collection of taxes; real property; removal or demolition; public officials; duties; lien on personal property.

Except in any city or village that has adopted a building code with provisions for demolition of unsafe buildings or structures, it shall be the duty of any assessor, sheriff, constable, city council member, and village trustee to at once inform the county treasurer of the removal or demolition of or a levy of attachment upon any item of real property known to him or her. It shall be the duty of the county treasurer to immediately proceed with the collection of any delinquent or current taxes when such acts become known to him or her in any manner. The taxes shall be due and collectible, which taxes shall include taxes on all real property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to remove or demolish all or a substantial portion of his or her real property or (2) a levy of attachment is made upon the real property. From the date the taxes are due and collectible, the taxes shall be a first lien upon the personal property of the person to whom assessed until paid.

Source: Laws 1992, LB 1063, § 137; Laws 1992, Second Spec. Sess., LB 1, § 110.

77-1726 Collection of taxes, corporation or company; failure or neglect to pay; penalties.

Any corporation or company doing business in this state which willfully fails or neglects to pay any taxes assessed or charged against it which have become delinquent shall be guilty of a Class IV felony and may be prosecuted under the

procedures in section 29-1608. Each day the tax remains unpaid shall constitute a separate violation of this section.

Before a prosecution under this section may be commenced, the county treasurer shall notify an officer or agent of the corporation or company in the county where the tax is delinquent (1) that the tax is delinquent, (2) of the amount of tax due, and (3) to pay the tax forthwith. If such officer or agent willfully fails to pay over the tax due to the county treasurer when so notified, he or she shall be guilty of a Class IV felony.

Source: Laws 1903, c. 73, § 161, p. 447; R.S.1913, § 6490; C.S.1922, § 6017; C.S.1929, § 77-1922; Laws 1937, c. 167, § 8, p. 641; Laws 1939, c. 98, § 8, p. 426; Laws 1941, c. 157, § 8, p. 612; C.S.Supp.,1941, § 77-1922; R.S.1943, § 77-1726; Laws 1977, LB 39, § 226; Laws 1990, LB 1183, § 1.

77-1727 Collection of taxes; injunction and replevin prohibited; exceptions.

No injunction shall be granted by any court or judge in this state (1) to restrain the collection of any tax, or any part thereof, or (2) to restrain the sale of any property for the nonpayment of any such tax.

No person shall be permitted to recover by replevin, or other process, any property taken or restrained by the county treasurer for the nonpayment of any tax, except such tax or the part thereof enjoined in case of injunction, levied or assessed for illegal or unauthorized purpose.

No injunction shall be granted or recovery by replevin shall be permitted unless the person has first successfully argued before a court of competent jurisdiction that the tax levied or collected was levied or assessed for illegal or unauthorized purpose.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1727; Laws 1991, LB 829, § 11.

1. Injunction proper
2. Injunction not proper
3. Miscellaneous

1. Injunction proper

Injunctive relief is only available where a tax is void or levied for an illegal or unauthorized purpose. *Ganser v. County of Lancaster*, 215 Neb. 313, 338 N.W.2d 609 (1983).

Injunction was proper where land sought to be assessed did not derive any benefit from new water main. *Wiborg v. City of Norfolk*, 176 Neb. 825, 127 N.W.2d 499 (1964).

Where value of property is increased without notice to owner, collection of tax on increase may be enjoined. *Babin v. County of Madison*, 161 Neb. 536, 73 N.W.2d 807 (1955).

Where tax is void for want of jurisdiction, injunction is proper. *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382 (1955).

Where special assessments against railroad right-of-way were illegal, injunction would lie. *Chicago & N. W. Ry. Co. v. City of Omaha*, 156 Neb. 705, 57 N.W.2d 753 (1953).

Injunction can issue against void occupation tax. *Best & Co. Inc. v. City of Omaha*, 149 Neb. 868, 33 N.W.2d 150 (1948).

Where tax is illegal, injunction will lie. *State Bank of Omaha v. Endres*, 109 Neb. 753, 192 N.W. 322 (1923).

Injunction will lie where tax is levied and assessed for an unauthorized purpose. *Union Pac. R. R. Co. v. Troupe*, 99 Neb. 73, 155 N.W. 230 (1915).

Taxes levied on property outside taxing district are for unauthorized purpose, and collection may be restrained. *Hemple v. City of Hastings*, 79 Neb. 723, 113 N.W. 187 (1907); *Chicago, B. & Q. R. R. Co. v. Cass County*, 51 Neb. 369, 70 N.W. 955 (1897).

Taxes designedly levied to be transferred to another fund are illegal and may be enjoined. *Chicago, B. & Q. R. R. Co. v. Lincoln County*, 66 Neb. 228, 92 N.W. 208 (1902).

When the assessment was without jurisdiction, injunction is proper. *Rothwell v. Knox County*, 62 Neb. 50, 86 N.W. 903 (1901).

Where tax is void, injunction is proper. *Grand I. & W. C. R. R. Co. v. Dawes County*, 62 Neb. 44, 86 N.W. 934 (1901).

Sale of land for void special assessment may be enjoined. *Ives v. Irely*, 51 Neb. 136, 70 N.W. 961 (1897).

2. Injunction not proper

Injunctive relief is available only where a tax is void, that is, where the taxing body does not have jurisdiction or power to impose the tax. *Jones v. State*, 248 Neb. 158, 532 N.W.2d 636 (1995).

Payment of taxes on land assessed by board of equalization cannot be avoided without showing land was exempt or other valid reason. *Radium Hospital v. Greenleaf*, 118 Neb. 136, 223 N.W. 667 (1929).

Injunction will not lie to restrain collection of taxes on cattle in county in which they were being fed. *Delatour v. Smith*, 116 Neb. 695, 218 N.W. 731 (1928).

Injunction to restrain treasurer from refunding tax paid under protest was not proper when petition did not show county board was acting without jurisdiction. *School Dist. No. 25 of Brown County v. DeLong*, 80 Neb. 667, 114 N.W. 934 (1908).

Injunction will not lie to restrain collection of taxes unless levied for unauthorized or illegal purpose, or when assessment is void. *Union P. R. R. Co. v. Cheyenne County*, 64 Neb. 777, 90 N.W. 917 (1902); *Philadelphia M. & T. Co. v. City of Omaha*, 63 Neb. 280, 88 N.W. 523 (1901).

Taxes, assessed for sidewalk, are not for illegal or unauthorized purpose, and injunction will not lie. *Wilson v. City of Auburn*, 27 Neb. 435, 43 N.W. 257 (1889).

Injunction will not be granted unless tax is void or inequitable. *South Platte Land Co. v. City of Crete*, 11 Neb. 344, 7 N.W. 859 (1881).

If legal tax can be separated from illegal, collection of entire tax will not be restrained. *Burlington & M. R. R. Co. v. York County*, 7 Neb. 487 (1878).

Special assessment levied against railroad was a tax which federal court would not enjoin. *Chicago, St. P., M. & O. Ry. Co. v. City of Randolph*, 122 F.Supp. 302 (D. Neb. 1954).

3. Miscellaneous

This section governs suits by taxpayers who seek to restrain the collection of any tax. *Rawson v. Harlan County*, 247 Neb. 944, 530 N.W.2d 923 (1995).

Tax levied by district which had been merged with city was within exception. *Abernathy v. City of Omaha*, 183 Neb. 660, 163 N.W.2d 579 (1968).

The prohibition against use of remedy of replevin has no application to strangers to the tax whose property has been distrained for the taxes of another. *Landis Machine Company v. Omaha Merchants Transfer Co.*, 142 Neb. 389, 9 N.W.2d 198 (1943).

Action to quiet title and remove cloud, directed against apparent lien of tax, is only maintainable when tax is void. *Philadelphia M. & T. Co. v. Omaha*, 65 Neb. 93, 90 N.W. 1005 (1902).

Validity of statute imposing tax on air-flight equipment could be tested by injunction. *Mid-Continent Airlines v. Nebraska State Board of Equalization*, 105 F.Supp. 188 (D. Neb. 1952).

77-1728 Repealed. Laws 1955, c. 297, § 5.

77-1729 Repealed. Laws 1955, c. 297, § 5.

77-1730 Repealed. Laws 1955, c. 297, § 5.

77-1731 Repealed. Laws 1955, c. 297, § 5.

77-1732 Repealed. Laws 1955, c. 297, § 5.

77-1733 Repealed. Laws 1955, c. 297, § 5.

77-1734 Collection of taxes; entry on tax list of refunds.

When the county treasurer refunds taxes pursuant to authority provided by law, he or she shall enter opposite such taxes in the tax list the words *Erroneously taxed – refunded*.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1734; Laws 1955, c. 297, § 1, p. 931; Laws 2002, LB 994, § 23.

77-1734.01 Refund of tax paid; claim; verification required; county board approval.

(1) In the case of an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority that decreases the Nebraska adjusted basis of the person's taxable tangible personal property, the county treasurer shall refund that portion of the tax paid that is in excess of the amount due after the amendment or correction.

(2) In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding. A claim for a refund pursuant to this section shall be made in writing to the county treasurer to whom the tax was paid within

three years after the date the tax was due or within ninety days after filing the amended return or the correction becomes final.

(3) Before the refund is made, the county treasurer shall receive verification from the county assessor or other taxing official that such error or mistake was made or the amended return was filed or the correction made, and the claim for refund shall be submitted to the county board. Upon verification, the county board shall approve the claim. The refund shall be made in the manner prescribed in section 77-1736.06. Such refund shall not have a dispositional effect on any similar refund for another taxpayer. This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

Source: Laws 1957, c. 336, § 1, p. 1173; Laws 1959, c. 373, § 1, p. 1312; Laws 1961, c. 385, § 1, p. 1179; Laws 1977, LB 245, § 1; Laws 1988, LB 819, § 1; Laws 1989, LB 762, § 2; Laws 1991, LB 829, § 12; Laws 1992, LB 719A, § 174; Laws 1999, LB 194, § 32; Laws 2008, LB965, § 17.

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county board acts quasi-judicially, and upon request for declaratory relief on ground resolution for refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. *Svoboda v. Hahn*, 196 Neb. 21, 241 N.W.2d 499 (1976).

The term clerical error herein is not restricted to a clerical error made by a taxpayer on the face of a personal property tax return. *School Dist. of Minatare v. County of Scotts Bluff*, 189 Neb. 395, 202 N.W.2d 825 (1972).

77-1735 Illegal tax paid; claim for refund; procedure.

(1) Except as provided in subsection (2) of this section, if a person makes a payment to any county or other political subdivision of any property tax or any payment in lieu of tax with respect to property and claims the tax or any part thereof is illegal for any reason other than the valuation or equalization of the property, he or she may, at any time within thirty days after such payment, make a written claim for refund of the payment from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is not refunded within ninety days thereafter, the claimant may sue the county board for the amount so claimed. Upon the trial, if it is determined that such tax or any part thereof was illegal, judgment shall be rendered therefor and such judgment shall be collected in the manner prescribed in section 77-1736.06. If the tax so claimed to be illegal was not collected for all political subdivisions in a consolidated tax district and if a suit is brought to recover the tax paid or a part thereof, the plaintiff in such action shall join as defendants in a single suit as many of the political subdivisions as he or she seeks recovery from by stating in the petition a claim against each such political subdivision as a separate cause of action. For purposes of this section, illegal shall mean a tax levied for an unauthorized purpose or as a result of fraudulent conduct on the part of the taxing officials. A person shall not be entitled to a refund pursuant to this section of any property tax paid or any payment in lieu of tax unless the person has filed a claim with the county treasurer or prevailed in an action against the county. If a county refuses to make a refund, a person shall not be entitled to a refund unless he or she prevails in an action against the county on such claim even if another person has successfully challenged a similar tax or payment.

(2) For property valued by the state, for purposes of a claim for refund pursuant to this section, the Tax Commissioner shall perform the functions of the county treasurer and county board. Upon approval of the claim by the Tax

Commissioner or a court of competent jurisdiction, the Tax Commissioner shall certify the amount of the refund to the county treasurer to whom this tax was paid or distributed. The refund shall be made in the manner prescribed in section 77-1736.06.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1735; Laws 1955, c. 297, § 2, p. 931; Laws 1967, c. 505, § 1, p. 1702; Laws 1977, LB 245, § 2; Laws 1984, LB 835, § 15; Laws 1989, LB 762, § 3; Laws 1991, LB 829, § 13; Laws 1992, Fourth Spec. Sess., LB 1, § 16; Laws 1995, LB 490, § 166; Laws 2007, LB334, § 81.

- 1. Illegal or unauthorized purpose
- 2. Void tax
- 3. Demand for refund
- 4. Miscellaneous

1. Illegal or unauthorized purpose

An exclusive remedy is provided for recovery of taxes paid where the tax was levied or assessed for an illegal or unauthorized purpose. *Scudder v. County of Buffalo*, 170 Neb. 293, 102 N.W.2d 447 (1960).

Railroad company could enjoin illegal special assessment against right-of-way. *Chicago & N. W. Ry. Co. v. City of Omaha*, 156 Neb. 705, 57 N.W.2d 753 (1953).

This section authorizes the bringing of an original action to recover taxes paid, where the taxpayer claims that the tax was levied or assessed for an illegal or unauthorized purpose. *Loup River Public Power District v. County of Platte*, 144 Neb. 600, 14 N.W.2d 210 (1944).

In absence of statute, taxes voluntarily paid cannot be recovered back, but, when tax imposed is illegal and unauthorized, an original action may be brought to recover the tax by virtue of statutory authority. *Riggs-Orr Inv. Co. v. City of Omaha*, 130 Neb. 697, 266 N.W. 430 (1936).

Action to recover taxes paid on ground they were levied for an unauthorized purpose must be brought under this section. *Lenemann v. Harlan County*, 110 Neb. 742, 194 N.W. 814 (1923).

When taxes levied by a county exceed the maximum permitted by the Constitution, the excess is levied for an illegal and unauthorized purpose. *Chase County v. Chicago, B. & Q. R. R. Co.*, 58 Neb. 274, 78 N.W. 502 (1899).

2. Void tax

Where petition alleges facts showing tax assessed by officer without authority, and proper refund is demanded, petition for refund states a cause of action under this section. *Western Public Service Co. v. Wheeler County*, 126 Neb. 120, 252 N.W. 609 (1934).

When taxpayer fails to demand repayment within thirty days after payment of void tax, he cannot maintain action. *Monteith v. Alpha High School District of Chase County*, 125 Neb. 665, 251 N.W. 661 (1933).

Where amount of money on hand returned by taxpayer for taxation was changed without notice to him, his remedy was under this section. *Darr v. Dawson County*, 93 Neb. 93, 139 N.W. 852 (1913).

Taxes in excess of constitutional limit are void, and may be recovered in action at law. *Dakota County v. Chicago, St. P., M. & O. Ry. Co.*, 63 Neb. 405, 88 N.W. 663 (1902).

3. Demand for refund

When a taxpayer fails to substantially comply with the 30-day claim requirement and has voluntarily paid a tax, that taxpayer will not be allowed to complain about the tax at a later point in time. *Rauert v. School Dist. 1-R of Hall Cty.*, 251 Neb. 135, 555 N.W.2d 763 (1996).

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county

board acts quasi-judicially, and upon request for declaratory relief on ground resolution for refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. *Svoboda v. Hahn*, 196 Neb. 21, 241 N.W.2d 499 (1976).

Request for refund of special assessments was properly refused. *Chicago & N. W. Ry. Co. v. City of Seward*, 166 Neb. 662, 90 N.W.2d 282 (1958).

To recover taxes illegally imposed, demand in writing for repayment must be made within 30 days after payment of tax. *Satterfield v. Britton*, 163 Neb. 161, 78 N.W.2d 817 (1956).

Claim for refund, based upon contention that intangible property of foreign corporation was not subject to taxation, could not be maintained under this section. *International Harvester Co. v. County of Douglas*, 146 Neb. 555, 20 N.W.2d 620 (1945).

Notice to county treasurer is not a demand on treasurer of school district required by this section as condition precedent to bringing suit for refund of school taxes. *City Nat. Bank of Lincoln v. School Dist. of City of Lincoln*, 121 Neb. 213, 236 N.W. 616 (1931).

No formal protest is required under this section, and demand for return is sufficient if it specifies the taxes sought to be recovered and the ground upon which their return is demanded. *Custer County v. Chicago, B. & Q. R. R. Co.*, 62 Neb. 657, 87 N.W. 341 (1901).

Protest must state grounds specifically, and burden of proof is on pleader. *Davis v. Otoe County*, 55 Neb. 677, 76 N.W. 465 (1898).

Demand is necessary to base action for recovery of illegal taxes paid under protest. *City of Omaha v. Kountze*, 25 Neb. 60, 40 N.W. 597 (1888); *B. & M. Ry. Co. v. Buffalo County*, 14 Neb. 51, 14 N.W. 539 (1883).

4. Miscellaneous

This section provides an exclusive statutory remedy under which a taxpayer may seek relief. *Rawson v. Harlan County*, 247 Neb. 944, 530 N.W.2d 923 (1995).

Plaintiff's petition to recover taxes stated cause of action under this section. *First Data Resources v. Howell*, 242 Neb. 248, 494 N.W.2d 542 (1993).

A person, as the term is used in this section, is one with an ownership interest in the property in question. *First Nat. Bank, Stromsburg v. Heiden*, 241 Neb. 893, 491 N.W.2d 699 (1992).

This section is not exclusive and proper claim may be allowed under section 77-1734.01. *School Dist. of Minatare v. County of Scotts Bluff*, 189 Neb. 395, 202 N.W.2d 825 (1972).

This section creates a direct cause of action by which a taxpayer may test the validity for any reason of a tax on any part thereof. *Frye v. Haas*, 182 Neb. 73, 152 N.W.2d 121 (1967).

A remedy is provided for the recovery of penalties as well as taxes which have been illegally imposed. *Misle v. Miller*, 176 Neb. 113, 125 N.W.2d 512 (1963).

Claim by railroad for refund of special assessments was properly disallowed. *Chicago & N. W. Ry. Co. v. City of Seward*, 166 Neb. 123, 88 N.W.2d 175 (1958).

Limitation under this section does not apply to action for recovery of money paid for void tax sale certificate against county. *McDonald v. County of Lincoln*, 141 Neb. 741, 4 N.W.2d 903 (1942).

Where propriety of removal to federal court of proceedings to recover taxes paid under protest is not challenged, subsequent suit in state court will be dismissed. *Chicago, St. P., M. & O. Ry. Co. v. Bauman*, 132 Neb. 67, 271 N.W. 256 (1937).

In action by taxpayer to recover special assessments voluntarily paid, statute of limitations begins to run from time of payment of the assessments. *Dorland v. City of Humboldt*, 129 Neb. 477, 262 N.W. 22 (1935).

A metropolitan city is not required to refund money received from purchaser at tax sale, taxes being levied on illegal special

assessments. *McCague v. City of Omaha*, 58 Neb. 37, 78 N.W. 463 (1899).

Taxes paid to officer, whose authority to collect has ceased, may be recovered back. *Fremont, E. & M. V. Ry. Co. v. Holt County*, 28 Neb. 742, 45 N.W. 163 (1890).

Right to recover taxes paid under protest applies to business tax assessed under void ordinance. *Caldwell v. City of Lincoln*, 19 Neb. 569, 27 N.W. 647 (1886).

County is not liable for school tax collected and paid to district, even though illegally levied. *Price v. Lancaster County*, 18 Neb. 199, 24 N.W. 705 (1885).

Above statute does not provide adequate remedy at law to railroad so as to preclude equitable relief, where railroad, to recover taxes paid, would be required to sue county treasurers in thirty-two different counties through which its line of railroad runs, thus involving multiplicity of suits. *Chicago & N. W. Ry. Co. v. Bauman*, 69 F.2d 171 (8th Cir. 1934).

Suit is not authorized against state to recover taxes paid on air-flight equipment. *Mid-Continent Airlines v. Nebraska State Board of Equalization*, 105 F.Supp. 188 (D. Neb. 1952).

77-1736 Repealed. Laws 1989, LB 762, § 11.

77-1736.01 Repealed. Laws 1959, c. 264, § 1.

77-1736.02 Repealed. Laws 1959, c. 264, § 1.

77-1736.03 Repealed. Laws 1959, c. 264, § 1.

77-1736.04 Repealed. Laws 1992, Fourth Spec. Sess., LB 1, § 44.

77-1736.05 Repealed. Laws 1989, LB 762, § 11.

77-1736.06 Property tax refund; procedure.

The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision which received any part of the tax or penalty being refunded. If sufficient funds are not available or the political subdivision, within thirty days of the mailing of the notice by the county treasurer if applicable, certifies to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund of the tax or penalty is paid, the county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt

for the registration of the claim. The certification by a political subdivision declaring a hardship shall be binding upon the county treasurer;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable and in no event later than five years from the date the final order or other action approving a refund is entered. The governing body of the political subdivision shall make provisions in its budget for the amount of any refund or claim to be satisfied pursuant to this section. If a receipt for the registration of a claim is given:

(a) Such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision next falling due from the person holding the receipt after the sixth next succeeding levy is made on behalf of the political subdivision following the final order or other action approving the refund; and

(b) To the extent the amount of such receipt exceeds the amount of such tax liability, the unsatisfied balance of the receipt shall be paid and satisfied within the five-year period prescribed in this subsection from a combination of a credit against taxes anticipated to be due to the political subdivision during such period and cash payment from any funds expected to accrue to the political subdivision pursuant to a written plan to be filed by the political subdivision with the county treasurer no later than thirty days after the claim against the political subdivision is first reduced by operation of a credit against taxes due to such political subdivision.

If a political subdivision fails to fully satisfy the refund or claim prior to the sixth next succeeding levy following the entry of a final nonappealable order or other action approving a refund, interest shall accrue on the unpaid balance commencing on the sixth next succeeding levy following such entry or action at the rate set forth in section 45-103;

(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund or credit. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;

(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;

(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof; and

(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after

receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund.

Source: Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, Second Spec. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB334, § 82; Laws 2008, LB965, § 18.

77-1736.07 Property tax refund; procedure; applicability.

Section 77-1736.06 is expressly intended to apply to all claims for refund of any property taxes pending on June 11, 1991.

Source: Laws 1991, LB 829, § 16; Laws 1992, Fourth Spec. Sess., LB 1, § 17.

77-1736.08 Repealed. Laws 1998, LB 1104, § 36.

77-1736.09 Repealed. Laws 1989, LB 762, § 11.

77-1736.10 Repealed. Laws 1991, LB 829, § 39.

77-1736.11 Repealed. Laws 1989, LB 762, § 11.

77-1737 Collection of taxes; no power to release or commute; recovery from public officials.

No county or township board, city council, or village trustees shall have the power to release, discharge, remit, or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever. Any taxes, so discharged, released, remitted, or commuted, may be recovered by civil action from the members of any such board, council, or trustees, and the sureties on their official bonds at the suit of any citizen of the county, township, city, or village, as the case may be, and when collected shall be paid into the proper treasury. The provisions of this section shall not be construed to prevent the proper authority from refunding taxes paid, as provided in section 77-1735, nor to interfere with the powers of any officers or board sitting as a board for the equalization of taxes.

Source: Laws 1903, c. 73, § 164, p. 449; R.S.1913, § 6493; C.S.1922, § 6020; C.S.1929, § 77-1925; R.S.1943, § 77-1737; Laws 1955, c. 297, § 4, p. 932.

Taxes are not prevented from merging in the fee simple title on conveyances of land to a governmental entity when only the governmental entity acquiring the land holds a tax lien. *City of Omaha v. Morello*, 257 Neb. 869, 602 N.W.2d 1 (1999).

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county board acts quasi-judicially, and upon request for declaratory relief on ground resolution for refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. *Svoboda v. Hahn*, 196 Neb. 21, 241 N.W.2d 499 (1976).

This section does not prevent the proper authority from refunding taxes as authorized by any specific tax refund statute.

School Dist. of Minatare v. County of Scotts Bluff, 189 Neb. 395, 202 N.W.2d 825 (1972).

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. *Foote v. County of Adams*, 163 Neb. 406, 80 N.W.2d 179 (1956).

Receipt of money under court decree was not a commutation of tax. *State ex rel. Heintze v. County of Adams*, 162 Neb. 127, 75 N.W.2d 539 (1956).

Lien of tax on property acquired by school district was not thereby dissolved. *Madison County v. School Dist. No. 2*, 148 Neb. 218, 27 N.W.2d 172 (1947).

Provision for refunding of taxes applies to refunding of occupation tax by village. *Shue v. Village of Silver Creek*, 98 Neb. 551, 153 N.W. 562 (1915).

77-1738 Collection of taxes; when stricken from tax list.

The county board shall cause delinquent taxes on personalty, mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as

improvements to leased land to be stricken from the tax list. Such delinquent taxes shall only be stricken if (1) at least two years have expired, (2) the treasurer has used due diligence to collect such taxes, and (3)(a) it appears from the return of the treasurer that any person charged with the taxes has removed out of the county or has died and left no property out of which the taxes can be paid or (b) it appears impossible to collect such taxes.

Source: Laws 1903, c. 73, § 165, p. 450; R.S.1913, § 6494; Laws 1915, c. 110, § 1, p. 259; C.S.1922, § 6021; C.S.1929, § 77-1926; R.S. 1943, § 77-1738; Laws 1947, c. 260, § 1, p. 849; Laws 1995, LB 490, § 168; Laws 2000, LB 968, § 68.

77-1739 Collection of taxes; taxes delinquent for ten years; cancellation of interest on payment of principal.

All personal property taxes or real estate taxes levied on a mobile home, cabin trailer, manufactured home, or similar property assessed and taxed as improvements to leased land of any taxpayer, delinquent for more than ten years, shall be canceled upon the payment of the principal of such taxes, without interest, if all other taxes of such taxpayer in that county, due subsequent thereto, have been paid in full.

Source: Laws 1921, c. 218, § 1, p. 793; C.S.1922, § 6022; C.S.1929, § 77-1927; Laws 1943, c. 177, § 1, p. 621; R.S.1943, § 77-1739; Laws 2000, LB 968, § 69.

77-1740 Collection of taxes; county treasurer's warrant book; entries.

Each county treasurer is required to keep a book, called the Warrant Book, in which he shall enter every state, county or other warrant or order by him paid, or received in payment of taxes from any person, specifying the date on which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was drawn, the sum for which it was received, and the interest due thereon, and the treasurer shall keep the account of warrants and orders, by him received for and on account of taxes, separate and distinct from such as are by him paid in cash.

Source: Laws 1903, c. 73, § 167, p. 450; R.S.1913, § 6495; C.S.1922, § 6023; C.S.1929, § 77-1928; R.S.1943, § 77-1740.

77-1741 Collection of taxes; contract for or purchase of warrants or orders at discount by treasurer, forbidden; penalty.

No county, city, township or village treasurer shall either directly or indirectly contract for or purchase any warrant or order or orders issued by the county of which he is treasurer at any discount whatever upon the sum due on such warrant or order or orders. If any county, city, township or village treasurer shall so contract for or purchase any such order or warrant, he shall not be allowed in settlement the amount of the order or warrant, or any part thereof, and shall also forfeit the whole amount due on such order or warrant, to be recovered by civil action, at the suit of the State of Nebraska, for the use of the school fund of the county.

Source: Laws 1903, c. 73, § 168, p. 451; R.S.1913, § 6496; C.S.1922, § 6024; C.S.1929, § 77-1929; R.S.1943, § 77-1741.

77-1742 Collection of taxes, personal; statement of uncollected taxes filed by county treasurer; list of assessment errors.

On or before November 1 annually, and at such other times as the county board may direct, the county treasurer shall make out and file with the county clerk a statement in writing, setting forth in detail the name of each person charged with personal property tax which the county treasurer and his or her deputies have been unable to collect by reason of the removal or insolvency of the person charged with such tax, the value of the property and the amount of tax, the cause of inability to collect such tax in each separate case, in a column provided in the list for that purpose. The treasurer shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate, and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of the several taxes and special assessments, and cause of error. The truth of the statement contained in such lists shall be verified by affidavit of the county treasurer.

Source: Laws 1903, c. 73, § 169, p. 451; R.S.1913, § 6497; C.S.1922, § 6025; C.S.1929, § 77-1930; R.S.1943, § 77-1742; Laws 1998, LB 306, § 35.

77-1743 Collection of taxes; county treasurer; credit on settlement for delinquent real property taxes and special assessments.

If any lands or lots shall be delinquent for taxes or special assessments, the treasurer shall be entitled to a credit in his final settlement for the amount of the several assessments thereon, the county to allow the amount of printer's fees thereon, and be entitled to the fees when collected.

Source: Laws 1903, c. 73, § 170, p. 452; R.S.1913, § 6498; C.S.1922, § 6026; C.S.1929, § 77-1931; Laws 1937, c. 167, § 9, p. 642; Laws 1939, c. 98, § 9, p. 427; Laws 1941, c. 157, § 9, p. 613; C.S.Supp.,1941, § 77-1931; R.S.1943, § 77-1743.

77-1744 Collection of taxes; county treasurer; credit on settlement for delinquent personal property taxes.

The county treasurer shall not be entitled to credit on his final settlement for delinquent personal property tax until he has filed with the clerk an affidavit that he has fully complied with the provisions of sections 77-1715 to 77-1726 relating to the giving of notice and issuing of distress warrants and been unable to collect the tax due thereon by reason of a want of personal property of the owner thereof, and that to the best of his knowledge and belief no personal property of any such owner is in the county.

Source: Laws 1903, c. 73, § 170, p. 452; R.S.1913, § 6498; C.S.1922, § 6026; C.S.1929, § 77-1931; Laws 1937, c. 167, § 9, p. 642; Laws 1939, c. 98, § 9, p. 427; Laws 1941, c. 157, § 9, p. 613; C.S.Supp.,1941, § 77-1931; R.S.1943, § 77-1744.

77-1745 Collection of taxes; settlement of county treasurer; made with county board; when made.

The county treasurer shall settle with the county board within thirty days after the first Tuesday in January, and on the first Monday in July in each year, and at such other times as the county board may direct, at which times the

county treasurer shall file with the county clerk a statement showing the amount of money collected since last settlement, from what source derived, amount of money paid out, and for what purpose, together with the vouchers for the same, the amount of taxes due and unpaid and the amount of money on hand belonging to the several funds.

Source: Laws 1903, c. 73, § 170, p. 452; R.S.1913, § 6498; C.S.1922, § 6026; C.S.1929, § 77-1931; Laws 1937, c. 167, § 9, p. 642; Laws 1939, c. 98, § 9, p. 427; Laws 1941, c. 157, § 9, p. 613; C.S.Supp.,1941, § 77-1931; R.S.1943, § 77-1745; Laws 1969, c. 681, § 1, p. 2608.

Action of board of equalization in making settlements is not a judicial determination. Treasurer is an insurer of funds collected. *Bush v. Johnson County*, 48 Neb. 1, 66 N.W. 1023 (1896).

77-1746 Collection of taxes; settlement of county treasurer; with county clerk when board not in session.

If there be no session of the county board held at the proper time for settling and adjusting the accounts of the county treasurer, it shall be the duty of the treasurer to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as the board is required to do. The county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessment returned, for which the treasurer is entitled to credit.

Source: Laws 1903, c. 73, § 171, p. 452; R.S.1913, § 6499; C.S.1922, § 6027; C.S.1929, § 77-1932; R.S.1943, § 77-1746.

77-1747 Repealed. Laws 1995, LB 490, § 195.

77-1748 Collection of taxes; settlement of county treasurer; certificate to local authorities.

The county clerk shall also at the same time certify to the several authorities or persons with whom the county treasurer is to make settlement, showing the valuation of property and the amount of taxes and special assessments due thereon allowable to the treasurer in the settlement of his several accounts.

Source: Laws 1903, c. 73, § 173, p. 453; R.S.1913, § 6501; C.S.1922, § 6029; C.S.1929, § 77-1934; R.S.1943, § 77-1748.

77-1749 Collection of taxes; settlement of county treasurer; credit for delinquent taxes; audit of treasurer's books.

The Tax Commissioner and other proper authority or person shall in his or her final settlement with the treasurer allow him or her credit for the amount so certified, but if the Tax Commissioner or other proper authority or person shall have reason to believe that the amount stated in the certificate is not correct, or that the allowance was illegally made, he or she shall return the same for correction. When it appears to be necessary in the opinion of the Tax Commissioner or other proper authority or person, he or she shall designate and appoint some competent person to examine the treasurer's books and statement of settlement, and the person so designated and appointed shall have

access to the treasurer's books and papers appertaining to such treasurer's office or settlement for the purpose of making such examination.

Source: Laws 1903, c. 73, § 174, p. 453; R.S.1913, § 6502; C.S.1922, § 6030; C.S.1929, § 77-1935; R.S.1943, § 77-1749; Laws 1995, LB 490, § 169; Laws 2007, LB334, § 83.

County board of equalization is sole judge as to when necessity for examination of accounts of treasurer exists. Kearney County v. Tuttle, 16 Neb. 34, 19 N.W. 637 (1884).

Board of equalization has authority under this section to employ competent person to examine accounts of treasurer. Laws v. Harlan County, 12 Neb. 637, 12 N.W. 114 (1882).

77-1750 Collection of taxes; settlement of county treasurer; adjustment with county clerk; order by county board.

In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settlement and if found correct shall enter an order to that effect. If any omission or error is found, the board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the Tax Commissioner and other proper authority or person who shall correct and adjust the treasurer's accounts accordingly.

Source: Laws 1903, c. 73, § 175, p. 453; R.S.1913, § 6503; C.S.1922, § 6031; C.S.1929, § 77-1936; R.S.1943, § 77-1750; Laws 1995, LB 490, § 170; Laws 2007, LB334, § 84.

77-1751 Repealed. Laws 1995, LB 490, § 195.

77-1752 Repealed. Laws 1995, LB 490, § 195.

77-1753 Repealed. Laws 1995, LB 490, § 195.

77-1754 Repealed. Laws 1995, LB 490, § 195.

77-1755 Repealed. Laws 1995, LB 490, § 195.

77-1755.01 Repealed. Laws 1995, LB 490, § 195.

77-1756 Repealed. Laws 1995, LB 490, § 195.

77-1757 Repealed. Laws 1995, LB 490, § 195.

77-1758 Repealed. Laws 1995, LB 490, § 195.

77-1759 Collection of taxes; report to and payment of taxes and special assessment to taxing units; when required.

The county treasurer shall report and pay over the amount of tax and special assessments due to towns, districts, cities, villages, all other taxing units, corporations, and persons, collected by him or her, when demanded by the proper authorities or persons. Upon a demand, one payment shall be for the funds collected or received during the previous calendar month and shall be paid not later than the fifteenth of the following month. A second demand may be made prior to the fifteenth of the month on taxes and special assessments collected or received, during the first fifteen days of the month. The second demand shall be paid not later than the last day of the month.

Source: Laws 1903, c. 73, § 183, p. 456; R.S.1913, § 6511; C.S.1922, § 6039; C.S.1929, § 77-1944; R.S.1943, § 77-1759; Laws 1998, LB 1104, § 11; Laws 1999, LB 287, § 2.

The plain language of this section authorizes a taxing authority to make demand for payment of its tax revenues which have been collected by the county treasurer. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

The plain language of this section provides that the county treasurer shall pay over the amount of tax collected when demanded by the proper authorities or persons. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

This section and section 23-1601(4) can be read so as to give effect to the plain language of each. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

It is the duty of county treasurer to collect taxes and pay over to school district. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

Mandamus will lie to compel county treasurer to pay to city treasurer city taxes collected by him. State of Neb. ex rel. Grable v. Roderick, 23 Neb. 505, 37 N.W. 77 (1888).

77-1760 Collection of taxes; failure to report and pay taxes collected by county treasurer; suit on bond.

If any county treasurer fails to make reports and payments required by section 77-1759 for five days after demand made the proper authority or person may bring suit upon his or her bond.

Source: Laws 1903, c. 73, § 184, p. 456; R.S.1913, § 6512; C.S.1922, § 6040; C.S.1929, § 77-1945; R.S.1943, § 77-1760; Laws 1995, LB 490, § 171.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Notice to county treasurer is not demand on district treasurer required as condition precedent to suit for refund of school

taxes. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

State taxes in hands of county treasurer, if lost without fault of county, are property of state, and county is not liable to state. Lancaster County v. State, 74 Neb. 211, 104 N.W. 187 (1905), affirmed on rehearing 74 Neb. 215, 107 N.W. 388 (1906).

77-1761 Collection of taxes; failure to report and pay taxes collected by county treasurer; removal from office.

If any county treasurer fails to account for and settle as required in section 77-1760, his office may be declared vacant by the county board, and the vacancy filled as hereinbefore provided.

Source: Laws 1903, c. 73, § 185, p. 456; R.S.1913, § 6513; C.S.1922, § 6041; C.S.1929, § 77-1946; R.S.1943, § 77-1761.

77-1762 Collection of taxes; failure to pay taxes collected by county treasurer; liability on bond.

The bond of every county treasurer shall be held to be security for the payment by such treasurer to the State Treasurer and the several cities, towns, villages, and the proper authorities and persons, respectively, of all taxes and special assessments which may be collected or received by him on their behalf, by virtue of any law in force at the time of giving such bond, or that may be passed or take effect thereafter.

Source: Laws 1903, c. 73, § 186, p. 456; R.S.1913, § 6514; C.S.1922, § 6042; C.S.1929, § 77-1947; R.S.1943, § 77-1762.

Payment of funds in hands of county treasurer to successor is effectuated only by delivery of money. Lancaster County v. State, 74 Neb. 211, 104 N.W. 187 (1905), affirmed on rehearing

74 Neb. 215, 107 N.W. 388 (1906); Cedar County v. Jenal, 14 Neb. 254, 15 N.W. 369 (1883).

77-1763 Collection of taxes; failure to make settlement with state; suit by Tax Commissioner.

Upon the failure of any county treasurer to make settlement with the Tax Commissioner, the Tax Commissioner shall sue the treasurer and his or her surety upon the bond of such treasurer, or sue the treasurer in such form as

may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interest of the state.

Source: Laws 1903, c. 73, § 187, p. 457; R.S.1913, § 6515; C.S.1922, § 6043; C.S.1929, § 77-1948; R.S.1943, § 77-1763; Laws 1995, LB 490, § 172; Laws 2007, LB334, § 85.

77-1764 Collection of taxes; suit on behalf of state; where brought.

Suit shall be brought in behalf of the state in the district court of the county in which the treasurer holds office or resides, and process may be directed to any county in the state.

Source: Laws 1903, c. 73, § 188, p. 457; R.S.1913, § 6516; C.S.1922, § 6044; C.S.1929, § 77-1949; R.S.1943, § 77-1764.

77-1765 Collection of taxes; suit on behalf of state; power of court to require disclosure; entry of judgment.

If any proceedings against any officer or person, whose duty it is to collect, receive, settle for or pay over any of the revenue of the state, whether the proceeding be by suit on the bond of such officer or person or otherwise, the court in which the proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit on oath a full and fair statement of all money by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case, and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law to pay. If in any suit upon the bonds of any such officer or person, he or his sureties, or any of them, shall not for any reason be liable upon the bond, the court may, nevertheless, give judgment against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to the form of the action or pleadings.

Source: Laws 1903, c. 73, § 188, p. 457; R.S.1913, § 6516; C.S.1922, § 6044; C.S.1929, § 77-1949; R.S.1943, § 77-1765.

Suit is proper when duty to deliver money is purely ministerial. State v. Ure, 102 Neb. 648, 168 N.W. 644 (1918); State ex rel Hall v. Ure, 99 Neb. 486, 156 N.W. 1053 (1916).

77-1766 Collection of taxes; suit by aggrieved municipal corporations.

Cities, towns, villages, or corporate authorities or persons aggrieved may prosecute suit against any treasurer, or other officer collecting or receiving funds for their use, upon his or her bond, in the name of the State of Nebraska, for their use in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the Tax Commissioner or not. Cities, towns, villages, and other corporate authorities or persons shall have the same right in any suits or proceedings in their behalf as is provided in case of suits by or on behalf of the state.

Source: Laws 1903, c. 73, § 189, p. 457; R.S.1913, § 6517; C.S.1922, § 6045; C.S.1929, § 77-1950; R.S.1943, § 77-1766; Laws 1995, LB 490, § 173; Laws 2007, LB334, § 86.

77-1767 Collection of taxes; loss or destruction of tax records; new assessment or new records authorized.

When assessment rolls or treasurers' books, in whole or in part, of any county, town, city, village or district shall be lost or destroyed by any means whatever, a new assessment, or new books as the case may require, shall be made under direction of the county board. The board shall, in such cases, fix reasonable times and dates for performing the work of assessment, equalization, levy, extension and collection of taxes, and paying over the same, or making new books, as the circumstances of the case may require. The dates fixed by the county board shall conform to the dates required by law for similar purposes. The county board is fully empowered to select and appoint persons where it may find the same necessary to carry into effect the provisions of this section.

Source: Laws 1903, c. 73, § 190, p. 458; R.S.1913, § 6518; C.S.1922, § 6046; C.S.1929, § 77-1951; R.S.1943, § 77-1767.

77-1768 Repealed. Laws 1995, LB 490, § 195.

77-1769 Repealed. Laws 1995, LB 490, § 195.

77-1770 Repealed. Laws 1995, LB 490, § 195.

77-1771 Collection of taxes; claim against governmental subdivision; deduction of personal taxes.

The governing body of any municipal corporation or governmental subdivision of the state, whenever the account or claim of any person is presented to it for allowance, and whenever there has been filed with it a statement from the county treasurer of the amount of delinquent personal taxes assessed against the person in whose favor the account or claim is presented, shall deduct from any amount found due upon such account or claim the amount of such tax, and shall forthwith issue a warrant for the balance remaining, if any. For any such delinquent personal taxes so setoff and deducted from any such account or claim, the governing body shall issue an order to the treasurer thereof directing him to draw from the same fund out of which said account or claim should have been paid, the amount of said delinquent taxes so setoff or deducted, and apply the same upon the said delinquent personal taxes in satisfaction thereof. The county treasurer shall, upon application of such claimant, issue receipt therefor to the person whose taxes are so satisfied.

Source: Laws 1933, c. 126, § 2, p. 501; C.S.Supp.,1941, § 77-1954; R.S.1943, § 77-1771.

Personal property taxes must be deducted on allowance of claim by county. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

77-1772 Collection of taxes; interest on delinquent taxes; distribution.

Interest collected upon delinquent county, city, village, school district, or learning community taxes shall be credited on the books and distributed among the various governmental subdivisions and municipal corporations in the same proportion as the principal of the taxes is credited and distributed.

Source: Laws 1933, c. 132, § 1, p. 509; C.S.Supp.,1941, § 77-1957; R.S.1943, § 77-1772; Laws 1947, c. 261, § 1, p. 850; Laws 2006, LB 1024, § 11.

77-1773 Repealed. Laws 1973, LB 224, § 18.

77-1774 Collection of taxes; reciprocity with other states; taxes, defined.

(1) Any state of the United States of America or any political subdivision thereof has the right to sue in the courts of the State of Nebraska to recover any lawfully imposed taxes which may be owing it, whether or not the taxes have been reduced to judgment, when the like right is accorded to the State of Nebraska and its political subdivisions by that state through statutory authority or granted as a matter of comity. The appropriate officials of such other state are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the Secretary of State of such other state that such officials have the authority to collect the taxes to be collected by such action shall be conclusive proof of authority.

(2) The Attorney General or an appropriate official of any political subdivision of the State of Nebraska may bring suit in the courts of other states to collect taxes legally due this state or any political subdivision thereof.

(3) Taxes as used in this section shall include: (a) Any and all tax assessments lawfully made, whether they be based upon a return or other disclosure of the taxpayer, or upon the information and belief of the taxing authority, or otherwise; (b) any and all penalties lawfully imposed pursuant to a taxing statute; and (c) interest charges lawfully added to the tax liability which constitutes the subject of the action.

Source: Laws 1967, c. 491, § 1, p. 1672.

77-1775 Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure.

(1) In case of payment of any taxes upon property valued by the state made as a result of a clerical error or honest mistake or misunderstanding, except as to valuation or equalization, on the part of the taxing officials of the state or the taxpayer, the taxpayer shall make a written claim for a credit or refund of the tax paid within two years from the date the tax was due. The claim shall set forth the amount of the overpayment and the reasons therefor.

(2) The Tax Commissioner may approve or disapprove the claim in whole or part without a hearing. The Tax Commissioner shall grant a hearing prior to taking any action on a claim for refund or credit if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim by the Tax Commissioner. The written order of the Tax Commissioner shall be mailed to the claimant within seven days after the date of the order. If the claim is denied in whole or part, the taxpayer may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

(3) Upon approval of the claim by the Tax Commissioner, the Property Tax Administrator shall certify the amount of the refund or credit to the county treasurer to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Property Tax Administrator shall certify the value resulting from the written order to the official who received the original valuation which was changed by the written order. The refund shall be made in the manner prescribed in section 77-1736.06. The ordering of a refund or credit pursuant to this section shall not have a dispositional effect on any similar claim for refund or credit made by another taxpayer.

Source: Laws 1983, LB 193, § 12; Laws 1988, LB 352, § 157; Laws 1989, LB 762, § 5; Laws 1991, LB 829, § 17; Laws 1995, LB 490, § 174; Laws 2004, LB 973, § 42; Laws 2007, LB334, § 87; Laws 2009, LB166, § 17.

Discriminatory taxes levied against railroad rolling stock in violation of section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 are invalid within the meaning

of this section. Dairyland Power Co-op v. State Bd. of Equal., 238 Neb. 696, 472 N.W.2d 363 (1991).

77-1775.01 Appeal resulting in lower value; refund; procedure.

(1) When property is valued or equalized by the Tax Commissioner, the Property Tax Administrator, or the Tax Equalization and Review Commission and an appeal is taken from such valuation or equalization and the final result of such appeal establishes a lower value than that upon which taxes have been paid, the amount of taxes paid on the value in excess of that finally determined value shall be refunded to the prevailing party who has paid such tax. If an appeal results in a lower value, only the taxpayer who is a party to the appeal shall be entitled to a refund.

(2) Upon receipt of a final nonappealable order, the commission shall meet or the Property Tax Administrator shall act within thirty days thereof to order the recertification of valuation of the prevailing party.

(3) The Property Tax Administrator upon receiving a certified copy of such recertification order shall recertify the amount of the valuation or tax to the county assessor of the county or counties to which the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Property Tax Administrator shall recertify the value resulting from the final nonappealable order to the county assessor who received the original valuation which was changed by the final order. The refund shall be made in the manner prescribed in section 77-1736.06. Nothing in this section shall be construed to mean that any taxpayer shall have had to pay any tax under protest or claim a refund of the tax paid.

Source: Laws 1989, LB 762, § 6; Laws 1989, Spec. Sess., LB 2, § 1; Laws 1991, LB 829, § 18; Laws 1992, Fourth Spec. Sess., LB 1, § 18; Laws 1995, LB 490, § 175; Laws 1997, LB 397, § 24.

77-1775.02 Changes to section 77-1775.01; applicability.

The changes made to section 77-1775.01 by Laws 1989, LB 2, Ninety-first Legislature, First Special Session, are expressly intended to apply to all litigation pending as of November 22, 1989.

Source: Laws 1989, Spec. Sess., LB 2, § 2.

77-1776 Overpayment due to clerical error or mistake; return by political subdivision; how treated.

Any political subdivision which has received proceeds from a levy imposed on all taxable property within an entire county which is in excess of that requested by the political subdivision under section 77-1601.02 as a result of a clerical error or mistake shall, in the fiscal year following receipt, return the excess tax collections, net of the collection fee, to the county. By July 31 of the fiscal year following the receipt of any excess tax collections, the county treasurer shall certify to the political subdivision the amount to be returned. Such excess tax collections shall be restricted funds in the budget of the county that receives the funds under section 13-518.

Source: Laws 1999, LB 36, § 1.

77-1777 Tax refund; sections applicable.

Sections 77-1778 to 77-1782 shall apply to any tax, except property taxes, collected by the Tax Commissioner to the extent that specific refund provisions have not been enacted. If there is any conflict between any specific refund statutes and the provisions of sections 77-1778 to 77-1782, the specific refund statutes shall control.

Source: Laws 1987, LB 523, § 36; Laws 1989, LB 762, § 7; Laws 1996, LB 1041, § 3.

77-1778 Tax refund; file claim; when.

When any person believes that he or she has made payment of a tax or any penalty or interest that is in excess of his or her tax liability for any reason, he or she may file a claim with the Tax Commissioner for a refund of such overpayment.

Source: Laws 1987, LB 523, § 37.

77-1779 Tax refund; claim; contents; form.

(1) A claim for a refund shall be in writing and filed with the Tax Commissioner within three years of the date (a) on which the overpayment was made or (b) on which the tax was required to be paid, whichever is later.

(2) The claim shall state the reason for the overpayment and the amount of refund or credit requested.

(3) The Tax Commissioner may prescribe the necessary forms for the filing of a claim for refund.

(4) An amended return reducing the amount of the liability and containing an explanation of the reduction shall constitute a refund claim.

Source: Laws 1987, LB 523, § 38.

77-1780 Tax refund; Tax Commissioner; powers; duties; interest.

(1) Pursuant to this section, the Tax Commissioner may approve the claim for refund, in whole or in part.

(2) The Tax Commissioner shall grant a hearing prior to taking any action on a claim for a refund if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim.

(3) The Tax Commissioner shall notify the taxpayer in writing of the denial of his or her claim for a refund. The notification shall be made by either certified or registered mail.

(4) Upon approval, the Tax Commissioner shall cause:

(a) A refund to be paid from the fund to which the tax was originally deposited;

(b) A credit to be established against the subsequent tax liability of the taxpayer if the amount of the credit does not exceed twelve times the average monthly tax liability of the taxpayer; or

(c) A credit to be applied to any other existing liability for any other tax collected by the Tax Commissioner.

(5) The payment of the claim for a refund, the allowance of a credit, or the application of the refund to an existing balance, in whole or in part, shall be

considered a final decision of the Tax Commissioner for the purposes of the Administrative Procedure Act.

(6) Interest shall be paid from the date of overpayment or the date the tax was required to be paid, whichever is later, until the date the overpayment is refunded, credited, or applied.

(7) Interest shall be paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1987, LB 523, § 39; Laws 1996, LB 1041, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

77-1781 Tax refund; denial; appeal.

The denial, in whole or in part, of a claim for refund shall be considered a final action of the Tax Commissioner. The denial may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1987, LB 523, § 40; Laws 1988, LB 352, § 158.

Cross References

Administrative Procedure Act, see section 84-920.

77-1782 Tax refund; erroneous payment; how treated.

(1) Any refund that is erroneously paid shall be considered an underpayment of the tax liability and may be assessed and collected in the same manner as any other underpayment of the tax required to be paid.

(2) It shall be an underpayment as of the date of the payment of the refund, the date the refund was applied to another liability, or the date the credit was used by the taxpayer to satisfy a subsequent tax liability.

Source: Laws 1987, LB 523, § 41.

77-1783 Repealed. Laws 1996, LB 1041, § 11.

77-1783.01 Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.

(1) Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 77-27,135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) No notice or demand for payment may be issued against any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation more than three years after the final determination of the corporation's liability.

(7) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the revenue laws of this state which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1996, LB 1041, § 5; Laws 2008, LB914, § 6; Laws 2009, LB165, § 2.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1784 Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

(1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established.

(4) For payments due after January 1, 2006, the Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer who made payments exceeding twenty thousand dollars for a tax program in

the prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.

(5) Any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

(7) For tax returns due on or after January 1, 2010, the Tax Commissioner may require any person that aids, procures, advises, or assists in the preparation of and files any tax return on behalf of any taxpayer for profit to file an electronic return if the person filed twenty-five or more tax returns in the prior calendar year. The requirement to require electronic filing may be phased in as deemed necessary by the Tax Commissioner.

Any person that files a tax return on behalf of a taxpayer must disclose in writing to the taxpayer that the return will be filed in an electronic format and in accordance with rules and regulations prescribed by the Tax Commissioner.

(8) Any person who fails to file an electronic return as required under subsection (7) of this section shall be subject to a penalty of one hundred dollars for each return that was not properly filed in addition to other penalties provided by law. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

Source: Laws 1987, LB 523, § 42; Laws 1995, LB 134, § 1; Laws 2000, LB 1251, § 1; Laws 2005, LB 216, § 2; Laws 2009, LB165, § 3.

ARTICLE 18

COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY SALE OF REAL PROPERTY

Section

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COLLECTION OF TAXES BY SALE OF REAL PROPERTY

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Section

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77-1801 Real property taxes; collection by sale; when.

Except for delinquent taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, all real estate on which the taxes shall not have been paid in full, as provided by law, on or before the first Monday of March, after they become delinquent, shall be subject to sale on or after such date.

Source: Laws 1903, c. 73, § 193, p. 459; R.S.1913, § 6521; C.S.1922, § 6049; C.S.1929, § 77-2001; Laws 1933, c. 136, § 4, p. 518; Laws 1937, c. 167, § 23, p. 655; Laws 1939, c. 98, § 23, p. 442; Laws 1941, c. 157, § 23, p. 626; C.S.Supp.,1941, § 77-2001; R.S.1943, § 77-1801; Laws 1986, LB 531, § 1; Laws 2000, LB 968, § 70.

77-1802 Real property taxes; delinquent tax list; notice of sale.

The county treasurer shall, not less than four nor more than six weeks prior to the first Monday of March in each year, make out a list of all real property subject to sale and the amount of all delinquent taxes against each item, describing the property as it is described on the tax list, with an accompanying notice stating that so much of such property described in the list as may be necessary for that purpose will, on the first Monday of March next thereafter, be sold by such county treasurer at public auction at his or her office for the taxes, interest, and costs thereon.

Source: Laws 1903, c. 73, § 194, p. 459; R.S.1913, § 6522; C.S.1922, § 6050; Laws 1929, c. 169, § 1, p. 583; C.S.1929, § 77-2002; Laws 1933, c. 136, § 5, p. 519; Laws 1937, c. 167, § 24, p. 655; Laws 1939, c. 98, § 24, p. 442; Laws 1941, c. 157, § 24, p. 626; C.S.Supp.,1941, § 77-2002; R.S.1943, § 77-1802; Laws 1986, LB 531, § 2; Laws 1992, LB 1063, § 139; Laws 1992, Second Spec. Sess., LB 1, § 112.

Requirement to include all delinquent taxes applies to the delinquent tax list and not to private tax sale, and does not require county treasurer to include in private sale all taxes delinquent at time of sale. *McGerr v. Bradley*, 117 Neb. 841, 223 N.W. 132 (1929), overruling *Wight v. McGuigan*, 94 Neb. 358, 143 N.W. 232 (1913).

Notice is not required of a private sale of lands previously noticed for public sale at which they were not sold. *Kittle v. Shervin*, 11 Neb. 65, 7 N.W. 861 (1881).

77-1803 Real property taxes; notice of sale; sufficiency of description.

In describing real property in the notice required by section 77-1802 and in all proceedings relative to assessing, advertising, or selling the property for

taxes, it shall be sufficient to designate the township, range, sections, or part of section and also the number of lots and blocks, by initial letters, abbreviations, and figures.

In describing improvements on leased land for such notice and proceedings, the words "Improvements Only Located Upon" shall precede the designation of such property as set out in this section.

Source: Laws 1903, c. 73, § 195, p. 460; R.S.1913, § 6523; C.S.1922, § 6051; C.S.1929, § 77-2003; R.S.1943, § 77-1803; Laws 1992, LB 1063, § 140; Laws 1992, Second Spec. Sess., LB 1, § 113.

Description is sufficient if interested parties are enabled thereby to determine what property is intended. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946).

Where land was described as part of lot 5, B. 41, tax was void for uncertainty. *Spiech v. Tierney*, 56 Neb. 514, 76 N.W. 1090 (1898).

It is sufficient if description affords notice and protects owner's rights. *Kershaw v. Jansen*, 49 Neb. 467, 68 N.W. 616 (1896).

Taxes levied were valid although plat by which lots had been described had never been recorded. *Roads v. Estabrook*, 35 Neb. 297, 53 N.W. 64 (1892); *Bryant v. Estabrook*, 16 Neb. 217, 20 N.W. 245 (1884).

Description is sufficient if property can be identified. *Alexander v. Hunter*, 29 Neb. 259, 45 N.W. 461 (1890); *Lynam v. Anderson*, 9 Neb. 367, 2 N.W. 732 (1879); *Concordia L. & T. Co. v. Van Camp*, 2 Neb. Unof. 633, 89 N.W. 744 (1902).

77-1804 Real property taxes; delinquent tax list; publication and posting of notice; publication charges.

The county treasurer shall cause the list of real property subject to sale and accompanying notice to be published once a week for three consecutive weeks prior to the date of sale, commencing the first week in February, in a legal newspaper and, in counties having more than two hundred fifty thousand inhabitants, in a daily legal newspaper of general circulation, published in the English language in the county, and designated by the county board. The county treasurer shall also cause to be posted in some conspicuous place in his or her office a copy of such notice. The treasurer shall assess against each description the sum of five dollars to defray the expenses of advertising, which sum shall be added to the total amount due on such real property and be collected in the same manner as taxes are collected.

Source: Laws 1903, c. 73, § 196, p. 460; R.S.1913, § 6524; Laws 1915, c. 111, § 1, p. 260; Laws 1919, c. 133, § 2, p. 310; C.S.1922, § 6052; Laws 1929, c. 170, § 1, p. 584; C.S.1929, § 77-2004; Laws 1933, c. 136, § 6, p. 519; Laws 1937, c. 167, § 25, p. 656; Laws 1939, c. 98, § 25, p. 443; Laws 1941, c. 157, § 25, p. 627; C.S.Supp.,1941, § 77-2004; R.S.1943, § 77-1804; Laws 1953, c. 279, § 1, p. 910; Laws 1965, c. 495, § 1, p. 1583; Laws 1974, LB 937, § 2; Laws 1976, LB 675, § 1; Laws 1986, LB 531, § 3; Laws 1992, LB 1063, § 141; Laws 1992, Second Spec. Sess., LB 1, § 114; Laws 1995, LB 202, § 2.

Cross References

For legal rate for publications, see section 33-141.

Treasurer is not required to include in private sale taxes becoming delinquent subsequent to the taxes levied and advertised for previous year. *McGerr v. Bradley*, 117 Neb. 841, 223 N.W. 132 (1929).

Statute providing rate for publishing notices in general governs rate for publishing delinquent tax lists and not above section which applies to amount to be charged to delinquent taxpayer. *Wisner v. Morrill County*, 117 Neb. 324, 220 N.W. 280 (1928).

Notice of tax sale must contain substantially all of the matter specified in statute. *Tate v. Biggs*, 89 Neb. 195, 130 N.W. 1053 (1911).

County board may change designation of paper in which notice is published from time to time. *World Pub. Co. v. Douglas County*, 79 Neb. 849, 113 N.W. 539 (1907).

Where county board recognizes and deals with newspaper as official paper of county, it is a paper designated for purpose of publication of notices of tax sales. *Continental Trust Co. v. Link*, 79 Neb. 29, 112 N.W. 352 (1907).

Action by board, in designating paper if in good faith, will not be interfered with by court of equity. *Getzschmann v. Board of County Commissioners of Douglas County*, 76 Neb. 648, 107 N.W. 987 (1906).

Week means period of time beginning and ending Saturday following. Requirements of section are discussed. *Medland v. Linton*, 60 Neb. 249, 82 N.W. 866 (1900).

Treasurer has no authority to sell real estate without including in sale all taxes delinquent for all previous years, with interest and costs. *Grant v. Bartholomew*, 57 Neb. 673, 78 N.W. 314 (1899); *Medland v. Connell*, 57 Neb. 10, 77 N.W. 437 (1898);

Adams v. Osgood, 42 Neb. 450, 60 N.W. 869 (1894); *O'Donohue v. Hendrix*, 13 Neb. 257, 13 N.W. 281 (1882); *Tillotson v. Small*, 13 Neb. 202, 13 N.W. 201 (1882); *State ex rel. Whiffen v. Helmer*, 10 Neb. 25, 4 N.W. 367 (1880).

If county board fails to designate paper, treasurer should cause notice to be published. *Hamilton County v. Bailey*, 12 Neb. 56, 10 N.W. 539 (1881).

77-1805 Real property taxes; affidavits of publication; by whom made.

Every printer who shall publish such list and notice shall, immediately after the last publication thereof, furnish to the treasurer of the proper county an affidavit of publication made by the publisher, manager or foreman of such newspaper to whom the facts of publication are known. No printer shall be paid for such publication who shall fail to furnish such affidavit within ten days after the last publication. The county treasurer shall also make, or cause to be made, an affidavit or affidavits of the publication of such list and notice as above required, all of which shall be carefully preserved by him in his office.

Source: Laws 1903, c. 73, § 197, p. 460; R.S.1913, § 6525; C.S.1922, § 6053; C.S.1929, § 77-2005; R.S.1943, § 77-1805.

Affidavit of publication of tax list sworn to before a United States Commissioner was void. *Cornell v. Maverick Loan & Trust Co.*, 95 Neb. 9, 144 N.W. 1072 (1914).

Affidavit subscribed and sworn to before a person not authorized by law to administer oaths is void and no affidavit. *Lanning v. Haases*, 89 Neb. 19, 130 N.W. 1008 (1911).

77-1806 Real property taxes; delinquent tax sale; when commenced and concluded.

On the day designated in the notice of sale, the county treasurer shall commence the sale of the real property on which the taxes and charges have not been paid and shall continue the sale from day to day, Sundays and holidays excepted, until each item of real property or so much thereof as is sufficient to pay the taxes and charges thereon, including the cost of advertising, has been sold or offered for sale.

Source: Laws 1903, c. 73, § 198, p. 461; R.S.1913, § 6526; C.S.1922, § 6054; C.S.1929, § 77-2006; Laws 1937, c. 167, § 10, p. 642; Laws 1939, c. 98, § 10, p. 428; Laws 1941, c. 157, § 10, p. 613; C.S.Supp.,1941, § 77-2006; R.S.1943, § 77-1806; Laws 1992, LB 1063, § 142; Laws 1992, Second Spec. Sess., LB 1, § 115.

Duty to continue sale from day to day ends when property is sold or offered for sale. *Nolan v. Klug*, 134 Neb. 860, 279 N.W. 791 (1938).

314 (1899); *Medland v. Connell*, 57 Neb. 10, 77 N.W. 437 (1898).

Treasurer is required to commence sale at appointed time and continue to offer the advertised lands until they are sold or not sold for want of bidders. *McGerr v. Bradley*, 117 Neb. 841, 223 N.W. 132 (1929).

Intended purchaser in good faith may compel treasurer to offer property for sale. *State ex rel. Snow v. Farney*, 36 Neb. 537, 54 N.W. 862 (1893).

Sale is invalid unless made for full amount of all delinquent taxes and charges. *Grant v. Bartholomew*, 57 Neb. 673, 78 N.W.

All steps in proceedings must be strictly followed. *Miller v. Hurford*, 11 Neb. 377, 9 N.W. 477 (1881).

77-1807 Real property taxes; delinquent tax sale; how conducted; sale of part.

The person who offers to pay the amount of taxes due on any real property for the smallest portion of the same shall be the purchaser, and when such person designates the smallest portion of the real property for which he or she will pay the amount of taxes assessed against any such property, the portion thus designated shall be considered an undivided portion. If no person bids for a less quantity than the whole, the treasurer may sell any real property to any one who will take the whole and pay the taxes and charges thereon. If the

homestead is listed separately as a homestead, it shall be sold only for the taxes delinquent thereon.

Source: Laws 1903, c. 73, § 199, p. 461; R.S.1913, § 6527; C.S.1922, § 6055; C.S.1929, § 77-2007; Laws 1937, c. 167, § 11, p. 643; Laws 1939, c. 98, § 11, p. 428; Laws 1941, c. 157, § 11, p. 614; C.S.Supp.,1941, § 77-2007; R.S.1943, § 77-1807; Laws 1992, LB 1063, § 143; Laws 1992, Second Spec. Sess., LB 1, § 116.

1. Effect of sale
2. Payment of purchase money
3. Payment of subsequent taxes
4. Subrogation
5. Miscellaneous

1. Effect of sale

Sale for less than amount of taxes due is not sale of the land, but it only transfers lien to purchaser. *Barker v. Hume*, 84 Neb. 235, 120 N.W. 1131 (1909).

Sale operates to transfer the lien to the purchaser. *City Safe Dep. & Agency Co. v. City of Omaha*, 79 Neb. 446, 112 N.W. 598 (1907).

Rule of caveat emptor applies to purchasers of real estate at tax sale. *McCague v. City of Omaha*, 58 Neb. 37, 78 N.W. 463 (1899); *Norris v. Burt County*, 56 Neb. 295, 76 N.W. 551 (1898).

2. Payment of purchase money

Tax lien is ordinarily extinguished by payment, except where land is sold for taxes, and subsequent delinquent taxes are paid by holder of certificate. *Toy v. McHugh*, 62 Neb. 820, 87 N.W. 1059 (1901).

Statute is notice to purchaser that purchase money must be paid. *Richardson County v. Miles*, 7 Neb. 118 (1878).

3. Payment of subsequent taxes

Payment of subsequent valid taxes by owner of invalid certificate gives him lien for such valid taxes. *John v. Connell*, 61 Neb. 267, 85 N.W. 82 (1901).

4. Subrogation

On sale of one tract for taxes levied upon another, purchaser is subrogated to lien of public. *Wyman v. Searle*, 88 Neb. 26, 128 N.W. 801 (1910).

Holder of certificate is subrogated to rights of public in any taxes paid to protect his lien. *Adams v. Osgood*, 60 Neb. 779, 84 N.W. 257 (1900).

Purchaser is entitled to reimbursement, or subrogation to rights of public. *Grant v. Bartholomew*, 57 Neb. 673, 78 N.W. 314 (1899); *Leavitt v. Bartholomew*, 1 Neb. Unof. 756, 93 N.W. 856 (1901).

5. Miscellaneous

In a suit to foreclose, a deficiency judgment is void. *Kelley v. Wehn*, 63 Neb. 410, 88 N.W. 682 (1902).

Tax levied on real estate is not a debt against owner, but a charge against the land. *Philadelphia M. & T. Co. v. City of Omaha*, 63 Neb. 280, 88 N.W. 523 (1901).

Policy of the law is to encourage competition at the sale. *State ex rel. Snow v. Farney*, 36 Neb. 537, 54 N.W. 862 (1893).

Force of tax deed and validity of sale are tested by law in force when sale was made. *McCann v. Merriam*, 11 Neb. 241, 9 N.W. 96 (1881).

77-1808 Real property taxes; delinquent tax sale; payment by purchaser; resale.

The person purchasing any real property shall pay to the treasurer the amount of taxes, interest, and cost thereon, which payment may be made in the same funds receivable by law in the payment of taxes. If any purchaser fails to so pay, then the real property shall at once again be offered as if no such sale had been made.

Source: Laws 1903, c. 73, § 200, p. 461; R.S.1913, § 6528; C.S.1922, § 6056; C.S.1929, § 77-2008; Laws 1937, c. 167, § 12, p. 643; Laws 1939, c. 98, § 12, p. 429; Laws 1941, c. 157, § 12, p. 614; C.S.Supp.,1941, § 77-2008; R.S.1943, § 77-1808; Laws 1992, LB 1063, § 144; Laws 1992, Second Spec. Sess., LB 1, § 117.

Sale is not invalid though payment is not made immediately, where treasurer is unable to receive it. *Leavitt v. S. D. Mercer Co.*, 64 Neb. 31, 89 N.W. 426 (1902); *Ure v. Bunn*, 3 Neb. Unof. 61, 90 N.W. 904 (1902).

Failure of treasurer to offer land for resale does not invalidate taxes. *Green v. Hellman*, 61 Neb. 875, 86 N.W. 912 (1901).

77-1809 Real property taxes; delinquent tax sales; purchase by county; assignment of certificate of purchase; interest.

At all sales provided by law, the county board may purchase for the use and benefit, and in the name of the county, any real estate advertised and offered

for sale when the same remains unsold for want of bidders. The county treasurer shall issue certificates of purchase of the real estate so sold in the name of the county. Such certificates shall remain in the custody of the county treasurer, who shall at any time assign the same to any person wishing to buy for the amount expressed on the face of the certificate and interest thereon 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 thereof. Such assignment shall be attested by the endorsement of the county clerk of his or her name on the back of such certificate, and such endorsement shall be made when requested by the county treasurer.

Source: Laws 1903, c. 73, § 201, p. 462; R.S.1913, § 6529; C.S.1922, § 6057; C.S.1929, § 77-2009; Laws 1937, c. 167, § 34, p. 662; Laws 1939, c. 98, § 34, p. 449; Laws 1941, c. 157, § 34, p. 633; C.S.Supp.,1941, § 77-2009; R.S.1943, § 77-1809; Laws 1971, LB 26, § 1; Laws 1979, LB 84, § 2; Laws 1981, LB 167, § 44.

Certificate of tax sale is required to show payment of taxes and interest. *Thomas v. Flynn*, 169 Neb. 458, 100 N.W.2d 37 (1959).

A governmental subdivision purchasing and foreclosing a tax sale certificate on real estate does so as trustee of an express trust for use and benefit of the state and all other governmental subdivisions entitled to participate in distribution of proceeds. *City of McCook v. Johnson*, 135 Neb. 270, 281 N.W. 69 (1938).

County board may purchase for county any real estate remaining unsold for want of bidders and foreclose tax. *Logan County v. Carnahan*, 66 Neb. 685, 92 N.W. 984 (1902), affirmed on rehearing 66 Neb. 693, 95 N.W. 812 (1903); *Otoe County v. Mathews*, 18 Neb. 466, 25 N.W. 618 (1885); *Otoe County v. Brown*, 16 Neb. 394, 20 N.W. 274 (1884).

Certificate cannot be assigned for less than amount due thereon with interest and costs. *State of Neb. ex rel. John T. Jones v. Graham*, 17 Neb. 43, 22 N.W. 114 (1885).

77-1810 Real property taxes; delinquent tax sales; purchase by political subdivisions authorized.

Whenever any real property subject to sale for taxes is within the corporate limits of any city, village, school district, drainage district, or irrigation district, it shall have the right and power through its governing board or body to purchase such real property for the use and benefit and in the name of the city, village, school district, drainage district, or irrigation district as the case may be. The treasurer of the city, village, school district, drainage district, or irrigation district may assign the certificate of purchase by endorsement of his or her name on the back thereof when directed so to do by written order of the governing board. No such sale shall be made to any city, village, school district, drainage district, or irrigation district by the county treasurer when the real property has been previously sold to the county, but in any such case, the city, village, school district, drainage district, or irrigation district may purchase the tax certificate held by the county.

Source: Laws 1903, c. 73, § 202, p. 462; R.S.1913, § 6530; Laws 1917, c. 118, § 1, p. 292; C.S.1922, § 6058; C.S.1929, § 77-2010; Laws 1937, c. 167, § 35, p. 662; Laws 1939, c. 98, § 35, p. 450; Laws 1941, c. 159, § 1, p. 641; Laws 1941, c. 157, § 35, p. 633; C.S.Supp.,1941, § 77-2010; R.S.1943, § 77-1810; Laws 1992, LB 1063, § 145; Laws 1992, Second Spec. Sess., LB 1, § 118.

City that purchases tax sale certificate may not bid in property at foreclosure sale without paying the amount bid. *City of McCook v. Johnson*, 135 Neb. 270, 281 N.W. 69 (1938).

Tax sale dates from the issuance of tax sale certificate to the city, not from date county treasurer receives the money therefor. *Nolan v. Klug*, 134 Neb. 860, 279 N.W. 791 (1938).

A drainage district may buy at a tax sale lands encumbered by unpaid delinquent assessments levied thereon for special drainage benefits. *Schobert-Zimmerman Drainage Dist. v. Soll*, 132 Neb. 629, 272 N.W. 775 (1937).

77-1811 Real property taxes; delinquent tax sales; purchase by political subdivisions; accounting by county treasurer.

Whenever real estate is purchased under section 77-1809 or 77-1810, the county treasurer shall not be required to account to the State Treasurer or to any person for the amount of taxes due, until the county board, city, village, school district, drainage district or irrigation district authorities have sold the certificate or certificates of purchase of such real estate, or until, by redemption or foreclosure proceedings, he shall have received the money thereon.

Source: Laws 1903, c. 73, § 203, p. 462; R.S.1913, § 6531; C.S.1922, § 6059; C.S.1929, § 77-2011; Laws 1937, c. 167, § 36, p. 663; Laws 1939, c. 98, § 36, p. 451; Laws 1941, c. 157, § 36, p. 634; C.S.Supp.,1941, § 77-2011; R.S.1943, § 77-1811.

It is unnecessary for county to pay the amount of the tax to the treasurer, and the certificate covering the taxes is valid lien upon the real estate. *County of Madison v. Walz*, 144 Neb. 677, 14 N.W.2d 319 (1944).

Trust relation terminates on sale of certificate or completion of foreclosure and distribution of proceeds. *City of McCook v. Johnson*, 135 Neb. 270, 281 N.W. 69 (1938).

Tax sale dates from the issuance of tax sale certificate to the city, not from date county treasurer receives the money therefor. *Nolan v. Klug*, 134 Neb. 860, 279 N.W. 791 (1938).

77-1812 Real property taxes; sale book; entries.

The county treasurer shall keep a sale book showing in separate columns the number and date of each certificate of sale, the name of the owners or owner if known, the description of the real property, the name of the purchaser, the total amount of taxes and costs for which sold, the amount of subsequent taxes paid by the purchaser and date of payment, to whom assigned, and the amount paid therefor, name of person redeeming, date of redemption, total amount paid for redemption, name of person to whom conveyed, and date of deed.

Source: Laws 1903, c. 73, § 204, p. 463; R.S.1913, § 6532; C.S.1922, § 6060; C.S.1929, § 77-2012; R.S.1943, § 77-1812; Laws 1992, LB 1063, § 146; Laws 1992, Second Spec. Sess., LB 1, § 119.

77-1813 Real property taxes; annual tax sale; return of county treasurer; when made; certified copy as evidence.

On or before the first Monday of April following the sale of the real property, the treasurer shall file in the office of the county clerk a return thereon as the same shall appear upon the treasurer's sale book, and such return, duly certified, shall be evidence of the regularity of the proceedings.

Source: Laws 1903, c. 73, § 205, p. 463; R.S.1913, § 6533; C.S.1922, § 6061; C.S.1929, § 77-2013; Laws 1933, c. 136, § 7, p. 520; C.S.Supp.,1941, § 77-2013; R.S.1943, § 77-1813; Laws 1987, LB 215, § 1.

There can be no valid administrative private sale for taxes unless county treasurer has filed with the county clerk a return of public sale showing land unsold for want of bidders. *Pettijohn v. County of Furnas*, 150 Neb. 736, 35 N.W.2d 828 (1949).

Private tax sale certificate issued by county treasurer to city in December after making due return to annual public sale does not contravene this section. *Nolan v. Klug*, 134 Neb. 860, 279 N.W. 791 (1938).

Return of sale to the county clerk must be made by the county treasurer on or before the first Monday in December. *McGerr v. Bradley*, 117 Neb. 841, 223 N.W. 132 (1929).

Treasurer cannot make valid private sale until he has made return of public sale. *Gallatin v. Tri-State Land Co.*, 89 Neb. 235, 131 N.W. 224 (1911); *Johnson v. Finley*, 54 Neb. 733, 74 N.W. 1080 (1898).

Returns must be certified and signed by treasurer. *Tate v. Biggs*, 89 Neb. 195, 130 N.W. 1053 (1911).

Return must be filed with county clerk. *Medland v. Linton*, 60 Neb. 249, 82 N.W. 866 (1900).

Return is not required until amount bid is paid. *Richardson County v. Miles*, 7 Neb. 118 (1878).

77-1814 Real property taxes; private tax sale; issuance of certificates.

After the sale is closed and the treasurer has made his or her return thereof to the county clerk as provided in section 77-1813, if any real property remains

unsold for want of bidders therefor, the county treasurer is authorized and required to sell the same at private sale at his or her office to any person who will pay the amount of taxes, penalty, and costs thereof and to make out duplicate certificates of sale and deliver one to the purchaser and the other to the county clerk. Such certificate shall contain the additional statement that such real property has been offered at public sale but not sold for want of bidders and shall also contain the words "sold for taxes at private sale". The treasurer is further authorized and required to sell all real property in the county on which taxes remain unpaid and delinquent for any previous year or years.

Source: Laws 1903, c. 73, § 206, p. 463; R.S.1913, § 6534; C.S.1922, § 6062; C.S.1929, § 77-2014; Laws 1937, c. 167, § 13, p. 643; Laws 1939, c. 98, § 13, p. 429; Laws 1941, c. 157, § 13, p. 614; C.S.Supp.,1941, § 77-2014; R.S.1943, § 77-1814; Laws 1992, LB 1063, § 147; Laws 1992, Second Spec. Sess., LB 1, § 120.

Where land is sold for taxes at private sale, deed must contain recital that land had first been offered at public sale. *Podewitz v. Gering Nat. Bank*, 171 Neb. 380, 106 N.W.2d 497 (1960).

Party who seeks to foreclose tax sale certificate is required to plead and prove all steps necessary to issuance of valid certificate. *Pettijohn v. County of Furnas*, 150 Neb. 736, 35 N.W.2d 828 (1949).

Realty may be sold at private sale for delinquent taxes advertised for previous year, though at the time of sale taxes for another year have become delinquent but have not been advertised and are not included in such sale. *McGerr v. Bradley*, 117 Neb. 841, 223 N.W. 132 (1929), overruling first two paragraphs of syllabus in *Wight v. McGuigan*, 94 Neb. 358, 143 N.W. 232 (1913).

Failure to file duplicate tax receipt will not affect sale or rights of purchaser. *Cowles v. Adams*, 78 Neb. 130, 110 N.W. 697 (1907).

Certificate is presumptive evidence that report was made and filed in due time. *Gallentine v. Fullerton*, 67 Neb. 553, 93 N.W. 932 (1903).

Private sale is invalid where treasurer has failed to make return of public sale as required by statute. *Gallentine v. Fullerton*, 67 Neb. 553, 93 N.W. 932 (1903); *Medland v. Connell*, 57 Neb. 10, 77 N.W. 437 (1898).

If private sale is invalid, purchaser is subrogated to rights of public and may foreclose lien for all taxes paid. *Johnson v. Finley*, 54 Neb. 733, 74 N.W. 1080 (1898); *Weston v. Meyers*, 45 Neb. 95, 63 N.W. 117 (1895); *Adams v. Osgood*, 42 Neb. 450, 60 N.W. 869 (1894).

Treasurer is not required to give notice or invite competition at private sale. *Kittle v. Shervin*, 11 Neb. 65, 7 N.W. 861 (1881).

77-1815 Real property taxes; county treasurer; attendance at tax sale; penalty.

If any treasurer fails to attend any sale of real property as required by sections 77-1801 to 77-1814, either in person or by deputy, he or she shall be liable to a fine of not less than fifty nor more than three hundred dollars to be recovered by an action in the district court in the name of the county against the treasurer and the person issuing the treasurer's bond.

Source: Laws 1903, c. 73, § 207, p. 464; R.S.1913, § 6535; C.S.1922, § 6063; C.S.1929, § 77-2015; R.S.1943, § 77-1815; Laws 1992, LB 1063, § 148; Laws 1992, Second Spec. Sess., LB 1, § 121.

77-1816 Real property taxes; fraudulent sales; penalty.

If any treasurer or deputy shall sell or assist in selling any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and willfully sell, or assist in selling, any real property for the payment of taxes to defraud the owner of such real property, or shall knowingly execute a deed for property so sold, he shall be deemed guilty of a Class I misdemeanor and shall be liable to pay the injured party all damages sustained by such wrongful act, and all such sales shall be void.

Source: Laws 1903, c. 73, § 207, p. 464; R.S.1913, § 6535; C.S.1922, § 6063; C.S.1929, § 77-2015; R.S.1943, § 77-1816; Laws 1977, LB 39, § 227.

77-1817 Real property tax sales; prohibition against purchase by county treasurer; penalty.

If any county treasurer shall, either directly or indirectly, be concerned in the purchase of any real property sold for the payment of taxes, he shall be liable to a penalty of not more than one thousand dollars to be recovered in an action in the district court brought in the name of the county against such treasurer and his bondsmen, and all such sales shall be void.

Source: Laws 1903, c. 73, § 208, p. 464; R.S.1913, § 6536; C.S.1922, § 6064; C.S.1929, § 77-2016; R.S.1943, § 77-1817.

77-1818 Real property taxes; certificate of purchase; lien of purchaser; subsequent taxes.

The purchaser of any real property sold by the county treasurer for taxes shall be entitled to a certificate in writing, describing the real property so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be signed by the treasurer in his or her official capacity and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires a perpetual lien of the tax on the real property, and if after the taxes become delinquent he or she subsequently pays any taxes levied on the property, whether levied for any year or years previous or subsequent to such sale, he or she shall have the same lien for them and may add them to the amount paid by him or her in the purchase.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1818; Laws 1992, LB 1063, § 149; Laws 1992, Second Spec. Sess., LB 1, § 122.

1. Presumption of validity
2. Lien
3. Effect of sale
4. Subrogation
5. Miscellaneous

1. Presumption of validity

Holder of tax sale certificate is relieved of the necessity, in the first instance, of proving that every requirement of the statute has been followed to establish that property is subject to the lien of his certificate. *City of Scottsbluff v. Kennedy*, 141 Neb. 728, 4 N.W.2d 878 (1942).

Sale certificate and receipts are prima facie evidence of validity of taxes. *Wales v. Warren*, 66 Neb. 455, 92 N.W. 590 (1902).

Legal presumption of validity of taxes and regularity of sale is raised by sale of land for delinquent taxes. *Darr v. Berquist*, 63 Neb. 713, 89 N.W. 256 (1902).

Burden of showing irregularities is upon party asserting same. *Darr v. Wisner*, 63 Neb. 305, 88 N.W. 518 (1901).

Tax certificate is sufficient to establish prima facie existence of a lien in some amount. *Merrill v. Van Camp*, 1 Neb. Unof. 462, 96 N.W. 344 (1901).

2. Lien

Provisions by which taxes are declared to be a perpetual lien are for the exclusive benefit of the state and the different agencies thereof. *Gibson v. Peterson*, 118 Neb. 218, 224 N.W. 272 (1929); *Alexander v. Shaffer*, 38 Neb. 812, 57 N.W. 541 (1894).

3. Effect of sale

Purchase, by one whose duty it was to pay taxes, operates as payment only. *Gibson v. Sexson*, 82 Neb. 475, 118 N.W. 77 (1908).

Purchase of title by holder of certificate merges tax lien in legal title. *Mead v. Brewer*, 77 Neb. 400, 109 N.W. 399 (1906).

Tax lien is ordinarily extinguished by payment, but exception to rule is where holder of sale certificate pays subsequent delinquent taxes. *Toy v. McHugh*, 62 Neb. 820, 87 N.W. 1059 (1901).

Purchaser has lien for all legal taxes paid by him, with interest and costs. *Medland v. Connell*, 57 Neb. 10, 77 N.W. 437 (1898).

Rule of caveat emptor applies to purchaser at tax sale for special assessment levied by metropolitan city. Though tax is invalid, city is not required to refund. *Pennock v. Douglas County*, 39 Neb. 293, 58 N.W. 117 (1894).

4. Subrogation

Certificate, barred upon void levy, gives no lien on property, but payment of subsequent valid taxes by holder in good faith, entitles him to subrogation to rights of public to lien. *John v. Connell*, 61 Neb. 267, 85 N.W. 82 (1901).

Purchaser in good faith is entitled to subrogation to all rights of public to lien. *Leavitt v. Bartholomew*, 1 Neb. Unof. 756, 93 N.W. 856 (1901).

5. Miscellaneous

This section does not require treasurer's official seal to be affixed to tax sale certificate. *County of Lincoln v. Evans*, 185 Neb. 19, 173 N.W.2d 365 (1969).

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

the certificate and included in foreclosure. County of Madison v. Walz, 144 Neb. 677, 14 N.W.2d 319 (1944).

Purchaser of tax sale certificate may pay subsequent taxes, and the amount thus paid may be added to the amount due on

Where sale was made at time required by law, a certificate dated three months afterwards was valid. Otoe County v. Brown, 16 Neb. 394, 20 N.W. 274 (1884).

77-1819 Real property taxes; certificate of purchase; form.

The certificate shall be substantially in the following form: COUNTY TREASURER'S CERTIFICATE OF TAX SALE. State of Nebraska County, ss: I, treasurer of the county of, in the State of Nebraska, do hereby certify that the following described real estate in such county and state: (describe the same) was, on the day of 20...., duly sold by me in the manner provided by law for the delinquent taxes for the years(list years)..... thereon, amounting to dollars, including interest thereon, and costs allowed by law, to for the sum of dollars. I further certify that unless redemption is made of such real estate in the manner provided by law, the, heirs or assigns will be entitled to a deed therefor on and after the day of A.D. 20...., on surrender of this certificate, and compliance with the provisions required by law.

In witness whereof, I have hereunto set my hand this day of A.D. 20.... .

(L.S.), Treasurer.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1819; Laws 2004, LB 813, § 32.

This section does not require treasurer's official seal to be affixed to tax sale certificate. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

77-1820 Real property taxes; certificate of purchase; separate description.

If any person becomes the purchaser of more than one item of real property, he or she may have the whole included in one certificate, but each item shall be separately described, and the amount paid may be entered in gross in the certificate.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1820; Laws 1992, LB 1063, § 150; Laws 1992, Second Spec. Sess., LB 1, § 123.

77-1821 Real property taxes; tax receipt; entries.

The treasurer shall make out a tax receipt and duplicate for the taxes on the real estate mentioned in the certificate, the same as in other cases, and shall write thereon sold for taxes at public sale or sold for taxes at private sale, as the case may be.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1821.

77-1822 Real property taxes; certificate of purchase; assignable.

The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his or her legal representatives, all the right and title of the original purchaser. The statement in the treasurer's

deed of the fact of the assignment shall be presumptive evidence thereof. An assignment shall be recorded by the county treasurer who shall collect a reassignment fee of ten dollars and issue a new certificate to the assignee.

Source: Laws 1903, c. 73, § 210, p. 465; R.S.1913, § 6538; C.S.1922, § 6066; C.S.1929, § 77-2018; Laws 1937, c. 167, § 37, p. 663; Laws 1939, c. 98, § 37, p. 451; Laws 1941, c. 157, § 37, p. 634; C.S.Supp.,1941, § 77-2018; R.S.1943, § 77-1822; Laws 2002, LB 994, § 24.

A tax sale certificate may be assigned by endorsement; and assignee acquires all the rights of assignor. Security Investment Co. v. Golz, 151 Neb. 172, 36 N.W.2d 862 (1949).

Possession of certificate, without proof of assignment, will not satisfy burden of proof placed upon plaintiff, where his title as assignee is denied. Wyman v. Searle, 88 Neb. 26, 128 N.W. 801 (1910).

Proof of endorsement by original purchaser and possession by endorsee are prima facie evidence of ownership. Farmers L. &

T. Co. v. Joseph, 86 Neb. 256, 125 N.W. 533 (1910); Leavitt v. Bartholomew, 1 Neb. Unof. 756, 93 N.W. 856 (1901).

Certificate may be assigned by endorsement, and assignee acquires all rights of assignor. Green v. Hellman, 61 Neb. 875, 86 N.W. 912 (1901).

A quitclaim deed will convey equitable title to sale certificate on land conveyed. Leavitt v. Bell, 55 Neb. 57, 75 N.W. 524 (1898).

77-1823 Real property taxes; tax certificates and deeds; fees of treasurer; entry on books of issuance of deed.

The treasurer shall charge a ten-dollar issuance fee for each deed or certificate made by him or her for a sale of real property for taxes together with the fee of the notary public or other officer acknowledging the deed, but any number of items of real property bought by any one person may be included in one deed as desired by the purchaser. The issuance fee shall not be required if the tax sale certificate is issued in the name of the county, but the issuance fee is due from the purchaser when the county assigns the certificate to another person. Whenever the treasurer makes a deed to any real property sold for taxes, he or she shall enter an account thereof in the sale book opposite the description of the real property conveyed.

Source: Laws 1903, c. 73, § 211, p. 466; R.S.1913, § 6539; C.S.1922, § 6067; C.S.1929, § 77-2019; R.S.1943, § 77-1823; Laws 1989, LB 324, § 2; Laws 1992, LB 1063, § 151; Laws 1992, Second Spec. Sess., LB 1, § 124; Laws 1995, LB 202, § 3.

77-1824 Real property taxes; redemption from sale; when and how made.

The owner or occupant of any real property sold for taxes or any person having a lien thereupon or interest therein may redeem the same at any time before the delivery of tax deed by the county treasurer by paying the county treasurer for the use of such purchaser or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon 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 of purchase to date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from date of such payment to date of redemption.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1824; Laws 1969, c.

646, § 3, p. 2564; Laws 1979, LB 84, § 3; Laws 1981, LB 167, § 45; Laws 1992, LB 1063, § 152; Laws 1992, Second Spec. Sess., LB 1, § 125.

- 1. Right of redemption
- 2. Interest
- 3. Miscellaneous

1. Right of redemption

Redemption before delivery of the tax deed inures to benefit of one having legal or equitable title to the property redeemed. *Mack v. Luebben*, 215 Neb. 832, 341 N.W.2d 335 (1983).

Owner or occupant may redeem from tax sale prior to issuance of valid tax deed. *Thomas v. Flynn*, 169 Neb. 458, 100 N.W.2d 37 (1959).

Private holder of tax sale certificate, other than minor or incompetent, must bring action to foreclose certificate within five years from its date. *Gibson v. Peterson*, 118 Neb. 218, 224 N.W. 272 (1929).

Dower interest of wife gives her right to redeem before as well as after death of husband. *Henze v. Mitchell*, 93 Neb. 278, 140 N.W. 149 (1913).

When last day of period for redemption falls on Sunday, owners right of redemption extends over all next day. *Counselman v. Samuels*, 93 Neb. 168, 139 N.W. 862 (1913).

When decree of foreclosure is void for want of service, owner of fee should be allowed to redeem. *Clarence v. Cunningham*, 86 Neb. 434, 125 N.W. 597 (1910).

Right of redemption given by Constitution applies to judicial as well as administrative sales. *Butler v. Libe*, 81 Neb. 740, 116 N.W. 663 (1908).

A tender to tax purchaser of less sum than is due will not discharge his lien. *Sanford v. Moore*, 58 Neb. 654, 79 N.W. 548 (1899).

Failure to pay printer's fees will not avoid redemption. *State ex rel. Nelson v. Harper*, 26 Neb. 761, 42 N.W. 764 (1889).

Where purchaser received large portion of taxes paid, from owner of land, for redemption, owner is entitled to redeem. *Taylor v. Courtnay*, 15 Neb. 190, 16 N.W. 842 (1883).

2. Interest

Owner of tax sale certificate issued prior to 1933 is entitled to interest at twelve percent per annum on amount due at time of decree, and decree draws interest at same rate. *McDonald v. Masonic Temple Craft*, 133 Neb. 589, 276 N.W. 176 (1937).

Purchaser of land, not subject to assessment at time taxes purchased were assessed, is entitled to same rate of interest as though land rightfully sold. *Caspary v. Boyd County*, 114 Neb. 124, 206 N.W. 736 (1925).

3. Miscellaneous

Section is not applicable to judicial sales for taxes. *Wood v. Speck*, 78 Neb. 435, 110 N.W. 1001 (1907).

One having no title or interest in land redeeming same from sale, requires no claim against owner, or lien against land. *McKenzie v. Beaumont*, 70 Neb. 179, 97 N.W. 225 (1903).

Tax sales and lien, mentioned in section, have reference only to valid sales and liens. *Adams v. Osgood*, 42 Neb. 450, 60 N.W. 869 (1894).

Treasurer is required to hold redemption money subject to order of owner of certificate. *Mandamus will lie to compel payment. State ex rel. Merrill v. Snyder*, 34 Neb. 345, 51 N.W. 827 (1892).

County board has no control over money collected by treasurer on redemption of lands, and treasurer alone is liable therefor. *State ex rel. Myers v. Richardson County*, 11 Neb. 403, 9 N.W. 550 (1881).

77-1825 Real property taxes; redemption from sale; entry on books; fee; notice to and payment of redemption money to certificate holder.

The treasurer shall enter a memorandum of such redemption in the sales book, and such treasurer shall give a receipt therefor to the person redeeming the same, for which he or she may charge a fee of two dollars. The county treasurer shall send written notice of redemption, by registered or certified mail, to the holder of the county treasurer's certificate of tax sale, provided the post office address of the holder of the certificate is filed in the office of the treasurer. The redemption money shall be paid to or upon the order of the holder on return of the certificate.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1825; Laws 1967, c. 503, § 2, p. 1700; Laws 1989, LB 324, § 3.

77-1826 Real property taxes; redemption from sale; minors; time permitted.

The real property of minors, or any interest they may have in any real property sold for taxes, may be redeemed at any time during the time of

redemption above described or at any time before such minor becomes of age and during two years thereafter.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1826; Laws 1992, LB 1063, § 153; Laws 1992, Second Spec. Sess., LB 1, § 126.

77-1827 Real property taxes; redemption; persons with mental disorder; time permitted.

The real property of persons with mental retardation or a mental disorder so sold, or any interest they may have in real property sold for taxes, may be redeemed at any time within five years after such sale.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1827; Laws 1986, LB 1177, § 34; Laws 1992, LB 1063, § 154; Laws 1992, Second Spec. Sess., LB 1, § 127.

77-1828 Real property taxes; redemption from sale; for whom made; reimbursement.

Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1828.

Redemption before delivery of the tax deed inures to benefit of one having legal or equitable title to the property redeemed.
Mack v. Luebben, 215 Neb. 832, 341 N.W.2d 335 (1983).

77-1829 Real property taxes; redemption from sale; extension of time by second sale.

If any purchaser of real property sold for taxes under sections 77-1801 to 77-1860 suffers the same to be again sold for taxes before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the second sale, during which time the real property shall be subject to redemption upon the terms and conditions prescribed by law.

Source: Laws 1903, c. 73, § 213, p. 466; R.S.1913, § 6541; C.S.1922, § 6069; Laws 1925, c. 168, § 2, p. 442; C.S.1929, § 77-2021; Laws 1937, c. 167, § 29, p. 659; Laws 1939, c. 98, § 29, p. 446;

Laws 1941, c. 157, § 29, p. 629; C.S.Supp.,1941, § 77-2021; R.S.1943, § 77-1829; Laws 1992, LB 1063, § 155; Laws 1992, Second Spec. Sess., LB 1, § 128.

77-1830 Real property taxes; redemption from sale; part interest in land; how made.

Any person claiming an undivided part of any real property sold for taxes may redeem the property on paying such proportion of the purchase money, interest, costs, and subsequent taxes as he or she claims of the real property sold. The owner or occupant of a divided part of any real property sold for taxes or any person having a lien thereon or interest therein may redeem the property by paying the taxes separately assessed against such divided part, together with interest, costs, and subsequent taxes. If no taxes have been separately assessed against such divided part, then it shall be the duty of the county assessor, upon demand of the owner or lienholder or upon the demand of the county treasurer, to assess the divided part and to certify the assessment to the county treasurer. The owner or lienholder of the divided part may thereupon redeem the divided part upon the payment to the treasurer of such sum so assessed, together with interest thereon, costs, and subsequent taxes. The treasurer shall make a proper entry of such partial redemption in his or her sale book, and no deed thereafter given shall convey a greater interest than that remaining unredeemed.

Source: Laws 1903, c. 73, § 213, p. 466; R.S.1913, § 6541; C.S.1922, § 6069; Laws 1925, c. 168, § 2, p. 442; C.S.1929, § 77-2021; Laws 1937, c. 167, § 29, p. 659; Laws 1939, c. 98, § 29, p. 446; Laws 1941, c. 157, § 29, p. 629; C.S.Supp.,1941, § 77-2021; R.S.1943, § 77-1830; Laws 1992, LB 1063, § 156; Laws 1992, Second Spec. Sess., LB 1, § 129.

Payments made to county treasurer to redeem special assessment can only apply to such as are shown by the county treasurer's books to be subject to redemption, and county treasurer has no authority to apportion special assessments as between properties. *Village of Winside v. Brune*, 133 Neb. 80, 274 N.W. 212 (1937).

77-1831 Real property taxes; issuance of treasurer's tax deed; notice given by purchaser.

No purchaser at any sale for taxes or his or her assignees shall be entitled to a deed from the treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the deed, serves or causes to be served a notice stating when such purchaser purchased the real property, the description thereof, in whose name assessed, for what year taxed or specially assessed, and that after the expiration of three months from the date of service of such notice the deed will be applied for.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1831; Laws 1992, LB 1063, § 157; Laws 1992, Second Spec. Sess., LB 1, § 130.

Once a purchaser has shown proof of notice as provided by statute and requested a deed within 6 months after the expiration of 3 years from the date of sale, the purchaser has done all that is required under chapter 77, article 18, to acquire a treasurer's tax deed. *Ottaco, Inc. v. McHugh*, 263 Neb. 489, 640 N.W.2d 662 (2002).

No notice is required under this statute if purchaser elects to foreclose on the land pursuant to sections 77-1901 to 77-1941 rather than obtain a treasurer's deed. *Bish v. Fletcher*, 219 Neb. 863, 366 N.W.2d 778 (1985).

Notice to parties in actual occupancy or possession is required for the issuance of tax deed. *Thomas v. Flynn*, 169 Neb. 458, 100 N.W.2d 37 (1959).

All information required by this section is jurisdictional and must be contained in the notice to redeem. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946); *Thomsen v. Dickey*, 42 Neb. 314, 60 N.W. 558 (1894).

Provisions of statute must be strictly complied with, and are mandatory. *Brokaw v. Cottrell*, 114 Neb. 858, 211 N.W. 184 (1926); *Howell v. Jordan*, 94 Neb. 264, 143 N.W. 217 (1913); *Henze v. Mitchell*, 93 Neb. 278, 140 N.W. 149 (1913).

Rights of parties in all respects are to be determined under law in force when party purchased land at tax sale, and tax deed should be issued in accordance with law in force when tax sale certificate was issued and not by law enacted subsequently. *Wells v. Bloom*, 96 Neb. 430, 147 N.W. 1112 (1914); *Whiffin v. Higgenbotham*, 80 Neb. 468, 114 N.W. 599 (1908).

Notice of time when redemption will expire must be given by purchaser or assignee before time expires. *Hendrix v. Boggs*, 15 Neb. 469, 20 N.W. 28 (1884).

77-1832 Real property taxes; issuance of treasurer's tax deed; service of notice; upon whom made.

Service of the notice provided by section 77-1831 shall be made by certified mail, return receipt requested, upon the person in whose name the title to the real property appears of record to the address where the property tax statement was mailed and upon every encumbrancer of record in the office of the register of deeds of the county. Whenever the record of a lien shows the post office address of the lienholder, notice shall be sent by certified mail, return receipt requested, to the holder of such lien at the address appearing of record.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1832; Laws 1987, LB 93, § 20; Laws 1992, LB 1063, § 158; Laws 1992, Second Spec. Sess., LB 1, § 131; Laws 2003, LB 319, § 1.

Actual occupancy or possession means such occupancy or possession as would put an ordinarily prudent man on notice by observation of the premises involved. *Thomas v. Flynn*, 169 Neb. 458, 100 N.W.2d 37 (1959).

Service of notice must be made upon the person in whose name the title appears of record, and upon occupant in possession. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946).

Personal service is not necessary if owner dead. *Sanford v. Scott*, 105 Neb. 479, 181 N.W. 148 (1920).

Notice must be served on person in whose name assessed, and failure to serve notice or show necessity for service by publication renders subsequent proceedings void. *Howell v. Jordan*, 94 Neb. 264, 143 N.W. 217 (1913).

Notice to actual occupant is essential. *Parsons v. Prudential R. E. Co.*, 86 Neb. 271, 125 N.W. 521 (1910).

Service of notice is not essential to foreclosure of lien by purchaser. *Carman v. Harris*, 61 Neb. 635, 85 N.W. 848 (1901); *Merrill v. Ijams*, 58 Neb. 706, 79 N.W. 734 (1899).

77-1833 Real property taxes; issuance of treasurer's tax deed; proof of service; fees.

The service of notice provided by section 77-1832 shall be proved by affidavit, and the notice and affidavit shall be filed and preserved in the office of the county treasurer. The certified mail return receipt shall be filed with and accompany the return of service. For each service of such notice, a fee of one dollar shall be allowed. The amount of such fees shall be noted by the treasurer in the sales book opposite the real property described in the notice and shall be collected by the treasurer in case of redemption for the benefit of the holder of the certificate.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1833; Laws 1969, c. 645, § 9, p. 2561; Laws 1992, LB 1063, § 159; Laws 1992, Second Spec. Sess., LB 1, § 132; Laws 2003, LB 319, § 2.

Deed issued, without affidavit showing service of notice to redeem first filed with treasurer, is void. *Peck v. Garfield County*, 88 Neb. 635, 130 N.W. 258 (1911).

Owner is not liable for expenses and costs in serving notice, when sale was illegal. *Covell & Ransom v. Young*, 11 Neb. 510, 9 N.W. 694 (1881).

77-1834 Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication.

If the person in whose name the title to the real property appears of record in the office of the register of deeds in the county or if the encumbrancer in whose

name an encumbrance on the real property appears of record in the office of the register of deeds in the county cannot, upon diligent inquiry, be found, then such purchaser or his or her assignee shall publish the notice in some newspaper published in the county and having a general circulation in the county or, if no newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which the real property is situated.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1834; Laws 1992, LB 1063, § 160; Laws 1992, Second Spec. Sess., LB 1, § 133; Laws 2003, LB 319, § 3; Laws 2008, LB893, § 1.

Cross References

Provisions for mailing copy of notice, see sections 25-520.01 to 25-520.03.

Disputed question of fact was raised as to occupancy of premises upon which notice could be given under this section. *Thomas v. Flynn*, 169 Neb. 458, 100 N.W.2d 37 (1959).

Notice published is sufficient if it imparts all of the information which the holder of tax sale certificate is required to disclose. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946).

Provisions are mandatory, and are strictly construed. *Brokaw v. Cottrell*, 114 Neb. 858, 211 N.W. 184 (1926).

Publication of notice is not required unless there is no person in actual occupancy of land, and the person in whose name the

title to the land appears cannot, upon diligent inquiry, be found in county. *Sanford v. Scott*, 105 Neb. 479, 181 N.W. 148 (1920).

Owner, in order to redeem from void tax deed, must pay the taxes, interest, penalties and costs, and also value of permanent improvements placed on land. *Herman v. Barth*, 85 Neb. 722, 124 N.W. 135 (1910); *Humphrey v. Hays*, 85 Neb. 239, 122 N.W. 987 (1909).

Giving of notice is not essential when purchaser proceeds in equity to foreclose lien. *Carman v. Harris*, 61 Neb. 635, 85 N.W. 848 (1901).

77-1835 Real property taxes; issuance of treasurer's tax deed; manner and proof of publication; false affidavit; penalty.

The notice provided by section 77-1834 shall be inserted three consecutive weeks, the first time not more than five months and the last time not less than three months before the time of redemption shall expire. Proof of publication shall be made by filing in the county treasurer's office the affidavit of the publisher, manager or foreman of such newspaper, that to his personal knowledge, said notice was published for the time and in the manner provided herein, setting out a copy of the notice and the date upon which the same was published. Such affidavit shall be preserved as a part of the files of said office. Any publisher, manager or foreman of a newspaper knowingly or negligently making a false affidavit regarding any such matters shall be guilty of perjury, and shall be punished accordingly.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1835.

Cross References

Perjury, see section 28-915.

Notice must be published for three consecutive weeks. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946).

A tax deed, void for want of proper affidavit of service having been filed with county treasurer, is not validated by filing of subsequent affidavit showing compliance. *Brokaw v. Cottrell*, 114 Neb. 858, 211 N.W. 184 (1926).

Proof of publication of notice must be made by affidavit, sworn to before officer authorized to administer oaths. *Lanning v. Haases*, 89 Neb. 19, 130 N.W. 1008 (1911).

Where affidavit of publication was sworn to before notice of publication could have been completed, the proof of publication was insufficient. *Lanning v. Musser*, 88 Neb. 418, 129 N.W. 1022 (1911).

Notice must be inserted at least three times, first being not more than five months and last not less than three months, before time fixed by law for redemption expires. *State ex rel. Richards v. Gayhart*, 34 Neb. 192, 51 N.W. 746 (1892).

77-1836 Real property taxes; issuance of treasurer's tax deed; fee.

If any person is compelled to publish notice in a newspaper as provided in sections 77-1834 and 77-1835, then before any person who may have a right to

redeem such real property from such sale is permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money the amount paid for publishing such notice, for the use of the person compelled to publish the notice. The fee for such publication shall not exceed five dollars for each item of real property contained in such notice. The cost of making such publication shall be noted by the treasurer in the sales book opposite the real property described in the notice.

Source: Laws 1903, c. 73, § 216, p. 468; R.S.1913, § 6544; C.S.1922, § 6072; C.S.1929, § 77-2024; R.S.1943, § 77-1836; Laws 1992, LB 1063, § 161; Laws 1992, Second Spec. Sess., LB 1, § 134; Laws 2002, LB 994, § 25.

Treasurer cannot demand amount unless statement thereof is left with him. *State ex rel. Nelson v. Harper*, 26 Neb. 761, 42 N.W. 764 (1889).

This action does not definitely fix charge, only limits amount owner shall pay to redeem. *Swan v. Huse*, 15 Neb. 465, 19 N.W. 605 (1884).

77-1837 Real property taxes; issuance of treasurer's tax deed; when.

At any time within six months after the expiration of three years from the date of sale of any real estate for taxes or special assessments, if such real estate has not been redeemed, the county treasurer, on request, on production of the certificate of purchase, and upon compliance with the provisions of sections 77-1801 to 77-1863, shall execute and deliver to the purchaser or his or her heirs or assigns a deed of conveyance for the real estate described in such certificate. The failure of the county treasurer to issue the deed of conveyance if requested within the timeframe provided in this section shall not impair the validity of such deed if there has otherwise been compliance with the provisions of sections 77-1801 to 77-1863.

Source: Laws 1903, c. 73, § 217, p. 468; R.S.1913, § 6545; C.S.1922, § 6073; C.S.1929, § 77-2025; R.S.1943, § 77-1837; Laws 1975, LB 78, § 1; Laws 1987, LB 215, § 2; Laws 2001, LB 118, § 1.

This section sets out the period during which a purchaser of a tax sale certificate may exercise his or her right to request a treasurer's tax deed. Before executing and delivering a treasurer's tax deed, this section requires the county treasurer to determine that the property has not been redeemed and that the purchaser has fulfilled all of the statutory requisites under chapter 77, article 18. In addition, the purchaser must present a valid sale certificate and make a request for a deed within the request period. If the county treasurer determines that these requisites have been satisfied, then he or she must execute and deliver the deed, but this authority is not limited to the 6-month request period. *Ottaco, Inc. v. McHugh*, 263 Neb. 489, 640 N.W.2d 662 (2002).

The time for redeeming property from a tax sale expires after three years plus ninety days from the date of the original sale. *Bish v. Fletcher*, 219 Neb. 863, 366 N.W.2d 778 (1985).

Personal notice is required in all cases where tax deed is sought, but is not required in sales under tax foreclosures. *Connely v. Hesselberth*, 132 Neb. 886, 273 N.W. 821 (1937).

Private holder of tax sale certificate must bring action to foreclose certificate within five years from its date. *Gibson v. Peterson*, 118 Neb. 218, 224 N.W. 272 (1929).

Tax deed issued more than five years after date of certificate is invalid. *Fuller v. County of Colfax*, 33 Neb. 716, 50 N.W. 1044 (1892).

The force of a tax deed and validity of sale are tested by revenue law in force at time of sale. *Baldwin v. Merriam*, 16 Neb. 199, 20 N.W. 250 (1884).

Production of certificate is a condition precedent to execution of deed. *Thompson v. Merriam*, 15 Neb. 498, 20 N.W. 24 (1884).

Tax deed issued on last day for redemption is void. *McGavock v. Pollack*, 13 Neb. 535, 14 N.W. 659 (1882).

A valid assessment and levy and sale for taxes are essential to the validity of tax deed. *State ex rel. Merriam v. Patterson*, 11 Neb. 266, 9 N.W. 82 (1881).

77-1838 Real property taxes; issuance of treasurer's tax deed; execution, acknowledgment, and recording; effect.

The deed made by the county treasurer shall be under his official seal of office and acknowledged by him before some officer authorized to take the acknowledgment of deeds. When so executed and acknowledged it shall be recorded in the same manner as other conveyances of real estate. When

recorded it shall vest in the grantee, his heirs and assigns, the title of the property therein described.

Source: Laws 1903, c. 73, § 218, p. 469; R.S.1913, § 6546; C.S.1922, § 6074; C.S.1929, § 77-2026; R.S.1943, § 77-1838.

- 1. Formal requirements
- 2. Miscellaneous

1. Formal requirements

Affixing of county treasurer’s official seal necessary to validity of tax deed. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

When the statute under which land is sold for taxes directs an act to be done, such as recording a tax deed, such statute must be strictly, if not literally, complied with. Saffer v. Saffer, 133 Neb. 528, 274 N.W. 479 (1937).

Tax deed issued on private sale was void for failure to recite that land was not sold at public sale for want of bidders. Sherlock v. Gillis, 108 Neb. 72, 187 N.W. 812 (1922).

Deed need not be witnessed. Sanford v. Scott, 105 Neb. 479, 181 N.W. 148 (1920).

If deed is invalid by reason of formal defects, purchaser has lien for amount of taxes paid with interest. Merriam v. Rauen, 23 Neb. 217, 36 N.W. 489 (1888).

A tax deed to be valid must have official seal of treasurer attached. Bendexen v. Fenton, 21 Neb. 184, 31 N.W. 685 (1887); Baldwin v. Merriam, 16 Neb. 199, 20 N.W. 250 (1884).

A deed which does not recite that sale was had at place designated by statute is invalid. Shelley v. Towle, 16 Neb. 194, 20 N.W. 251 (1884); Haller v. Blaco, 10 Neb. 36, 4 N.W. 362 (1880).

A scroll to represent a seal is not sufficient. Sullivan v. Merriam, 16 Neb. 157, 20 N.W. 118 (1884).

2. Miscellaneous

Where deed conforms to statute then in force, it is valid on its face within meaning of special statute of limitations. Opp v. Smith, 102 Neb. 152, 166 N.W. 265 (1918).

Two distinct tracts may be included in deed. Towle v. Holt, 14 Neb. 221, 15 N.W. 203 (1883).

77-1839 Real property taxes; issuance of tax deed by county treasurer; form.

The conveyance provided by section 77-1838 shall be substantially in the following form:

Whereas, at a sale of real estate for the nonpayment of taxes, made in the county of on the day of A.D. 20...., the following described real estate situated in such county: (here describe real estate conveyed) was sold to for the delinquent taxes of the year and, Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of such real estate has complied with the laws of the State of Nebraska, necessary to entitle to a deed of such real estate, Now, Therefore, I, county treasurer of the county of, in consideration of the premises, and by virtue of the statutes of the State of Nebraska in such cases made and provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and official seal this day of A.D. 20....

..... County Treasurer.

State of Nebraska County, ss.

On this day of A.D. 20...., before me a in and for such county, personally appeared the above named treasurer of such county, personally known to me to be the treasurer of such county, at the date of the execution of the foregoing conveyance, and to be the identical person whose name is affixed to, and who executed the conveyance as treasurer of such county, and acknowledged the execution of the same to be his or her voluntary act and deed as treasurer of such county, for the purposes therein expressed.

Witness my hand and official seal the day and year last above written.

.....

.....
Source: Laws 1903, c. 73, § 218, p. 469; R.S.1913, § 6546; C.S.1922, § 6074; C.S.1929, § 77-2026; R.S.1943, § 77-1839; Laws 2004, LB 813, § 33.

Affixing of county treasurer’s official seal necessary to validity of tax deed. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

A tax deed is not required to state that the land has been offered at public sale. Podewitz v. Gering Nat. Bank, 171 Neb. 380, 106 N.W.2d 497 (1960).

77-1840 Real property taxes; issuance of treasurer’s tax deed; recording of proceedings.

The register of deeds shall record the evidence upon which the tax deeds are issued, and be entitled to the same fee therefor that may be allowed by law for recording deeds, and the county treasurer shall deliver the same to the register of deeds for that purpose.

Source: Laws 1903, c. 73, § 219, p. 470; R.S.1913, § 6547; C.S.1922, § 6075; C.S.1929, § 77-2027; R.S.1943, § 77-1840.

Cross References

For fee for recording deed, see section 33-109.

This section makes the evidence, on which deeds were executed, a part of the public records in the office of the register of deeds. Lanigan v. Gilroy, 97 Neb. 754, 151 N.W. 297 (1915).

It is the duty of the register of deeds to record deed when presented for that purpose. Burnham v. State ex rel. Farmers Loan and Trust Co., 44 Neb. 438, 63 N.W. 45 (1895).

77-1841 Real property taxes; issuance of treasurer’s tax deed; loss of tax sale certificate; procedure.

In case of the loss of any certificate, on being fully satisfied thereof by due proof, and upon bond being given to the State of Nebraska in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the register of deeds to be recorded as aforesaid.

Source: Laws 1903, c. 73, § 219, p. 470; R.S.1913, § 6547; C.S.1922, § 6075; C.S.1929, § 77-2027; R.S.1943, § 77-1841.

77-1842 Real property taxes; treasurer’s tax deed; presumptive evidence of certain facts.

Deeds made by the county treasurer shall be presumptive evidence in all courts of this state, in all controversies and suits in relation to the rights of the purchaser and his or her heirs or assigns to the real property thereby conveyed, of the following facts: (1) That the real property conveyed was subject to taxation for the year or years stated in the deed; (2) that the taxes were not paid at any time before the sale; (3) that the real property conveyed had not been redeemed from the sale at the date of the deed; (4) that the property had been listed and assessed; (5) that the taxes were levied according to law; (6) that the property was sold for taxes as stated in the deed; (7) that the notice had been served or due publication made as required in sections 77-1831 to 77-1835 before the time of redemption had expired; (8) that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; (9) that the grantee named in the deed was the purchaser or his or her assignee; and (10) that all the prerequisites of the law were complied with by all the officers who had or whose duty it was to have had any part or action in any

transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done.

Source: Laws 1903, c. 73, § 220, p. 470; R.S.1913, § 6548; C.S.1922, § 6076; C.S.1929, § 77-2028; R.S.1943, § 77-1842; Laws 1992, LB 1063, § 162; Laws 1992, Second Spec. Sess., LB 1, § 135.

Burden of proof rests on party seeking to quiet title against tax deed claimed to be void. *Thomas v. Flynn*, 169 Neb. 458, 100 N.W.2d 37 (1959).

Presumption is not conclusive and may be rebutted, but burden rests upon party attacking deed to show some jurisdictional defect. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946).

Tax deed is not conclusive of matters as to which this section makes it presumptive evidence only. *Tate v. Biggs*, 89 Neb. 195, 130 N.W. 1053 (1911).

Deed is only prima facie evidence of regularity. Failure to comply with requirements of the law may be shown, notwithstanding the presumption. *Equitable Land Co. v. Willis*, 86 Neb. 200, 125 N.W. 512 (1910).

Title acquired under tax sale is a new title, free from encumbrances connected with prior title. *Topliff v. Richardson*, 76 Neb. 114, 107 N.W. 114 (1906).

Possession under a void tax deed is under color of title and is adverse. *McPherson v. McPherson*, 75 Neb. 830, 106 N.W. 991 (1906).

Issuance of tax deed raises presumption that taxes have been regularly levied and assessed. *Wales v. Warren*, 66 Neb. 455, 92 N.W. 590 (1902); *Darr v. Berquist*, 63 Neb. 713, 89 N.W. 256 (1902).

One taking possession of land, claiming it under tax deed, is not a trespasser. *Gaster v. Welna*, 23 Neb. 564, 37 N.W. 456 (1888).

A tax deed is not a lien or encumbrance, within meaning of appraisal statute, and party claiming under it holds adversely. *Sessions and Curson v. Irwin*, 8 Neb. 5 (1878).

77-1843 Real property taxes; treasurer's tax deed; proof required to defeat tax title.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially by the treasurer in the manner provided by sections 77-1831 to 77-1842, the person claiming the title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the title, either (1) that the real property was not subject to taxation for the years or year named in the deed; (2) that the taxes had been paid before the sale; (3) that the property has been redeemed from the sale according to the provisions of sections 77-1201 to 77-1219, 77-1229 to 77-1236, 77-1301 to 77-1318.01, 77-1501 to 77-1514, 77-1601 to 77-1618, 77-1701 to 77-1710, 77-1716 to 77-1738, 77-1740 to 77-1767, and 77-1801 to 77-1855, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state; or (4) that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1843; Laws 2006, LB 808, § 40.

Proof of redemption before delivery of the tax deed defeats any title conveyed by the tax deed. *Mack v. Luebben*, 215 Neb. 832, 341 N.W.2d 335 (1983).

Nothing in this section changes the general rule that the purchase or extinguishment of an outstanding title, interest, or claim by one cotenant inures to the benefit of the other cotenants. *O'Toole v. Yunghans*, 211 Neb. 852, 320 N.W.2d 768 (1982).

Tax deed to former tenant cannot be avoided because tenant owed owner for rent which accrued during tenancy. *Manning v. Oakes*, 80 Neb. 471, 114 N.W. 604 (1908).

Tax deed is sufficient color of title, when coupled with possession, to put statute of limitations in operation. *Craven v. Craven*, 68 Neb. 459, 94 N.W. 604 (1903).

Possession under tax deed is adverse to possession of prior occupant. *Maxwell v. Higgins*, 38 Neb. 671, 57 N.W. 388 (1894).

77-1844 Real property taxes; treasurer's tax deed; condition required to question title.

No person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title,

had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property had been paid by such person or the persons under whom he claims title as aforesaid.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1844.

Tender to county treasurer of taxes due is sufficient to lay foundation for action to redeem. *Brokaw v. Cottrell*, 114 Neb. 858, 211 N.W. 184 (1926).

Where tax deed is void, owner may redeem from tax liens upon payment of delinquent taxes, interest and penalties. *Sherlock v. Gillis*, 108 Neb. 72, 187 N.W. 812 (1922).

It is not essential as condition precedent to suit to set aside tax deed that all taxes be first paid, but it is sufficient if taxes are paid at or before trial and decree. *Cornell v. Maverick Loan & Trust Co.*, 95 Neb. 842, 147 N.W. 697 (1914).

Tender by owner of unpaid taxes is sufficient where county treasurer refuses to accept payment. *Howell v. Jordan*, 94 Neb. 264, 143 N.W. 217 (1913).

In action to quiet title against sale for taxes under void decree of court, offer to pay such taxes as are found due is sufficient. *Humphrey v. Hays*, 85 Neb. 239, 122 N.W. 987 (1909).

In action to set aside tax title, party must discharge all unpaid taxes as a condition precedent to invoking assistance of court. *Thomas v. Farmers L. & T. Co.*, 76 Neb. 568, 107 N.W. 589 (1906).

77-1845 Real property taxes; treasurer's tax deed; taxes paid; mistake in entry; effect.

In all cases when a person has paid his or her taxes and through mistake in the entry made in the treasurer's books or in the receipt the real property upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1845; Laws 1992, LB 1063, § 163; Laws 1992, Second Spec. Sess., LB 1, § 136.

A deed erroneously issued after redemption has occurred is void. *Mack v. Luebben*, 215 Neb. 832, 341 N.W.2d 335 (1983).

77-1846 Real property taxes; treasurer's tax deed; effect of fraud.

In all cases when the owner of real property sold for taxes resists the validity of a tax title, the owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established, the sale and title shall be void.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1846; Laws 1992, LB 1063, § 164; Laws 1992, Second Spec. Sess., LB 1, § 137.

77-1847 Real property taxes; wrongful sale by officers; purchaser held harmless by county; liability of officers.

When by mistake or wrongful act of the treasurer or other officer real property has been sold on which no tax was due at the time or whenever real property is sold in consequence of error in describing such real property in the tax receipt, the county shall hold the purchaser harmless by paying him or her the amount of principal, interest, and costs to which he or she would have been entitled had the real property been rightfully sold. The treasurer or other officer shall be liable to the county therefor upon his or her official bond, or the purchaser or his or her assignee may recover directly of the treasurer or other officer in an action on his or her official bond.

Source: Laws 1903, c. 73, § 222, p. 472; R.S.1913, § 6550; C.S.1922, § 6078; C.S.1929, § 77-2030; R.S.1943, § 77-1847; Laws 1992, LB 1063, § 165; Laws 1992, Second Spec. Sess., LB 1, § 138.

1. Liability of county
2. Liability of municipal corporations
3. Actions to recover
4. Miscellaneous

1. Liability of county

Liability of county to holder of tax sale certificate for refund of taxes illegally assessed is purely statutory. *Kennedy v. Dawes County*, 130 Neb. 227, 264 N.W. 452 (1936).

Liability of county for refund to purchaser where title fails is statutory, and claim is barred unless presented within five years after date of sale. *Gibson v. Dawes County*, 129 Neb. 706, 262 N.W. 671 (1935).

Purchaser of land, which was not subject to assessment when taxes paid were assessed, is entitled to recover amount to which he would have been entitled if land rightfully sold. *Caspary v. Boyd County*, 114 Neb. 124, 206 N.W. 736 (1925).

County is not liable for derelictions of officers and agents of cities. *Kelley v. Gage County*, 67 Neb. 6, 93 N.W. 194 (1903), affirmed on rehearing 67 Neb. 11, 99 N.W. 524 (1904); *Concordia L. & T. Co. v. Douglas County*, 2 Neb. Unof. 124, 96 N.W. 55 (1901).

Rights and liabilities of purchaser and county are determined by statutes in force when sale occurred. *Norris v. Burt County*, 56 Neb. 295, 76 N.W. 551 (1898).

Where land, not subject to taxation, is sold, county is liable to purchaser for amount paid, with interest, together with subsequent taxes paid in good faith to protect lien. *Wilson v. Butler County*, 26 Neb. 676, 42 N.W. 891 (1889).

County is liable to purchaser where land is sold, no taxes being due. *Roberts v. Adams County*, 20 Neb. 409, 30 N.W. 405 (1886).

2. Liability of municipal corporations

A county cannot recover from a city on account of city taxes refunded by it. *Kelley v. Gage County*, 67 Neb. 6, 93 N.W. 194 (1903), affirmed on rehearing 67 Neb. 11, 99 N.W. 524 (1904).

In absence of statutory authority, a city cannot be required to refund money received from purchaser at sale made for illegal assessments. *Martin v. Kearney County*, 62 Neb. 538, 87 N.W. 351 (1901); *McCague v. City of Omaha*, 58 Neb. 37, 78 N.W. 463 (1899).

3. Actions to recover

A party to recover under this section must bring himself within its terms. *Martin v. Kearney County*, 62 Neb. 538, 87 N.W. 351 (1901).

Action should be brought in name of person to whom deed was issued. *Alexander v. Overton*, 52 Neb. 283, 72 N.W. 212 (1897).

Statute of limitations commences to run when title is adjudged invalid by court of competent jurisdiction. *Merriam v. Otoe County*, 15 Neb. 408, 19 N.W. 479 (1884).

Petition must set out particular act done or omitted, and name of officer doing or omitting it. *Kaeiser v. Nuckolls County*, 14 Neb. 277, 15 N.W. 363 (1883).

4. Miscellaneous

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. *Foote v. County of Adams*, 163 Neb. 406, 80 N.W.2d 179 (1956).

Prior to 1915, there was no provision for the recovery back of money paid for void tax certificate unless the certificate for void tax was the result of mistake or wrongful act of a treasurer or other officer under this section. *McDonald v. County of Lincoln*, 141 Neb. 741, 4 N.W.2d 903 (1942).

Statute does not require foreclosure action begun or demand for deed made on void tax sale certificate before instituting proceedings before county board for reimbursement, provided proceedings are begun within five years from date of certificate. *Farm Investment Co. v. Scotts Bluff County*, 125 Neb. 582, 251 N.W. 115 (1933).

Liability of county to refund money paid by purchaser of tax sale certificate, where title has failed, is entirely statutory. *Speidel v. Scotts Bluff County*, 125 Neb. 431, 250 N.W. 555 (1933).

Failure to demand deed or commence foreclosure within time provided by law bars action against county to refund. *Battelle v. Douglas County*, 65 Neb. 329, 91 N.W. 412 (1902).

Claims should be presented to county board, and, if rejected, appeal should be taken. *Fuller v. Colfax County*, 33 Neb. 716, 50 N.W. 1044 (1892); *Richardson County v. Hull*, 28 Neb. 810, 45 N.W. 53 (1890).

77-1848 Sale of school real property for taxes; interest acquired by purchaser.

Whenever any school or university real property bought on credit is sold for taxes, the purchaser at such tax sale shall acquire only the interest of the original purchaser in such real property, and no sale of such real property for taxes shall prejudice the rights of the state therein or preclude the recovery of the purchase money or interest due thereon. In all cases when the real property is mortgaged or otherwise encumbered to the school or university fund, the interest of the person who holds the fee shall alone be sold for taxes and in no case shall the lien or interest of the state be affected by any sale of such encumbered real property made for taxes.

Source: Laws 1903, c. 73, § 223, p. 472; R.S.1913, § 6551; C.S.1922, § 6079; C.S.1929, § 77-2031; R.S.1943, § 77-1848; Laws 1992, LB 1063, § 166; Laws 1992, Second Spec. Sess., LB 1, § 139.

Sale of school lands for special assessment does not affect rights of state. *Morehouse v. Elkhorn River Drainage Dist.*, 90 Neb. 406, 133 N.W. 446 (1911).

Purchaser's remedy is under this section, where taxes have been paid. *Alexander v. Hunter*, 29 Neb. 259, 45 N.W. 461 (1890).

It is only when in fact lands assessed were not subject to taxation that the entry can be made by treasurer. *Price v. Lancaster County*, 20 Neb. 252, 29 N.W. 931 (1886).

77-1849 Real property taxes; erroneous sale; refund of purchase money.

Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or, if a deed be returned by the purchaser, that any tract or lot has been sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the sale book that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. In such cases the purchase money shall be refunded to the purchaser.

Source: Laws 1903, c. 73, § 224, p. 473; R.S.1913, § 6552; C.S.1922, § 6080; C.S.1929, § 77-2032; R.S.1943, § 77-1849.

77-1850 Real property taxes; treasurer's tax deed; effect of acts of de facto officers.

In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, clerks, supervisors, commissioners, and other officers de facto shall be deemed and construed to be of the same validity as acts of officers de jure.

Source: Laws 1903, c. 73, § 225, p. 473; R.S.1913, § 6553; C.S.1922, § 6081; C.S.1929, § 77-2033; R.S.1943, § 77-1850.

One who holds and performs the duties of an office, and receives the fees and emoluments thereof, under color of right, is a de facto officer. *Holt County v. Scott*, 53 Neb. 176, 73 N.W. 681 (1897).

77-1851 Real property taxes; assessed in wrong name; effect.

No sale of real property for taxes shall be void or voidable on account of the same having been assessed in any other name than that of the rightful owner, if the property be in other respects sufficiently described.

Source: Laws 1903, c. 73, § 226, p. 473; R.S.1913, § 6554; C.S.1922, § 6082; C.S.1929, § 77-2034; R.S.1943, § 77-1851.

Where owner and county treasurer were both able to determine property intended by description although part thereof was assessed in name other than owner, taxes were not void. *Scotts Bluff County v. Frank*, 142 Neb. 698, 7 N.W.2d 625 (1943).

77-1852 Real property taxes; books and records; certified copies; presumptive evidence.

The books and records belonging to the offices of the county clerk and county treasurer, or copies thereof properly certified, shall be presumptive evidence of the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

Source: Laws 1903, c. 73, § 227, p. 473; R.S.1913, § 6555; C.S.1922, § 6083; C.S.1929, § 77-2035; R.S.1943, § 77-1852.

77-1853 Real property taxes; irregularities; effect.

Irregularities in making or equalizing assessments, or in making the returns thereof, shall not invalidate the sale of any real estate when sold by the county

treasurer for delinquent taxes due thereon, nor in any manner invalidate the tax levied on any property or charged against any person.

Source: Laws 1903, c. 73, § 228, p. 473; R.S.1913, § 6556; C.S.1922, § 6084; C.S.1929, § 77-2036; R.S.1943, § 77-1853.

Fixing actual value at eighty percent of market value was an irregularity of which taxpayer could not complain. *Collier v. County of Logan*, 169 Neb. 1, 97 N.W.2d 879 (1959).

Irregularity in certification of special assessment did not invalidate tax. *Belza v. Village of Emerson*, 159 Neb. 651, 68 N.W.2d 272 (1955).

Consideration by county assessor of valuations made by others was an irregularity that did not invalidate tax. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954).

In absence of proof to contrary, it will be presumed that taxing authorities discharged all duties imposed upon them. *Adams v. Osgood*, 60 Neb. 779, 84 N.W. 257 (1900).

Injunction will not lie to restrain collection of tax on ground of irregularities in levy. *Wilson v. City of Auburn*, 27 Neb. 435, 43 N.W. 257 (1889).

Failure to attach tax certificate is an irregularity which section intended to provide for. *Wood v. Helmer*, 10 Neb. 65, 4 N.W. 968 (1880).

Fact that taxes are illegal in part does not invalidate sale, and sale operates as assignment of lien. *Hall v. Moore*, 3 Neb. Unof. 574, 92 N.W. 294 (1902).

County assessor's assessment of mobile homes on different ledger pages from the underlying property is at most a mere irregularity and does not affect the validity of the taxes or subsequent liens on the underlying property. *Phelps County v. Anderson*, 2 Neb. App. 236, 508 N.W.2d 314 (1993).

77-1854 Real property taxes; irregularities enumerated.

The following defects, omissions and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceedings from and including the assessment and to and including the execution and delivery of the deed of the property sold for taxes, shall be taken and deemed to be mere irregularities within the meaning of section 77-1853: (1) The failure of the assessor to take or subscribe an oath or attach one to any assessment roll; (2) the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied or charged against property, or the valuation of any property upon any record; (3) the failure or neglect of the county treasurer to offer any real estate for sale for delinquent taxes thereon at the time provided by law, unless the same be sold sooner than is provided by law; (4) the failure of the treasurer to adjourn such sale from time to time as required by law, or any irregularity or informality in such adjournment; (5) the failure of the county treasurer to offer any real estate at public sale which may afterwards be sold at private sale, and any irregularity or informality in the manner or order in which real estate may be offered at public sale; (6) the failure to assess any property for taxation or to levy any tax within the time provided by law; and (7) any irregularity, informality or omission in any assessment book, tax collector's book, or other record of any real or personal property assessed for taxation, or upon which any tax is levied, or which may be sold for taxes. Where the defect is in the description of property, such description must be sufficiently definite to enable the county treasurer or other officer, or any person interested, to determine what property is meant or intended by the description, and in such case a defective or indefinite description on the assessment or treasurer's book, or in any notice or advertisement may be made definite by the treasurer in the deed by which he may convey such property, if sold for taxes, by conveying by proper and definite description the property so defectively or indefinitely described.

Source: Laws 1903, c. 73, § 229, p. 474; R.S.1913, § 6557; C.S.1922, § 6085; C.S.1929, § 77-2037; R.S.1943, § 77-1854.

Error in typing amount of special assessment tax due on line for delinquent general tax was deemed a mere irregularity on the tax sale certificate. *County of Polk v. Wombacher*, 229 Neb. 239, 426 N.W.2d 266 (1988).

Failure of tax list to contain certificate of county clerk was mere irregularity. *Belza v. Village of Emerson*, 159 Neb. 651, 68 N.W.2d 272 (1955).

A description of real estate contained in a published notice of tax sale is sufficient if interested parties are enabled thereby to determine what property is meant or intended. *Kuska v. Kubat*, 147 Neb. 139, 22 N.W.2d 484 (1946).

Any indefiniteness and uncertainty arising from the use of initialed letters, abbreviations and figures in describing real estate is at most an irregularity in no way affecting the validity of an assessment. *City of Scottsbluff v. Kennedy*, 141 Neb. 728, 4 N.W.2d 878 (1942).

Mere irregularities in conducting sale for taxes legally assessed will not defeat lien of purchaser. *Sanford v. Moore*, 58 Neb. 654, 79 N.W. 548 (1899).

Indefinite description giving section, town and range was sufficient under this section. *Concordia L. & T. Co. v. Van Camp*, 2 Neb. Unof. 633, 89 N.W. 744 (1902).

77-1855 Real property taxes; recovery of real estate sold; limitation of action.

No action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution and recording of the treasurer's deed, unless the owner is at the time of the sale a minor, a mentally incompetent person, or a convict in a Department of Correctional Services adult correctional facility in which case such action must be brought within five years after such disability is removed.

Source: Laws 1903, c. 73, § 230, p. 475; R.S.1913, § 6558; C.S.1922, § 6086; C.S.1929, § 77-2038; R.S.1943, § 77-1855; Laws 1986, LB 1177, § 35; Laws 1993, LB 31, § 22.

Statute has no application where tax deed was void. *Mack v. Luebben*, 215 Neb. 832, 341 N.W.2d 335 (1983).

Suit attacking void tax deed is not barred in five years. *Sherlock v. Gillis*, 108 Neb. 72, 187 N.W. 812 (1922); *Opp v. Smith*, 102 Neb. 152, 166 N.W. 265 (1918).

When tax deed is void, owner may maintain action to redeem within ten years after recording of deed. *Lanigan v. Gilroy*, 97 Neb. 754, 151 N.W. 297 (1915).

Limitation is applicable in quieting title, when lands are sold under void decree. *Hill v. Chamberlain*, 91 Neb. 610, 136 N.W. 999 (1912).

Deed must be valid on its face to entitle party claiming under it to benefit of this special limitation. *Bendexen v. Fenton*, 21 Neb. 184, 31 N.W. 685 (1887); *Housel v. Boggs*, 17 Neb. 94, 22 N.W. 226 (1885).

Party claiming under a tax deed and invoking the aid of special statute of limitations must have actual possession of land. *Baldwin v. Merriam*, 16 Neb. 199, 20 N.W. 250 (1884).

77-1856 Real property taxes; effect of failure to demand deed or to foreclose; cancellation of tax sales.

If the owner of any tax sale certificate fails or neglects to demand a deed thereon or to commence an action for the foreclosure of the same within the time specified in section 77-1837 or 77-1902, such tax sale certificate shall cease to be valid or of any force or effect whatever and the real property covered thereby shall be forever released and discharged from the lien of all taxes for which the real property was sold. It is made the duty of each and every county treasurer of the State of Nebraska to enter on the tax sale records of his or her office a cancellation of all tax sales on which the time specified in section 77-1837 or 77-1902 has elapsed since date of sale, with date of entry affixed, in language substantially as follows: Canceled by section 77-1856. No county treasurer or bonded abstractor shall be held responsible on his or her bond or otherwise on account of such entry being made in accordance with this section. All real property covered by tax sales that comes within the provisions of sections 77-1801 to 77-1860 shall from the time of this entry be considered to stand of record as though no tax sale had ever been made.

Source: Laws 1903, c. 73, § 241, p. 478; R.S.1913, § 6569; Laws 1915, c. 112, § 1, p. 261; C.S.1922, § 6097; C.S.1929, § 77-2049; R.S. 1943, § 77-1856; Laws 1977, LB 6, § 1; Laws 1992, LB 1063, § 167; Laws 1992, Second Spec. Sess., LB 1, § 140.

1. Limitation of action
2. Miscellaneous

1. Limitation of action

Action to foreclose tax lien may be instituted within five years by filing of cross-petition in partition suit. *Fairley v. Kemper*, 174 Neb. 565, 118 N.W.2d 754 (1962).

Action to foreclose a tax sale certificate, except as to minors and incompetents, must be brought within five years from the date of the tax sale certificate. *Gibson v. Dawes County*, 129 Neb. 706, 262 N.W. 671 (1935).

Where foreclosure was instituted within five years of date of tax sale certificate, action was not barred. *Jones v. Gibson*, 119 Neb. 574, 230 N.W. 249 (1930).

Private holder of tax sale certificate must bring action to foreclose certificate within five years from its date. *Gibson v. Peterson*, 118 Neb. 218, 224 N.W. 272 (1929).

Limitation does not relate to remedy merely, but to cause of action. *Foree v. Stubbs*, 41 Neb. 271, 59 N.W. 798 (1894).

2. Miscellaneous

This section does not apply to recovery from county of money paid for void taxes. *McDonald v. County of Lincoln*, 141 Neb. 741, 4 N.W.2d 903 (1942).

Liability of county to holder of tax sale certificate for refund upon taxes illegally assessed is measured solely by statute relating thereto, and, if the action is barred on its face by statute of limitations, demurrer to petition will be sustained. *Kennedy v. Dawes County*, 130 Neb. 227, 264 N.W. 452 (1936).

Where tax sale certificate has been held valid and decree of foreclosure entered thereon, tax purchaser is not entitled to refund from county in any amount. *Speidel v. Scotts Bluff County*, 125 Neb. 431, 250 N.W. 555 (1933).

Where right of action on certificate has lapsed, it carries with it all right to recover for subsequent taxes. *Battelle v. Douglas County*, 65 Neb. 329, 91 N.W. 412 (1902).

Statute operates not merely to defeat the remedy, but limits the duration of lien itself. *Carson v. Broady*, 56 Neb. 648, 77 N.W. 80 (1898).

Statute is not a bar to recovery of taxes under provisions of occupying claimant's act. *Lothrop v. Michaelson*, 44 Neb. 633, 63 N.W. 28 (1895).

77-1857 County treasurer; seal; when used.

County treasurers shall have and keep an official seal, which may be either an engraved or an ink stamp seal, and which shall have included thereon the name of the county followed by the word County, the name of the state, and the words County Treasurer. Each county treasurer shall affix an impression or representation of such seal to every certificate of tax sale and tax deed made by him.

Source: Laws 1903, c. 31, § 1, p. 280; R.S.1913, § 6571; C.S.1922, § 6099; C.S.1929, § 77-2051; R.S.1943, § 77-1857; Laws 1953, c. 280, § 1, p. 911; Laws 1971, LB 653, § 9.

Omission from tax sale certificate of treasurer's seal is an irregularity and does not render tax sale certificate void or unenforceable. *County of Lincoln v. Evans*, 185 Neb. 19, 173 N.W.2d 365 (1969).

77-1858 Real property taxes; powers of sale; special assessments included; exception.

Wherever power is now given by the revenue laws of this state to the county treasurer of any county in this state to sell real estate, on which the taxes have not been paid as provided by law, it shall include the power to sell the real estate for (1) all the taxes and special assessments, except special assessments levied by a sanitary and improvement district organized under sections 31-727 to 31-762, levied or hereafter levied by any county, municipality, drainage district, or other political subdivision of the state and (2) all special assessments levied or hereafter levied by any sanitary and improvement district if such sale is requested by such sanitary and improvement district which levied the special assessment. All provisions of the revenue law now in force with reference to the collection of taxes shall apply with equal force to all taxes and special assessments levied by such county, municipality, drainage district, or other political subdivision of the state.

Source: Laws 1915, c. 228, § 1, p. 531; C.S.1922, § 6101; C.S.1929, § 77-2053; R.S.1943, § 77-1858; Laws 1996, LB 1321, § 2.

Under this section, county may foreclose upon special assessment lien levied by a village. *County of Polk v. Wombacher*, 229 Neb. 239, 426 N.W.2d 266 (1988).

Special assessments may be collected in same manner as general taxes. *Belza v. Village of Emerson*, 159 Neb. 651, 68 N.W.2d 272 (1955).

This section was cumulative, and did not give taxpayer right to recover interest under older statute. *Caspary v. Boyd County*, 114 Neb. 124, 206 N.W. 736 (1925).

77-1859 Real property taxes; void tax sale; reimbursement of purchaser.

Whenever, for any reason, real estate has been sold or shall hereafter be sold for the payment of any tax or special assessment levied by any county, municipality, drainage district, or other political subdivision of the state, and it shall thereafter be determined by a court of competent jurisdiction that said sale was void, it shall be the duty of said county, municipality, drainage district, or other political subdivision of the state, which levied the tax or special assessment, to hold said purchaser harmless by paying him or her the amount of principal paid by him or her at the sale, with interest thereon 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 of sale.

Source: Laws 1915, c. 228, § 2, p. 531; C.S.1922, § 6102; C.S.1929, § 77-2054; R.S.1943, § 77-1859; Laws 1981, LB 167, § 46.

Limitation upon the right to recover money paid for void taxes under this section is the general statute of limitations, and action may be brought at any time within four years after the date that the taxes are declared void by a court of competent jurisdiction. *McDonald v. County of Lincoln*, 141 Neb. 741, 4 N.W.2d 903 (1942).

Where tax is void because levied on exempt property, remedy of purchaser at tax sale to recover money paid is under this section. *McDonald v. Masonic Temple Craft*, 135 Neb. 48, 280 N.W. 275 (1938).

Liability of county to holder of tax sale certificate for refund upon taxes illegally assessed is solely statutory, and, if petition shows on its face that it is barred by statute of limitations, it will not stand against demurrer. *Kennedy v. Dawes County*, 130 Neb. 227, 264 N.W. 452 (1936).

Where action for refund of taxes, involved in county treasurer's tax sale certificate, is barred by the statute of limitations, plaintiff, the holder of the certificate, is not entitled to recover back from the county taxes paid by him subsequent to the treasurer's sale. *Gibson v. Dawes County*, 129 Neb. 706, 262 N.W. 671 (1935).

Tax sale certificate must have been adjudged invalid by court of competent jurisdiction before purchaser can claim refund from county. *Farm Investment Co. v. Scotts Bluff County*, 125 Neb. 582, 251 N.W. 115 (1933).

To entitle tax certificate purchaser to refund, it must appear that land was sold for taxes when no tax was due, or in consequence of error in describing land, or it must have been determined by court that sale was void. *Speidel v. Scotts Bluff County*, 125 Neb. 431, 250 N.W. 555 (1933).

All rights possessed under prior statutes were reserved. *Caspary v. Boyd County*, 114 Neb. 124, 206 N.W. 736 (1925).

77-1860 Foreclosure by counties prior to 1903; decrees validated.

All judgments, orders, decrees and findings made prior to July 28, 1903, by any district court in the State of Nebraska, in any action wherein any county in the state prosecuted actions to foreclose tax liens and sell lots or lands in Nebraska for the taxes levied thereon and delinquent, without having first purchased a tax certificate from the county treasurer, but on the contrary were based solely on the taxes assessed and delinquent, and purported to have been bought for the county in its own behalf, and as trustee for the State of Nebraska and the several municipalities interested in such taxes, and all sheriff's deeds made in said proceedings, are legalized and made valid, to the same extent and purpose as though the statute had specifically authorized such foreclosures without the purchase of a treasurer's tax certificate.

Source: Laws 1903, c. 77, § 1, p. 521; R.S.1913, § 6572; C.S.1922, § 6100; C.S.1929, § 77-2052; R.S.1943, § 77-1860.

77-1861 Real property taxes and special assessments; extinguishment after fifteen years; vitalization of constitutional amendment.

It is declared to be the intent and purpose of sections 77-203, and 77-1861 to 77-1863 to vitalize Article VIII, section 4, of the Constitution of Nebraska, and to invoke and exercise the powers conferred upon the Legislature of Nebraska, thereby.

Source: Laws 1959, c. 354, § 1, p. 1249.

77-1862 Real property taxes and special assessments; extinguishment after fifteen years; year 1943 and prior thereto; subsequent years.

(1) Any and all taxes and special assessments, together with interest, penalty, and costs, levied upon any real property, and any lien created thereby in this state and due to this state or to any county or other political subdivision thereof, becoming delinquent in the calendar year 1943 or any prior year, are hereby released and extinguished forever.

(2) Any and all taxes and special assessments, together with interest, penalty, and costs, levied upon any real property, except mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, and any lien created thereby in this state and due to this state or to any county or other political subdivision thereof, becoming delinquent in the calendar year 1944, or any subsequent year, are hereby released and extinguished forever upon the expiration of fifteen years after the date upon which the tax or special assessment became or shall become delinquent.

Source: Laws 1959, c. 354, § 2, p. 1249; Laws 2000, LB 968, § 71.

77-1863 Real property taxes and special assessments; extinguished after fifteen years; not required to be certified.

Any county officer or other person who is required to certify to public records shall not be required to certify to any taxes or special assessments, penalty and costs, which have been released and extinguished in accordance with the provisions of section 77-1861 and 77-1862.

Source: Laws 1959, c. 354, § 3, p. 1249.

ARTICLE 19

COLLECTION OF DELINQUENT REAL ESTATE TAXES THROUGH COURT PROCEEDINGS

Cross References

Mineral or royalty interests separate from other interests in land for foreclosure purposes, see section 57-227.

Section	
77-1901.	Tax liens; delinquency; order of county board directing foreclosure.
77-1902.	Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period.
77-1903.	Foreclosure proceedings; confirmation of sale.
77-1904.	Foreclosure proceedings; designation of property.
77-1905.	Repealed. Laws 2002, LB 876, § 92.
77-1906.	Foreclosure proceedings; unknown owners; real property as defendant.
77-1907.	Repealed. Laws 2002, LB 876, § 92.
77-1908.	Foreclosure proceedings; presumptive evidence.
77-1909.	Foreclosure proceedings; decree; contents.
77-1910.	Foreclosure proceedings; surplus proceeds; application; limit of real property to be sold.
77-1911.	Foreclosure proceedings; decree; order of sale, when issued; limitation.
77-1912.	Foreclosure proceedings; sheriff's sale; political subdivision as purchaser.
77-1913.	Foreclosure proceedings; examination by court; order for sheriff's deed; certificate of tax sale for subsequent taxes.
77-1914.	Foreclosure proceedings; confirmation of sale; release of real property.
77-1915.	Foreclosure proceedings; proceeds of sale; disposition.
77-1916.	Foreclosure proceedings; surplus proceeds; disposition; prorating.
77-1917.	Foreclosure proceedings; redemption; subsequent taxes paid; conditions.
77-1917.01.	Delinquent special assessments; effect; foreclosure proceedings.
77-1918.	Delinquent taxes; annual report by county treasurer; duty of county board; duty of county attorney; fees; failure to perform duty; penalty; removal, when.

- Section
- 77-1918.01. Foreclosure proceedings; county attorney fee; when effective.
- 77-1919. Repealed. Laws 1949, c. 240, § 5.
- 77-1920. Repealed. Laws 1949, c. 240, § 5.
- 77-1921. Repealed. Laws 1949, c. 240, § 5.
- 77-1922. Repealed. Laws 1949, c. 240, § 5.
- 77-1923. Foreclosure of tax lien by county under old law; sale prior to May 26, 1943; action to attack; limitation period.
- 77-1924. Foreclosure of tax lien by county under old law; sale after May 26, 1943; action to attack; limitation period.
- 77-1925. Foreclosure of tax lien by county under old law; sale not confirmed prior to May 26, 1943; action to attack; limitation period.
- 77-1926. Foreclosure of tax lien by county under old law; action to attack; prerequisite, payment of taxes and costs.
- 77-1927. Foreclosure of tax lien by county under old law; resale by county board.
- 77-1928. Foreclosure of tax lien by county under old law; sale of property; proceeds; disposition.
- 77-1929. Repealed. Laws 1949, c. 240, § 5.
- 77-1930. Repealed. Laws 1949, c. 240, § 5.
- 77-1931. Repealed. Laws 1949, c. 240, § 5.
- 77-1932. Repealed. Laws 1949, c. 240, § 5.
- 77-1933. Repealed. Laws 2006, LB 1024, § 115.
- 77-1934. Tax certificate foreclosure proceedings under old law; defective procedure; confirmation of sale not yet obtained; action to cure defects.
- 77-1935. Tax certificate foreclosure proceedings under old law; action to cure defects; conditions precedent.
- 77-1936. Tax certificate foreclosure proceedings; authority of governmental subdivisions to convey real property obtained thereunder.
- 77-1937. Tax certificate foreclosure proceedings under old law; distribution of proceeds of sale.
- 77-1938. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; proper completion of proceedings authorized.
- 77-1939. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; application to complete proceedings.
- 77-1940. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; notice of hearing; service.
- 77-1941. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; hearing; determination.

77-1901 Tax liens; delinquency; order of county board directing foreclosure.

Counties shall have a lien upon real estate within their boundaries for all taxes due thereon to the state, any governmental subdivision of the state, any municipal corporation, and any drainage or irrigation district. After any parcel of real estate has been offered for sale and not sold for want of bidders, the county board shall make and enter an order directing the county attorney to foreclose the lien for all taxes then delinquent, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which real estate has not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of real estate mortgages, except as otherwise specifically provided by sections 77-1903 to 77-1917.

Source: Laws 1943, c. 176, § 1, p. 614; R.S.1943, § 77-1901; Laws 1965, c. 496, § 1, p. 1584; Laws 1979, LB 84, § 4; Laws 1996, LB 1321, § 3.

Sheriff's deeds are specially covered by this statute and, unlike the provisions for tax certificates, there is no section establishing a presumption regarding service, as is true in the case of a treasurer's deed. *Brown v. Glebe*, 213 Neb. 318, 328 N.W.2d 786 (1983).

Procedure for foreclosure of tax liens, except as otherwise provided by tax foreclosure act, is the same as in the foreclosure of real estate mortgages. *Madison County v. School Dist. No. 2*, 148 Neb. 218, 27 N.W.2d 172 (1947).

In the foreclosure of tax lien, final confirmation of sale cannot be had until two years shall have expired from date of sale. *County of Douglas v. Christensen*, 144 Neb. 899, 15 N.W.2d 53 (1944).

77-1902 Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period.

When land has been sold for delinquent taxes and a tax sale certificate or tax deed has been issued, the holder of such tax sale certificate or tax deed may, instead of demanding a deed or, if a deed has been issued, by surrendering the same in court, proceed in the district court of the county in which the land is situated to foreclose the lien for taxes represented by the tax sale certificate or tax deed and all subsequent tax liens thereon, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which real estate has not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903 to 77-1917. Such action shall only be brought within six months after the expiration of three years from the date of sale of any real estate for taxes or special assessments.

Source: Laws 1943, c. 176, § 2, p. 615; R.S.1943, § 77-1902; Laws 1975, LB 78, § 2; Laws 1987, LB 215, § 3; Laws 1996, LB 1321, § 4.

A foreclosure action brought under this section must be brought within 6 months after the expiration of 3 years from the date of sale of any real estate for taxes. *County of Seward v. Andelt*, 251 Neb. 713, 559 N.W.2d 465 (1997).

Under this section, "time for redemption" is the three years immediately following a delinquent tax sale, and an action to foreclose a tax lien can only be brought within ninety days immediately after expiration of such time for redemption. *Bish v. Fletcher*, 219 Neb. 863, 366 N.W.2d 778 (1985), is overruled. *County of Lancaster v. Maser*, 224 Neb. 566, 400 N.W.2d 238 (1987).

Foreclosure of a tax lien must be brought within ninety days after the expiration of the right to redeem. In accordance with section 77-1837, such redemption right expires three years plus

ninety days from the date of the original sale. *Bish v. Fletcher*, 219 Neb. 863, 366 N.W.2d 778 (1985).

Authority to proceed under equity powers is limited by remaining provisions of tax foreclosure act. *Madison County v. School Dist. No. 2*, 148 Neb. 218, 27 N.W.2d 172 (1947).

In foreclosure under this section, court may refuse confirmation of sale where increased bid has been made after sale and before confirmation. *County of Gage v. Beatrice Neb. Water Co.*, 147 Neb. 236, 22 N.W.2d 696 (1946).

A delinquent taxpayer may redeem a tax sale certificate after a foreclosure action has been filed. *KLH Retirement Planning v. Cejka*, 3 Neb. App. 687, 530 N.W.2d 279 (1995).

77-1903 Foreclosure proceedings; confirmation of sale.

The foreclosure proceedings, provided by sections 77-1901 and 77-1902, shall be conducted as nearly as possible in the same manner, except in the following particulars: (1) In the foreclosure of a tax lien, as provided by section 77-1901, final confirmation of sale cannot be had until two years have expired from the date of the sale held by the sheriff in the foreclosure proceedings; or (2) in the foreclosure of a tax sale certificate or tax deed, as provided in section 77-1902, final confirmation of sale may be had immediately after the sheriff's sale.

Source: Laws 1943, c. 176, § 3, p. 615; R.S.1943, § 77-1903.

Confirmation cannot be had until expiration of two-year period, unless right to redeem is waived by owner or all persons

having a legal interest in the land. *County of Douglas v. Christensen*, 144 Neb. 899, 15 N.W.2d 53 (1944).

77-1904 Foreclosure proceedings; designation of property.

In all foreclosure proceedings, including in the complaint, it is sufficient to designate the township, range, section, or part of section and the number and description of any lot or block by initial letters, abbreviations, and figures.

In describing improvements on leased land for such notice and proceedings, the words "Improvements Only Located Upon" shall precede the designation of such property as set out in this section.

Source: Laws 1943, c. 176, § 4, p. 615; R.S.1943, § 77-1904; Laws 1992, LB 1063, § 168; Laws 1992, Second Spec. Sess., LB 1, § 141; Laws 2002, LB 876, § 83.

Purpose of this section is to reduce costs in the foreclosure of tax liens and tax sale certificates when more than one is held by the same party. *County of Hall v. Engleman*, 182 Neb. 676, 156 N.W.2d 801 (1968).

Under prior act, and reenactment of this section by 1943 act, the use of initial letters, abbreviations, and figures in describing real estate was expressly authorized. *City of Scottsbluff v. Kennedy*, 141 Neb. 728, 4 N.W.2d 878 (1942).

Plaintiff may join as many tracts as he sees fit, but each one constitutes a separate cause of action and must be separately stated and numbered. *McNish v. Perrine*, 14 Neb. 582, 16 N.W. 837 (1883).

Certificate of tax sale, together with subsequent taxes, constitutes one cause of action. *Cushman v. Taylor*, 2 Neb. Unof. 793, 90 N.W. 207 (1902).

77-1905 Repealed. Laws 2002, LB 876, § 92.

77-1906 Foreclosure proceedings; unknown owners; real property as defendant.

The plaintiff may also, if desired, include as or make the real property described in the complaint a defendant and, if the owners of any such real property are unknown and cannot be found, may proceed against the real property itself, but in such case the service shall be as in the case of an unknown defendant.

Source: Laws 1943, c. 176, § 6, p. 616; R.S.1943, § 77-1906; Laws 1992, LB 1063, § 169; Laws 1992, Second Spec. Sess., LB 1, § 142; Laws 2002, LB 876, § 84.

Cross References

For proceedings against unknown defendants, see section 25-321.

For provisions for mailing copy of notice, see sections 25-520.01 to 25-520.03.

77-1907 Repealed. Laws 2002, LB 876, § 92.

77-1908 Foreclosure proceedings; presumptive evidence.

The tax sale certificate or tax deed, in foreclosure proceedings under section 77-1902, or a certificate of the county treasurer, as to the amount of unpaid delinquent taxes in foreclosure proceedings under section 77-1901, shall be presumptive evidence of all facts necessary to entitle the plaintiff to a decree for the amount appearing to be due thereon with interest at the rate required to be paid for redemption from tax sale.

Source: Laws 1943, c. 176, § 8, p. 616; R.S.1943, § 77-1908.

77-1909 Foreclosure proceedings; decree; contents.

In its decree, the court shall ascertain and determine the amount of taxes, special assessments, and other liens, interest, and costs chargeable to each particular item of real property and award to the plaintiff an attorney's fee, unless waived by the plaintiff, in an amount equal to ten percent of the amount due which shall be taxed as part of the costs in the action and apportioned equitably as other costs.

Source: Laws 1943, c. 176, § 9, p. 616; R.S.1943, § 77-1909; Laws 1992, LB 1063, § 171; Laws 1992, Second Spec. Sess., LB 1, § 144.

Interest and costs are to be included in awarding an attorney fee pursuant to this section. The award of attorney fees is to be made in the decree of foreclosure, not in the order confirming

the sale. *Buffalo County v. Kizzier*, 250 Neb. 247, 548 N.W.2d 753 (1996).

77-1910 Foreclosure proceedings; surplus proceeds; application; limit of real property to be sold.

The court may in its decree order that any surplus proceeds of the sale of one item of real property shall be applied to the payment of taxes and costs against any other item of real property owned by the same defendant when no rights of a third person are affected thereby and may order that only so much of the real property, so owned by one defendant, shall be sold as may be necessary to satisfy all taxes and costs charged against all the real property owned by the same defendant.

Source: Laws 1943, c. 176, § 10, p. 616; R.S.1943, § 77-1910; Laws 1992, LB 1063, § 172; Laws 1992, Second Spec. Sess., LB 1, § 145.

77-1911 Foreclosure proceedings; decree; order of sale, when issued; limitation.

Upon the expiration of twenty days from and after such decree, the plaintiff shall be entitled to an order of sale of the real property remaining unredeemed. This order of sale shall be issued only at the request of the plaintiff or the holder of an unredeemed lien and shall be issued within ten years from the date of the decree. After ten years from the date of the decree, (1) no order of sale shall issue, (2) the decree shall be deemed satisfied, and (3) no further action shall lie to enforce the lien of any taxes or special assessments included in the decree.

Source: Laws 1943, c. 176, § 11, p. 617; R.S.1943, § 77-1911; Laws 1953, c. 281, § 1, p. 912; Laws 1992, LB 1063, § 173; Laws 1992, Second Spec. Sess., LB 1, § 146.

Procedure contemplates sale of the lands if not redeemed. *Madison County v. School Dist. No. 2*, 148 Neb. 218, 27 N.W.2d 172 (1947).

77-1912 Foreclosure proceedings; sheriff's sale; political subdivision as purchaser.

The sheriff shall sell the real property in the same manner provided by law for a sale on execution and shall at once pay the proceeds thereof to the clerk of the district court. Any governmental subdivision of the state, municipal corporation, or drainage or irrigation district to which any part of the taxes included in the decree of foreclosure is due may purchase any real property sold at sheriff's sale. The provisions of the law for the protection of the purchasers at tax sales shall apply to purchasers at foreclosure sales provided for in this section. The sheriff or officer conducting the sale shall not be entitled to any commission on the money received and paid out on foreclosure sales provided for herein.

Source: Laws 1943, c. 176, § 12, p. 617; R.S.1943, § 77-1912; Laws 1992, LB 1063, § 174; Laws 1992, Second Spec. Sess., LB 1, § 147.

The sheriff is required to collect the entire price bid at the judicial sale, not merely a percentage thereof. *Buffalo County v. Kizzier*, 250 Neb. 247, 548 N.W.2d 753 (1996).

As a general rule, property which is susceptible of being sold at a foreclosure sale in separate tracts should, if practicable, be sold in parcels, rather than as an entirety. It is within the

discretion of the trial court to provide in a decree of foreclosure for the sale of property en masse, and such a sale will be sustained absent a showing of prejudice. Where the record does not show that the judgment debtor requested that the land be sold in separate tracts, he is not entitled as a matter of right to have the sale set aside because the land was sold en masse.

County of Dakota v. Mallett, 235 Neb. 82, 453 N.W.2d 594 (1990).

district court. Bordy v. Smith, 150 Neb. 272, 34 N.W.2d 331 (1948).

Interest on money received by sheriff on bids at tax foreclosure sale belongs to beneficial owners of fund and not to clerk of

77-1913 Foreclosure proceedings; examination by court; order for sheriff's deed; certificate of tax sale for subsequent taxes.

The court shall, after the expiration of the time provided in section 77-1903 and on the motion of the plaintiff, examine the proceedings and, if they are found to be correct and if the subsequent taxes have been paid to date, in case the purchaser is not a land reutilization authority or a governmental subdivision of the state, a municipal corporation or an irrigation or drainage district interested in the distribution of the proceeds of the foreclosure sale, make and enter an order of confirmation of the sale, shall direct the disposition of the proceeds of the sale and order the sheriff to make and deliver to the purchasers, without further cost to them, a sheriff's deed for any real estate not redeemed; *Provided*, if a private purchaser at any sale held by the sheriff in tax foreclosure proceedings shall fail to pay the subsequent taxes levied and assessed against the property under foreclosure, any governmental subdivision of the state, municipal corporation or drainage or irrigation district, interested in the distribution of the proceeds of the foreclosure sale, may apply for and have issued to it a certificate of tax sale covering such subsequent taxes in the manner provided by sections 77-1809 and 77-1810, and, upon production of such certificate in the court conducting said foreclosure proceedings, such court may thereupon order confirmation of such foreclosure sale, notwithstanding the private purchaser has failed to pay the subsequent taxes levied and assessed against the property.

Source: Laws 1943, c. 176, § 13, p. 617; R.S.1943, § 77-1913; Laws 1982, LB 630, § 1.

When there is no evidence that others are willing to pay more, a judicial sale will not be set aside on account of mere inadequacy of price, unless such inadequacy is so gross as to make it appear that it was the result of fraud or mistake, or to shock the conscience of the court. The district court must determine by unrestricted means whether at the sheriff's sale the price bid is adequate or whether at a subsequent sale more would be realized, and this court will not overturn its determination absent an abuse of discretion. County of Dakota v. Mallett, 235 Neb. 82, 453 N.W.2d 594 (1990).

Substantially increased offers made in open court before confirmation of sale are sufficient to authorize district court to deny confirmation and order a new sale. County of Gage v. Beatrice Neb. Water Co., 147 Neb. 236, 22 N.W.2d 696 (1946).

Title to land acquired by tax foreclosure in Nebraska was subject to attack in Missouri federal district court on jurisdictional grounds. Duke v. Durfee, 308 F.2d 209 (8th Cir. 1962).

77-1914 Foreclosure proceedings; confirmation of sale; release of real property.

Upon confirmation of the sale, the clerk of the district court shall certify to the county treasurer the year or years of the taxes for which the real property was sold. The county treasurer shall thereupon cancel the taxes for such years, and the proceedings shall operate as a release of such real property from all liens for the taxes included on the real property. The delivery of the sheriff's deed shall pass title to the purchaser free and clear of all liens and interests of all persons who were parties to the proceedings, who received service of process, and over whom the court had jurisdiction.

Source: Laws 1943, c. 176, § 14, p. 618; R.S.1943, § 77-1914; Laws 1992, LB 1063, § 175; Laws 1992, Second Spec. Sess., LB 1, § 148; Laws 2008, LB893, § 2.

77-1915 Foreclosure proceedings; proceeds of sale; disposition.

From the proceeds of the sale of any real property, the costs charged thereto shall first be paid. When the plaintiff is a private person, firm, or corporation, the balance thereof, or so much thereof as is necessary, shall be paid to the plaintiff. When the plaintiff is a governmental subdivision, municipal corporation, or drainage or irrigation district, the balance thereof, or so much thereof as is necessary, shall be paid to the county treasurer for distribution to the various governmental subdivisions, municipal corporations, or drainage or irrigation districts entitled thereto in discharge of all claims.

Source: Laws 1943, c. 176, § 15, p. 618; R.S.1943, § 77-1915; Laws 1992, LB 1063, § 176; Laws 1992, Second Spec. Sess., LB 1, § 149.

Attorney's fee taxed as costs is not distributable as tax revenue. *Strawn v. County of Sarpy*, 156 Neb. 797, 58 N.W.2d 168 (1953).

77-1916 Foreclosure proceedings; surplus proceeds; disposition; prorating.

If a surplus remains after satisfying all costs and taxes against any particular item of real property, the excess shall be applied in the manner provided by law for the disposition of the surplus in the foreclosure of mortgages on real property. If the proceeds are insufficient to pay the costs and all the taxes, when the plaintiff is a governmental subdivision, a municipal corporation, or a drainage or irrigation district, the amount remaining shall be prorated among the governmental subdivisions, municipal corporations, and drainage or irrigation districts in the proportion of their interest in the decree of foreclosure. The proceeds of the sale of one item of real property shall not be applied to the discharge of a lien for taxes against another item of real property except when so directed by the decree for foreclosure under the circumstances set forth in section 77-1910.

Source: Laws 1943, c. 176, § 16, p. 618; R.S.1943, § 77-1916; Laws 1992, LB 1063, § 177; Laws 1992, Second Spec. Sess., LB 1, § 150.

77-1917 Foreclosure proceedings; redemption; subsequent taxes paid; conditions.

(1) Any person entitled to redeem real property may do so at any time prior to the institution of foreclosure proceedings by paying the county treasurer for the use of such holder of a tax sale certificate or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon 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 of purchase to the date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from the date of such payment to the date of redemption.

(2) Any person entitled to redeem real property may do so at any time after the decree of foreclosure and before the final confirmation of the sale by paying to the clerk of the district court the amount found due against the property, with interest and costs to the date of redemption and, in addition thereto, when the real property has been sold at sheriff's sale to a purchaser other than the plaintiff, any subsequent taxes paid by such purchaser, as shown by tax receipts filed by such purchaser with the clerk of the district court, with interest 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 or dates of payment of such taxes, and also interest on the purchase price at the same rate, for the use of the

purchaser, from the date of sale to the date of redemption. During the pendency of a foreclosure action any person entitled to redeem any lot or parcel may do so by paying to the court the amount due with interest and costs, including attorney's fees, provided for in section 77-1909, if requested in the foreclosure complaint. Within thirty days after receipt of payment of all amounts due, the holder of the tax sale certificate shall dismiss its claim in the foreclosure proceeding with respect to any redeemed tax sale certificate. The holder of the tax sale certificate shall be required to provide the county treasurer with written notice that a foreclosure suit has been instituted and provide the county treasurer with an affidavit setting forth the costs incurred in the foreclosure action and indicating whether attorney's fees were requested in the foreclosure complaint.

(3) The person redeeming any lot or parcel shall be required to provide the county treasurer with an appropriate receipt evidencing the payment to the court of the amount due with interest and costs and the holder of the tax sale certificate shall file with the county treasurer notice of its dismissal of the claim in the foreclosure proceeding.

Source: Laws 1943, c. 176, § 17, p. 619; R.S.1943, § 77-1917; Laws 1945, c. 194, § 1, p. 597; Laws 1971, LB 743, § 1; Laws 1979, LB 84, § 5; Laws 1981, LB 167, § 47; Laws 1992, LB 1063, § 178; Laws 1992, Second Spec. Sess., LB 1, § 151; Laws 1997, LB 486, § 1; Laws 2002, LB 876, § 85; Laws 2008, LB893, § 3.

Cross References

For redemption from foreclosure generally, see section 25-1530.

County may not proceed in foreclosure action under this statute. *County of Polk v. Wombacher*, 229 Neb. 239, 426 N.W.2d 266 (1988).

77-1917.01 Delinquent special assessments; effect; foreclosure proceedings.

All cities, villages and sanitary and improvement districts in Nebraska shall have a lien upon real estate within their boundaries for all special assessments due thereon to the municipal corporation or district, which lien shall be inferior only to general taxes levied by the state and its political subdivisions. When such special assessments have become delinquent, without the real property against which they are assessed being first offered at tax sale by the tax sale certificate method or otherwise, the municipal corporation or district involved may itself as party plaintiff proceed in the district court of the county in which the real estate is situated to foreclose, in its own name, the lien for such delinquent special assessments in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903 to 77-1917, which shall govern when applicable. Final confirmation of sale in such foreclosure proceeding and issuance of deed to the plaintiff, or its assignee, cannot be had until two years have expired from the date of the sale held by the sheriff, and, after expiration of such two-year period, personal notice has been served on occupants of the real property. The remedy granted in this section to cities, villages and sanitary and improvement districts for the collection of delinquent special assessments shall be cumulative and in addition to other existing methods.

Source: Laws 1961, c. 387, § 1, p. 1182; Laws 1976, LB 313, § 13.

This section provides the subdivision of the government named therein an independent and complete remedy for the foreclosure of special assessment liens and is in addition to any

other remedies provided by the law for the collection of special assessments. *Sanitary & Improvement Dist. #222 v. Metropolitan Life Ins. Co.*, 201 Neb. 10, 266 N.W.2d 73 (1978).

77-1918 Delinquent taxes; annual report by county treasurer; duty of county board; duty of county attorney; fees; failure to perform duty; penalty; removal, when.

On or before October 1 of each year, the county treasurer shall make a report in writing to the county board setting out a complete list of all real property in the county on which any taxes are delinquent and which was not sold for want of bidders at the last annual tax sale held in such county. It shall be the duty of the county board, at its first meeting held after the making of such report, to carefully examine the same, and while it may direct the issuance of tax sale certificates to the county upon any real property upon which there are any delinquent taxes, it shall, as to all real property upon which taxes are delinquent for three or more years, either enter an order directing the foreclosure of the lien of such taxes as provided in section 77-1901 or enter an order for the county treasurer to issue tax sale certificates to the county covering the delinquent taxes upon such real property, to be foreclosed upon in the manner and at the time provided in sections 77-1901 to 77-1918.

The county board shall have authority to direct the county attorney to commence foreclosure of such liens or certificates or it may designate another attorney to commence such actions, and the county board is authorized to pay any reasonable fee for such foreclosures to be assessed as costs. In the event the county attorney is designated to bring the action, the fee shall be fifty dollars for each cause of action in addition to his or her salary to be retained by him or her, but it shall not be paid to the county attorney until the decree is entered and the property sold pursuant to such decree. No fee shall be allowed the county attorney for such foreclosures in counties having a population of more than one hundred thousand inhabitants.

Any county treasurer, county attorney, or member of the county board who willfully fails, neglects, or refuses to perform the duties imposed by such sections shall be guilty of official misdemeanor and subject to removal from office as provided in sections 23-2001 to 23-2009. If the county board fails to dismiss the county attorney for failure to foreclose liens, the county board shall be removed. Any member of a county board who, upon a motion duly made by one member of such board to remove a county attorney from office who has failed to foreclose liens, does not vote for such motion or any member who votes to retain a county attorney in office after it has been brought to the board's attention that he or she has failed to foreclose liens shall be subject to removal from office as provided in sections 23-2001 to 23-2009.

Source: Laws 1943, c. 176, § 18, p. 619; R.S.1943, § 77-1918; Laws 1961, c. 388, § 1, p. 1183; Laws 1971, LB 743, § 2; Laws 1986, LB 531, § 4; Laws 1992, LB 1063, § 179; Laws 1992, Second Spec. Sess., LB 1, § 152; Laws 1995, LB 488, § 1.

Pursuant to this section, a county must choose to foreclose real estate tax liens under either the lien method set forth at section 77-1901 or the certificate method set forth in section 77-1902. *County of Seward v. Andelt*, 251 Neb. 713, 559 N.W.2d 465 (1997).

Laws 1971, L.B. 743, which amended this section was effective so far as compensation was provided for county attorneys as

soon as it could become operative under the Constitution, but fee not payable until property sold pursuant to decree. *State ex rel. Nebraska State Bar Assn. v. Holscher*, 193 Neb. 729, 230 N.W.2d 75 (1975).

County attorney is obligated to institute and prosecute actions by county to foreclose tax lien. *State ex rel. Nebraska State Bar Assn. v. Conover*, 166 Neb. 132, 88 N.W.2d 135 (1958).

77-1918.01 Foreclosure proceedings; county attorney fee; when effective.

Section 77-1918 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for county attorneys, and to give effect to such salary as soon as same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1971, LB 743, § 3; Laws 1972, LB 1069, § 6.

77-1919 Repealed. Laws 1949, c. 240, § 5.

77-1920 Repealed. Laws 1949, c. 240, § 5.

77-1921 Repealed. Laws 1949, c. 240, § 5.

77-1922 Repealed. Laws 1949, c. 240, § 5.

77-1923 Foreclosure of tax lien by county under old law; sale prior to May 26, 1943; action to attack; limitation period.

Where any county shall have commenced proceedings in this state under the provisions of section 77-2039, C.S.Supp.,1941, and shall have purchased real estate sold under said proceedings, as trustee for the benefit of the governmental bodies interested in the taxes, and the sale has been confirmed and the deed or deeds therefor have been issued and delivered to the county and the county has sold the real estate prior to May 26, 1943, any person, persons, firm or corporation or governmental body of the state, which shall have or has had any interest whatsoever in said real estate, lien thereon or interest in said taxes, shall have one year and no more, under any circumstances whatever, from May 26, 1943, within which to bring any action whatsoever to attack said proceeding, any of the steps taken thereunder, the method of purchasing, the power of the county either to bring said proceeding or to purchase the property in its name as trustee or said deeds. In the event no such action shall be brought within said period so fixed by this period of limitation, then the title of the purchaser from the county shall be valid and absolute against any such person, persons, firm or corporation or governmental body.

Source: Laws 1943, c. 184, § 1, p. 631; R.S.1943, § 77-1923.

77-1924 Foreclosure of tax lien by county under old law; sale after May 26, 1943; action to attack; limitation period.

Where any county shall have commenced proceedings in this state under the provisions of section 77-2039, C.S.Supp.,1941, and shall have purchased real estate sold under said proceedings, as trustee for the benefit of the governmental bodies interested in the taxes, and the sale has been confirmed and the deed or deeds therefor have been issued and delivered to the county, any person, persons, firm or corporation or governmental body of the state, which shall have or have had any interest whatsoever in said real estate, lien thereon or interest in said taxes, shall have one year and no more, under any circumstances whatever, from May 26, 1943, within which to bring any action whatsoever to attack said proceeding, any of the steps taken thereunder, the method of purchasing, the power of the county either to bring said proceeding or to purchase the property in its name as trustee or said deeds. In the event no such action shall be brought within said period so fixed by this period of

limitations, then the title of the county as trustee shall be valid and absolute against any such person, persons, firm or corporation or governmental body.

Source: Laws 1943, c. 184, § 2, p. 632; R.S.1943, § 77-1924.

77-1925 Foreclosure of tax lien by county under old law; sale not confirmed prior to May 26, 1943; action to attack; limitation period.

Where any county shall have commenced proceedings in this state under the provisions of section 77-2039, C.S.Supp.,1941, and shall have purchased real estate sold under said proceedings, as trustee for the benefit of the governmental bodies interested in the taxes, and the sale or sales have not been confirmed as of May 26, 1943, but more than two years shall have elapsed since the date of the sale, then the county shall be entitled upon motion to have the sale or sales confirmed and a deed or deeds issued to it and any person, persons, firm or corporation or governmental body, which shall have or have had any interest whatsoever in said real estate, lien thereon or interest in said taxes, shall have one year and no more, under any circumstances whatever, from the date of the issuance of said deeds within which to bring any action whatsoever to attack such proceedings, any of the steps taken thereunder, the method of purchasing, the power of the county either to bring said proceeding or to purchase the property in its name as trustee or said deeds. In the event no such action shall be brought within said period so fixed by this period of limitation, then the title of the county to said premises, as trustee, shall be good and valid as against each and all such person, persons, firms, corporations or governmental bodies, and the county shall not be required to pay the subsequent taxes, levied or assessed against said premises, or the court costs charged against said real estate in the foreclosure proceeding.

Source: Laws 1943, c. 184, § 3, p. 632; R.S.1943, § 77-1925.

77-1926 Foreclosure of tax lien by county under old law; action to attack; prerequisite, payment of taxes and costs.

In the event any person, persons, firm or corporation or governmental body shall bring any action or proceeding whatever to contest the validity of any of the tax foreclosure proceedings by such a county, under any one or more of sections 77-1923 to 77-1925, or any deeds to the county or from the county, then such person, persons, firm, corporation or governmental body shall first pay to the clerk of the district court in which the action shall have been had, all taxes levied or assessed against said premises for the years foreclosed on, with interest and penalties provided by law, and all court costs in the tax foreclosure proceeding charged against the real estate, and shall pay to the county treasurer of the county all taxes levied or assessed against said premises subsequent to the taxes foreclosed upon, with interest and penalties provided by law, which are liens upon the property at the time such action or proceeding shall be commenced. The paying of such taxes and court costs shall be a prerequisite to the filing of any such action or proceeding.

Source: Laws 1943, c. 184, § 4, p. 633; R.S.1943, § 77-1926.

77-1927 Foreclosure of tax lien by county under old law; resale by county board.

Where any county shall have acquired real estate, under the conditions set forth in any one or more of sections 77-1923 to 77-1925, the county board shall

have power to convey any of such real estate, by a deed signed by the chairman of the county board at any time after May 26, 1943, subject to the right, if any, of any person, persons, firm or corporation or governmental body to attack the same by action or proceeding within the one-year limitation herein provided for, for such price as the county board, in the exercise of good faith, shall determine to be a fair and reasonable price for the property.

Source: Laws 1943, c. 184, § 5, p. 633; R.S.1943, § 77-1927.

77-1928 Foreclosure of tax lien by county under old law; sale of property; proceeds; disposition.

From the proceeds of the sales of said pieces of property, or any sales which may have heretofore been had, there shall first be paid the costs of sale, the court costs, including any attorney's fees paid or to be paid on account of said foreclosure, any reasonable expense in taking care of the property and all costs for advertising for delinquent taxes. The balance, if any, shall be distributed to the governmental bodies in the following manner: By paying the taxes which shall have been unpaid by the previous owners, with interest and penalties, in the inverse order assessed, to the extent of the proceeds, and any unpaid taxes thereafter remaining shall be canceled on the books of the county.

Source: Laws 1943, c. 184, § 6, p. 634; R.S.1943, § 77-1928.

77-1929 Repealed. Laws 1949, c. 240, § 5.

77-1930 Repealed. Laws 1949, c. 240, § 5.

77-1931 Repealed. Laws 1949, c. 240, § 5.

77-1932 Repealed. Laws 1949, c. 240, § 5.

77-1933 Repealed. Laws 2006, LB 1024, § 115.

77-1934 Tax certificate foreclosure proceedings under old law; defective procedure; confirmation of sale not yet obtained; action to cure defects.

Where any county, city, village, school district, drainage district, or irrigation district shall have commenced proceedings under the provisions of either section 77-2040 or 77-2041, C.S.Supp.,1941, to foreclose tax sale certificates, and the sale or sales held by the sheriff in such proceedings has not been confirmed as of March 24, 1947, but more than two years shall have elapsed, either between the time of issuance of tax sale certificate and the time of instituting the tax foreclosure proceedings, or from and after the time of holding sheriff's sale, then such purchaser of the tax sale certificate or certificates shall be entitled upon motion to have the sale or sales confirmed and a deed or deeds issued to such purchaser, and any person, persons, firm, corporation, or governmental body, which shall have or has had any interest whatsoever in the real estate, lien thereon, or interest in the taxes foreclosed, shall have one year and no more, under any circumstances whatever, from the date of the issuance of the deed or deeds, within which to bring any action whatsoever to attack such proceedings, any of the steps taken thereunder, the method of purchasing or the power of the county, municipality or other governmental subdivision mentioned above to bring said proceedings, to purchase the property in its name as trustee, or to receive deed. In the event no such action shall be brought within the period of limitation fixed by this

section, the title of the purchaser shall be valid and absolute against any such person, persons, firm, corporation, or governmental body.

Source: Laws 1947, c. 264, § 2, p. 855.

Failure to bring action did not bar claim of easement. *Jurgen-
sen v. Ainscow*, 155 Neb. 701, 53 N.W.2d 196 (1952).

77-1935 Tax certificate foreclosure proceedings under old law; action to cure defects; conditions precedent.

In the event any person, persons, firm, corporation, or governmental body shall bring any action whatever to contest the validity of any of the tax foreclosure proceedings, under either section 77-1933 or 77-1934, then such person, persons, firm, corporation, or governmental body shall first pay to the clerk of the district court in which the action shall be brought all taxes levied or assessed against real estate for the years foreclosed on, with interest and penalties provided by law, and all court costs in the tax foreclosure proceedings taxed in the cause of action affecting the real estate involved in the subsequent action, and shall also pay to the county treasurer of the county all taxes levied or assessed against said real estate subsequent to the taxes foreclosed upon, with interest and penalties provided by law, which are liens upon the property at the time such subsequent action shall be commenced. The money paid to the county treasurer as subsequent taxes shall be held by the county treasurer in escrow until there has been a final adjudication as to the validity of the tax foreclosure proceedings under attack, and not unless and until such proceedings have been adjudicated to be invalid shall the county treasurer distribute the subsequent taxes thus paid to the state and governmental subdivisions entitled to participate therein. The payment of such taxes and court costs shall be a prerequisite to the filing of any such action. In the event the party bringing action to contest the validity of such tax foreclosure proceedings is unsuccessful, the clerk of the district court shall refund to such party, after deducting all unpaid costs assessed against him by the court in such action, the balance remaining after such deduction of the amount of any costs and taxes paid to such clerk as a condition precedent to institution of such action. The county treasurer shall also refund all subsequent taxes paid by such party in the event he is unsuccessful.

Source: Laws 1947, c. 264, § 3, p. 855.

77-1936 Tax certificate foreclosure proceedings; authority of governmental subdivisions to convey real property obtained thereunder.

When any county, city, village, school district, drainage district or irrigation district shall have acquired real estate under such tax foreclosure proceedings, the governing body of such governmental subdivision or municipal corporation shall have power to convey any such real estate by a deed signed by the chairman or other presiding officer of such body, subject to the right, if any, of any person, persons, firm, corporation, or governmental body to attack the same by action or proceeding within the one-year limitation provided in sections 77-1933 to 77-1937, for such price as the governing body of any such governmental subdivision or municipal corporation, in the exercise of good faith, shall determine to be a fair and reasonable price for the property.

Source: Laws 1947, c. 264, § 4, p. 856.

77-1937 Tax certificate foreclosure proceedings under old law; distribution of proceeds of sale.

From the proceeds of the sale of such real estate in the foreclosure proceedings or of any such sales which may have heretofore been had and where the proceeds have not been already distributed, there shall first be paid the costs of sale, the court costs, including any attorneys' fees to be paid on account of said foreclosure, any reasonable expense in taking care of the property, and all costs for advertising delinquent taxes. The balance, if any, shall be distributed to the governmental bodies in the following manner: By paying the taxes which shall have been unpaid by the previous owners, with interest and penalties, in the inverse order assessed, to the extent of the proceeds, and any unpaid taxes thereafter remaining shall be canceled in the books of the county.

Source: Laws 1947, c. 264, § 5, p. 857.

77-1938 Tax foreclosure proceedings; defects subsequent to decree of foreclosure; proper completion of proceedings authorized.

In all proceedings heretofore had for the foreclosure of tax liens or tax sale certificates wherein a valid decree of foreclosure was procured, but proceedings subsequent to the entry of such decree were defective, invalid, or void for any reason, any person who has, subsequent to the entry of such decree, acquired any interest in such property by purchase from a former owner, assignment from a lienholder, payment of subsequent taxes, or erection of improvements on the property, may file an application to have the tax foreclosure proceeding properly completed, and the rights of the parties subsequent to the entry of such decree adjusted by the court.

Source: Laws 1949, c. 240, § 1, p. 652.

Act is only procedural in character. City of Wayne v. Adams, 156 Neb. 297, 56 N.W.2d 117 (1952).

77-1939 Tax foreclosure proceedings; defects subsequent to decree of foreclosure; application to complete proceedings.

The application provided for in section 77-1938 shall be filed in the original tax foreclosure proceeding wherein the decree of foreclosure was rendered. The application shall set forth: (1) The nature of the interest of the applicant in the property and how it was acquired; (2) the defect or defects which rendered proceedings subsequent to the decree of foreclosure defective, invalid, or void; (3) the taxes and special assessments which have become a lien since the entry of the decree of foreclosure, and the amount thereof, if any, paid by the applicant; (4) the improvements, if any, placed upon the property since the decree of foreclosure by the applicant or any person under whom he claims an interest in the property; and (5) any other facts proper for a court of equity to take into consideration in determining the rights, equities, and liens of the parties in and to the premises described in the tax foreclosure proceedings. The application shall conclude with a request that the court order the foreclosure proceedings to be properly completed and the rights of all parties arising subsequent to the decree of foreclosure be adjusted and determined.

Source: Laws 1949, c. 240, § 2, p. 652.

77-1940 Tax foreclosure proceedings; defects subsequent to decree of foreclosure; notice of hearing; service.

Notice of hearing upon the application shall be given to the plaintiff in the foreclosure proceedings, the state and all governmental subdivisions having any interest in the taxes found due by the decree, and all other persons who have since the entry of the decree apparently acquired any interest of record in the property. Such notice shall be served upon the parties in the same manner as a summons is served at the beginning of a civil action. Service of process may be made upon the State of Nebraska by service upon the Attorney General. Such parties shall have twenty days from the date of service of such notice in which to answer said application.

Source: Laws 1949, c. 240, § 3, p. 653.

77-1941 Tax foreclosure proceedings; defects subsequent to decree of foreclosure; hearing; determination.

Upon hearing the application, the court shall enter a supplemental decree directing that the tax foreclosure proceeding be properly completed, and determining the rights of all parties that have arisen subsequent to the entry of the decree of foreclosure. The rights adjudicated in the original tax foreclosure proceeding shall be respected and observed, but such adjudication shall not prevent any party from establishing superior rights that may have arisen since the entry of the decree through payment of subsequent taxes and special assessments and the placing of improvements on the premises in good faith. In the event any municipal corporation or governmental subdivision shall have received any consideration as the result of the proceedings which were defective, invalid, or void, it shall be required to account for the same, and judgment may be entered against it for the amount thereof and applied as a credit on any amount due it under the original decree of foreclosure.

Source: Laws 1949, c. 240, § 4, p. 653.

Applicant is required to pay taxes or place improvements on premises in good faith. *City of Wayne v. Adams*, 156 Neb. 297, 56 N.W.2d 117 (1952).

ARTICLE 20**INHERITANCE TAX****Cross References**

Interest of surviving spouse, determination prior to payment of tax, see section 30-103.01.

Section

- 77-2001. Inheritance tax; property taxable; transfer by will or inheritance; exception.
- 77-2002. Inheritance tax; property taxable; transfer in contemplation of death.
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INHERITANCE TAX

- Section
- 77-2008.01. Inheritance tax; estates dependent upon contingencies or conditions; rate of tax; payment; investment of proceeds; redetermination of tax.
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- 77-2012. Inheritance tax; legacy charge upon real property; duty of heir or devisee to deduct tax.
- 77-2013. Inheritance tax; power of sale to raise funds to pay tax.
- 77-2014. Inheritance tax; payment by personal representative or trustee; where paid; receipt for tax; proper county, defined; tax apportioned among counties.
- 77-2015. Repealed. Laws 1959, c. 374, § 1.
- 77-2016. Repealed. Laws 1976, LB 585, § 29.
- 77-2017. Inheritance tax; transfer of stocks or loans by foreign executor or administrator; tax; how paid.
- 77-2018. Inheritance tax; erroneous payment refunded; limitation; procedure.
- 77-2018.01. Inheritance tax; proceedings for determination.
- 77-2018.02. Inheritance tax; procedure for determination in absence of probate of estate; petition; notice; waiver of notice; hearing.
- 77-2018.03. Inheritance tax; determination; notice served upon county attorney; duty of county attorney.
- 77-2018.04. Inheritance tax; proceedings for determination of; deductions allowed; enumerated.
- 77-2018.05. Inheritance tax; court may make final determination of; how determined.
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- 77-2019. Inheritance tax; appraisal; appointment of appraisers.
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- 77-2022. Inheritance tax; appraisal; determination and assessment of tax.
- 77-2023. Inheritance tax; appeal; procedure.
- 77-2024. Inheritance tax; appraisal; costs; fees; charged to estate of decedent.
- 77-2025. Inheritance tax; estate not subject to tax; determination.
- 77-2026. Inheritance tax; appraiser; extra fee or reward; penalty.
- 77-2027. Inheritance tax; what court has jurisdiction; transfer of proceedings.
- 77-2028. Inheritance tax; nonpayment; hearing; judgment; levy and execution.
- 77-2029. Inheritance tax; nonpayment; notification of county attorney; institution of proceeding to collect.
- 77-2030. Inheritance tax; annual statements.
- 77-2031. Repealed. Laws 1953, c. 283, § 1.
- 77-2032. Inheritance tax; how credited.
- 77-2033. Repealed. Laws 1982, LB 480, § 9.
- 77-2034. Repealed. Laws 1982, LB 480, § 9.
- 77-2035. Repealed. Laws 1982, LB 480, § 9.
- 77-2036. Repealed. Laws 1982, LB 480, § 9.
- 77-2037. Inheritance tax; lien; expiration.
- 77-2038. Inheritance tax; decedent's will may direct apportionment of taxes; inter vivos instrument.
- 77-2039. Inheritance, estate, or generation-skipping transfer tax lien; court may discharge property subject to tax; terms and conditions; application for release or discharge; show cause.

Section
77-2040.

Inheritance tax; estate tax; decedent dying after December 31, 1982; provisions applicable; changes applicable January 1, 2008.

77-2001 Inheritance tax; property taxable; transfer by will or inheritance; exception.

All property, including proceeds of life insurance receivable by the executor or administrator to the extent of the amount receivable by the executor or administrator as insurance under policies upon the life of the decedent, which shall pass by will or by the intestate laws of this state from any person who, at the time of death was a resident of this state, or, if the decedent was not a resident, any part of the property within this state, except property exempted by the provisions of Chapter 77, article 20, shall be subject to tax at the rates prescribed by sections 77-2004 to 77-2006.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2001; Laws 1945, c. 198, § 3, p. 604; Laws 1951, c. 267, § 1, p. 898; Laws 1982, LB 480, § 1.

Inheritance taxes are imposed on each beneficiary upon the value of property received by him while estate taxes are upon the right to transmit property and are based upon the whole estate transmitted. *Nielsen v. Sidner*, 191 Neb. 324, 215 N.W.2d 86 (1974).

To authorize imposition of tax, decedent must have interest in property at time of his death. *County of Holt v. Gallagher*, 156 Neb. 457, 56 N.W.2d 621 (1953).

A foreign corporation organized exclusively for charitable purposes, although it has domesticated in this state, is not exempt from payment of inheritance tax. *In re Estate of Sautter*, 142 Neb. 42, 5 N.W.2d 263 (1942).

Property escheating to state is not subject to inheritance tax. *In re Estate of O'Connor*, 126 Neb. 182, 252 N.W. 826 (1934).

Where property passes by will, it is subject to an inheritance tax even though the devise or bequest was made with the intention of carrying out a previous contract. *Krug v. Douglas County*, 114 Neb. 517, 208 N.W. 665 (1926).

Legacy to religious institution and to trustees of state cemetery is subject to inheritance tax. *In re Rudge's Estate*, 114 Neb. 335, 207 N.W. 520 (1926).

Legislature has power to provide for taxation upon inheritance. *In re Sanford*, 90 Neb. 410, 133 N.W. 870 (1911); *State ex rel. Slabaugh v. Vinsonhaler*, 74 Neb. 675, 105 N.W. 472 (1905).

Right to succeed to title to mortgage on Nebraska land, payable to nonresident of state, is not subject to tax. *Dodge County v. Burns*, 89 Neb. 534, 131 N.W. 922 (1911).

Where stocks were held by foreign trustee in trust for resident of this state, property was subject to inheritance tax. *Douglas County v. Kountze*, 84 Neb. 506, 121 N.W. 593 (1909).

Inheritance tax is not a property tax but a tax upon the right of succession. *State ex rel. Slabaugh v. Vinsonhaler*, 74 Neb. 675, 105 N.W. 472 (1905).

77-2002 Inheritance tax; property taxable; transfer in contemplation of death.

(1) Any interest in property whether created or acquired prior or subsequent to August 27, 1951, shall be subject to tax at the rates prescribed by sections 77-2004 to 77-2006, except property exempted by the provisions of Chapter 77, article 20, if it shall be transferred by deed, grant, sale, or gift, in trust or otherwise, and: (a) Made in contemplation of the death of the grantor; (b) intended to take effect in possession or enjoyment, after his or her death; (c) by reason of death, any person shall become beneficially entitled in possession or expectation to any property or income thereof; or (d) held as joint owners or joint tenants by the decedent and any other person in their joint names, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or property, except that when such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and

full consideration in money or property, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person or, when any property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint owners or joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint owners or joint tenants.

(2) For the purpose of subsection (1) of this section, if the decedent, within a period of three years ending with the date of his or her death, except in the case of a bona fide sale for an adequate and full consideration for money or money's worth, transferred an interest in property for which a federal gift tax return is required to be filed under the provisions of the Internal Revenue Code, such transfer shall be deemed to have been made in contemplation of death within the meaning of subsection (1) of this section; no such transfer made before such three-year period shall be treated as having been made in contemplation of death in any event.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2002; Laws 1945, c. 198, § 4, p. 604; Laws 1947, c. 263, § 1, p. 853; Laws 1951, c. 267, § 2, p. 899; Laws 1953, c. 282, § 1, p. 913; Laws 1955, c. 299, § 1, p. 935; Laws 1976, LB 585, § 2; Laws 1982, LB 480, § 2; Laws 1995, LB 574, § 66.

Costs and attorney's fees in litigation independent of the estate are not deductible in inheritance tax proceedings. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

Contract subscribing money to college endowment and for scholarship payable on subscriber's death was donative and money thereby transferred therefor was taxable. In re Wheeler's Estate, 119 Neb. 344, 228 N.W. 861 (1930).

Lands, conveyed by deed in which grantor retained life estate and land conveyed by absolute deeds delivered after grantor's death not intended to take effect previously in possession or enjoyment, may be subject to inheritance tax. In re Estate of Bronzynski, 116 Neb. 196, 216 N.W. 558 (1927).

77-2003 Inheritance tax; to whom paid; who liable; lien; exception.

The tax imposed upon transfers under sections 77-2001 and 77-2002 shall be paid to the treasurer of the proper county and all heirs, legatees and devisees, personal representatives, other recipients of property subject to tax, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. This tax shall be a lien on the real property subject thereto until paid or otherwise terminated pursuant to section 77-2037, except that no interest in any property passing from the decedent to the decedent's surviving spouse shall be subject to the lien.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2003; Laws 1976, LB 585, § 3; Laws 1978, LB 650, § 28; Laws 1982, LB 480, § 3.

When will contest was settled between beneficiaries and heirs at law, and stipulation for a decree of distribution in accord with settlement has been made, and there is no intent thereby to evade or reduce the inheritance tax, the tax hereunder should be computed upon portion received by each beneficiary under the decree. In re Estate of Kierstead, 122 Neb. 694, 241 N.W. 274 (1932).

Agreement between devisees to satisfy claim against estate in favor of one of them by conveyance of portion of such real estate to claimant will not exempt it. In re Estate of Sanford, 90 Neb. 410, 133 N.W. 870 (1911).

An inheritance tax is imposed on a beneficiary's right to receive a portion of the property of the decedent and is a tax of

the beneficiary and not of the decedent. In re Estate of Smatlan, 1 Neb. App. 295, 501 N.W.2d 718 (1992).

Where decedent's will directed that all estate and inheritance taxes should be paid from body of estate and not deducted from devises or legacies but residue was not sufficient to pay federal estate taxes and state death taxes, Nebraska apportionment statute controls and bequest to charity should not be reduced by

payment thereof. First Nat. Bank of Omaha v. United States, 490 F.2d 1054 (8th Cir. 1974).

Where all of estate except devises and legacies is not sufficient to pay tax burden, decedent's bequests to charity should not be reduced by payment of federal estate and state death taxes. First Nat. Bank of Omaha v. United States, 340 F.Supp. 232 (D. Neb. 1972).

77-2004 Inheritance tax; rate; transfer to immediate relatives; exemption.

In the case of a father, mother, grandfather, grandmother, brother, sister, son, daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant, any lineal descendant legally adopted as such in conformity with the laws of the state where adopted, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such persons, the rate of tax shall be one percent of the clear market value of the property in excess of forty thousand dollars received by each person. Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than forty thousand dollars shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance shall not be subject to tax. Interests passing to the surviving spouse by will, in the manner set forth in section 77-2002, or in any other manner shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2004; Laws 1951, c. 267, § 3, p. 900; Laws 1953, c. 282, § 2, p. 914; Laws 1957, c. 337, § 1, p. 1174; Laws 1965, c. 497, § 1, p. 1585; Laws 1975, LB 481, § 31; Laws 1976, LB 585, § 4; Laws 1977, LB 456, § 1; Laws 1982, LB 480, § 4; Laws 1988, LB 845, § 1; Laws 1997, LB 16, § 1; Laws 2007, LB502, § 1.

- 1. Family member
- 2. Tax rate

1. Family member

The language "any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent" is not limited in application to blood relatives, and includes parties to whom the decedent stood "in loco parentis". In determining if the requisite acknowledged parental relationship exists for purposes of this section, the following factors should guide the trial court: (1) the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as parent. In re Estate of Ackerman, 250 Neb. 665, 550 N.W.2d 678 (1996).

For the purpose of determining whether a devisee under a will is a "person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent" under this section, it is not necessary that there be a written acknowledgment. In re Estate of Stanton, 245 Neb. 942, 516 N.W.2d 586 (1994).

Section 77-2005.01 expands the operation of this section and section 77-2005, extending the same tax treatment to the relatives of a former spouse to whom the deceased person was married at the time of the spouse's death, but in no sense

conflicts with either of the other two statutes. In re Estate of Morse, 241 Neb. 40, 486 N.W.2d 195 (1992).

Physical absence from home of testatrix, while attending school, did not of itself prevent stepdaughter from being member of household of testatrix for inheritance tax purposes. Wondra v. Platte Valley State Bank & Trust Co., 194 Neb. 41, 230 N.W.2d 182 (1975).

Persons standing in loco parentis for ten years prior to death are within provisions of this section even though they are not relatives of the blood. In re Estate of Dowell, 149 Neb. 599, 31 N.W.2d 745 (1948).

Persons standing in loco parentis are within the intent and scope of this section. The fact that a parent-child relationship may start when both parties are adults, or may begin when the child is a minor and continue after that child reaches adulthood, is not a bar to a claim brought under this section. While a child's residence is necessarily a factor to be considered in determining whether a parent-child relationship exists for purposes of this section, it is not the only factor. In re Estate of Quinn, 1 Neb. App. 1025, 510 N.W.2d 488 (1993).

2. Tax rate

An inheritance by the widower of a daughter is not taxable at the rate prescribed by this section. Todd v. County of Box Butte, 169 Neb. 311, 99 N.W.2d 245 (1959).

For purpose of inheritance tax, property should be valued at amount of money which it would produce if offered and sold for cash at time of death of decedent. In re Woolsey's Estate, 109 Neb. 138, 190 N.W. 215 (1922).

Law abolishing estates of dower and curtesy gives surviving spouse enlarged estate of same kind and nature as that of dower

or curtesy, and, like dower, is not subject to inheritance tax. In re Estate of Strahan v. Wayne County, 93 Neb. 828, 142 N.W. 678 (1913).

Where widow elects to take under the will, her interest, to extent of statutory interest, is exempt from tax. In re Estate of Sanford, 91 Neb. 752, 137 N.W. 864 (1912).

77-2005 Inheritance tax; rate; transfer to remote relatives.

In the case of an uncle, aunt, niece, or nephew related to the deceased by blood or legal adoption, or other lineal descendant of the same, or the spouse or surviving spouse of any of such persons, the rate of tax shall be thirteen percent of the clear market value of the property received by each person in excess of fifteen thousand dollars. If the clear market value of the beneficial interest is fifteen thousand dollars or less, it shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2005; Laws 1947, c. 262, § 1, p. 851; Laws 1951, c. 267, § 4, p. 900; Laws 1959, c. 353, § 5, p. 1245; Laws 1965, c. 497, § 2, p. 1586; Laws 1976, LB 585, § 5; Laws 2007, LB502, § 2.

Section 77-2005.01 expands the operation of section 77-2004 and this section, extending the same tax treatment to the relatives of a former spouse to whom the deceased person was married at the time of the spouse's death, but in no sense conflicts with either of the other two statutes. In re Estate of Morse, 241 Neb. 40, 486 N.W.2d 195 (1992).

The Legislature may properly distinguish inheritance tax laws in favor of blood relations, since such distinction is neither

arbitrary nor unconstitutionally ambiguous. Ralston v. County of Dawson, 200 Neb. 678, 264 N.W.2d 868 (1978).

A more burdensome tax is imposed in the case of named remote relatives by blood or legal adoption. Todd v. County of Box Butte, 169 Neb. 311, 99 N.W.2d 245 (1959).

77-2005.01 Relatives of decedent; computation of inheritance tax.

(1) For the purposes of sections 77-2004 and 77-2005, relatives of the decedent shall include relatives of a former spouse to whom the decedent was married at the time of the death of the former spouse and relatives of a spouse to whom the decedent was married at the time of his or her death.

(2) The computation of any tax due pursuant to sections 77-2004, 77-2005, and 77-2006 shall be made without regard to Nebraska inheritance tax apportionment.

Source: Laws 1976, LB 585, § 6; Laws 1977, LB 456, § 2.

This section expands the operation of sections 77-2004 and 77-2005, extending the same tax treatment to the relatives of a former spouse to whom the deceased person was married at the

time of the spouse's death, but in no sense conflicts with either of the other two statutes. In re Estate of Morse, 241 Neb. 40, 486 N.W.2d 195 (1992).

77-2006 Inheritance tax; rate; other transfers.

In all other cases the rate of tax shall be eighteen percent on the clear market value of the beneficial interests in excess of ten thousand dollars. Such rates of tax shall be applied to the clear market value of the beneficial interests in excess of ten thousand dollars received by each person. If the clear market value of the beneficial interest is ten thousand dollars or less, it shall not be subject to any tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201;

Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2006; Laws 1947, c. 262, § 2, p. 851; Laws 1965, c. 497, § 3, p. 1586; Laws 1988, LB 845, § 2; Laws 2007, LB502, § 3.

The Legislature may properly distinguish inheritance tax laws in favor of blood relations, since such distinction is neither arbitrary nor unconstitutionally ambiguous. *Ralston v. County of Dawson*, 200 Neb. 678, 264 N.W.2d 868 (1978).

Physical absence from home of testatrix, while attending school, did not of itself prevent stepdaughter from being member of household of testatrix for inheritance tax purposes. *Wondra v. Platte Valley State Bank & Trust Co.*, 194 Neb. 41, 230 N.W.2d 182 (1975).

An inheritance by the widower of a daughter is taxable at the rate prescribed by this section. *Todd v. County of Box Butte*, 169 Neb. 311, 99 N.W.2d 245 (1959).

Tax is imposed upon the clear market value of the beneficial interest taken by the taxpayer. *County of Keith v. Triska*, 168 Neb. 1, 95 N.W.2d 350 (1959).

77-2007 Inheritance tax; property exempt.

If any estate includes payments under an employee benefit plan, such payments shall not be subject to Nebraska inheritance taxation to the extent that (1) the benefit is life insurance otherwise excluded from taxation pursuant to section 77-2001, or (2) the benefit is not subject to federal estate taxation pursuant to section 2039 of the Internal Revenue Code.

Source: Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S.1943, § 77-2007; Laws 1947, c. 262, § 3, p. 852; Laws 1949, c. 241, § 1, p. 654; Laws 1951, c. 268, § 1, p. 902; Laws 1971, LB 981, § 1; Laws 1976, LB 585, § 7.

A bequest in the nature of a trust to an association in this state for expenditure by it within this state for exclusively charitable purposes is exempt from inheritance taxes. In re Estate of Halstead, 154 Neb. 31, 46 N.W.2d 779 (1951).

To be exempt from inheritance tax, legacy must come within the strict letter of the statute. In re Rudge's Estate, 114 Neb. 335, 207 N.W. 520 (1926).

77-2007.01 Uniform Reciprocal Transfer Tax Act; inheritance tax; when payable.

The tax imposed by Chapter 77, article 20, in respect of personal property (except tangible personal property having an actual situs in this state) shall not be payable (1) if the decedent is a resident of a state or territory of the United States which at the time of the transfer did not impose a transfer tax or death tax of any character in respect of personal property of residents of this state (except tangible personal property having an actual situs in such state or territory), or (2) if the laws of the state or territory of residence of the decedent at the time of the transfer contained a reciprocal provision under which nonresidents were exempted from transfer taxes or death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein) provided the state or territory of residence of such nonresidents allowed a similar exemption to residents of the state or territory of residence of such decedent. For the purposes of this section the District of Columbia, Puerto Rico, and the Philippine Islands shall be considered territories of the United States.

Source: Laws 1951, c. 254, § 1, p. 875.

Nebraska's version of the Uniform Reciprocal Transfer Tax Act does not limit the exemption to cases in which the decedent's resident state has imposed a tax on the transfer of the

property exempted. In re Estate of Holt, 246 Neb. 50, 516 N.W.2d 608 (1994).

77-2007.02 Uniform Reciprocal Transfer Tax Act; construction; citation.

Sections 77-2007.01 and 77-2007.02 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states

which enact them. Sections 77-2007.01 and 77-2007.02 shall be known as the Uniform Reciprocal Transfer Tax Act.

Source: Laws 1951, c. 254, § 2, p. 876.

77-2007.03 Inheritance tax; property transferred to United States, state, or governmental subdivision; exempt.

Property transferred to either (1) the United States, or any of its departments, instrumentalities, or agencies, or (2) this state, or any governmental subdivision, department, agency, or instrumentality thereof, any municipal corporation or body politic created by or under the laws of Nebraska, or any agency, institution, foundation, or fund administered or operated by any of the same shall be exempt from any inheritance tax imposed by sections 77-2001 to 77-2006, and any amendments thereto.

Source: Laws 1949, c. 241, § 2, p. 655.

77-2007.04 Inheritance tax; property; religious, charitable, or educational purposes; exempt.

All bequests, legacies, devises, or gifts to or for the use of any corporation, organization, association, society, institution, or foundation, organized and operating exclusively for religious, charitable, public, scientific, or educational purposes, no part of which is owned or used for financial gain or profit, either by the owner or user, or inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, or educational purposes shall not be subject to any tax under the provisions of sections 77-2001 to 77-2006, and any amendments thereto, if any of the following conditions are present:

(1) Such corporation, organization, association, society, institution, or foundation is organized under the laws of this state or of the United States, or

(2) The property transferred is limited for use within this state, or

(3) In the event that the corporation, organization, association, society, institution, or foundation is organized or existing under the laws of a territory or another state of the United States or of a foreign state or country, at the date of the decedent's death either of the following occurred:

(a) The territory, other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar corporation, organization, association, society, institution, or foundation, organized or existing under the laws of this state, or

(b) The laws of the territory, other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar corporation, organization, association, society, institution, or foundation, organized or existing under the laws of another territory or state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other territory or state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar corporation, organization, association, society, institution, or foundation, organized or existing under the laws of another territory or state of the United States or foreign state or country.

Source: Laws 1949, c. 241, § 3, p. 655.

Subsection (3) of this section is not applicable if the transfer in question falls into only the second category of transfers set out in the opening paragraph of this section, i.e., transfers "to a trustee or trustees exclusively for . . . religious, charitable, or educational purposes." In re Estate of Breslow, 266 Neb. 953, 670 N.W.2d 797 (2003).

Where decedent's will directed that all estate and inheritance taxes should be paid from body of estate and not deducted from devises or legacies but residue was not sufficient to pay federal

estate taxes and state death taxes, Nebraska apportionment statute controls and bequest to charity should not be reduced by payment thereof. First Nat. Bank of Omaha v. United States, 490 F.2d 1054 (8th Cir. 1974).

Where all of estate except devises and legacies is not sufficient to pay tax burden, decedent's bequests to charity should not be reduced by payment of federal estate and state death taxes. First Nat. Bank of Omaha v. United States, 340 F.Supp. 232 (D. Neb. 1972).

77-2008 Inheritance tax; estates for life and remainder appraised and apportioned; rules and regulations; furnish to county judge.

Bequests, devises, or transfers of property or any interest therein in trust or otherwise for the life of the legatee, devisee, or transferee, or for a term, and bequests, devises, and transfers of vested or contingent remainder interests in property shall be subject to the provisions of sections 77-2001 to 77-2007.04. Such property or interests therein shall be appraised at times and in the manner provided in sections 77-2018.01 to 77-2025 at what was the fair market value thereof at the time of the death of the decedent. The portion thereof allocable to the temporary estate and the portion thereof allocable to the vested remainder estate shall be computed in accordance with such regulations with respect thereto as the state Tax Commissioner, from time to time, shall promulgate and adopt, and the Tax Commissioner is hereby directed to promulgate and adopt, from time to time, and to furnish to each county judge regulations and tables with respect thereto, based upon sound actuarial principles and prevailing interest rates.

Source: Laws 1901, c. 54, § 2, p. 415; R.S.1913, § 6623; C.S.1922, § 6154; C.S.1929, § 77-2202; R.S.1943, § 77-2008; Laws 1953, c. 282, § 3, p. 915.

A testator may shift the burden of payment of inheritance taxes as between a life estate and remainder interests. Stuckey v. Rosenberg, 169 Neb. 557, 100 N.W.2d 526 (1960).

77-2008.01 Inheritance tax; estates dependent upon contingencies or conditions; rate of tax; payment; investment of proceeds; redetermination of tax.

When property is devised, bequeathed, or otherwise transferred or limited in trust or otherwise in such a manner as to be subject to the tax prescribed in sections 77-2001 to 77-2008, and the rights, interests, or estates of the transferees, legatees, devisees, or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, an inheritance tax shall be imposed upon such transfer at the highest rate which, on the happening of any of the contingencies or conditions, would be possible under the provisions of Chapter 77, article 20, or to any person, corporation, or institution payable at the time prescribed in section 77-2010; *Provided*, that on the happening of any contingency or condition whereby the said property, or any part thereof, is transferred to any person, corporation, or institution, exempt from taxation under the provisions of Chapter 77, article 20, or to any person, corporation, or institution as to whom or which the rate of tax is less than the rate imposed and paid, such person, corporation, or institution shall be entitled to a redetermination of the tax and to a return by the county treasurer or county treasurers of so much of the tax imposed and paid as equals the difference between the amount imposed and paid and the amount which such person, corporation, or institution should pay under Chapter 77, article 20; *and provided further*, that where such tax imposed

and paid is held by the county treasurer or county treasurers, as provided in this section, the county court having jurisdiction is authorized and empowered to enter an order in the estate and forward a copy thereof to the county treasurer or county treasurers, directing said county treasurer or county treasurers to invest and reinvest said funds so held in United States Government bonds, United States treasury certificates, United States treasury notes, or other direct obligations of the United States Government, and interest at the rate drawn by said bonds, certificates, notes or other government obligations, as herein provided, shall be credited to the particular inheritance tax account so held. Upon redetermination of the inheritance tax, the tax refunded, if any, together with the interest received on the sum refunded, shall be paid by the county treasurer or county treasurers in a lump sum to the estate of the deceased person paying said tax, or to the person or persons found entitled thereto by the county court, and the balance of said tax, together with the interest received thereon, shall be credited by the county treasurer or county treasurers to the general inheritance tax fund of the county or counties. Where an estate for life or for a term can be divested by the act or omission of the legatee, devisee, transferee, or beneficiary it shall be taxed as if there were no possibility of such divesting.

Source: Laws 1953, c. 282, § 4, p. 915; Laws 1961, c. 389, § 1, p. 1185.

77-2008.02 Inheritance tax; estates for life and remainder; tax payable from corpus of estate without apportionment.

In cases where a trust is created or other provisions made whereby any person is given an interest in income or an estate for years, or for life, or other temporary or contingent interest in any property or fund, the tax on both such temporary or contingent interest and on the remainder thereafter shall be charged against and be paid out of the corpus of such property or fund without apportionment between remainders and temporary or contingent estates, and any refund of taxes paid out of corpus shall again become a part of the corpus of such property or fund.

Source: Laws 1953, c. 282, § 5, p. 916.

Under terms of will, inheritance tax on devise of life estate was payable out of residue. *Stuckey v. Rosenberg*, 169 Neb. 557, 100 N.W.2d 526 (1960).

77-2008.03 Inheritance tax; power of appointment; method and manner of taxing.

Whenever any person or corporation shall be given a power of appointment over any property by a transfer which is subject to the provisions of sections 77-2001 to 77-2008.02, whether such power is created before or after June 13, 1955, such power of appointment shall be deemed a transfer of the interest in the property which is subject to such power from the donor to the donee of such power at the date of the donor's death; *Provided*, if at the date of the donor's death, the power of appointment is limited, in whole or in part, to be exercised in favor of one or more specific beneficiaries or classes of beneficiaries, then, to the extent it is so limited, such power of appointment shall not be deemed a transfer from the donor to the donee of the power, but shall be deemed a transfer of the interest in the property which is subject to the power from the donor of the power to the specific beneficiary or class of beneficiaries, as of the date of the donor's death.

Source: Laws 1955, c. 301, § 1, p. 939.

In the special case of a general power of appointment where the donor and donee are also husband and wife, such transfer is not subject to inheritance tax. In re Estate of Nelson, 253 Neb. 414, 571 N.W.2d 269 (1997).

Payments made after death of a life tenant on contract for sale of real estate under power granted her under husband's will are not part of her estate. McDonald v. Shaughnessy, 194 Neb. 221, 231 N.W.2d 332 (1975).

77-2008.04 Inheritance tax; power of appointment; exercise or nonexercise; not subject to tax.

The exercise or failure to exercise any power of appointment by the donee thereof, shall not be deemed a transfer which is subject to the provisions of sections 77-2001 to 77-2008.02.

Source: Laws 1955, c. 301, § 2, p. 940.

In the case of a general power of appointment, interest in the property transfers from the donor to the donee at the time of the donor's death whether or not the power itself is exercised. In the special case of a general power of appointment where the

donor and donee are also husband and wife, such transfer is not subject to inheritance tax. In re Estate of Nelson, 253 Neb. 414, 571 N.W.2d 269 (1997).

77-2009 Inheritance tax; delay in coming into possession of property; bond for tax; exception.

(1) When property is devised, bequeathed, or otherwise transferred or limited, in trust or otherwise, in such a manner as to be subject to the tax prescribed in sections 77-2001 to 77-2008.02, and the rights, interest, or estates of the transferees, legatees, devisees, or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged or when the rights of the transferees, legatees, devisees, or beneficiaries to possession or enjoyment of said property are subject to an intervening life estate or temporary estate, then and in that event any person or persons interested in such property, by giving a bond as provided for in subsection (2) of this section, with surety or sureties approved by the county judge, may elect not to pay the tax resulting from the inheritance or transfer of the uncertain, contingent, or postponed interest until the contingency has occurred, the uncertainty has been resolved, or the person against whom the tax is assessed shall have come into actual possession or enjoyment of the property.

(2) The bond referred to in subsection (1) of this section shall be filed in the county court where the estate proceedings are pending and shall bind the surety or sureties on said bond to the county where the estate proceedings are pending and to such other counties as the county judge may direct in an amount to be determined by the county judge, but not to exceed in any event two times the amount of the estimated tax. Such bond shall be conditioned upon the payment of the tax with interest by the person or persons primarily liable therefor when the contingency has occurred, the uncertainty has been resolved, or the person or persons against whom the tax has been assessed shall have come into the possession or enjoyment of said property.

(3) It is expressly provided that no bond, referred to in subsections (1) and (2) of this section, shall be required on account of the tax resulting from the inheritance or transfer of real property, which is subject to a lien for the tax involved, unless it is the desire of the owner or other person interested in said property to release any such lien against said real estate and in that event, by furnishing a bond as described in subsection (2) of this section, the lien against the real estate shall cease and said property may be transferred free from any lien arising from the inheritance tax. Interest on any such uncertain, contingent, or postponed interest in property shall be charged only at the rate used in

valuing such uncertain, contingent, or postponed interest in property pursuant to regulations issued under section 77-2008.

Source: Laws 1901, c. 54, § 2, p. 415; R.S.1913, § 6623; C.S.1922, § 6154; C.S.1929, § 77-2202; R.S.1943, § 77-2009; Laws 1955, c. 300, § 1, p. 937.

77-2010 Inheritance tax; when due; interest; bond; failure to file; penalty.

All taxes imposed by sections 77-2001 to 77-2037, unless otherwise herein provided for, shall be due and payable twelve months after the date of the death of the decedent, and interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be charged and collected on any unpaid taxes due from the date the same became payable, and in all cases in which the personal representatives or trustees do not pay such tax within twelve months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 77-2009 for the payment of the tax together with interest. In addition, for failure to file an appropriate proceeding for the determination of the tax within twelve months after the date of the death of the decedent there shall be added to the amount due a penalty of five percent per month or fraction thereof, up to a maximum penalty of twenty-five percent of the unpaid taxes due. The filing of a petition or an application for probate proceedings or the filing of an application under section 77-2018.07 and payment of the tentative tax payment within twelve months of the decedent's death shall be considered an appropriate proceeding for the determination to avoid a penalty and to stop the accrual of a penalty. In addition, the county court may abate this penalty if good cause is shown for failure to file.

Source: Laws 1901, c. 54, § 3, p. 416; Laws 1911, c. 107, § 1, p. 386; R.S.1913, § 6624; C.S.1922, § 6155; C.S.1929, § 77-2203; R.S. 1943, § 77-2010; Laws 1951, c. 267, § 5, p. 901; Laws 1976, LB 585, § 10; Laws 1978, LB 650, § 29; Laws 1981, LB 167, § 48; Laws 2007, LB502, § 4; Laws 2009, LB120, § 1.

Delay caused by litigation does not excuse county judge from assessing tax as of date of death. *County of Keith v. Triska*, 168 Neb. 1, 95 N.W.2d 350 (1959).

Delay caused by litigation does not furnish basis for refusal to charge interest. *State ex rel. Nebraska State Bar Assn. v. Richards*, 165 Neb. 80, 84 N.W.2d 136 (1957).

Interest is required on inheritance tax unless paid within one year, notwithstanding pendency of appeal. *In re Fort's Estate*, 117 Neb. 854, 223 N.W. 633 (1929).

Where legatees neglect to pay tax within prescribed time, interest runs from date of death. *In re Estate of Sanford*, 90 Neb. 410, 133 N.W. 870 (1911).

77-2011 Inheritance tax; distribution of property; duty of personal representative or trustee to deduct or collect tax.

Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon.

Source: Laws 1901, c. 54, § 4, p. 416; R.S.1913, § 6625; C.S.1922, § 6156; C.S.1929, § 77-2204; R.S.1943, § 77-2011.

Executors and administrators are required to deduct the inheritance tax from any property distributed or to collect the tax

from the one who receives it. *Nielsen v. Sidner*, 191 Neb. 324, 215 N.W.2d 86 (1974).

Inheritance tax is a direct charge against the res. In re Estate of Sautter, 142 Neb. 42, 5 N.W.2d 263 (1942).

77-2012 Inheritance tax; legacy charge upon real property; duty of heir or devisee to deduct tax.

Whenever any legacy shall be charged upon or payable out of real estate, the heir or devisee before paying the same shall deduct the tax therefrom and pay the same to the executor, administrator or trustee. The tax shall remain a charge upon the real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of the legacies might be enforced. If, however, the legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but, if it be not in money, he shall make application to the court having jurisdiction of his account to make apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Source: Laws 1901, c. 54, § 4, p. 416; R.S.1913, § 6625; C.S.1922, § 6156; C.S.1929, § 77-2204; R.S.1943, § 77-2012.

77-2013 Inheritance tax; power of sale to raise funds to pay tax.

All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay the tax, in the same manner as they may be enabled to do by law for the payment of debts of their testators and intestates, and the amount of the tax shall be paid as directed by section 77-2014.

Source: Laws 1901, c. 54, § 5, p. 417; R.S.1913, § 6626; C.S.1922, § 6157; C.S.1929, § 77-2205; R.S.1943, § 77-2013.

Inheritance tax is a direct charge against the res. In re Estate of Sautter, 142 Neb. 42, 5 N.W.2d 263 (1942).

77-2014 Inheritance tax; payment by personal representative or trustee; where paid; receipt for tax; proper county, defined; tax apportioned among counties.

(1) Every sum of money retained by an executor, administrator, or trustee, or paid into his or her hands for any tax on any property, shall be paid by him or her within thirty days thereafter to the county treasurer of the proper county, and the county treasurer shall give, and every executor, administrator, or trustee shall take a receipt from him or her of such payments.

(2)(a) For purposes of this section, proper county shall mean the county of the decedent's residence, except (i) when the decedent had an interest in real property located in a county other than his or her residence at the time of the death of the decedent, the words proper county shall mean the county in which the real property is situated, or (ii) when the decedent had an interest in personal property subject to being listed and assessed for personal property taxation at the time of the death of the decedent, the words proper county shall mean the county where the property is listed and assessed.

(b) When the decedent is a nonresident, proper county shall mean the county provided in subdivisions (2)(a)(i) and (2)(a)(ii) of this section and, as to any other property which may be subject to Nebraska inheritance taxation, the county where such property is located.

(3) The total inheritance tax assessed against the estate shall be apportioned among the counties in the ratio that the value of the gross property subject to tax and not subject to tax under sections 77-2004, 77-2006, and 77-2007.04 located in each county bears to the gross value of all property subject to tax and not subject to tax under sections 77-2004, 77-2006, and 77-2007.04.

(4) Questions that may arise as to the proper place to list and assess such personal property for the purposes of sections 77-2001 to 77-2037 shall be determined pursuant to procedure set forth in sections 77-2018.01 to 77-2027.

Source: Laws 1901, c. 54, § 6, p. 417; Laws 1905, c. 117, § 1, p. 525; R.S.1913, § 6627; C.S.1922, § 6158; C.S.1929, § 77-2206; R.S. 1943, § 77-2014; Laws 1953, c. 282, § 6, p. 916; Laws 1976, LB 585, § 13; Laws 2007, LB364, § 1.

Inheritance tax is a direct charge against the res. In re Estate of Sautter, 142 Neb. 42, 5 N.W.2d 263 (1942).

77-2015 Repealed. Laws 1959, c. 374, § 1.

77-2016 Repealed. Laws 1976, LB 585, § 29.

77-2017 Inheritance tax; transfer of stocks or loans by foreign executor or administrator; tax; how paid.

Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this state standing in the name of the decedent or in trust for a decedent which shall be liable to inheritance tax, the tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof. If not paid by the foreign executor or administrator, the corporation making such transfer shall become liable to pay the tax where the corporation has knowledge before the transfer that the stocks or loans are liable for such tax.

Source: Laws 1901, c. 54, § 9, p. 418; R.S.1913, § 6630; C.S.1922, § 6161; C.S.1929, § 77-2209; Laws 1931, c. 136, § 1, p. 380; C.S.Supp.,1941, § 77-2209; R.S.1943, § 77-2017; Laws 1945, c. 198, § 5, p. 605.

77-2018 Inheritance tax; erroneous payment refunded; limitation; procedure.

When any amount of inheritance tax shall have been paid erroneously to the county treasurer, he shall, upon a finding by the court and an order rendered to him of the erroneous payment, refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid. All applications for the repayment of the tax shall be made to the county court within two years of the date of payment. The county court shall hear all evidence relevant to its finding whether or not any amount of inheritance tax has been erroneously paid and if any refund of such payment is due. The court shall notify the county treasurer of its final determination.

Source: Laws 1901, c. 54, § 10, p. 418; Laws 1905, c. 117, § 1, p. 525; R.S.1913, § 6631; C.S.1922, § 6162; C.S.1929, § 77-2210; R.S. 1943, § 77-2018; Laws 1976, LB 585, § 14.

To avoid payment of interest on tax when amount is in dispute, personal representative can pay assessed amount and recover excess back, if any, within two years. In re Fort's Estate, 117 Neb. 854, 223 N.W. 633 (1929).

Above section governs entirely procedure by which inheritance tax erroneously paid is recovered. In re Woolsey's Estate, 113 Neb. 218, 202 N.W. 630 (1925).

Court will not enjoin collection of taxes as there is an adequate remedy at law. *Smith v. Douglas County*, 242 F. 894 (8th Cir. 1917).

77-2018.01 Inheritance tax; proceedings for determination.

(1) The inheritance tax, if any, imposed under sections 77-2001 to 77-2037 may be determined either (a) in any proceedings brought under the provisions of Chapter 30, article 24 or 25, or (b) in a proceeding instituted for the sole purpose of determining such tax.

(2) Proceedings for determination of the tax may be initiated either (a) by order of the county court before which any proceeding is pending, (b) by application of the personal representative, (c) by application of the county attorney, or (d) by application of any person having a legal interest in the property involved in the determination of the tax.

Source: Laws 1949, c. 242, § 1, p. 657; Laws 1953, c. 282, § 7, p. 917; Laws 1965, c. 498, § 1, p. 1587; Laws 1975, LB 481, § 32.

Cross References

Fee of county court when no personal representative appointed, see section 33-126.03.

The liability of an estate for inheritance tax may be determined upon petition of executrix with allegations and proof in this case. *Reller v. McArthur*, 187 Neb. 313, 189 N.W.2d 468 (1971).

Application for determination of tax may be made by party having legal interest in estate. *County of Keith v. Triska*, 168 Neb. 1, 95 N.W.2d 350 (1959).

Proceedings can be initiated by application of executor. *State ex rel. Nebraska State Bar Assn. v. Richards*, 165 Neb. 80, 84 N.W.2d 136 (1957).

77-2018.02 Inheritance tax; procedure for determination in absence of probate of estate; petition; notice; waiver of notice; hearing.

(1) In the absence of any proceeding brought under Chapter 30, article 24 or 25, in this state, proceedings for the determination of the tax may be instituted in the county court of the county where the property or any part thereof which might be subject to tax is situated.

(2) Upon the filing of the petition referred to in subsection (1) of this section, the county court shall order the petition set for hearing, not less than two nor more than four weeks after the date of filing the petition, and shall cause notice thereof to be given to all persons interested in the estate of the deceased and the property described in the petition, except as provided in subsections (4) and (5) of this section, in the manner provided for in subsection (3) of this section.

(3) The notice, provided for by subsection (2) of this section, shall be given by one publication in a legal newspaper of the county or, in the absence of such legal newspaper, then in a legal newspaper of some adjoining county of general circulation in the county. In addition to such publication of notice, personal service of notice of said hearing shall be had upon the county attorney of each county in which the property described in the petition is located, at least one week prior to the hearing.

(4) If it appears to the county court, upon the filing of the petition, by any person other than the county attorney, that no assessment of inheritance tax could result, it shall forthwith enter thereon an order directing the county attorney to show cause, within one week from the service thereof, why determination should not be made that no inheritance tax is due on account of the property described in the petition and the potential lien thereof on such property extinguished. Upon service of such order to show cause and failure of

such showing by the county attorney, notice of such hearing by publication shall be dispensed with, and the petitioner shall be entitled without delay to a determination of no tax due on account of the property described in the petition, and any potential lien shall be extinguished.

(5) If it shall appear to the county court that (a) the county attorney of each county in which the property described in the petition is located has executed a waiver of notice upon him to show cause, or of the time and place of hearing, and has entered a voluntary appearance in such proceeding in behalf of the county and the State of Nebraska, and (b) either (i) all persons against whom an inheritance tax may be assessed are either a petitioner or have executed a waiver of notice upon them to show cause, or of the time and place of hearing, and have entered a voluntary appearance, or (ii) a party to the proceeding has agreed to pay to the proper counties the full inheritance tax so determined, the court may dispense with the notice provided for in subsections (2) and (3) of this section and proceed without delay to make a determination of inheritance tax, if any, due on account of the property described in the petition.

Source: Laws 1953, c. 282, § 8, p. 917; Laws 1959, c. 375, § 1, p. 1314; Laws 1969, c. 682, § 1, p. 2609; Laws 1975, LB 481, § 33; Laws 1976, LB 585, § 15; Laws 1977, LB 456, § 3.

77-2018.03 Inheritance tax; determination; notice served upon county attorney; duty of county attorney.

In all matters involving the determination of inheritance tax, notice served upon the county attorney shall constitute notice to the county and the State of Nebraska. It shall be the duty of the county attorney to represent the county and the State of Nebraska in such matters as its attorney. In so representing the county and the State of Nebraska, the county attorney is authorized, in addition to such other powers as he normally may exercise as attorney for the county, to enter into and bind the county and the State of Nebraska by stipulation as to any facts which could be presented by evidence to either the inheritance tax appraiser or the county court, and to waive service of notices upon him to show cause or of the time and place of hearing, and to enter a voluntary appearance in such proceeding, in behalf of the county and the State of Nebraska.

Source: Laws 1953, c. 282, § 9, p. 918.

County attorney has the duty to represent state in determination of inheritance taxes. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

77-2018.04 Inheritance tax; proceedings for determination of; deductions allowed; enumerated.

In all proceedings for the determination of inheritance tax, the following deductions from the value of the property subject to Nebraska inheritance taxation shall be allowed to the extent paid from, chargeable to, paid, payable, or expected to become payable with respect to property subject to Nebraska inheritance taxation:

- (1) The cost of the funeral of the decedent, including costs for interment and gravesite marker;
- (2) All expenses of administration which accrue as a result of the death of the decedent, including, but not limited to, attorney's fees, court costs, and expenses concerning property not subject to probate, and expenses related to

taking possession or control of estate assets and the management, protection, and preservation of estate assets, including, but not limited to, expenses related to the sale of estate assets, but not expenses related to the day-to-day operation and continuation of business interests which have not accrued as a result of the death of the decedent;

(3) All expenses of the last illness of the decedent which were incurred within six months of the death of the decedent;

(4) All other debts upon which the decedent was liable for payment at the date of his or her death and which have been paid; and

(5) Any federal estate tax paid, payable, or expected to become payable, after deduction of all applicable credits, which is attributable to property subject to Nebraska inheritance taxation.

Source: Laws 1976, LB 585, § 8; Laws 1977, LB 456, § 4; Laws 1987, LB 125, § 1; Laws 2009, LB120, § 2.

77-2018.05 Inheritance tax; court may make final determination of; how determined.

Notwithstanding sections 77-2001 to 77-2039, the court shall have the authority, upon the written application of any of the parties subject to the tax imposed under such sections, to determine a final inheritance tax on any property devised, bequeathed, or otherwise transferred, based upon the probabilities at the time of the decedent's death rather than taxing the property at the rates specified in such sections.

Source: Laws 1976, LB 585, § 9; Laws 1987, LB 125, § 2.

77-2018.06 Inheritance tax; property received by decedent from prior decedent; credit against tax; how computed.

If the decedent had received property from another person who died within five years prior to the death of the decedent upon which Nebraska inheritance tax was paid because of the death of the prior decedent, such tax so paid shall be a credit against the amount of inheritance tax, if any, assessed against the recipients of property from the estate of the decedent. Each recipient shall receive a prorated credit based upon such recipient's proportionate share of the total property of the decedent subject to Nebraska inheritance tax.

Source: Laws 1976, LB 585, § 11.

77-2018.07 Inheritance tax; tentative payment of tax; when; application; consent of county attorney required; procedure for payment of tentative tax.

(1) Any person subject to the tax imposed by sections 77-2001 to 77-2037 may, prior to the final determination of the inheritance tax, make a tentative payment of the tax in order to avoid the accrual of interest or penalty on such tax. Any person who desires to pay such tentative inheritance tax shall make a written application to the county court for an order allowing the payment of a sum specified in such application, prior to the final determination of the inheritance tax due.

(2) If the county attorney shall not consent to the amount requested in the application by entering his or her voluntary appearance and waiver of notice, he or she shall within seven days of the filing of the application show in writing what sum he or she requests for the purpose of the prepayment. The county

court shall issue an order allowing a tentative payment of the tax in such amount as the court shall specify.

(3) The county treasurer shall receive all taxes paid pursuant to this section but shall not be required to invest any tentative tax payment made for the benefit of the estate nor shall the county treasurer be required to pay interest on any refund claim for the period he or she holds the tentative tax payment.

(4) The tentative tax payment allowed in this section shall apply to both probate and nonprobate estates. The tentative tax payment shall not be a final order and may be amended, altered, or modified by subsequent order of the court.

Source: Laws 1976, LB 585, § 12; Laws 2009, LB120, § 3.

77-2019 Inheritance tax; appraisal; appointment of appraisers.

In order to fix the value of property subject to the payment of the inheritance tax, the county judge may appoint a clerk magistrate or some other competent person, or the clerk magistrate may appoint a competent person, as appraiser as often as or whenever occasion may require, except that when real estate is to be appraised by a competent person other than a county judge or a clerk magistrate, the county judge or clerk magistrate shall appoint a credentialed real property appraiser, but if the county judge or clerk magistrate finds that no credentialed real property appraiser is a disinterested freeholder of the county, some other competent person may be appointed.

Source: Laws 1901, c. 54, § 11, p. 418; Laws 1907, c. 104, § 1, p. 359; R.S.1913, § 6632; Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2019; Laws 1949, c. 242, § 2, p. 657; Laws 1976, LB 585, § 16; Laws 1987, LB 601, § 9; Laws 1990, LB 1153, § 63; Laws 1991, LB 203, § 57; Laws 1994, LB 1107, § 50; Laws 2006, LB 778, § 72.

County court is not bound by report made by appraiser but may take further evidence and enter order determining tax. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

77-2020 Inheritance tax; appraisal; duty of appraiser; objections; hearing on report.

It shall be the duty of an appraiser appointed under section 77-2019 forthwith to give such notice by mail or personally to all interested persons as the court may by order direct, of the time and place he will appraise such property. At such time and place he shall appraise the property at the fair market value of the same, and for that purpose the appraiser is authorized by leave of the court to issue subpoenas and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property, and the value thereof. He shall make a report thereof and of such value in writing to the court with the depositions of the witnesses and such other facts relating thereto as the court may by order require, to be filed with the records of the county court. Any person interested may file objections to such report within five days after the report is filed with the court. The judge of the county court shall examine the appraiser's report and any objections thereto, and may,

at his discretion, take further evidence and shall enter an order fixing the proper appraisal of the property.

Source: Laws 1901, c. 54, § 11, p. 418; Laws 1907, c. 104, § 1, p. 359; R.S.1913, § 6632; Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2020; Laws 1951, c. 269, § 1, p. 903; Laws 1976, LB 585, § 17.

Failure to file objection to appraiser's report within five days does not preclude appeal from determination of tax. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

Property for purpose of tax should be valued at amount of money which it would produce if offered and sold for cash at

time of death of decedent. In re Fort's Estate, 117 Neb. 854, 223 N.W. 633 (1929); In re Woolsey's Estate, 109 Neb. 138, 190 N.W. 215 (1922).

77-2021 Inheritance tax; appraisal; county judge as appraiser.

Instead of appointing an appraiser, the county judge may by order fix a day and give notice to all interested parties and at such time appraise the property at the fair market value of the same.

Source: Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2021.

County court is not bound by report made by appraiser but may take further evidence and enter order determining tax. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

County court can fix values without appointing special appraisers. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

County judge may act as appraiser. County of Holt v. Gallagher, 156 Neb. 457, 56 N.W.2d 621 (1953).

77-2022 Inheritance tax; appraisal; determination and assessment of tax.

When the value of the property has been fixed, as provided in section 77-2020 or 77-2021, the county judge shall determine and assess the tax to which the same is liable.

Source: Laws 1901, c. 54, § 11, p. 418; Laws 1907, c. 104, § 1, p. 359; R.S.1913, § 6632; Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2022; Laws 1951, c. 269, § 2, p. 903.

County court is not bound by report made by appraiser but may take further evidence and enter order determining tax. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

County court can determine tax that is owing. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

77-2023 Inheritance tax; appeal; procedure.

An appeal may be taken from the determination of the tax due made by the county court to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

Source: Laws 1901, c. 54, § 11, p. 418; Laws 1907, c. 104, § 1, p. 359; R.S.1913, § 6632; Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2023; Laws 1951, c. 269, § 3, p. 903; Laws 1981, LB 42, § 26; Laws 1995, LB 538, § 9.

Appeal is taken from determination of tax due and not from the appraisal or assessment. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

County has right of appeal from determination of tax. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

Beneficiaries obtaining substantial reduction in inheritance tax on appeal to district court are not liable for costs in district court. In re Fort's Estate, 117 Neb. 854, 223 N.W. 633 (1929).

County has right of appeal for alleged inadequacy of assessment of inheritance tax. Kearney County v. Hapeman, 102 Neb. 550, 167 N.W. 792 (1918).

77-2024 Inheritance tax; appraisalment; costs; fees; charged to estate of decedent.

The appraisers shall be paid a reasonable fee to be fixed by the county judge, together with mileage at the rate provided in section 81-1176 for state employees. Witnesses shall be allowed the sum of ten dollars per day for every day's attendance at an appraisal hearing, together with mileage at the rate provided in section 81-1176 for state employees. The officer serving process under sections 77-2001 to 77-2037 shall receive the same fees as are now provided by law for similar services with mileage to be computed at the rate provided in section 33-117 for county sheriffs. When it is determined that an inheritance tax is due, all costs made or incurred in the determination and assessment of inheritance tax, including appraiser's fees, shall be charged to the estate of the decedent.

Source: Laws 1901, c. 54, § 11, p. 418; Laws 1907, c. 104, § 1, p. 359; R.S.1913, § 6632; Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2024; Laws 1953, c. 282, § 10, p. 919; Laws 1959, c. 376, § 2, p. 1316; Laws 1976, LB 585, § 18; Laws 1981, LB 204, § 152.

77-2025 Inheritance tax; estate not subject to tax; determination.

If it shall be made to appear to the county judge in either probate proceedings or an independent proceeding for the determination of such tax that an estate is not subject to such inheritance tax, the county judge may so determine, and such finding and order shall be made a part of the final decree in said estate or proceeding.

Source: Laws 1915, c. 113, § 1, p. 262; C.S.1922, § 6163; C.S.1929, § 77-2211; R.S.1943, § 77-2025; Laws 1949, c. 242, § 3, p. 657.

77-2026 Inheritance tax; appraiser; extra fee or reward; penalty.

Any appraiser appointed under the authority and by virtue of section 77-2019 who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any person or corporation liable to pay such tax or any portion thereof, shall be guilty of a Class IV misdemeanor, and in addition thereto the county judge shall dismiss him from such service.

Source: Laws 1901, c. 54, § 12, p. 419; R.S.1913, § 6633; C.S.1922, § 6164; C.S.1929, § 77-2212; R.S.1943, § 77-2026; Laws 1977, LB 39, § 228.

77-2027 Inheritance tax; what court has jurisdiction; transfer of proceedings.

The county court in the county in which the real property is situated of a decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to all taxes arising under sections 77-2001 to 77-2037. If a court finds that in the interest of justice a proceeding

or a file should be located in another county court of this state, the court making the finding may transfer the proceeding or file to the other court.

Source: Laws 1901, c. 54, § 13, p. 420; R.S.1913, § 6634; C.S.1922, § 6165; C.S.1929, § 77-2213; R.S.1943, § 77-2027; Laws 1976, LB 585, § 19.

County court may determine taxes due upon the clear market value of the beneficial interest taken by the taxpayer. County of Keith v. Triska, 168 Neb. 1, 95 N.W.2d 350 (1959).

County court has jurisdiction to assess tax on beneficiaries. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

County court has exclusive original jurisdiction over fixing, determining and assessing inheritance taxes. In re Estate of Sautter, 142 Neb. 42, 5 N.W.2d 263 (1942).

County court, on appeal from order of county judge determining value of estate from appraiser's report, is vested with complete, exclusive jurisdiction in the first instance to determine all questions in relation to inheritance taxes. In re Estate of Piel, 141 Neb. 783, 4 N.W.2d 875 (1942).

77-2028 Inheritance tax; nonpayment; hearing; judgment; levy and execution.

If it shall appear to the county court that any tax accruing under sections 77-2001 to 77-2037 has not been paid according to law, after a determination thereof has been made in either probate proceedings or an independent proceeding for determination of such tax, it shall issue a summons commanding the persons or corporations liable to pay such tax or interested in such property to appear before the court on a certain day, not more than three months after the date of such summons, to show cause why such tax should not be paid. After a hearing, pursuant to this section, the court may proceed to a judgment against any person liable for the inheritance tax and such judgment shall be a lien against any person adjudged liable to pay such tax. The county attorney shall proceed to levy an execution of such lien before the county court and such court may issue an order for the levy and execution against the person adjudged liable.

Source: Laws 1901, c. 54, § 14, p. 420; R.S.1913, § 6635; C.S.1922, § 6166; C.S.1929, § 77-2214; R.S.1943, § 77-2028; Laws 1949, c. 242, § 4, p. 658; Laws 1951, c. 270, § 1, p. 904; Laws 1976, LB 585, § 20.

77-2029 Inheritance tax; nonpayment; notification of county attorney; institution of proceeding to collect.

Whenever the treasurer of any county shall have reason to believe that any tax under sections 77-2001 to 77-2037 is due and unpaid after such taxes have been determined and assessed or after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the county attorney of the proper county in writing every three months of such refusal to pay the tax. The county attorney so notified, if he has cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 77-2028 for the enforcement and collection of this tax.

Source: Laws 1901, c. 54, § 15, p. 420; R.S.1913, § 6636; C.S.1922, § 6167; C.S.1929, § 77-2215; R.S.1943, § 77-2029; Laws 1976, LB 585, § 21.

77-2030 Inheritance tax; annual statements.

The county judge and county clerk of each county shall annually make a statement in writing to the county attorney of the county, of the party from which or the party from whom they have reason to believe a tax under sections 77-2001 to 77-2037 is due and unpaid.

Source: Laws 1901, c. 54, § 16, p. 421; R.S.1913, § 6637; C.S.1922, § 6168; C.S.1929, § 77-2216; R.S.1943, § 77-2030; Laws 1976, LB 585, § 22.

77-2031 Repealed. Laws 1953, c. 283, § 1.**77-2032 Inheritance tax; how credited.**

All inheritance tax money received or collected by each county shall be credited by resolution of the county board in whole or in part either to the county general fund or to any other fund of the county selected by the county board.

Source: Laws 1905, c. 117, § 1, p. 525; Laws 1913, c. 14, § 1, p. 76; R.S.1913, § 6639; C.S.1922, § 6170; C.S.1929, § 77-2218; Laws 1933, c. 83, § 1, p. 332; Laws 1937, c. 177, § 1, p. 704; Laws 1941, c. 156, § 1, p. 604; C.S.Supp.,1941, § 77-2218; R.S.1943, § 77-2032; Laws 1959, c. 377, § 1, p. 1317; Laws 1961, c. 390, § 1, p. 1187; Laws 1965, c. 499, § 1, p. 1588; Laws 1982, LB 480, § 5.

Failure to credit inheritance tax money to general fund before drawing warrant did not make payment void. *Thiles v. County Board of Sarpy County*, 189 Neb. 1, 200 N.W.2d 13 (1972).

77-2033 Repealed. Laws 1982, LB 480, § 9.**77-2034 Repealed. Laws 1982, LB 480, § 9.****77-2035 Repealed. Laws 1982, LB 480, § 9.****77-2036 Repealed. Laws 1982, LB 480, § 9.****77-2037 Inheritance tax; lien; expiration.**

Regardless of any defect in the proceedings in which such inheritance tax was determined, or the jurisdiction of the court to make such determination, the lien of the inheritance tax shall cease upon the first to occur of: (1) Ten years from the date of death of a decedent and no action shall be maintained for the determination, assessment or collection of such tax, unless a determination of the amount of such tax by the court having jurisdiction thereof shall have been made within such ten-year period, in which case such lien and the right to maintain any action for the assessment or collection of any tax shall cease five years after such determination or upon payment of such tax, whichever first occurs; (2) the payment of the amount of inheritance tax finally determined by the county court to be due with respect to property described in such proceedings; or (3) the release or discharge of any lien pursuant to section 77-2039.

Source: Laws 1901, c. 54, § 21, p. 422; R.S.1913, § 6641; Laws 1921, c. 163, § 1, p. 656; C.S.1922, § 6172; C.S.1929, § 77-2220; Laws 1943, c. 191, § 1, p. 645; R.S.1943, § 77-2037; Laws 1953, c. 282,

§ 11, p. 919; Laws 1973, LB 210, § 2; Laws 1974, LB 664, § 1; Laws 1976, LB 585, § 23; Laws 1977, LB 456, § 5; Laws 1978, LB 650, § 30.

77-2038 Inheritance tax; decedent's will may direct apportionment of taxes; inter vivos instrument.

Notwithstanding the provisions of Chapter 77, article 20, the decedent's will may provide direction for the apportionment of the taxes assessed upon any of the decedent's property subject to Nebraska inheritance tax or any written instrument executed inter vivos by the decedent may provide direction for the apportionment of the taxes assessed upon any property subject to Nebraska inheritance tax for the property dealt with in such inter vivos instrument.

Source: Laws 1976, LB 585, § 26.

77-2039 Inheritance, estate, or generation-skipping transfer tax lien; court may discharge property subject to tax; terms and conditions; application for release or discharge; show cause.

(1) Any county court may issue an order discharging any or all of the property subject to any inheritance tax, Nebraska estate tax, or generation-skipping transfer tax lien.

(2) The county court may prescribe the terms and conditions upon which any inheritance tax, estate tax, or generation-skipping transfer tax lien shall be released or discharged.

(3) Any person who desires a release or discharge of any inheritance tax, estate tax, or generation-skipping transfer tax lien shall make a written application to the county court. If the county attorney shall not consent to the release or discharge of the lien as requested in the application by entering his or her voluntary appearance and waiver of notice, he or she shall within seven days of the filing of such application show in writing why such release or discharge should not be granted or shall specify the terms and conditions upon which such release or discharge should be allowed.

Source: Laws 1976, LB 585, § 27; Laws 1980, LB 694, § 12; Laws 1992, LB 1004, § 2.

77-2040 Inheritance tax; estate tax; decedent dying after December 31, 1982; provisions applicable; changes applicable January 1, 2008.

Sections 77-2002 to 77-2004 and 77-2102 shall become operative on December 31, 1982, and shall apply to all property which passes from a decedent dying after such date. Sections 77-2001, 77-2032, and 77-2106 shall become operative on July 17, 1982. The changes made in sections 77-2004 to 77-2006 by Laws 2007, LB 502, apply to all property which passes from a decedent dying on or after January 1, 2008. The changes made to section 77-2010 by Laws 2007, LB 502, apply to decedents dying on or after January 1, 2008.

Source: Laws 1982, LB 480, § 8; Laws 2007, LB502, § 5.

ARTICLE 21

ESTATE AND GENERATION-SKIPPING TRANSFER TAX

Cross References

Interest of surviving spouse, determination prior to payment of tax, see section 30-103.01.

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77-2101 Terms, defined.

For purposes of sections 77-2101 to 77-2116:

- (1) Estate tax means the tax due to the state under section 77-2101.01;
- (2) Generation-skipping transfer tax means the tax due to the state under section 77-2101.02;
- (3) Nebraska taxable estate means the federal taxable estate, as determined under Chapter 11 of the Internal Revenue Code, minus one million dollars;
- (4) Nebraska taxable transfer means the federal taxable transfer, as determined under Chapter 13 of the Internal Revenue Code, minus one million dollars; and
- (5) Transfer tax means the estate tax and generation-skipping transfer tax.

Source: Laws 1992, LB 1004, § 5; Laws 1995, LB 574, § 67; Laws 2002, LB 905, § 1.

77-2101.01 Estate tax; amount.

(1) In addition to the inheritance taxes imposed by the laws of the State of Nebraska, there is levied and imposed an estate or excise tax for all decedents dying before January 1, 2007, upon the transfer of the estate of every resident decedent and upon the value of any interest in Nebraska real estate and tangible personal property situated in Nebraska of a nonresident decedent.

(2) For decedents dying before January 1, 2003, the amount of such tax shall be the maximum state tax credit allowance upon the tax imposed by Chapter 11 of the Internal Revenue Code reduced by the lesser of (a) the aggregate amount of all estate, inheritance, legacy, or succession taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to such tax or (b) the sum of (i) the amount determined by multiplying the maximum state tax credit allowance with respect to the taxable transfer by the percentage which the gross value of the trans-

ferred property not situated in Nebraska bears to the gross value of the transferred property and (ii) the amount of Nebraska inheritance taxes paid.

(3) For all decedents dying on or after January 1, 2003, and before January 1, 2007, (a) for the estate of every resident decedent, the amount of such tax shall be the amount calculated in section 77-2101.03 reduced by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property minus the amount of Nebraska inheritance taxes paid, and (b) for the estate of every nonresident decedent, the amount of such tax shall be the amount calculated in section 77-2101.03 multiplied by the percentage which the gross value of the transferred property situated in Nebraska bears to the gross value of the transferred property minus the amount of Nebraska inheritance taxes paid.

Source: Laws 1955, c. 302, § 2, p. 941; Laws 1976, LB 585, § 24; Laws 1978, LB 650, § 31; Laws 1992, LB 1004, § 3; Laws 1995, LB 574, § 68; Laws 2002, LB 905, § 2; Laws 2005, LB 499, § 1; Laws 2007, LB367, § 6.

This section is not an unconstitutional delegation of legislative power. The tax imposed by this section is a matter of legislative prerogative exercisable only by the Nebraska Legislature and not exercisable by any other legislature outside the State of Nebraska. In re Estate of West, 226 Neb. 813, 415 N.W.2d 769 (1987).

77-2101.02 Generation-skipping transfer tax; amount.

For all generation-skipping transfers occurring before January 1, 2007, there is hereby imposed a generation-skipping transfer tax upon the generation-skipping transfer or distribution of property of every resident of this state and upon the generation-skipping transfer of Nebraska real estate and tangible personal property situated in Nebraska by a nonresident. The amount of the generation-skipping transfer tax shall be the amount calculated in section 77-2101.03 reduced by the lesser of (1) the aggregate amount of all transfer taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to the generation-skipping transfer tax or (2) the amount determined by multiplying the amount calculated in section 77-2101.03 with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property.

Source: Laws 1992, LB 1004, § 4; Laws 1993, LB 345, § 12; Laws 1995, LB 574, § 69; Laws 2002, LB 905, § 3; Laws 2007, LB367, § 7.

77-2101.03 Tax; calculation.

(1) For decedents dying on or after January 1, 2003, and before July 1, 2003, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table:

Nebraska taxable estate		Tax = + %			Of Excess
At least	But less than				Over
\$ 0	\$ 40,000	\$ 0	0		\$ 0
40,000	90,000	0	.8		40,000
90,000	140,000	400	1.6		90,000
140,000	240,000	1,200	2.4		140,000
240,000	440,000	3,600	3.2		240,000
440,000	640,000	10,000	4		440,000

ESTATE AND GENERATION-SKIPPING TRANSFER TAX

§ 77-2102

640,000	840,000	18,000	4.8	640,000
840,000	1,040,000	27,600	5.6	840,000
1,040,000	1,540,000	38,800	6.4	1,040,000
1,540,000	2,040,000	70,800	7.2	1,540,000
2,040,000	2,540,000	106,800	8	2,040,000
2,540,000	3,040,000	146,800	8.8	2,540,000
3,040,000	3,540,000	190,800	9.6	3,040,000
3,540,000	4,040,000	238,800	10.4	3,540,000
4,040,000	5,040,000	290,800	11.2	4,040,000
5,040,000	6,040,000	402,800	12	5,040,000
6,040,000	7,040,000	522,800	12.8	6,040,000
7,040,000	8,040,000	650,800	13.6	7,040,000
8,040,000	9,040,000	786,800	14.4	8,040,000
9,040,000	10,040,000	930,800	15.2	9,040,000
10,040,000		1,082,800	16	10,040,000

(2) For decedents dying on or after July 1, 2003, and before January 1, 2007, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table:

Nebraska taxable estate		Tax = + %			Of Excess
At least	But less than				Over
\$ 0	\$ 100,000	\$ 0	5.6	\$ 0	0
100,000	500,000	5,600	6.4	100,000	100,000
500,000	1,000,000	31,200	7.2	500,000	500,000
1,000,000	1,500,000	67,200	8	1,000,000	1,000,000
1,500,000	2,000,000	107,200	8.8	1,500,000	1,500,000
2,000,000	2,500,000	151,200	9.6	2,000,000	2,000,000
2,500,000	3,000,000	199,200	10.4	2,500,000	2,500,000
3,000,000	3,500,000	251,200	11.2	3,000,000	3,000,000
3,500,000	4,000,000	307,200	12	3,500,000	3,500,000
4,000,000	5,000,000	367,200	12.8	4,000,000	4,000,000
5,000,000	6,000,000	495,200	13.6	5,000,000	5,000,000
6,000,000	7,000,000	631,200	14.4	6,000,000	6,000,000
7,000,000	8,000,000	775,200	15.2	7,000,000	7,000,000
8,000,000	9,000,000	927,200	16	8,000,000	8,000,000
9,000,000		1,087,200	16.8	9,000,000	9,000,000

(3) Taxable generation-skipping transfers shall be taxed at a rate of sixteen percent of the Nebraska taxable transfer.

Source: Laws 2002, LB 905, § 4; Laws 2003, LB 283, § 2; Laws 2003, LB 759, § 2; Laws 2004, LB 1034, § 1; Laws 2007, LB367, § 8.

77-2102 Tax; when due; who liable; interest; lien; exception.

The transfer tax imposed under sections 77-2101 to 77-2116 shall become due and payable to the State Treasurer within twelve months from the date of the death of the decedent in the case of the estate tax and the date of the transfer in the case of the generation-skipping transfer tax. The limitation of time during which a tax return, for the purpose of the transfer tax, shall be open to inspection and examination shall be three years from the date of filing the return. Personal representatives, trustees, grantees, donees, beneficiaries,

transferees, surviving joint owners, and other recipients of property subject to tax shall be and remain liable for the tax until it is paid. If the tax indicated by the return of the taxpayer is not paid when due, interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, shall be charged and collected from the date the same became payable. The transfer tax shall be a lien on the real property subject thereto until the first to occur of: (1) Payment; (2) ten years from the date of death of the decedent; or (3) the release or discharge of any lien pursuant to section 77-2039, except that no interest in any property passing from the decedent to the decedent's surviving spouse shall be subject to the lien.

Source: Laws 1929, c. 73, § 2, p. 254; C.S.1929, § 77-2302; Laws 1931, c. 129, § 1, p. 363; Laws 1937, c. 175, § 2, p. 690; C.S.Supp.,1941, § 77-2302; R.S.1943, § 77-2102; Laws 1955, c. 302, § 3, p. 942; Laws 1976, LB 585, § 25; Laws 1978, LB 650, § 32; Laws 1981, LB 167, § 49; Laws 1982, LB 480, § 6; Laws 1984, LB 962, § 4; Laws 1992, LB 1004, § 6; Laws 1992, Fourth Spec. Sess., LB 1, § 19; Laws 2002, LB 905, § 5.

Cross References

Decedent dying after December 31, 1982, provisions applicable, see section 77-2040.

77-2103 Repealed. Laws 2005, LB 499, § 3.

77-2104 Tax; net transfer; follow federal rules and regulations.

The rules and regulations for determining the amount of net transfer upon which the transfer or excise tax imposed under sections 77-2101 to 77-2116 shall be based, shall, insofar as applicable, be the same rules and regulations adopted by the Commissioner of Internal Revenue for determining the net transfer under Chapters 11 and 13 of the Internal Revenue Code.

Source: Laws 1929, c. 73, § 4, p. 254; C.S.1929, § 77-2304; R.S.1943, § 77-2104; Laws 1984, LB 962, § 6; Laws 1992, LB 1004, § 8; Laws 1995, LB 574, § 71; Laws 2002, LB 905, § 7.

77-2105 Tax; administration; information and returns; penalty.

The Tax Commissioner shall have charge of the administration of sections 77-2101 to 77-2116 and shall make such rules and regulations as may be necessary to carry out such sections. He or she shall have authority to require all persons or corporations liable for the payment of the transfer or excise tax to file returns on such forms and at such times as he or she may require. The county attorneys of the state shall furnish the commissioner with such information as he or she may require from time to time with reference to estates pending in the county courts of Nebraska. Any person or corporation who fails to furnish the commissioner with such information or reports as he or she requires under such sections shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 73, § 5, p. 255; C.S.1929, § 77-2305; R.S.1943, § 77-2105; Laws 1977, LB 39, § 229; Laws 1984, LB 962, § 7; Laws 1992, LB 1004, § 9; Laws 2002, LB 905, § 8.

77-2106 Tax; proceeds; credited to General Fund.

All the proceeds from the levy and imposition of the transfer or excise tax shall be paid to the Tax Commissioner who shall remit the proceeds to the State Treasurer for credit to the General Fund.

Source: Laws 1929, c. 73, § 6, p. 255; C.S.1929, § 77-2306; Laws 1937, c. 175, § 1, p. 689; C.S.Supp.,1941, § 77-2306; R.S.1943, § 77-2106; Laws 1949, c. 229, § 5, p. 637; Laws 1949, c. 243, § 3, p. 660; Laws 1975, LB 233, § 1; Laws 1982, LB 480, § 7; Laws 1992, LB 1004, § 10.

77-2106.01 Tax; refunds; interest; claim.

When any amount of transfer tax in excess of that legally due has been paid to the State Treasurer, the party making such overpayment or his or her successors or assigns shall be entitled to refund of such overpayment plus interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. All claims for refund on account of the overpayment of transfer taxes shall be filed with the Tax Commissioner within four years after the date of such overpayment or within one year of a change in the amount of federal tax due, whichever is later. If any overpayment of transfer tax is refunded within ninety days after the last day prescribed for filing the original return of such tax or ninety days after the date on which the original return was filed, if later, no interest shall be allowed under this section on the overpayment. If the Tax Commissioner rejects or disallows any such claim in whole or in part, action in the district courts shall be permitted in accordance with sections 25-21,201 to 25-21,218.

Source: Laws 1949, c. 243, § 1, p. 659; Laws 1985, LB 273, § 39; Laws 1991, LB 9, § 1; Laws 1992, LB 1004, § 11; Laws 1992, Fourth Spec. Sess., LB 1, § 20; Laws 1993, LB 345, § 13.

The plain, direct, and unambiguous meaning of the words "has been paid" in this section does not limit interest on overpayments of estate tax to those overpayments made after the effective date of the statute. Given its plain and ordinary

meaning, the term "has been paid" includes overpayments of estate tax made prior to the effective date of LB1004, July 15, 1992. *Vervaecke v. State*, 247 Neb. 707, 529 N.W.2d 779 (1995).

77-2106.02 Tax; refund; Tax Commissioner; issue certificate; effect.

The Tax Commissioner, upon satisfactory proof rendered to him or her of the overpayment of transfer tax in any case, shall issue a certificate of the amount of such overpayment and the party entitled to a refund on account of such overpayment. Such certificate shall constitute prima facie evidence of such overpayment and the person or persons entitled to a refund on account of such payment.

Source: Laws 1949, c. 243, § 3, p. 659; Laws 1992, LB 1004, § 12.

77-2106.03 Repealed. Laws 1991, LB 9, § 8.**77-2107 Repealed. Laws 1980, LB 834, § 66.****77-2108 Apportionment and proration of tax; basis.**

Whenever it appears upon any accounting or in any appropriate action or proceeding that a personal representative, executor, administrator, trustee, or other person acting in a fiduciary capacity has paid or may be required to pay any transfer tax levied or assessed under sections 77-2101 to 77-2116 or under the provisions of any federal estate or generation-skipping transfer tax law

heretofore or hereafter enacted upon or with respect to any property required to be included in the gross estate of a decedent or total amount of generation-skipping transfer under the provisions of any such law, the amount of the tax so paid or payable, except as otherwise directed in the decedent's will or except in a case when by written instrument executed inter vivos direction is given for apportionment within the fund of the taxes assessed upon the specific fund dealt with in such inter vivos instrument, shall be equitably apportioned and prorated among the persons interested in the estate or transfer. Such apportionment and proration shall be made in the proportion as near as may be that the value of the property, interest, or benefit of each such person bears to the total value of the property, interests, or benefits received by all such persons interested in the estate or transfer, except that in making such proration, allowances shall be made for any exemptions granted by the law imposing the tax and for any deductions, including any marital deduction, allowed by such law for the purpose of arriving at the value of the net estate or transfer. In cases when a trust is created or other provision made by which any person is given an interest in income or an estate for years or for life or any other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and be paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

Source: Laws 1949, c. 222, § 1, p. 624; Laws 1953, c. 95, § 3, p. 270; Laws 1992, LB 1004, § 13; Laws 2002, LB 905, § 9.

County court apportionment orders entered pursuant to this section and section 77-2112 are final, appealable orders. In re Estate of Hanika, 229 Neb. 655, 428 N.W.2d 502 (1988).

This section does not require that allowances be made for credits given by the IRS against estate and gift taxes. Interest imposed by the IRS on estate tax is part of the "tax" to be apportioned pursuant to this section. County court apportionment orders entered pursuant to this section are final, appealable orders. Supreme Court review of apportionment proceedings is de novo on the record. In re Estate of Detlefs, 227 Neb. 531, 418 N.W.2d 571 (1988).

This section requires that federal estate taxes are to be apportioned among the persons interested in the estate. In re Estate of Kennedy, 220 Neb. 212, 369 N.W.2d 63 (1985).

Estate taxes will be equitably apportioned unless there is a clear and unambiguous direction to the contrary. In re Estate of Glaser, 217 Neb. 104, 348 N.W.2d 127 (1984); Nielsen v. Sidner,

191 Neb. 324, 215 N.W.2d 86 (1974); Naffziger v. Cook, 179 Neb. 264, 137 N.W.2d 804 (1965); Stuckey v. Rosenberg, 169 Neb. 557, 100 N.W.2d 526 (1960).

The testator's intention as expressed in the will, when considered as a whole, is controlling in determining whether a particular gift is exonerated from diminution under statute providing for apportionment of taxes. Rasmussen v. Wedge, 190 Neb. 818, 212 N.W.2d 637 (1973).

Where a testator has designated in his will that estate or inheritance taxes be paid in a manner different than that provided by statute, his directions will control in Nebraska. First Nat. Bank of Omaha v. United States, 490 F.2d 1054 (8th Cir. 1974).

Where all of estate except devises and legacies is not sufficient to pay tax burden, decedent's bequests to charity should not be reduced by payment of federal estate and state death taxes. First Nat. Bank of Omaha v. United States, 340 F.Supp. 232 (D. Neb. 1972).

77-2109 Tax; persons interested in the estate or transfer, defined.

For purposes of sections 77-2108 to 77-2112, persons interested in the estate or transfer shall, with respect to both state and federal taxes, include all persons who may be entitled to receive or who have received any property or interest which is so required to be included in the gross estate of a decedent or total amount of the generation-skipping transfer or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy or by reason of any transfer, trust, estate, interest, right, power, relinquishment of power, or otherwise, taxable under either state or federal estate or generation-skipping transfer tax laws.

Source: Laws 1949, c. 222, § 2, p. 625; Laws 1992, LB 1004, § 14.

77-2110 Tax; fiduciary; property not in gross estate or transfer; recover.

In all cases in which any property required to be included in the gross estate or total amount of the generation-skipping transfer referred to in section 77-2108 does not come into possession of the personal representative, executor, or administrator as such, he or she shall, in the case of a trust involving temporary interests described in such section, be entitled to recover from the fiduciary in possession of the corpus of such trust, and in all other cases from the persons interested in the estate or transfer, the proportionate amount of such tax payable by such fiduciary or persons with which they are chargeable under such section.

Source: Laws 1949, c. 222, § 3, p. 625; Laws 1992, LB 1004, § 15.

77-2111 Tax; fiduciary; contributions; recovery.

Any personal representative, executor, administrator, trustee, or other person acting in a fiduciary capacity who has paid or may be required to pay any transfer tax and any person who has paid more than the proportionate amount of the tax apportionable to him or her under sections 77-2108 to 77-2112 on any property passing to him or her or in his or her possession shall be entitled to a just and equitable contribution from those who have not paid the full amount of the tax apportionable to them respectively.

Source: Laws 1949, c. 222, § 4, p. 626; Laws 1992, LB 1004, § 16.

77-2112 Tax; county court; jurisdiction; determination; district court; jurisdiction.

The county court of the county wherein the estate of the decedent is being probated shall have jurisdiction in the probate proceedings to hear and determine the apportionment and proration of such tax as set out in section 77-2108. The district court of the county of which the decedent was a resident at the time of his death, or if a nonresident of the state, of the county in which all or any part of his property was situated, shall have jurisdiction of an action in equity for an accounting and contribution after the apportionment and proration have been determined by the county court.

Source: Laws 1949, c. 222, § 5, p. 626.

County court apportionment orders entered pursuant to this section and section 77-2108 are final, appealable orders. In re Estate of Hanika, 229 Neb. 655, 428 N.W.2d 502 (1988).

County court apportionment orders entered pursuant to this section are final, appealable orders. In re Estate of Detlefs, 227 Neb. 531, 418 N.W.2d 571 (1988).

77-2113 Tax; filings required.

(1) The personal representative of every estate subject to the tax imposed by sections 77-2101 to 77-2116 shall file with the Tax Commissioner within twelve months from the date of death of the decedent:

(a) An estate tax return on forms prescribed by the Tax Commissioner for taxes due under such sections;

(b) A true copy of any federal estate tax return, pages 1, 2, and 3;

(c) A true copy of the federal determination of estate tax whether issued by the Internal Revenue Service or a federal court, if any. If such determination has not been received from the Internal Revenue Service or the federal court at the time of filing the return required in subdivision (a) of this subsection, a statement that the determination is unavailable shall be attached to the return and a true copy of the federal determination shall be filed with the Tax

Commissioner within ten days of receipt of such determination by the personal representative; and

(d) A true copy of the inheritance tax return or worksheet as filed with the county court in each county where the decedent had property.

(2) For the generation-skipping transfer tax, a return in the form required by the Tax Commissioner shall be filed with the Tax Commissioner within twelve months of the date of the transfer by the transferee. The return shall include a true copy of the federal generation-skipping transfer tax return and the federal determination of the federal generation-skipping transfer tax due whether issued by the Internal Revenue Service or a federal court, if any.

Source: Laws 1984, LB 962, § 1; Laws 1992, LB 1004, § 17; Laws 2002, LB 905, § 10.

77-2114 Tax filing; Tax Commissioner; powers and duties; failure to file; penalty.

(1) Within thirty days after a transfer tax return or the federal determination is filed pursuant to section 77-2113, whichever is later, the Tax Commissioner shall examine it to determine the correct amount of tax.

(a) If the Tax Commissioner finds that the amount of tax on the return is less than the correct amount, he or she shall notify the person required to file a transfer tax return of the amount of the deficiency proposed to be assessed. The pertinent provisions of section 77-2709 shall be applicable in the assessment of such proposed deficiencies.

(b) If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall notify the person required to file a transfer tax return of the amount and refund the difference to the person who paid the tax.

(c) If the Tax Commissioner finds that the correct amount of tax has been paid or that no tax is due, he or she shall certify the same to the person required to file a transfer tax return.

(2) If a person required to file a transfer tax return fails to file the tax return as required under section 77-2113, the Tax Commissioner or his or her legal representative may apply to the judge of the county court which has jurisdiction over the decedent's or transferor's property for an order directing such person to file the required return. If the person fails to file or refuses to obey such order, he or she shall be guilty of contempt of court.

Source: Laws 1984, LB 962, § 2; Laws 1992, LB 1004, § 18.

77-2115 Tax; records confidential; exception; penalty.

(1) If the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services makes known in any manner the value of any estate or any particular set forth or disclosed in any report, state tax return, federal tax return, or other tax information required to be filed with the Tax Commissioner under the provisions of Nebraska's transfer tax laws, except so far as may be necessary for the enforcement and collection of the transfer tax provided for by the laws of this state, such person shall be guilty of a Class I misdemeanor.

(2) Federal tax returns, copies of such returns, and return information as defined under section 6103(d) of the Internal Revenue Code and state transfer tax returns and inheritance tax returns which are required to be filed with the

Tax Commissioner for the enforcement of the inheritance and transfer tax laws of this state shall be deemed to be confidential by the Tax Commissioner.

(3) Nothing in this section shall be construed to prohibit:

(a) The delivery or inspection of such returns or tax information by:

(i) The personal representative or legal representative of the decedent's estate or representative of the transferor;

(ii) The county attorney of the county in which the decedent's or transferor's property is located;

(iii) The judge of the county court in which the decedent's or transferor's property is located; or

(iv) The Attorney General's office or other legal representative of the Tax Commissioner when such returns or tax information are relevant to any action or proceeding instituted by or against the transferor or the personal or legal representative of the decedent's estate or transferor;

(b) The furnishing of such information to the United States Government or to other states allowing similar privileges to the Tax Commissioner; or

(c) The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

Source: Laws 1984, LB 962, § 3; Laws 1992, LB 1004, § 19; Laws 1995, LB 574, § 72; Laws 2005, LB 216, § 3.

77-2116 Changes by Laws 2002, LB 905; applicability.

The changes made by Laws 2002, LB 905, apply to decedents dying and to generation-skipping transfers made on and after January 1, 2003.

Source: Laws 2002, LB 905, § 11.

ARTICLE 22

WARRANTS

Cross References

County warrants, obtaining by false representation, penalty, see section 23-135.01.

Section

- 77-2201. Warrants; payment; order of presentation.
- 77-2202. Warrants; registration; form of record.
- 77-2203. Warrants; registration; manner of making.
- 77-2204. Warrants; investment of educational trust funds; when authorized.
- 77-2205. Warrants; registration; time limitation; file claim with State Claims Board.
- 77-2206. Warrants; registration; order of payment; notice to holder; exception.
- 77-2207. Repealed. Laws 1984, LB 933, § 20.
- 77-2208. Payments to county; county treasurer; receipt.
- 77-2209. Payments to municipality; municipal treasurer; receipt.
- 77-2210. Treasurer's books; how kept.
- 77-2211. Treasurer's books; penalty for neglect to keep.
- 77-2212. Treasurer's books; inspection.
- 77-2213. Treasurer; failure to notify holders of registered warrants; penalty.
- 77-2214. Treasurer; failure to register or pay warrants in order; penalty.
- 77-2215. Lost warrants; duplicate issued; conditions; stop-payment order.

77-2201 Warrants; payment; order of presentation.

All warrants upon the State Treasurer or the treasurer of any county, city, school district, learning community, or other municipal corporation shall be paid in the order of their presentation therefor.

Source: Laws 1871, § 1, p. 113; Laws 1895, c. 67, § 1, p. 240; R.S.1913, § 6642; C.S.1922, § 6173; C.S.1929, § 77-2401; R.S.1943, § 77-2201; Laws 2006, LB 1024, § 12.

Bodies other than those within the strict and proper sense of the term municipal corporations are at times referred to as such for certain purposes; a sanitary and improvement district is a municipal corporation for purposes of this section. In re Application of S.I.D. No. 65, 219 Neb. 647, 365 N.W.2d 456 (1985).

Warrants issued in excess of authorized percentage of levy are not payable by county treasurer. State ex rel. Cody and West v. Colfax County, 10 Neb. 29, 4 N.W. 377 (1880).

77-2202 Warrants; registration; form of record.

The State Treasurer and the treasurer of every county, city, school district, learning community, or other municipal corporation shall keep a warrant register, which register shall show in columns arranged for that purpose the number, the date, and the amount of each warrant presented and registered, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the warrant is registered, the date of payment, the amount of interest, and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered is mailed.

Source: Laws 1871, § 2, p. 114; Laws 1895, c. 67, § 2, p. 240; R.S.1913, § 6643; C.S.1922, § 6174; C.S.1929, § 77-2402; R.S.1943, § 77-2202; Laws 2006, LB 1024, § 13.

77-2203 Warrants; registration; manner of making.

Whenever a warrant is presented for payment to any such treasurer and there is not sufficient money on hand to the credit of the proper fund to pay the same, it shall be the duty of every such treasurer to enter such warrant in his warrant register for payment in the order of its presentation, and upon every warrant so presented and registered, he shall endorse registered for payment, with the date of registration, and shall sign such endorsement.

Source: Laws 1871, § 3, p. 114; Laws 1891, c. 56, § 1, p. 394; Laws 1907, c. 158, § 1, p. 492; R.S.1913, § 6644; C.S.1922, § 6175; C.S.1929, § 77-2403; R.S.1943, § 77-2203.

A public treasurer is authorized to register warrants only when no other reason exists for their nonpayment except that there are not sufficient funds on hand for payment thereof. Pollock v. Consolidated School District, 138 Neb. 315, 293 N.W. 108 (1940).

It is the duty of treasurer to register warrants in order presented. State ex rel. Stull Bros. v. Bartley, 41 Neb. 277, 59 N.W. 907 (1894).

77-2204 Warrants; investment of educational trust funds; when authorized.

Whenever the State Treasurer is authorized by the Board of Educational Lands and Funds to invest the educational trust funds of the state in state warrants, he shall pay the owner or holder of any state warrant legally drawn, upon its presentation, and surrender the amount thereof from the money under his control belonging to such trust funds, unless there be sufficient money on hand belonging to the fund upon which such warrant is drawn out of which to pay the same. When any such warrant or warrants are taken up by the State Treasurer as aforesaid, he shall register the same and they shall be taken and considered in all respects as warrants purchased by the treasurer with and for

the use and benefit of the trust fund, and the same shall draw interest at the rate now provided by law for registered state warrants until such time as there shall be sufficient money in the treasury to the credit of the fund against which the warrant or warrants are drawn to pay the same.

Source: Laws 1907, c. 158, § 1, p. 492; R.S.1913, § 6644; C.S.1922, § 6175; C.S.1929, § 77-2403; R.S.1943, § 77-2204.

77-2205 Warrants; registration; time limitation; file claim with State Claims Board.

If the State Treasurer is unable to pay the full amount thereof for any such warrants when they are presented to him or her due to (1) insufficient money to the credit of the funds against which such warrants are drawn, (2) not being authorized by the Board of Educational Lands and Funds to invest trust funds in state warrants, or (3) insufficient money in such trust funds to pay the same, then the owner or holder of the warrants shall be entitled to have the same registered, and not otherwise. The State Treasurer shall not pay any warrant, unless registered for any of the reasons set forth in this section, which is presented to him or her for payment more than two years after the date of its issuance if issued prior to October 1, 1992, or one year after the date of its issuance if issued on or after October 1, 1992, and any such warrant shall cease to be an obligation of the State of Nebraska and shall be charged off upon the books of the State Treasurer. Except as otherwise provided by law, the amount stated on such warrant shall be credited to the General Fund. Such warrant may, however, thereafter be presented to the State Claims Board which may approve a claim pursuant to the State Miscellaneous Claims Act for the amount of the warrant.

Source: Laws 1907, c. 158, § 1, p. 492; R.S.1913, § 6644; C.S.1922, § 6175; C.S.1929, § 77-2403; R.S.1943, § 77-2205; Laws 1945, c. 195, § 1, p. 598; Laws 1988, LB 864, § 12; Laws 1992, LB 982, § 1.

Cross References

State Miscellaneous Claims Act, see section 81-8,294.

77-2206 Warrants; registration; order of payment; notice to holder; exception.

It shall be the duty of every treasurer to pay each registered warrant in the order of its registration. When there is sufficient money in the treasury to the credit of the proper fund against which it is drawn to pay a registered warrant, the treasurer shall give notice by mail to the holder at his or her address if known to such treasurer, or if unknown, he or she shall give notice to the holders of registered warrants to be paid by causing one publication to be made in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county where his or her office is located, that certain registered warrants against a certain fund, designated from a beginning number to a concluding number inclusive, will be paid at the office of such treasurer. After the date for payment named in the call, interest upon such warrant shall cease. The State Treasurer may pay any

warrant of a less amount than twenty-five dollars when presented for payment regardless of the order of presentation for payment or registration.

Source: Laws 1871, § 4, p. 114; R.S.1913, § 6645; C.S.1922, § 6176; Laws 1927, c. 177, § 1, p. 517; C.S.1929, § 77-2404; R.S.1943, § 77-2206; Laws 1986, LB 960, § 39.

It is the duty of treasurer of school district to give notice to holder of warrant when sufficient money is in treasury to pay same. *Havelock Nat. Bank v. Northport Irrigation Dist.*, 139 Neb. 747, 298 N.W. 695 (1941).

Refusal of holder of General Fund warrant to accept payment of money known to belong to permanent school fund was

proper. *State ex rel. Stull Bros. v. Bartley*, 41 Neb. 277, 59 N.W. 907 (1894).

Warrants must be paid in order of entry upon record. *State ex rel. Cody v. Colfax County*, 10 Neb. 29, 4 N.W. 377 (1880).

77-2207 Repealed. Laws 1984, LB 933, § 20.

77-2208 Payments to county; county treasurer; receipt.

Except in counties with populations of four hundred thousand or more, every county treasurer may make duplicate receipts for all sums paid into his or her office, which receipts shall show the source from which such funds are derived and shall, by distinct lines and columns, show the amount received to the credit of each separate fund and whether such sums were paid in cash or warrants, county or road orders, or supervisors' receipts. In counties with populations of four hundred thousand or more, the county treasurer shall make out such receipts in triplicate. The treasurer shall deliver one of the receipts to the person making such payment and shall retain the second copy in his or her office. A list of such payments may be submitted to the county clerk within thirty days after the closing of the previous month in lieu of a receipt, except that in counties with populations of four hundred thousand or more, the third copy shall be filed with the county clerk within six days after making the receipt.

Source: Laws 1871, § 6, p. 115; R.S.1913, § 6647; C.S.1922, § 6178; C.S.1929, § 77-2406; R.S.1943, § 77-2208; Laws 1993, LB 346, § 20.

77-2209 Payments to municipality; municipal treasurer; receipt.

The treasurer of every city or village shall make duplicate receipts for all sums which shall be paid into his office, which receipts shall show the source from which such funds are derived, and shall, by distinct lines and columns, show the amount received to the credit of each separate fund, and whether the same was paid in cash, in warrants, or otherwise; one of which duplicates the treasurer shall deliver to the person making such payment, and the other he shall retain in his office.

Source: Laws 1871, § 7, p. 115; R.S.1913, § 6648; C.S.1922, § 6179; C.S.1929, § 77-2407; R.S.1943, § 77-2209.

77-2210 Treasurer's books; how kept.

Every such treasurer shall daily, as money is received, foot the several columns of his cash book and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants registered, he shall close the account for that year in such register and shall carry forward the excess.

Source: Laws 1871, § 8, p. 115; R.S.1913, § 6649; C.S.1922, § 6180; C.S.1929, § 77-2408; R.S.1943, § 77-2210.

77-2211 Treasurer's books; penalty for neglect to keep.

Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received and receipted for, or who shall fail to keep his cash book footed from day to day as required by section 77-2210, for the space of three days, shall forfeit for each offense the sum of one hundred dollars, to be recovered in a civil action on his official bond by any person holding a warrant drawn on such treasurer, one-half to the person bringing such action, and one-half to the school fund of the county in which such action is brought.

Source: Laws 1871, § 9, p. 115; R.S.1913, § 6650; C.S.1922, § 6181; C.S.1929, § 77-2409; R.S.1943, § 77-2211.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

77-2212 Treasurer's books; inspection.

The cash book, register and retained receipts of every such treasurer shall at all times be open to the inspection of any person in whose name any warrants are registered and unpaid.

Source: Laws 1871, § 10, p. 115; R.S.1913, § 6651; C.S.1922, § 6182; C.S.1929, § 77-2410; R.S.1943, § 77-2212.

77-2213 Treasurer; failure to notify holders of registered warrants; penalty.

Any treasurer who shall, for a period of five days after money in amount sufficient to pay any registered warrant in its order has been received, fail to mail notice thereof to the person registering such warrant, shall forfeit to such person ten percent on the amount of such warrant, and ten percent additional for every thirty days thereafter during which such failure shall continue.

Source: Laws 1871, § 11, p. 116; R.S.1913, § 6652; C.S.1922, § 6183; C.S.1929, § 77-2411; R.S.1943, § 77-2213.

77-2214 Treasurer; failure to register or pay warrants in order; penalty.

Any treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration, shall be liable on his official bond to each and every person, the payment of whose warrant or warrants is thereby postponed, in the sum of five hundred dollars to be recovered in a civil action, one-half of which shall go to the person bringing such action, and one-half to the school fund of the county in which such action is brought.

Source: Laws 1871, § 12, p. 116; R.S.1913, § 6653; C.S.1922, § 6184; C.S.1929, § 77-2412; R.S.1943, § 77-2214.

A county treasurer is not liable for refusal to register within ten days of issue. Means v. Webster, 23 Neb. 432, 36 N.W. 809 (1888).

77-2215 Lost warrants; duplicate issued; conditions; stop-payment order.

(1) Whenever it shall be made to appear to the satisfaction of any officer, except the Director of Administrative Services, authorized by law to issue warrants, that any warrant issued by him or her has been lost or destroyed, such officer shall have authority to issue a duplicate thereof, numbered the same as the original, with the word duplicate written or printed in red ink

across the face thereof. No duplicate warrant shall be issued until the party applying for the same shall make an affidavit that such party was the owner of the original warrant and shall also file with such officer an indemnity bond with good and sufficient security, conditioned to refund any money received by the party or his or her assigns on such duplicate in case of presentation and payment of the original by the treasurer upon whom the same is drawn, whether upon a genuine endorsement thereon or otherwise. The payee of any lost or destroyed warrant shall not be required to file an indemnity bond when the affidavit shows that such payee has not received such lost or destroyed warrant and cannot reasonably expect to receive it.

(2) Whenever it shall have come to the attention of the Director of Administrative Services that an outstanding warrant has not been presented for payment, the Director of Administrative Services shall immediately issue a stop-payment order and notify the State Treasurer, by letter, of the issuance of such order. After the expiration of seven working days from the issuance of such order, if in the meantime such outstanding warrant has not been presented for payment, the Director of Administrative Services shall have authority to issue a duplicate thereof, numbered the same as the original, with the word duplicate written or printed in red ink across the face thereof. In an emergency, the Director of Administrative Services may immediately issue such duplicate warrant.

Source: Laws 1875, § 1, p. 176; R.S.1913, § 6654; C.S.1922, § 6185; C.S.1929, § 77-2413; R.S.1943, § 77-2215; Laws 1951, c. 208, § 1, p. 769; Laws 1957, c. 338, § 1, p. 1175; Laws 1977, LB 137, § 1; Laws 1986, LB 930, § 1.

ARTICLE 23

DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

Cross References

Authorized investments, see sections 8-712, 46-567.04, and 72-202.

Embezzlement of public funds, see sections 28-509 to 28-518.

Municipal funds, authorized depositories for, see sections 14-556, 16-712, and 17-607.

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DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

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- 77-2332. Repealed. Laws 1969, c. 584, § 134.
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- 77-2336. Sinking funds of county; investment in registered warrants; authorization by county board; record.
- 77-2337. Sinking funds of city; investment in warrants; limitation; direction to treasurer.
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(a) GENERAL PROVISIONS

77-2301 State funds; deposit of funds; conditions.

(1) The State Treasurer shall deposit, and at all times keep on deposit for safekeeping, in the state or national banks, or some of them doing business in this state and of approved standing and responsibility, the amount of money in his or her hands belonging to the several current funds in the state treasury. Any bank may apply for the privilege of keeping on deposit such funds or some part thereof.

(2)(a) Every bank shall, as a condition of keeping on deposit state funds, agree to cash free of charge state warrants which are presented by payees of the state without regard to whether or not such payee has an account with such bank, and such bank shall not require such payee to place his or her fingerprint or thumbprint on the state warrant as a condition to cashing such warrant.

(b) The condition of keeping on deposit state funds in subdivision (2)(a) of this section shall not preclude any bank from refusing to cash a state warrant presented to the bank if (i) a stop-payment order has been placed on the state warrant, (ii) the state warrant has been reported as unregistered, voided, lost, stolen, destroyed, or that a duplicate state warrant has been issued in its place, (iii) the state warrant is incomplete or is forged or altered in any manner, (iv) the state warrant lacks any necessary indorsement or an indorsement is illegible, unauthorized, or forged, (v) the state warrant is stale-dated, or (vi) the bank has a reasonable belief that the individual presenting the state warrant is not the payee named on the state warrant.

(3) All deposits shall be subject to payment when demanded by the State Treasurer on his or her check and shall be subject also to such regulations as are imposed by law and rules adopted by the State Treasurer in receiving and holding such deposits.

Source: Laws 1891, c. 50, § 1, p. 347; Laws 1903, c. 110, § 3, p. 586; R.S.1913, § 6655; Laws 1915, c. 114, § 1, p. 264; C.S.1922, § 6186; Laws 1923, c. 120, § 1, p. 285; C.S.1929, § 77-2501; Laws 1935, c. 152, § 1, p. 559; Laws 1941, c. 171, § 3, p. 675; C.S.Supp.,1941, § 77-2501; R.S.1943, § 77-2301; Laws 1999, LB 217, § 2.

Statute prohibiting officers of bank from receiving on deposit public money without furnishing security applies to national banks. *Dovey v. State*, 116 Neb. 533, 218 N.W. 390 (1928).

Purchase of renewal of certificates of deposit from former State Treasurer was not a deposit of money by treasurer within meaning of above section, and sureties on bond were not liable.

State ex rel. Spillman v. First National Bank of Carroll, 115 Neb. 754, 214 N.W. 626 (1927).

Bank is not liable for interest where treasurer purchased demand certificates of it. *Hamilton County v. Aurora Nat. Bank*, 88 Neb. 280, 129 N.W. 267 (1911).

This section does not repeal section of criminal code relating to embezzlement of public money. Whitney v. State, 53 Neb. 287, 73 N.W. 696 (1898); Korth v. State, 46 Neb. 631, 65 N.W. 792 (1896).

Section is constitutional. Hopkins v. Scott, 38 Neb. 661, 57 N.W. 391 (1894).

Section is inoperative insofar as it requires deposit of permanent educational funds of state. State ex rel. First Nat. Bank of Crete v. Bartley, 39 Neb. 353, 58 N.W. 172 (1894).

77-2302 Federal Deposit Insurance Corporation references; how construed.

For purposes of any law requiring a bank, capital stock financial institution as defined under section 77-2366, or qualifying mutual financial institution as defined under section 77-2365.01 to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation, references to amounts insured by the Federal Deposit Insurance Corporation shall include amounts guaranteed by the Federal Deposit Insurance Corporation.

Source: Laws 2009, LB259, § 26.

77-2303 State funds; depositories; bond required; approval; conditions.

For the security of funds deposited under the provisions of sections 77-2301 to 77-2309, the State Treasurer shall require all such depositories to give bond for the safekeeping of payments of such deposits. The officers of the bank seeking to qualify as a depository shall be ineligible to sign the bond provided for under this section. The bond shall run to the people of the State of Nebraska, and shall be approved by the Governor, Secretary of State and Attorney General. No bond shall be valid unless approved by all three of the above-named officers. The bond shall be conditioned that the depository shall at the end of each and every month render to the State Treasurer a statement in duplicate showing the daily balance and the amount of money of the state held by it during the month, and for the payment of the deposit when demanded by the treasurer on his check at any time, and generally to do and perform whatever may be required by the provisions of this article and a faithful discharge of the trust reposed in such depository.

Source: Laws 1891, c. 50, § 3, p. 348; Laws 1897, c. 23, § 2, p. 188; Laws 1899, c. 74, § 1, p. 321; Laws 1905, c. 151, § 1, p. 595; Laws 1907, c. 142, § 1, p. 450; Laws 1909, c. 139, § 1, p. 493; R.S.1913, § 6657; C.S.1922, § 6188; Laws 1927, c. 34, § 1, p. 153; C.S.1929, § 77-2503; Laws 1931, c. 135, § 1, p. 376; Laws 1933, c. 147, § 1, p. 564; Laws 1935, c. 152, § 2, p. 560; C.S.Supp.,1941, § 77-2503; R.S.1943, § 77-2303.

Bond is a continuing liability. Certification of check of outgoing treasurer is not a redeposit. Hall County v. Thomssen, 63 Neb. 787, 89 N.W. 393 (1902).

77-2304 State funds; depositories; form of bond.

Such bond shall be in substance as follows:

Know all Men by these Presents, That we as principals, and as sureties, are held and firmly bound unto the State of Nebraska, in the just and full sum of Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and our administrators, jointly and severally, by these presents. Dated the day of A.D.

Whereas, the said bank, in consideration of the deposit of certain of the money of the State of Nebraska for safekeeping with and in the bank of the amount whereof shall be subject to withdrawal or diminution by the State Treasurer as the requirements of the state shall demand, and which amount may be increased or decreased as the treasurer may determine;

Now, Therefore, if said bank of shall at the end of every month render to the State Treasurer a statement in duplicate showing the daily balance of the state money held by it during the month next preceding, and how the same has been credited, and shall well and truly keep all said sums of money so deposited or to be deposited as aforesaid subject to the check and order of the State Treasurer as aforesaid, and shall pay over the same, and each and every part thereof, upon the written demand of the State Treasurer, and to his successor in office as shall be by him demanded, and shall in all respect save and keep the people of the State of Nebraska, and the State Treasurer harmless and indemnified for and by reason of the making of such deposit or deposits, then this obligation shall be void and of no effect, otherwise to be and remain in full force and virtue.

Source: Laws 1891, c. 50, § 3, p. 348; Laws 1897, c. 23, § 2, p. 188; Laws 1899, c. 74, § 1, p. 321; Laws 1905, c. 151, § 1, p. 595; Laws 1907, c. 142, § 1, p. 450; Laws 1909, c. 139, § 1, p. 493; R.S.1913, § 6657; C.S.1922, § 6188; Laws 1927, c. 34, § 1, p. 153; C.S.1929, § 77-2503; Laws 1931, c. 135, § 1, p. 376; Laws 1933, c. 147, § 1, p. 564; Laws 1935, c. 152, § 2, p. 560; C.S.Supp.,1941, § 77-2503; R.S.1943, § 77-2304.

77-2305 State funds; depositories; limitations on amount deposited in any one bank.

The State Treasurer shall not have on deposit in any bank giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, nor any bank giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus one-half of the amount of the bond of the bank. The amount deposited in any bank shall not exceed the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus twice its capital stock and surplus, but no bonds or giving of security shall be required for funds over which the state investment officer has investment jurisdiction except those funds which are eligible for long-term investment. All bonds of such depositories shall be deposited with and held by the State Treasurer.

Source: Laws 1891, c. 50, § 3, p. 348; Laws 1897, c. 23, § 2, p. 188; Laws 1899, c. 74, § 1, p. 321; Laws 1905, c. 151, § 1, p. 595; Laws 1907, c. 142, § 1, p. 450; Laws 1909, c. 139, § 1, p. 493; R.S.1913, § 6657; C.S.1922, § 6188; Laws 1927, c. 34, § 1, p. 153; C.S.1929, § 77-2503; Laws 1931, c. 135, § 1, p. 376; Laws 1933, c. 147, § 1, p. 564; Laws 1935, c. 152, § 2, p. 560; C.S.Supp.,1941, § 77-2503; R.S.1943, § 77-2305; Laws 1957, c. 340, § 1, p. 1178; Laws 1978, LB 599, § 1; Laws 1996, LB 1274, § 26; Laws 2009, LB259, § 14.

Section is not applicable to cities of second class. *Luikart v. City of Aurora*, 125 Neb. 263, 249 N.W. 590 (1933).

Banks designated as depositories may pledge assets of bank to secure state and county funds when deposited therein. *Bliss v. Pathfinder Irr. Dist.*, 122 Neb. 203, 240 N.W. 291 (1932).

Deposit of amount exceeding one-half amount of bond is no release. *In re State Treasurer's Settlement*, 51 Neb. 116, 70 N.W. 532 (1897).

77-2306 State funds; depositories; security in lieu of bonds.

In lieu of a bond as provided in section 77-2305, any bank making application to become a depository under the provisions of sections 77-2301 to 77-2309 may give security as provided in the Public Funds Deposit Security Act to the State Treasurer.

Source: Laws 1891, c. 50, § 3, p. 348; Laws 1897, c. 23, § 2, p. 188; Laws 1899, c. 74, § 1, p. 321; Laws 1905, c. 151, § 1, p. 595; Laws 1907, c. 142, § 1, p. 450; Laws 1909, c. 139, § 1, p. 493; R.S.1913, § 6657; C.S.1922, § 6188; Laws 1927, c. 34, § 1, p. 153; C.S.1929, § 77-2503; Laws 1931, c. 135, § 1, p. 276; Laws 1933, c. 147, § 1, p. 564; Laws 1935, c. 152, § 2, p. 560; C.S.Supp.,1941, § 77-2503; R.S.1943, § 77-2306; Laws 1959, c. 263, § 13, p. 944; Laws 1967, c. 507, § 1, p. 1707; Laws 1989, LB 377, § 12; Laws 1995, LB 384, § 29; Laws 1996, LB 1274, § 27.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2307 Repealed. Laws 1996, LB 1274, § 57.

77-2308 Repealed. Laws 1996, LB 1274, § 57.

77-2309 State funds; State Treasurer; duty to secure best terms possible.

It is made the duty of the State Treasurer to use all reasonable and proper means to secure to the state the best terms for the depositing of the money belonging to the state, consistent with the safekeeping and prompt payment of the funds of the state when demanded.

Source: Laws 1891, c. 50, § 4, p. 350; R.S.1913, § 6658; C.S.1922, § 6189; C.S.1929, § 77-2504; R.S.1943, § 77-2309.

77-2310 State funds; State Treasurer; making of profit prohibited; illegal removal of funds; penalty; liability on bond.

The making of profit, directly or indirectly, by the State Treasurer out of any money in the state treasury belonging to the state, the custody of which the treasurer is charged with, by loaning, depositing or otherwise using it or depositing the same in any manner, or the removal by the treasurer or by his consent of such money or a part thereof out of the vault of the treasurer's department or any legal depository of the same, except for the payment of warrants, legally drawn or for the purpose of depositing the same in the banks selected as depositories under the provisions of sections 77-2301 to 77-2309, shall be deemed guilty of a Class IV felony, and shall also be liable under and upon his official bond for all profits realized from such unlawful using of such funds.

Source: Laws 1891, c. 50, § 4, p. 350; R.S.1913, § 6658; C.S.1922, § 6189; C.S.1929, § 77-2504; R.S.1943, § 77-2310; Laws 1977, LB 39, § 230.

77-2311 State funds; State Treasurer; failure to act; penalty.

If the State Treasurer shall willfully fail or refuse at any time to do or perform any act required of him by sections 77-2301 to 77-2309, he shall be guilty of a Class II misdemeanor. It shall be the duty of the Attorney General to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of sections 77-2303 to 77-2305.

Source: Laws 1891, c. 50, § 5, p. 351; R.S.1913, § 6659; C.S.1922, § 6190; C.S.1929, § 77-2505; R.S.1943, § 77-2311; Laws 1977, LB 39, § 231.

77-2312 County funds; deposit required; conditions.

The county treasurer of each and every county in the State of Nebraska shall deposit, and at all times keep on deposit for safekeeping in the state or national banks, capital stock financial institutions, or qualifying mutual financial institutions doing business in the county of approved and responsible standing, the amount of money in his or her hands collected and held by him or her as county treasurer. Any check, draft, order, or other negotiable instrument deposited by the county treasurer, except when drawn upon the bank, capital stock financial institution, or qualifying mutual financial institution in which the deposit is made, shall be received by the bank, capital stock financial institution, or qualifying mutual financial institution for collection only and shall be subject to final payment thereof to the bank, capital stock financial institution, or qualifying mutual financial institution. Collection of such items shall be in the usual course of business and except for its own negligence, the bank, capital stock financial institution, or qualifying mutual financial institution shall not be liable thereon until and unless payment is actually received. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1891, c. 50, § 6, p. 351; Laws 1897, c. 23, § 3, p. 190; Laws 1903, c. 110, § 1, p. 584; R.S.1913, § 6660; C.S.1922, § 6191; C.S.1929, § 77-2506; Laws 1930, Spec. Sess., c. 7, § 1, p. 35; Laws 1935, c. 153, § 3, p. 562; Laws 1937, c. 174, § 1, p. 687; C.S.Supp.,1941, § 77-2506; R.S.1943, § 77-2312; Laws 1989, LB 33, § 32; Laws 2001, LB 362, § 34.

1. Authorization of deposit
2. Liability of county treasurer
3. Miscellaneous

1. Authorization of deposit

Deposit of county tax funds, secured by pledge of bank's assets and depository bond, is not trust fund so as to entitle surety as county's assignee to preferred claim on bank's insolvency. State ex rel. Sorensen v. First State Bank of Alliance, 122 Neb. 502, 240 N.W. 747 (1932), 79 A.L.R. 576 (1932).

General deposits alone are authorized to be made in county depositories by county treasurers. Shambaugh v. City Bank of Elm Creek, 118 Neb. 817, 226 N.W. 460 (1929).

Entire deposit by county treasurer although in excess of legal limit, was within protection of guaranty fund. State ex rel. Davis v. People's State Bank of Anselmo, 111 Neb. 126, 196 N.W. 912 (1923).

A bank is liable on depository bond signed by cashier. Johnson County v. Chamberlain Bkg. House, 80 Neb. 96, 113 N.W. 1055 (1907).

2. Liability of county treasurer

No defense that the funds have been lost without fault or negligence of the county treasurer. Garfield County v. Pearl, 138 Neb. 810, 295 N.W. 820 (1941).

County treasurer cannot authorize deposit of county funds in bank unless it has been duly designated as depository and given bond, and county treasurer and surety are liable for loss of county funds deposited in excess of bank's bond. Massachusetts Bonding & Ins. Co. v. Steele, 125 Neb. 7, 248 N.W. 648 (1933).

County treasurer is not liable for safekeeping of funds where he has deposited money in depository bank which has given bond hereunder. Lancaster County v. State, 97 Neb. 95, 149 N.W. 331 (1914).

If not negligent, county treasurer is not liable for uncollected interest. *Hamilton County v. Aurora Nat. Bank*, 88 Neb. 280, 129 N.W. 267 (1911).

County treasurer is not liable when not negligent. *Hamilton County v. Cunningham*, 87 Neb. 650, 127 N.W. 1060 (1910).

3. Miscellaneous

Interest received by county treasurer from depository banks on sinking funds in his custody for paying bonds of school district must be credited to general fund of county. *School District No. 22 of Harlan County v. Harlan County*, 127 Neb. 4, 254 N.W. 701 (1934).

Interest received from depository bank, by a county treasurer, upon funds in his custody as ex officio treasurer of a drainage

district, is the money of such district. *Nemaha Valley Drainage Dist. No. 2 v. Nemaha County*, 100 Neb. 64, 158 N.W. 438 (1916).

Demand certificates are treated as cash, and no interest charged thereon. *Hamilton County v. Aurora Nat. Bank*, 88 Neb. 280, 129 N.W. 267 (1911).

Municipality may maintain action to recover money unlawfully deposited by treasurer. *Farmers & Merchants Banking Co. v. City of Red Cloud*, 62 Neb. 442, 87 N.W. 175 (1901).

County cannot lawfully relieve bank of paying full legal rate. *Commercial State Bank of Neligh v. Antelope County*, 48 Neb. 496, 67 N.W. 465 (1896).

77-2313 County funds; application by depositories; approval by county board.

Any bank, capital stock financial institution, or qualifying mutual financial institution located in the county may apply for the privilege of keeping money upon the following conditions: All deposits shall be subject to payment when demanded by the county treasurer on his or her check or order and subject also to such regulations as are imposed by law and the rules adopted by the county treasurer for holding and receiving such deposits. It shall be the duty of the county board to act on the application or applications of any and all banks, capital stock financial institutions, or qualifying mutual financial institutions, state or national, as may ask for the privilege of becoming the depository of such money, as well as to approve the bonds of those selected incident to such relation, and the county treasurer shall not deposit such money or any part thereof in any bank, capital stock financial institution, or qualifying mutual financial institution other than such as may have been so selected by the county board for such purposes, if any such bank, capital stock financial institution, or qualifying mutual financial institution has been so selected by the county board.

Source: Laws 1891, c. 50, § 6, p. 351; Laws 1897, c. 23, § 3, p. 190; Laws 1903, c. 110, § 1, p. 584; R.S.1913, § 6660; C.S.1922, § 6191; C.S.1929, § 77-2506; Laws 1930, Spec. Sess., c. 7, § 1, p. 35; Laws 1935, c. 153, § 3, p. 562; Laws 1937, c. 174, § 1, p. 687; C.S.Supp.,1941, § 77-2506; R.S.1943, § 77-2313; Laws 1989, LB 33, § 33; Laws 2001, LB 362, § 35.

Board cannot designate one bank as preferred depository. *State ex rel. Irrigators Bank v. Whipple*, 60 Neb. 650, 83 N.W. 921 (1900).

Nat. Bank of Stanton v. Owen, 41 Neb. 651, 59 N.W. 886 (1894).

Designation of bank by county board confers on bank no right to compel board to approve sureties on bond. *State ex rel. First*

77-2314 County funds; depositories; funds deposited pro rata.

When more than one bank, capital stock financial institution, or qualifying mutual financial institution may have been selected by the county board as depositories, the county treasurer shall not give a preference to any one or more of them in the money he or she may so deposit, but shall keep deposited with each of such banks, capital stock financial institutions, or qualifying mutual financial institutions such a part of the money as the capital of such bank, capital stock financial institution, or qualifying mutual financial institution as of December 31 of the preceding year is a part of the amount of all the capital of all the banks, capital stock financial institutions, or qualifying mutual financial institutions so selected as of December 31 of the preceding year, so that such money may at all times be deposited with such banks, capital stock

financial institutions, or qualifying mutual financial institutions pro rata as to their capital, except that the county treasurer may select one or more banks, capital stock financial institutions, or qualifying mutual financial institutions to be used for active accounts in which he or she may keep deposited in excess of these requirements only such funds as may be necessary for the transaction of ordinary day-to-day requirements. For purposes of this section, capital shall mean capital stock, if any, surplus, undivided profits, capital notes or debentures, and other unimpaired reserves. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1903, c. 110, § 1, p. 584; R.S.1913, § 6660; C.S.1922, § 6191; C.S.1929, § 77-2506; Laws 1930, Spec. Sess., c. 7, § 1, p. 35; Laws 1935, c. 153, § 3, p. 562; Laws 1937, c. 174, § 1, p. 687; C.S.Supp.,1941, § 77-2506; R.S.1943, § 77-2314; Laws 1974, LB 954, § 1; Laws 1989, LB 33, § 34; Laws 1996, LB 1274, § 28; Laws 2001, LB 362, § 36.

In absence of bad faith, county treasurer is not liable for depositing more than bank's pro rata share. *Furnas County v. Evans*, 97 Neb. 54, 149 N.W. 64 (1914); *Holt County v. Cronin*, 79 Neb. 424, 112 N.W. 561 (1907).

Treasurer must distribute funds among depositories as provided, and mandamus will lie. *State ex rel. First Nat. Bank of O'Neill v. Cronin*, 72 Neb. 642, 101 N.W. 327 (1904).

77-2315 County funds; investment; securities authorized; interest; disposition; delivery of securities to successor.

A county treasurer may by and with the consent of the county board invest in United States Government bonds, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, United States Treasury notes, bills, or certificates of indebtedness maturing within two years from the date of purchase, or in certificates of deposit. Every treasurer having invested in securities as aforesaid must deliver the same to his successor, who shall receive and accept the same as funds of the office. The interest received on any investments authorized by this section and section 77-2340 shall be credited to the general fund of the county, or to a fund to be used exclusively for the purposes contemplated by the provisions of section 23-120, in the discretion of the county board; *Provided*, that if such interest is received on a fund which shall not have been commingled with any other fund for investment purposes, then any interest received shall be credited to the fund from which the investment shall have been made. It shall be in the discretion of the county board whether any fund shall be commingled or invested from an identifiable account.

Source: Laws 1935, c. 153, § 3, p. 562; Laws 1937, c. 174, § 1, p. 687; C.S.Supp.,1941, § 77-2506; R.S.1943, § 77-2315; Laws 1955, c. 303, § 1, p. 943; Laws 1959, c. 263, § 14, p. 945; Laws 1961, c. 392, § 1, p. 1190; Laws 1974, LB 771, § 1.

77-2316 County funds; depositories; bond required; approval; conditions.

For the security of the funds so deposited under the provisions of sections 77-2312 to 77-2324, the county treasurer shall require all such depositories to give bonds for the safekeeping and payment of such deposits and the accretions thereof, except as otherwise provided in sections 77-2312 to 77-2364 for time deposits. The bond shall run to the people of the county, and be approved by

the county board and conditioned that the depository shall, at the end of each and every month, render to the treasurer and county board a statement in duplicate, showing the several daily balances and the amounts of money of the county held by it during the month, and how credited; and for the payment of the deposits, when demanded by the county treasurer on his check at any time, as hereinbefore provided, and generally do and perform whatever may be required by the provisions of this article, and a faithful discharge of the trust reposed in such depository.

Source: Laws 1891, c. 50, § 8, p. 352; Laws 1897, c. 23, § 5, p. 191; Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2316; Laws 1961, c. 392, § 2, p. 1190.

1. Constitutionality
2. Designation of depository
3. Liability of treasurer
4. Miscellaneous

1. Constitutionality

Act is constitutional so far as it relates to deposit of county funds. State ex rel. First Nat. Bank of O'Neill v. Cronin, 72 Neb. 642, 101 N.W. 327 (1904).

2. Designation of depository

Funds deposited in a bank designated as a depository are not trust funds, but are a deposit otherwise secured. State ex rel. Sorensen v. South Omaha State Bank, 128 Neb. 733, 260 N.W. 278 (1935).

Treasurer is not authorized to deposit money in a bank not designated as a depository. State ex rel. Sorensen v. Bank of Otoe, 125 Neb. 414, 250 N.W. 547 (1933).

Board's control extends only to approval or rejection of bonds. State ex rel. Irrigators Bank v. Whipple, 60 Neb. 650, 83 N.W. 921 (1900).

3. Liability of treasurer

County treasurer cannot deposit county funds in bank unless it has been duly authorized as depository and given bond, and county treasurer and surety are liable for loss of county funds

deposited in excess of bank's bond. Massachusetts Bonding & Ins. Co. v. Steele, 125 Neb. 7, 248 N.W. 648 (1933).

Powers and duties of county treasurer with reference to depositing of public funds are limited. Dovey v. State, 116 Neb. 533, 218 N.W. 390 (1928).

Treasurer is liable on bond for profits unaccounted for. Furnas County v. Evans, 90 Neb. 37, 132 N.W. 723 (1911).

In absence of bad faith, county treasurer is not liable for depositing more than bank's pro rata share. Holt County v. Cronin, 79 Neb. 424, 112 N.W. 561 (1907).

4. Miscellaneous

Section is not applicable to cities of second class. Luikart v. City of Aurora, 125 Neb. 263, 249 N.W. 590 (1933).

A bond given to secure public funds in a bank by a county treasurer expires with the term of such official and does not apply to deposits made by the new treasurer. State ex rel. Spillman v. Dunbar State Bank, 119 Neb. 335, 228 N.W. 868 (1930).

77-2317 County funds; depositories; form of bond; ineligible sureties.

The bond in substance shall be similar to the bond required and set forth in section 77-2304. No person in any way connected with any depository bank, capital stock financial institution, or qualifying mutual financial institution as an officer or stockholder shall be accepted as a surety on any bond given by the bank, capital stock financial institution, or qualifying mutual financial institution of which he or she is an officer or stockholder.

Source: Laws 1891, c. 50, § 8, p. 352; Laws 1897, c. 23, § 5, p. 191; Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2317; Laws 1989, LB 33, § 35; Laws 1996, LB 1274, § 29; Laws 2001, LB 362, § 37.

77-2318 County funds; depositories; limitation on deposits; exception.

The county treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more money than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution in cases when the bank, capital stock financial institution, or qualifying mutual financial institution gives a guaranty bond except as provided in section 77-2318.01. The amount on deposit at any time with any bank, capital stock financial institution, or qualifying mutual financial institution shall not exceed fifty percent of the capital and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution except as provided in section 77-2318.01. When the amount of money which the county treasurer desires to deposit in the banks, capital stock financial institutions, and qualifying mutual financial institutions within the county exceeds fifty percent of the capital and surplus of all of the banks, capital stock financial institutions, and qualifying mutual financial institutions in such county, then the county treasurer may, with the consent of the county board, deposit an amount in excess thereof, but not exceeding the capital stock and surplus in any one bank, capital stock financial institution, or qualifying mutual financial institution unless the depository gives security as provided in section 77-2318.01. Bond shall be required of all banks, capital stock financial institutions, and qualifying mutual financial institutions for such excess deposit unless security is given in accordance with section 77-2318.01. The bonds shall be deposited with the county clerk and approved by the county board. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1891, c. 50, § 8, p. 352; Laws 1897, c. 23, § 5, p. 191; Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2318; Laws 1953, c. 284, § 1, p. 921; Laws 1989, LB 33, § 36; Laws 1992, LB 757, § 26; Laws 1996, LB 1274, § 30; Laws 2001, LB 362, § 38; Laws 2009, LB259, § 15.

Deposits of county funds exceeding fifty percent of national bank's paid-up stock are within protection of surety bonds, and surety is liable for attorney fees also. *Scotts Bluff County v. First Nat. Bank of Gering*, 115 Neb. 273, 212 N.W. 617 (1927); *People of Sioux County v. National Surety Company*, 276 U.S. 238 (1928), overruling *National Surety Co. v. Lyons*, 16 F.2d 688 (8th Cir. 1926).

Surety, after paying county treasurer amount of liability, is entitled to have amount paid allowed as preferred claim payable out of guaranty fund. *State ex rel. Davis v. State Bank of Gering*, 114 Neb. 213, 206 N.W. 758 (1925).

Entire deposit by county treasurer, although in excess of legal limit, is within protection of guaranty fund. *State ex rel. Davis v. People's State Bank of Anselmo*, 111 Neb. 126, 196 N.W. 912 (1923).

Under facts herein, sureties may share ratably dividends declared by bank's receiver upon county's claim for entire deposit, under this section. *Cole v. Myers*, 100 Neb. 480, 160 N.W. 894 (1916).

In absence of neglect, treasurer is not liable for interest on excess deposits where he deposits money in bank in excess of amount for which it has qualified. *Custer County v. Cavenee*, 99 Neb. 101, 155 N.W. 605 (1915).

77-2318.01 County funds; deposit of excess, when.

The county treasurer may deposit in any bank, capital stock financial institution, or qualifying mutual financial institution of the county in which he or she is treasurer in excess of the amounts authorized in section 77-2318 when (1) the depository secures the deposits by giving security as provided in the Public

Funds Deposit Security Act and (2) the same is approved by a formal resolution of the county board. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1953, c. 284, § 2, p. 922; Laws 1988, LB 703, § 2; Laws 1989, LB 33, § 37; Laws 1996, LB 1274, § 31; Laws 2001, LB 362, § 39.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2319 County funds; depositories; deposits outside of county; when.

When banks, capital stock financial institutions, or qualifying mutual financial institutions located in the county refuse or neglect to bid on money of the county, when there are no banks, capital stock financial institutions, or qualifying mutual financial institutions in the county, or when the banks, capital stock financial institutions, or qualifying mutual financial institutions located in the county do not have sufficient capital and surplus to receive such money under sections 77-2312 to 77-2324, then any surplus over the amount specified that banks, capital stock financial institutions, or qualifying mutual financial institutions in the county may receive shall be deposited in banks, capital stock financial institutions, or qualifying mutual financial institutions outside of the county having sufficient capital and surplus under the same conditions and terms as if in the county. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2319; Laws 1989, LB 33, § 38; Laws 2001, LB 362, § 40.

77-2320 County funds; depositories; security in lieu of bond.

In lieu of a bond as provided in sections 77-2316 to 77-2319, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository under sections 77-2312 to 77-2324 may give security as provided in the Public Funds Deposit Security Act to the county clerk. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2320; Laws 1959, c. 263, § 15, p. 945; Laws 1977, LB 266, § 2; Laws 1988, LB 703, § 3; Laws 1989, LB 33, § 39; Laws 1989, LB 377, § 13; Laws 1996, LB 1274, § 32; Laws 2001, LB 362, § 41.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

Banks designated as depositories may pledge assets of bank to secure state and county funds when deposited therein. *Bliss v. Pathfinder Irr. Dist.*, 122 Neb. 203, 240 N.W. 291 (1932).

Specification of certain assets which bank may pledge to secure repayment of county deposits is not a limitation on

power to pledge others. *Bliss v. Mason*, 121 Neb. 484, 237 N.W. 581 (1931).

77-2321 Repealed. Laws 1996, LB 1274, § 57.

77-2322 Repealed. Laws 1996, LB 1274, § 57.

77-2323 County funds; deposit; violation; penalty.

Any treasurer or any officer of a bank, capital stock financial institution, or qualifying mutual financial institution who shall directly or indirectly violate or knowingly permit to be violated sections 77-2316 to 77-2323 so far as such sections relate to the deposit of public money in a bank, capital stock financial institution, or qualifying mutual financial institution shall be guilty of a Class IV felony. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2323; Laws 1977, LB 39, § 232; Laws 1989, LB 33, § 42; Laws 2001, LB 362, § 42.

77-2324 County funds; county treasurer; duty to secure best terms possible.

It is hereby made the duty of the county treasurer to use all reasonable and proper means to secure to the county the best terms for the depositing of the money belonging to the county consistent with the safekeeping and prompt payment of the funds of the county when demanded.

Source: Laws 1891, c. 50, § 9, p. 353; R.S.1913, § 6663; C.S.1922, § 6194; C.S.1929, § 77-2511; R.S.1943, § 77-2324.

Drainage district is entitled to interest obtained by county from fund in hands of treasurer as ex officio treasurer of

district. *Nemaha Valley Drainage District No. 2 v. Nemaha County*, 100 Neb. 64, 158 N.W. 438 (1916).

77-2325 County funds; county treasurer; prohibited acts; penalty; liability on bond.

The making of profit, directly or indirectly, by the county treasurer out of any money in the county treasury belonging to the county, the custody of which the treasurer is charged with, by loaning or depositing or otherwise using or depositing the same in any manner, or the removal by the county treasurer or by his or her consent of such money or a part thereof out of the vault of the treasurer's department or any legal depository of the same, except for the payment of warrants legally drawn or for the purpose of depositing the same in the banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories under sections 77-2312 to 77-2324, shall be deemed a Class IV felony, and the county treasurer shall also be liable under and upon his or her official bond for all profits realized from such unlawful using of such funds.

Source: Laws 1891, c. 50, § 9, p. 353; R.S.1913, § 6663; C.S.1922, § 6194; C.S.1929, § 77-2511; R.S.1943, § 77-2325; Laws 1977, LB 39, § 233; Laws 1989, LB 33, § 43; Laws 2001, LB 362, § 43.

77-2326 County fund; county treasurer; failure to act; penalty.

If the county treasurer shall willfully fail or refuse at any time to do or perform any act required of him by sections 77-2312 to 77-2324, he shall be guilty of a Class I misdemeanor. It shall be the duty of the county attorney to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of said sections.

Source: Laws 1891, c. 50, § 10, p. 354; R.S.1913, § 6664; C.S.1922, § 6195; C.S.1929, § 77-2512; R.S.1943, § 77-2326; Laws 1977, LB 39, § 234.

77-2326.01 Public money in hands of county and court officials; terms, defined.

For purposes of sections 77-2313 to 77-2326.09, (1) county board shall include county commissioners or county supervisors, as the case may be, and (2) public money shall include all funds which come into the hands of county judges, clerks of the county court, or clerks of the district court pursuant to any provision of law authorizing such officers to collect or receive the same.

Source: Laws 1947, c. 269, § 1, p. 868; Laws 1988, LB 370, § 12; Laws 1990, LB 1146, § 6.

Until enactment of this act, there was no statute providing a depository for funds held by clerks of the district courts. *Bordy v. Smith*, 150 Neb. 272, 34 N.W.2d 331 (1948).

77-2326.02 Clerk of the district court; deposit of funds.

All public funds paid to or coming into the hands of any clerk of the district court shall be deposited in such bank, capital stock financial institution, or qualifying mutual financial institution as shall have been designated as official depositories for such funds. Such deposits shall be subject to the provisions and conditions provided in sections 77-2326.03 to 77-2326.09. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 2, p. 869; Laws 1988, LB 370, § 13; Laws 1989, LB 33, § 44; Laws 2001, LB 362, § 44.

77-2326.03 Clerk of the district court; depositories; designation.

Depositories shall be such banks, capital stock financial institutions, and qualifying mutual financial institutions as shall be from time to time designated by the county board by formal resolution duly recorded in the minutes of the proceedings of such board. Such designation may be withdrawn at any time by such board in like manner, whereupon all deposits in such bank, capital stock financial institution, or qualifying mutual financial institution under the control of the clerk of the district court shall be immediately withdrawn. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 3, p. 869; Laws 1988, LB 370, § 14; Laws 1989, LB 33, § 45; Laws 2001, LB 362, § 45.

77-2326.04 Public money in hands of court officials; deposits; security for repayment.

No deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made to accumulate in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the county judge, clerk of the county court, or clerk of the district court, as the case may be, has received from such depository as security for the prompt repayment by the depository of his or her respective deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation either a surety bond in form and with corporate sureties approved by the county judge or judges or by formal resolution of the county board, as the case may be, or in lieu thereof, the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 4, p. 869; Laws 1959, c. 263, § 16, p. 946; Laws 1988, LB 703, § 4; Laws 1989, LB 33, § 46; Laws 1989, LB 377, § 14; Laws 1990, LB 1146, § 7; Laws 1993, LB 356, § 1; Laws 1996, LB 1274, § 33; Laws 2001, LB 362, § 46; Laws 2009, LB259, § 16.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2326.05 Clerk of the district court; deposits; limitation.

The deposits secured by a surety bond shall at no time exceed the amount of the penal sum of such surety bond.

Source: Laws 1947, c. 269, § 5, p. 870; Laws 1988, LB 703, § 5; Laws 1996, LB 1274, § 34.

77-2326.06 Clerk of the district court; deposits; security; contracts.

Every depository may secure deposits by giving a surety bond or giving security as provided in section 77-2326.04 and otherwise enter into and become a party to any contract or arrangement not inconsistent with this section, as may be reasonably necessary or proper to render fully effective section 77-2326.04. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 6, p. 870; Laws 1988, LB 703, § 6; Laws 1989, LB 33, § 47; Laws 1996, LB 1274, § 35; Laws 2001, LB 362, § 47.

77-2326.07 Clerk of the district court; depositories; securities; list.

The clerk of the district court shall at all times keep and certify to the county board a complete and correct list and description of the securities furnished by any depository to secure the deposits. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 7, p. 870; Laws 1988, LB 370, § 15; Laws 1988, LB 703, § 7; Laws 1989, LB 33, § 48; Laws 1996, LB 1274, § 36; Laws 2001, LB 362, § 48.

77-2326.08 Clerk of the county or district court; depositories; statement of funds.

Each depository shall furnish directly to the county board a sworn monthly statement of the funds of the county judge, clerk of the county court, and clerk of the district court on deposit in such depository. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1947, c. 269, § 8, p. 870; Laws 1988, LB 370, § 16; Laws 1988, LB 703, § 8; Laws 1989, LB 33, § 49; Laws 1990, LB 1146, § 8; Laws 1996, LB 1274, § 37; Laws 2001, LB 362, § 49.

77-2326.09 Clerk of the county or district court; deputies; employees; liability.

The clerk of the county court, the clerk of the district court, their deputies or other employees, and their sureties shall not be liable for any loss resulting from the failure of any bank, capital stock financial institution, or qualifying mutual financial institution as to any such deposits made and maintained as provided in sections 77-2326.01 to 77-2326.09.

Source: Laws 1947, c. 269, § 9, p. 870; Laws 1988, LB 370, § 17; Laws 1989, LB 33, § 50; Laws 1990, LB 1146, § 9; Laws 2001, LB 362, § 50.

77-2327 Public funds; depository bonds; expiration.

All bonds given to secure deposits of public money by the state or by any county, except for deposit guaranty bonds defined under section 77-2387, shall expire on January 1 of each year.

Source: Laws 1927, c. 34, § 4, p. 158; C.S.1929, § 77-2509; Laws 1933, c. 128, § 1, p. 504; C.S.Supp.,1941, § 77-2509; R.S.1943, § 77-2327; Laws 2000, LB 932, § 37.

Bond given by state bank to secure school district deposit is valid obligation of sureties, notwithstanding absence of statute expressly granting such authority. *School District of City of Bayard v. Vanatta*, 123 Neb. 216, 242 N.W. 435 (1932).

It is lawful for bank to give depository bond to school district to secure deposit of its funds, and sureties thereon are bound thereby. *Liberty High School District of Sioux County v. Currie*, 122 Neb. 173, 240 N.W. 286 (1931).

77-2328 Repealed. Laws 1996, LB 1274, § 57.**77-2329 Public funds; treasurers or secretary-treasurers; when not liable under bond.**

No treasurer or secretary-treasurer shall be liable on his or her bond for money on deposit in a bank, capital stock financial institution, or qualifying mutual financial institution under and by direction of the proper legal authority if the bank, capital stock financial institution, or qualifying mutual financial institution has given bond in accordance with section 14-556, 15-846, 16-714, 17-720, 77-2318, 77-2344, 77-2352, 77-2355, or 77-2375 or given security as provided in the Public Funds Deposit Security Act.

Source: Laws 1891, c. 50, § 11, p. 354; R.S.1913, § 6665; C.S.1922, § 6196; C.S.1929, § 77-2513; R.S.1943, § 77-2329; Laws 1953, c. 284, § 3, p. 922; Laws 1987, LB 440, § 10; Laws 1989, LB 33, § 52; Laws 1994, LB 1118, § 19; Laws 1996, LB 1274, § 38; Laws 2001, LB 362, § 51.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

This section is limited to state and county funds. *Village of Hampton v. Gausman*, 136 Neb. 550, 286 N.W. 757 (1939).

Designation of bank as depository does not relieve treasurer from liability where bank did not give bond. *City of Cozad v. Thompson*, 126 Neb. 79, 252 N.W. 606 (1934).

County treasurer is not liable for interest on deposits which he has not collected and is unable to collect. *Custer County v. Cavenee*, 99 Neb. 101, 155 N.W. 605 (1915).

Reference to proper legal authority is to county board. *State ex rel. First Nat. Bank of Stanton v. Owen*, 41 Neb. 651, 59 N.W. 886 (1894).

77-2330 Repealed. Laws 1969, c. 584, § 134.

77-2331 Repealed. Laws 1969, c. 584, § 134.

77-2332 Repealed. Laws 1969, c. 584, § 134.

77-2333 Repealed. Laws 1972, LB 1044, § 1.

77-2334 Sinking funds of county, township and school districts; investment; conditions.

The county treasurer of any county in which there is a sinking fund on hand in the treasury for the redemption of outstanding county, township or school district bonds, when such sinking fund is not otherwise invested, shall invest such funds in legally issued and duly registered warrants and legally issued and duly registered county bonds of the county at face value of such warrants or county bonds in any amount he may deem advisable, not to exceed seventy-five percent of such fund, not otherwise invested and lying idle in the treasury; *Provided*, the time for payment of all such warrants or bonds so purchased shall be prior to the time when the sinking fund so invested should be in the hands of the treasurer for the purpose for which it was levied. All warrants or bonds so purchased shall be kept in the treasurer's office until paid by the respective funds on which they were drawn or issued in their regular order of registration.

Source: Laws 1897, c. 83, § 1, p. 357; Laws 1901, c. 75, § 1, p. 464; R.S.1913, § 6669; C.S.1922, § 6200; C.S.1929, § 77-2517; R.S. 1943, § 77-2334.

County treasurer is legal custodian of sinking funds of a school district. *School District No. 22 of Harlan County v. Harlan County*, 127 Neb. 4, 254 N.W. 701 (1934).

77-2335 Sinking funds of county and other governmental subdivisions; investment in registered warrants; purchase and holding for benefit of fund.

When any warrant issued by the proper authorities of any county, township, city, town or school district shall have been presented for payment and the same is not paid for want of funds, the treasurer shall, upon and under the direction of the county board of such county, purchase and take up such registered warrant with sinking funds in his hands and hold such warrant for the benefit of the fund so invested until the same is paid in its order, as provided by law.

Source: Laws 1895, c. 68, § 1, p. 241; R.S.1913, § 6670; C.S.1922, § 6201; C.S.1929, § 77-2518; R.S.1943, § 77-2335.

77-2336 Sinking funds of county; investment in registered warrants; authorization by county board; record.

The county board of any county in this state is authorized to provide for the purchase and taking up of registered warrants, as provided for in section 77-2335, out of the sinking funds in the hands of the county treasurer whenever in the judgment of such county board the same shall be safe and expedient. Before so investing any sinking funds, the county board shall fix and prescribe and enter of record general directions and authority to such county treasurer as to the funds to be invested, specifying the funds to be so invested, the kind and amount of warrants to be so invested in, and in so doing shall, as far as the same may be practicable, continue to invest the sinking fund which shall last become due and payable. Not more than fifty percent of the money so collected on any given sinking fund shall be so invested in warrants at any given time. When practicable, the warrants drawn by any given authority shall be provided for from the sinking funds belonging to the organization issuing such warrant, and of such provisions the county board shall give the treasurer notice.

Source: Laws 1895, c. 68, § 2, p. 241; R.S.1913, § 6671; C.S.1922, § 6202; C.S.1929, § 77-2519; R.S.1943, § 77-2336.

77-2337 Sinking funds of city; investment in warrants; limitation; direction to treasurer.

The city council of any incorporated city of this state may make similar provision for the taking up of warrants out of the sinking funds in the hands of the city treasurer of such city. The warrants to be so purchased shall be limited to those of its own issue or to those of any school district situated mainly or wholly within the boundaries of such city. Upon a notice given of such direction it shall be the duty of such treasurer to so take up such warrants.

Source: Laws 1895, c. 68, § 3, p. 242; R.S.1913, § 6672; C.S.1922, § 6203; C.S.1929, § 77-2520; R.S.1943, § 77-2337.

77-2338 Sinking funds of school district; investment in warrants; limitation; direction to treasurer.

The school board of any school district in this state is authorized to direct the legal custodian of any of its sinking funds to invest such sinking funds in the warrants of such school district in like manner as hereinbefore provided for. The investment of such school district sinking fund under this section shall be limited to the warrants of its own issue. Upon such direction of the school board, the custodian of such sinking funds shall proceed to take up the warrants of such school district as herein provided for.

Source: Laws 1895, c. 68, § 4, p. 243; R.S.1913, § 6673; C.S.1922, § 6204; C.S.1929, § 77-2521; R.S.1943, § 77-2338.

Interest received by county treasurer from depository banks on sinking funds for payment of bonds of school district must be credited to the general fund of the county. School District No. 22 of Harlan County v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

77-2339 Sinking funds of township; investment in warrants; limitation; direction to county treasurer.

The township board in counties under township organization is authorized and instructed to direct the county treasurer to invest the sinking fund of the township in the custody of the county treasurer in the warrants of the township. The investment of the sinking fund shall be limited to warrants of its own issue. Upon an order of the township board properly signed by the supervisor and

countersigned by the township clerk, the county treasurer shall invest the sinking fund for the benefit of the township as provided in this section.

Source: Laws 1895, c. 68, § 5, p. 243; R.S.1913, § 6674; C.S.1922, § 6205; C.S.1929, § 77-2522; R.S.1943, § 77-2339.

77-2340 County funds; investment of funds; time deposits; security required; exception.

The county treasurers of the various counties of the state may, upon resolution of their respective county boards authorizing the same, make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of county funds under the provisions of sections 77-2312 to 77-2315. The time deposits shall bear interest and shall be secured as set forth in section 77-2304 or 77-2320, except that the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be exempt from the requirement of being secured as provided by section 77-2320 or by bonds similar to the bond required and set forth in section 77-2304. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1931, c. 18, § 2, p. 90; C.S.Supp.,1941, § 77-2524; R.S. 1943, § 77-2340; Laws 1961, c. 392, § 3, p. 1191; Laws 1972, LB 1069, § 7; Laws 1975, LB 164, § 1; Laws 1989, LB 33, § 53; Laws 1992, LB 757, § 27; Laws 2001, LB 362, § 52; Laws 2009, LB259, § 17.

77-2341 Funds of governmental subdivision; investment of surplus; securities authorized.

(1) Whenever any county, city, village, or other governmental subdivision, other than a school district, of the State of Nebraska has accumulated a surplus of any fund in excess of its current needs or has accumulated a sinking fund for the payment of its bonds and the money in such sinking fund exceeds the amount necessary to pay the principal and interest of any such bonds which become due during the current year, the governing body of such county, city, village, or other governmental subdivision may invest any such surplus in excess of current needs or such excess in its sinking fund in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made. The state investment officer shall upon request furnish a copy of current authorized investment guidelines of the Nebraska Investment Council.

(2) Whenever any school district of the State of Nebraska has accumulated a surplus of any fund in excess of its current needs or has accumulated a fund for the payment of bonds and the money in such fund exceeds the amount necessary to pay the principal and interest of any such bonds which become due during the current year, the board of education of such school district may invest any such surplus in excess of current needs or such excess in the bond fund in securities in which such board of education is authorized to invest pursuant to section 79-1043.

(3) Nothing in subsection (1) of this section shall be construed to restrict investments authorized pursuant to section 14-563.

(4) Nothing in subsections (1), (2), and (3) of this section shall be construed to authorize investments in venture capital.

Source: Laws 1931, c. 152, § 1, p. 411; C.S.Supp.,1941, § 77-2528; Laws 1943, c. 179, § 1, p. 624; R.S.1943, § 77-2341; Laws 1959, c. 263, § 18, p. 947; Laws 1961, c. 392, § 4, p. 1191; Laws 1989, LB 221, § 6; Laws 1994, LB 1066, § 83; Laws 1996, LB 900, § 1062.

Cross References

For investments for the Board of Educational Lands and Funds, see sections 72-202, 77-2204, and 77-2205.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

Sinking fund for payment of bonds was anticipated. *Talbott v. Village of Lyons*, 171 Neb. 186, 105 N.W.2d 918 (1960).

77-2342 Metropolitan utilities district funds; deposit required.

A metropolitan utilities district shall deposit the funds received or held by the district in such bank, capital stock financial institution, or qualifying mutual financial institution, situated within the boundaries of such district, as shall have been and shall be from time to time approved by the governing body of such district as official depositories for the funds belonging to such district. Such deposit shall be made subject to the conditions in sections 77-2342 to 77-2349. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 1, p. 378; C.S.Supp.,1941, § 77-2530; R.S. 1943, § 77-2342; Laws 1989, LB 33, § 54; Laws 1992, LB 746, § 75; Laws 2001, LB 177, § 5; Laws 2001, LB 362, § 53.

77-2343 Metropolitan utilities district funds; depositories; designation; conditions.

Depositories shall be such banks, capital stock financial institutions, or qualifying mutual financial institutions as shall be from time to time designated by the governing body of a metropolitan utilities district by formal resolution duly recorded. Such designation may be withdrawn at any time by such governing body by formal resolution duly entered upon its records. No deposit shall be made except in a duly designated depository, and deposits shall be withdrawn by the district immediately upon the withdrawal of the designation of any bank, capital stock financial institution, or qualifying mutual financial institution as a depository. All deposits shall be subject to payment on demand upon the check or order of the district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 2, p. 378; Laws 1935, c. 6, § 1, p. 69; C.S.Supp.,1941, § 77-2531; R.S.1943, § 77-2343; Laws 1989, LB 33, 55; Laws 2001, LB 177, § 6; Laws 2001, LB 362, § 54.

77-2344 Metropolitan utilities district funds; depositories; bond or securities authorized.

No deposit in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the metropolitan utilities district has received from such depository as security for the prompt repayment by the depository either a corporate surety bond in form and with sureties approved by formal resolution by the governing body of such district or the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 2, p. 378; Laws 1935, c. 6, § 1, p. 69; C.S.Supp.,1941, § 77-2531; R.S.1943, § 77-2344; Laws 1959, c. 263, § 19, p. 948; Laws 1989, LB 33, § 56; Laws 1989, LB 377, § 15; Laws 1992, LB 746, § 76; Laws 1992, LB 757, § 28; Laws 1996, LB 1274, § 39; Laws 2001, LB 177, § 7; Laws 2001, LB 362, § 55; Laws 2009, LB259, § 18.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2345 Metropolitan utilities district funds; depositories; limitation on amount.

No deposit shall be made in any designated bank, capital stock financial institution, or qualifying mutual financial institution (1) in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation or (2) in excess of the obligation of the depository bond at the time any deposit of funds is made or during the period in which the deposit of funds remains in the depository. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 2, p. 378; Laws 1935, c. 6, § 1, p. 69; C.S.Supp.,1941, § 77-2531; R.S.1943, § 77-2345; Laws 1989, LB 33, § 57; Laws 1992, LB 757, § 29; Laws 1996, LB 1274, § 40; Laws 2001, LB 362, § 56; Laws 2009, LB259, § 19.

77-2346 Metropolitan utilities district funds; depositories; duty to keep list of securities.

A metropolitan utilities district shall at all times maintain a certified list of the securities furnished by any depository. Each depository shall supply directly to the governing body of the district a sworn monthly statement of the funds of the district on deposit in such depository. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1933, c. 95, § 2, p. 378; Laws 1935, c. 6, § 1, p. 69; C.S.Supp.,1941, § 77-2531; R.S.1943, § 77-2346; Laws 1989, LB 33, § 58; Laws 1996, LB 1274, § 41; Laws 2001, LB 177, § 8; Laws 2001, LB 362, § 57.

77-2347 Repealed. Laws 2001, LB 177, § 11.

77-2348 Repealed. Laws 2001, LB 177, § 11.**77-2349 Metropolitan utilities district funds; custodian of securities; withdrawal of funds.**

A metropolitan utilities district shall be the custodian of securities in which funds of such district are invested, including the securities of such district itself. Except for funds deposited in a depository in strict accordance with all the requirements of sections 77-2342 to 77-2349, the district shall be liable for the accounting, safekeeping, and repayment of all funds received by the district. Any such district may at any time withdraw any funds on deposit in a depository or any funds in the district's possession and custody and invest such funds in such securities as may be designated by formal resolution of the governing body of such district.

Source: Laws 1933, c. 95, § 4, p. 379; C.S.Supp.,1941, § 77-2533; R.S. 1943, § 77-2349; Laws 1989, LB 33, § 61; Laws 1992, LB 746, § 77; Laws 2001, LB 177, § 9.

77-2350 School district or township funds; deposit; conditions.

The treasurer or ex officio treasurer of any school district or township shall deposit the funds received or held by him or her by virtue of his or her office in such bank, capital stock financial institution, or qualifying mutual financial institution, situated within the boundaries of such district or township, as shall have been and shall be from time to time designated by the governing body of such school district or township as official depositories for such funds. Depositories shall be such banks, capital stock financial institutions, or qualifying mutual financial institutions as shall be designated by the respective governing bodies by formal resolution duly recorded. Such designation may be withdrawn at any time by such governing body by formal resolution duly entered upon its records. If there is no bank, capital stock financial institution, or qualifying mutual financial institution within the boundaries of such school district or township or if the bank, capital stock financial institution, or qualifying mutual financial institution within the district refuses or neglects to make application as a depository, then the governing body may designate any bank, capital stock financial institution, or qualifying mutual financial institution within the state.

Source: Laws 1935, c. 5, § 1, p. 67; Laws 1939, c. 103, § 1, p. 462; C.S.Supp.,1941, § 77-2534; R.S.1943, § 77-2350; Laws 1967, c. 508, § 1, p. 1708; Laws 1988, LB 802, § 11; Laws 1989, LB 33, § 62; Laws 2001, LB 362, § 58.

77-2350.01 School district or township funds; prorate deposits; when.

When more than one bank, capital stock financial institution, or qualifying mutual financial institution has been designated by the governing body of the school district or township as a depository, the treasurer or ex officio treasurer shall not give a preference but shall prorate deposits in the manner required of county treasurers as provided in section 77-2314. This section shall have no application to certificates of deposit. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1967, c. 508, § 4, p. 1710; Laws 1973, LB 247, § 1; Laws 1988, LB 802, § 12; Laws 1989, LB 33, § 63; Laws 2001, LB 362, § 59.

77-2350.02 School district or township treasurer; violation; penalty.

If the treasurer or ex officio treasurer of any school district or township willfully fails or refuses at any time to do or perform any act required of him or her by sections 77-2350 to 77-2352, he or she shall be guilty of a Class IV misdemeanor.

Source: Laws 1967, c. 508, § 5, p. 1710; Laws 1977, LB 39, § 235; Laws 1988, LB 802, § 13.

77-2351 Treasurers; when not liable on bond.

No treasurer or ex officio treasurer shall be liable on his or her bond for money on deposit in a bank, capital stock financial institution, or qualifying mutual financial institution and by direction of the proper legal authority, if the bank, capital stock financial institution, or qualifying mutual financial institution has given bond or gives security in accordance with section 77-2352. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 5, § 2, p. 68; Laws 1937, c. 22, § 2, p. 135; Laws 1939, c. 103, § 2, p. 463; C.S.Supp.,1941, § 77-2535; R.S.1943, § 77-2351; Laws 1967, c. 508, § 2, p. 1708; Laws 1987, LB 109, § 1; Laws 1989, LB 33, § 64; Laws 1996, LB 1274, § 42; Laws 2001, LB 362, § 60.

77-2352 School district or township funds; security requirements.

No deposit in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the treasurer or ex officio treasurer has received from the depository as security for the prompt repayment by the depository either a corporate surety bond in form and with sureties approved by formal resolution by the governing body of such district or the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1937, c. 22, § 2, p. 135; Laws 1939, c. 103, § 2, p. 463; C.S.Supp.,1941, § 77-2535; R.S.1943, § 77-2352; Laws 1959, c. 263, § 20, p. 948; Laws 1967, c. 508, § 3, p. 1709; Laws 1988, LB 802, § 14; Laws 1989, LB 33, § 65; Laws 1989, LB 377, § 16; Laws 1992, LB 757, § 30; Laws 1996, LB 1274, § 43; Laws 2001, LB 362, § 61; Laws 2009, LB259, § 20.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2353 Public power and irrigation district funds; deposit required.

All funds of any public power district, public irrigation district, or public power and irrigation district organized and existing under the laws of this state shall be deposited by the treasurer or other competent officer of such district in such bank, capital stock financial institution, or qualifying mutual financial institution as shall have been designated as official depositories for the funds

belonging to such district. Such deposits shall either be made in accordance with and subject to agreements of such district with its bondholders or noteholders or, in the absence of any such agreement, shall be subject to the provisions and conditions provided in sections 77-2353 to 77-2361. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 1, p. 642; C.S.Supp.,1941, § 77-2537; R.S.1943, § 77-2353; Laws 1969, c. 544, § 2, p. 2198; Laws 1989, LB 33, § 66; Laws 2001, LB 362, § 62.

77-2353.01 Public power districts; authorized investments.

In addition to other authorized investments, public power districts are authorized to invest and reinvest in: (1) Direct obligations of or obligations guaranteed by the United States of America; (2) bonds, debentures, or notes issued by any of the following federal agencies: Bank for Cooperatives; Federal Intermediate Banks; Federal Home Loan Bank System; Export-Import Bank of Washington; Federal Land Banks; or the Federal National Mortgage Association including participation certificates issued by such association; (3) public housing bonds purchased on the open market, issued by public housing authorities, and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America or temporary notes issued by public housing authorities or preliminary loan notes issued by local public agencies, in each case, fully secured as to the payment of both principal and interest by a requisition or a payment agreement with the United States of America; (4) direct and general obligations of any state within the territorial United States to the payment of the principal of and interest on which the full credit of such state is pledged; (5) bonds, debentures, notes, or other instruments of indebtedness issued by a bank or other financial lending institution, whether public or privately owned, established by rural electric cooperatives and public power districts to provide supplemental financing in addition to financing available from the Rural Electrification Administration; (6) bonds, debentures, notes, or other instruments of indebtedness of a nonprofit rural electric supply cooperative organization providing electric line materials and other related equipment without profit to its members, including public power districts; (7) stocks, bonds, debentures, notes, or other instruments of indebtedness issued by an insurance carrier providing insurance coverage to such public power district; (8) stocks, bonds, debentures, notes, or other instruments of indebtedness issued by corporations having authority to sell, lease, and service satellite television signal descrambling or decoding devices and satellite television programming; and (9) time certificates of deposit issued by any bank, capital stock financial institution, or qualifying mutual financial institution meeting the requirements of sections 77-2354 to 77-2357. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Public power districts when authorized by their respective boards of directors are authorized to take such action as may be necessary in order to carry out the foregoing investment authorization.

Source: Laws 1969, c. 544, § 1, p. 2197; Laws 1973, LB 47, § 1; Laws 1982, LB 644, § 1; Laws 1987, LB 246, § 1; Laws 1989, LB 33, § 67; Laws 1989, LB 113, § 1; Laws 2001, LB 362, § 63.

77-2354 Public power and irrigation district funds; designation of depositories.

Depositories shall be such banks, capital stock financial institutions, and qualifying mutual financial institutions as shall be from time to time designated by the board of directors of such district by formal resolution duly recorded in the minutes of the proceedings of such board. Such designation may be withdrawn at any time by the board of directors of such district by formal resolution duly entered upon its records, whereupon all such deposits, except those represented by time certificates of deposit, in such bank, capital stock financial institution, or qualifying mutual financial institution shall be immediately withdrawn. All deposits, except those invested in time certificates of deposit, shall be subject to payment on demand upon the check or order of the duly authorized officer or officers of the district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2354; Laws 1973, LB 47, § 2; Laws 1989, LB 33, § 68; Laws 2001, LB 362, § 64.

77-2355 Public power and irrigation district funds; depositories; bond or security required.

No deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be made or be allowed to accumulate in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the treasurer or other competent officer of the district has received from such depository as security for the prompt repayment of such deposits by the depository either a surety bond in form and with corporate sureties approved by formal resolution of the board of directors of such district or, in lieu thereof, the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2355; Laws 1959, c. 263, § 21, p. 949; Laws 1989, LB 33, § 69; Laws 1989, LB 377, § 17; Laws 1992, LB 757, § 31; Laws 1996, LB 1274, § 44; Laws 2001, LB 362, § 65; Laws 2009, LB259, § 21.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2356 Public power and irrigation district funds; deposits; limitation.

The deposits secured by a surety bond shall at no time exceed the amount of the penal sum of such surety bond.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2356; Laws 1996, LB 1274, § 45.

77-2357 Public power and irrigation district funds; depositories; power to enter into agreement.

Every depository is authorized to secure deposits by giving bond or giving security, as provided in sections 77-2353 to 77-2361, and otherwise to enter into and become a party to any contract or arrangement, not inconsistent with the provisions hereof, as may be reasonably necessary or proper to render fully effective the provisions of such sections. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2357; Laws 1989, LB 33, § 70; Laws 1996, LB 1274, § 46; Laws 2001, LB 362, § 66.

77-2358 Public power and irrigation district funds; depositories; duty of treasurer to keep list of securities.

The treasurer or other competent officer of the district shall at all times keep and certify to the district a complete and correct list and description of the securities furnished by any depository. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2358; Laws 1989, LB 33, § 71; Laws 1996, LB 1274, § 47; Laws 2001, LB 362, § 67.

77-2359 Public power and irrigation district funds; depositories; statement of funds on deposit.

Each depository shall furnish directly to the board of directors of the district, or to an officer of the district designated by the board, a sworn monthly statement of the funds of the district on deposit in such depository.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2359; Laws 1989, LB 33, § 72; Laws 1996, LB 1274, § 48.

77-2360 Public power and irrigation district funds; deposit of funds; rules and regulations.

The board of directors of any such district may from time to time adopt and promulgate such rules and regulations governing the handling of its funds by the treasurer or other designated officers of the district and otherwise governing the relationship between such district and its depository as shall not conflict with the express provisions of sections 77-2353 to 77-2361 or other provisions of law. It shall be the duty of the treasurer and all other officers thus designated or otherwise charged by law with the handling of funds of the district to comply with such rules and regulations.

Source: Laws 1941, c. 160, § 2, p. 642; C.S.Supp.,1941, § 77-2538; R.S.1943, § 77-2360; Laws 1989, LB 33, § 73.

77-2361 Public power and irrigation district funds; treasurer or other officer; not liable on bond.

Neither the treasurer, nor other officer of the district charged with the handling of its funds, nor their sureties shall be liable for any loss resulting from the failure of any bank, capital stock financial institution, or qualifying

mutual financial institutions as to any such deposits made and maintained as provided in sections 77-2353 to 77-2361. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1941, c. 160, § 3, p. 644; C.S.Supp.,1941, § 77-2539; R.S.1943, § 77-2361; Laws 1989, LB 33, § 74; Laws 2001, LB 362, § 68.

77-2362 Public funds; depositories; security.

Whenever, by the laws of this state, any municipal corporation or other governmental subdivision of the state is authorized or required to obtain or accept from banks, capital stock financial institutions, or qualifying mutual financial institutions surety bonds or other bonds as security for deposits of public funds belonging to such municipal corporation or other governmental subdivision, the insurance or guarantee afforded to depositors in banks, capital stock financial institutions, or qualifying mutual financial institutions through the Federal Deposit Insurance Corporation, organized under the laws of the United States, shall be deemed and construed to be, for the purposes of such laws, a surety bond or bonds to the extent that such deposits are insured or guaranteed by such corporation, and for deposits so insured or guaranteed, no other surety bond or bonds or other security shall be required. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1935, c. 140, § 1, p. 515; C.S.Supp.,1941, § 77-2536; R.S.1943, § 77-2362; Laws 1989, LB 33, § 75; Laws 1992, LB 757, § 32; Laws 2001, LB 362, § 69; Laws 2009, LB259, § 22.

77-2363 Public funds; actions to recover; validity of contracts.

In all cases in which public money or funds belonging to the United States, an agency of the United States, the State of Nebraska, or any political subdivision in this state have been deposited or loaned to any person or persons, corporation, bank, capital stock financial institution, qualifying mutual financial institution, partnership, limited liability company, or other firm or association of persons, it shall be lawful for the officer or officers making such deposit or loan or his, her, or their successors in office to maintain an action or actions for the recovery of such money so deposited or loaned. All contracts made for the security or payment of any such money or public funds shall be held to be good and lawful contracts binding on all parties thereto.

Source: Laws 1879, § 1, p. 156; R.S.1913, § 6675; C.S.1922, § 6212; C.S.1929, § 77-2601; Laws 1933, c. 120, § 1, p. 488; Laws 1935, c. 4, § 1, p. 66; Laws 1937, c. 169, § 1, p. 674; C.S.Supp.,1941, § 77-2601; Laws 1943, c. 19, § 5, p. 105; R.S.1943, § 77-2363; Laws 1987, LB 440, § 11; Laws 1988, LB 802, § 15; Laws 1989, LB 33, § 76; Laws 1990, LB 1165, § 1; Laws 1993, LB 121, § 498; Laws 1994, LB 1118, § 20; Laws 1996, LB 1274, § 49; Laws 2001, LB 362, § 70.

Where village brings suit against sureties who had given a bond to protect deposit, and sureties consent to entry of judgment against them, it is an admission that bank was a legal depository. *Shumway v. Department of Banking*, 131 Neb. 246,

267 N.W. 469 (1936), withdrawing opinion 130 Neb. 491, 265 N.W. 553 (1936).

County treasurer having loaned or invested public funds without authority, may, in his official capacity, maintain action for

their recovery. *Woods v. Brown County*, 125 Neb. 692, 251 N.W. 839 (1933).

Officer making deposit hereunder, or his successor in office, in his official capacity, may maintain action or actions for recovery of such money. *State ex rel. Sorensen v. Nemaha County Bank of Auburn*, 124 Neb. 883, 248 N.W. 650 (1933).

Bond given by state bank to secure school district deposits is valid obligation hereunder, and sureties on such bond are bound thereby. *Liberty High School District of Sioux County v. Currie*, 122 Neb. 173, 240 N.W. 286 (1931).

Section is remedial, and should be given liberal construction. *McIntosh v. Johnson*, 51 Neb. 33, 70 N.W. 522 (1897).

County funds, wrongfully deposited in bank, cease to be public funds. *First Nat. Bank of South Bend Indiana v. Gandy*, 11 Neb. 431, 9 N.W. 566 (1881).

Where State Treasurer was not authorized to deposit funds, state had no right of action against bank. *State v. Keim and Gamble*, 8 Neb. 63 (1878).

77-2364 Public funds; depositories; authority to give bond or security.

All depositories of public money or other funds belonging to the United States, the State of Nebraska, or the political subdivisions in this state shall have full authority to give bond for the safekeeping and payment of such deposits and the accretions thereof. In lieu of such bond, such depositories shall have full authority to give security as provided in the Public Funds Deposit Security Act. The State of Nebraska and any political subdivision in this state are hereby given the right and authority to accept such bonds or, in lieu thereof, such giving of security as provided in the act. Nothing in this section shall be construed to in any manner affect the liability of any surety or signers of any official bond hereafter given or made in this state.

Source: Laws 1879, § 1, p. 156; R.S.1913, § 6675; C.S.1922, § 6212; C.S.1929, § 77-2601; Laws 1933, c. 120, § 1, p. 488; Laws 1935, c. 4, § 1, p. 66; Laws 1937, c. 169, § 1, p. 674; C.S.Supp.,1941, § 77-2601; Laws 1943, c. 19, § 5, p. 105; R.S.1943, § 77-2364; Laws 1989, LB 33, § 77; Laws 1996, LB 1274, § 50.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

Section authorizes bank to pledge assets for security of deposits of city of second class by contract, and such contract is binding on both parties in absence of statutory prohibition. *Luikart v. City of Aurora*, 125 Neb. 263, 249 N.W. 590 (1933).

Irrigation district is a public corporation but is not a municipality within meaning of this section, and bank is without authority to pledge assets to secure deposit of irrigation district

funds unless expressly authorized to do so. *Bliss v. Pathfinder Irrigation District*, 122 Neb. 203, 240 N.W. 291 (1932).

State bank may contract to indemnify sureties on depository bond given to secure public deposits, and may pledge sufficient assets to protect such sureties from loss. *Bliss v. Mason*, 121 Neb. 484, 237 N.W. 581 (1931).

77-2365 Revenue-Sharing Trust Fund; created; investment; expenditure.

There is hereby established in the state treasury a special fund to be known as the Revenue-Sharing Trust Fund to which shall be credited all funds received by the state under the federal State and Local Fiscal Assistance Act of 1972, Public Law 92-512, or act successor thereto and to which shall be credited all earnings from the investment thereof. No expenditure shall be made from such fund except upon specific appropriation by the Legislature. Any such appropriation shall in all respects comply with the terms of the law and rules and regulations pursuant to which the federal government disburses such funds to the state. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1973, LB 122, § 1; Laws 1995, LB 7, § 87.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-2365.01 Funds of state or political subdivisions; deposit with qualifying mutual financial institutions; conditions.

(1)(a) Notwithstanding any other provision of law, any local ordinance, regulation, or resolution, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with qualifying mutual financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks and capital stock financial institutions. In making such a deposit of public funds, it shall not be necessary for the state or any political subdivision to become an owner of any interest in the qualifying mutual financial institution or to acquire voting rights therein, and a qualifying mutual financial institution is authorized and empowered to receive public funds under these conditions. Qualifying mutual financial institution means a state or federal mutual building and loan association, a state or federal mutual savings and loan association, a state or federal mutual savings bank, or a state or federal mutual organized bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a qualifying mutual financial institution which maintained a main chartered office in this state prior to becoming a branch of such qualifying mutual financial institution, which, by its charter and bylaws, restricts the rights of the state or a political subdivision as an account holder as follows:

(i) Interest in the qualifying mutual financial institution is limited to the withdrawal value of the state's or the political subdivision's account;

(ii) The state or the political subdivision has no voting rights in the qualifying mutual financial institution; and

(iii) The state or the political subdivision has no entitlement to any distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the qualifying mutual financial institution.

(b) To the extent any deposit in any bank is:

(i) Required to be subject to check or draft, then such deposit may be subject to order; and

(ii) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such qualifying mutual financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such qualifying mutual financial institution.

(2) To the extent the state or a political subdivision is or may ever be required by law to deposit funds in a bank, the state or political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in a qualifying mutual financial institution on the same basis.

(3) The restriction in subdivision (1)(a)(iii) of this section shall not apply to the interest of the state or political subdivision in any security required by law to be furnished by the qualifying mutual financial institution.

(4) A qualifying mutual financial institution that amends its charter or bylaws in such a manner that it no longer meets the restrictions set forth in subdivisions (1)(a)(i) through (iii) of this section shall immediately give notice that it is no longer a qualifying mutual financial institution to the custodial official, as

that term is defined in section 77-2387, of every state and political subdivision depositor, and that the state or political subdivision must immediately withdraw its deposits.

(5) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state or any political subdivision in qualifying mutual financial institutions.

Source: Laws 2001, LB 362, § 1; Laws 2003, LB 175, § 13; Laws 2004, LB 999, § 48.

77-2365.02 Funds of state or political subdivisions; investment in certificates of deposit and timed deposits; conditions.

Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be invested, by the appropriate custodian of such funds, in certificates of deposit or time deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall include the investment of funds in certificates of deposit and time deposits in accordance with the following conditions:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit or time deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such certificate of deposit or time deposit is fully insured or guaranteed by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds was initially made acts as a custodian for the state or political subdivision with respect to any such certificate of deposit or time deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into and such certificates of deposit or time deposits are issued by other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds in certificates of deposit or time deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment of funds in certificates of deposit or time deposits initially made by the state or political subdivision.

Source: Laws 2004, LB 999, § 51; Laws 2009, LB259, § 23.

77-2366 Funds of state or political subdivisions; deposit with capital stock financial institutions; conditions.

(1) Notwithstanding any other provision of law, any local ordinance or regulation, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with capital stock financial institutions to the same extent and subject to the same terms, conditions, and limitations, including

collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks. Capital stock financial institutions shall include state and national banks, capital stock state building and loan associations, capital stock federal savings and loan associations, capital stock federal savings banks, and capital stock state savings banks, which have a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution. To the extent any deposit in any bank is:

(a) Required to be subject to check or draft, then such deposit may be subject to order; and

(b) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such other financial institution.

(2) To the extent the state or any political subdivision is or may ever be required by any law to deposit funds in any bank, the state or any such political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in any capital stock financial institution on the same basis.

(3) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state and any political subdivision in capital stock financial institutions.

Source: Laws 1988, LB 488, § 1; Laws 1992, LB 757, § 33; Laws 2003, LB 131, § 36; Laws 2004, LB 999, § 49.

77-2367 Revisor of Statutes; duty.

In any section of the law dealing with the deposit of funds of any political subdivision, the Revisor of Statutes shall substitute or add the term capital stock financial institution, as defined in section 77-2366, for the term bank so long as the result is not inconsistent with the intention of sections 77-2366 and 77-2367.

Source: Laws 1988, LB 488, § 2; Laws 1989, LB 33, § 78.

77-2368 Sale of recyclable and reusable products, materials, and supplies; proceeds; disposition.

Revenue from the sale by the state of recyclable and reusable products, materials, and supplies shall be remitted to the State Treasurer for credit to the Resource Recovery Fund.

Source: Laws 1990, LB 163, § 8.

77-2369 Local hospital district; funds; deposit required; secretary-treasurer; duties.

The secretary-treasurer of each local hospital district in the State of Nebraska shall deposit, and at all times keep on deposit for safekeeping in the state or national banks, capital stock financial institutions, or qualifying mutual financial institutions doing business in the district of approved and responsible

standing, the amount of money in his or her hands collected and held by him or her as secretary-treasurer. Any check, draft, order, or other negotiable instrument deposited by the secretary-treasurer, except when drawn upon the bank, capital stock financial institution, or qualifying mutual financial institution in which the deposit is made, shall be received by the bank, capital stock financial institution, or qualifying mutual financial institution for collection only and shall be subject to final payment thereof to the bank, capital stock financial institution, or qualifying mutual financial institution. Collection of such items shall be in the usual course of business and except for its own negligence, the bank, capital stock financial institution, or qualifying mutual financial institution shall not be liable thereon until and unless payment is actually received. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 1; Laws 2001, LB 362, § 71.

77-2370 Local hospital district; selection of depository; procedure.

Any bank, capital stock financial institution, or qualifying mutual financial institution located in the district may apply for the privilege of keeping money upon the following conditions: All deposits shall be subject to payment when demanded by the secretary-treasurer on his or her check or order and subject also to such regulations as are imposed by law and the rules adopted by the secretary-treasurer for holding and receiving such deposits. It shall be the duty of the board of directors to act on the application or applications of any and all banks, capital stock financial institutions, or qualifying mutual financial institutions, state or national, as may ask for the privilege of becoming the depository of such money, as well as to approve the bonds of those selected incident to such relation, and the secretary-treasurer shall not deposit such money or any part thereof in any bank, capital stock financial institution, or qualifying mutual financial institution other than such as may have been so selected by the board of directors for such purposes, if any such bank, capital stock financial institution, or qualifying mutual financial institution has been so selected by the board of directors.

Source: Laws 1994, LB 1118, § 2; Laws 2001, LB 362, § 72.

77-2371 Local hospital district; deposits; requirements.

When more than one bank, capital stock financial institution, or qualifying mutual financial institution may have been selected by the board of directors as depositories, the secretary-treasurer shall not give a preference to any one or more of them in the money he or she may so deposit, but shall keep deposited with each of such banks, capital stock financial institutions, or qualifying mutual financial institutions such a part of the money as the capital of such bank, capital stock financial institution, or qualifying mutual financial institution as of December 31 of the preceding year is a part of the amount of all the capital of all the banks, capital stock financial institutions, or qualifying mutual financial institutions so selected as of December 31 of the preceding year, so that such money may at all times be deposited with such banks, capital stock financial institutions, or qualifying mutual financial institutions pro rata as to their capital, except that the secretary-treasurer may select one or more banks, capital stock financial institutions, or qualifying mutual financial institutions to

be used for active accounts in which he or she may keep deposited in excess of these requirements only such funds as may be necessary for the transaction of ordinary day-to-day requirements. For purposes of this section, capital shall mean capital stock, surplus, undivided profits, capital notes or debentures, and other unimpaired reserves. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 3; Laws 1996, LB 1274, § 51; Laws 2001, LB 362, § 73.

77-2372 Local hospital district; investments authorized; interest; how credited.

A secretary-treasurer may by and with the consent of the board of directors invest in United States Government bonds, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, United States Treasury notes, bills, or certificates of indebtedness maturing within two years from the date of purchase, or in certificates of deposit. Every secretary-treasurer having invested in such securities shall deliver the same to his or her successor, who shall receive and accept the same as funds of the office. The interest received on any investments authorized by this section and section 77-2385 shall be credited to the general fund of the local hospital district, or to a fund to be used exclusively for the purposes contemplated by the provisions of section 23-3548, in the discretion of the board of directors. If such interest is received on a fund which shall not have been commingled with any other fund for investment purposes, then any interest received shall be credited to the fund from which the investment shall have been made. It shall be in the discretion of the board of directors whether any fund shall be commingled or invested from an identifiable account.

Source: Laws 1994, LB 1118, § 4.

77-2373 Local hospital district; depositories; bond requirements; payment of deposits.

For the security of the funds deposited under the provisions of sections 77-2369 to 77-2385, the secretary-treasurer shall require all such depositories to give bonds for the safekeeping and payment of such deposits and the accretions thereof, except as otherwise provided in section 77-2385 for time deposits. The bond shall run to the people of the local hospital district, be approved by the board of directors, and be conditioned that the depository shall, at the end of each and every month, render to the secretary-treasurer and the board of directors a statement in duplicate showing the several daily balances and the amounts of money of the local hospital district held by it during the month and how credited. For the payment of the deposits, the depository shall render such deposits when demanded by the secretary-treasurer on his or her check at any time, perform whatever else is required by sections 77-2369 to 77-2385, and faithfully discharge the trust reposed in such depository.

Source: Laws 1994, LB 1118, § 5.

77-2374 Local hospital district; bond; surety; limitation.

The bond in substance shall be similar to the bond required and set forth in section 77-2304. No person in any way connected with any depository bank, capital stock financial institution, or qualifying mutual financial institution as an officer or stockholder shall be accepted as a surety on any bond given by the bank, capital stock financial institution, or qualifying mutual financial institution of which he or she is an officer or stockholder.

Source: Laws 1994, LB 1118, § 6; Laws 1996, LB 1274, § 52; Laws 2001, LB 362, § 74.

77-2375 Local hospital district; deposit; limitation on amount; excess deposit; security required.

The secretary-treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more money than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution in cases when the bank, capital stock financial institution, or qualifying mutual financial institution gives a guaranty bond, except as provided in section 77-2376. The amount on deposit at any time with any bank, capital stock financial institution, or qualifying mutual financial institution shall not exceed fifty percent of the capital and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution, except as provided in section 77-2376. When the amount of money which the secretary-treasurer desires to deposit in the banks, capital stock financial institutions, or qualifying mutual financial institutions within the district exceeds fifty percent of the capital and surplus of all of the banks, capital stock financial institutions, or qualifying mutual financial institutions in such local hospital district, the secretary-treasurer may, with the consent of the board of directors, deposit an amount in excess thereof, but not exceeding the capital and surplus in any one bank, capital stock financial institution, or qualifying mutual financial institution, unless the depository gives security as provided in section 77-2376. Bond shall be required of all banks, capital stock financial institutions, or qualifying mutual financial institutions for such excess deposit, unless security is given in accordance with section 77-2376. The bonds shall be deposited with the secretary-treasurer and approved by the board of directors. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 7; Laws 1996, LB 1274, § 53; Laws 2001, LB 362, § 75; Laws 2009, LB259, § 24.

77-2376 Local hospital district; excess deposit; security requirements.

The secretary-treasurer may deposit in any bank, capital stock financial institution, or qualifying mutual financial institution of the local hospital district in which he or she is secretary-treasurer amounts in excess of amounts authorized in section 77-2375 when (1) the depository secures the deposits by giving security as provided in the Public Funds Deposit Security Act and (2) the same is approved by a formal resolution of the board of directors. Section

77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 8; Laws 1996, LB 1274, § 54; Laws 2001, LB 362, § 76.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2377 Local hospital district; deposit in institutions outside district; when.

When banks, capital stock financial institutions, or qualifying mutual financial institutions located in the local hospital district refuse or neglect to bid on money of the local hospital district, when there are no banks, capital stock financial institutions, or qualifying mutual financial institutions in the local hospital district, or when the banks, capital stock financial institutions, or qualifying mutual financial institutions located in the local hospital district do not have sufficient capital and surplus to receive such money under sections 77-2369 to 77-2385, then any surplus over the amount specified that banks, capital stock financial institutions, or qualifying mutual financial institutions in the local hospital district may receive shall be deposited in banks, capital stock financial institutions, or qualifying mutual financial institutions outside of the local hospital district having sufficient capital and surplus under the same conditions and terms as if in the local hospital district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 9; Laws 2001, LB 362, § 77.

77-2378 Local hospital district; security in lieu of bond authorized.

In lieu of a bond as provided in sections 77-2373 to 77-2377, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository under sections 77-2369 to 77-2385 may give security as provided in the Public Funds Deposit Security Act to the secretary-treasurer. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 10; Laws 1996, LB 1274, § 55; Laws 2001, LB 362, § 78.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2379 Repealed. Laws 1996, LB 1274, § 57.

77-2380 Repealed. Laws 1996, LB 1274, § 57.

77-2381 Local hospital district; violations; penalty.

Any treasurer or any officer of a bank, capital stock financial institution, or qualifying mutual financial institution who shall directly or indirectly violate or knowingly permit to be violated the provisions of sections 77-2373 to 77-2381, so far as such sections relate to the deposit of public money in a bank, capital stock financial institution, or qualifying mutual financial institution, shall be guilty of a Class IV felony. Section 77-2366 shall apply to deposits in capital

stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 13; Laws 2001, LB 362, § 79.

77-2382 Local hospital district; secretary-treasurer; duty.

It shall be the duty of the secretary-treasurer to use all reasonable and proper means to secure to the local hospital district the best terms for the depositing of the money belonging to the local hospital district consistent with the safekeeping and prompt payment of the funds of the local hospital district when demanded.

Source: Laws 1994, LB 1118, § 14.

77-2383 Local hospital district; secretary-treasurer; prohibited acts; violation; penalty; liability on bond.

The making of profit, directly or indirectly, by the secretary-treasurer out of any money in the local hospital district treasury belonging to the local hospital district, the custody of which the secretary-treasurer is charged with, by loaning or depositing or otherwise using or depositing the same in any manner, or the removal by the secretary-treasurer or by his or her consent of such money or a part thereof out of the vault of the secretary-treasurer's department or any legal depository of such money, except for the payment of warrants legally drawn or for the purpose of depositing the same in the banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories under the provisions of sections 77-2369 to 77-2385, shall be deemed a Class IV felony, and the secretary-treasurer shall also be liable under and upon his or her official bond for all profits realized from such unlawful using of such funds.

Source: Laws 1994, LB 1118, § 15; Laws 2001, LB 362, § 80.

77-2384 Local hospital district; secretary-treasurer; violation; penalty; recovery under bond; procedure.

If the secretary-treasurer shall willfully fail or refuse at any time to do or perform any act required of him or her by sections 77-2369 to 77-2385, he or she shall be guilty of a Class I misdemeanor. It shall be the duty of the appropriate county attorney or the Attorney General to enter and prosecute to final determination all suits for the recovery of any penalty arising under the conditions of any bond required to be given by the provisions of such sections.

Source: Laws 1994, LB 1118, § 16.

77-2385 Local hospital district; time deposits authorized; requirements.

The secretary-treasurers of the various local hospital districts of the state may, upon resolution of their respective boards of directors authorizing such action, make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of the local hospital district funds under sections 77-2369 to 77-2372. The time deposits shall bear interest and shall be secured as set forth in section 77-2304 or 77-2378, except that the amount insured or guaranteed by the Federal Deposit Insurance Corporation shall be exempt from the requirement of being secured as provided by section 77-2378 or by bonds similar to the bond required and set

forth in section 77-2304. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1994, LB 1118, § 17; Laws 2001, LB 362, § 81; Laws 2009, LB259, § 25.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2386 Act, how cited.

Sections 77-2386 to 77-23,106 shall be known and may be cited as the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 1; Laws 2000, LB 932, § 38.

77-2387 Terms, defined.

For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured or guaranteed by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock

financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(11) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(12) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state;

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka; and

(r) Certificates of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 2; Laws 1997, LB 275, § 2; Laws 2000, LB 932, § 39; Laws 2001, LB 362, § 82; Laws 2001, LB 420, § 35; Laws 2003, LB 131, § 37; Laws 2003, LB 175, § 14; Laws 2004, LB 999, § 50; Laws 2009, LB259, § 27.

77-2388 Authorized depositories; security; requirements.

Any bank, capital stock financial institution, or qualifying mutual financial institution subject to a requirement by law to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation may give security by furnishing securities or providing a deposit guaranty bond pursuant to the Public Funds Deposit Security Act in satisfaction of the requirement.

Source: Laws 1996, LB 1274, § 3; Laws 2001, LB 362, § 83; Laws 2009, LB259, § 28.

77-2389 Security; how furnished.

A bank, capital stock financial institution, or qualifying mutual financial institution furnishes securities pursuant to the Public Funds Deposit Security Act if it (1) deposits securities held by the bank, capital stock financial institution, or qualifying mutual financial institution, (2) pledges or grants a security interest in securities held by the bank, capital stock financial institution, or qualifying mutual financial institution as provided in the act, or (3) effects the assignment to the custodial official of a certificate of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that is issued to the bank, capital stock financial institution, or qualifying mutual financial institution.

Source: Laws 1996, LB 1274, § 4; Laws 2001, LB 362, § 84; Laws 2003, LB 175, § 15; Laws 2009, LB259, § 29.

77-2390 Deposit of trust receipt authorized.

Any bank, capital stock financial institution, or qualifying mutual financial institution pledging securities to secure deposits of public money or public funds pursuant to section 77-2389 may deposit, with the approval of the governing authority, the securities in a federal reserve bank or a bank, federal home loan bank, capital stock financial institution, qualifying mutual financial institution, or trust company approved by the governing authority, and take for the same a trust receipt in the form of and executed in the manner approved by

the governing authority. When the transaction has been approved, the bank, capital stock financial institution, or qualifying mutual financial institution may deposit the trust receipt in lieu of the securities evidenced by the trust receipt.

Source: Laws 1996, LB 1274, § 5; Laws 2000, LB 932, § 40; Laws 2001, LB 362, § 85.

77-2391 Security; delivery requirements; perfection.

(1) Securities pledged or securities in which a security interest has been granted pursuant to section 77-2389 shall be delivered to and held by a federal reserve bank or by a branch of a federal reserve bank, a federal home loan bank, or another responsible bank, capital stock financial institution, qualifying mutual financial institution, or trust company, other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, as designated by the governing authority, with appropriate joint custody and the pledge agreement or security interest as described in subsection (2) of this section, in a form approved by the governing authority.

(2) The delivery by the bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository to the custodial official of a written receipt or acknowledgment from a federal reserve bank or branch of a federal reserve bank, a federal home loan bank, or another bank, capital stock financial institution, qualifying mutual financial institution, or trust company, other than the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, that includes the title of such custodial official, describes the securities identified on the books or records of the depository, and provides that the securities or the proceeds of the securities will be delivered only upon the surrender of the written receipt or the acknowledgment duly executed by the custodial official designated on the written receipt or the acknowledgment and by the authorized representative of the depository shall, together with the custodial official's actual and continued possession of the written receipt or acknowledgment, constitute a valid and perfected security interest in favor of the custodial official in and to the identified securities. Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Source: Laws 1996, LB 1274, § 6; Laws 1997, LB 275, § 3; Laws 1999, LB 550, § 44; Laws 2000, LB 932, § 41; Laws 2001, LB 362, § 86.

77-2392 Substitution of securities authorized.

A bank, capital stock financial institution, or qualifying mutual financial institution which has furnished securities pursuant to the Public Funds Deposit Security Act shall have the right at any time and without prior approval to substitute other securities of equal value in lieu of securities furnished except that such securities substituted shall be those provided for under the act. Following any substitution of securities pursuant to this section the custodial official shall report such substitution to the governing authority.

Source: Laws 1996, LB 1274, § 7; Laws 2001, LB 362, § 87.

77-2393 Withdrawal of securities; when; effect.

A bank, capital stock financial institution, or qualifying mutual financial institution which has furnished securities pursuant to the Public Funds Deposit Security Act may withdraw all or any part of such securities upon repayment to the custodial official of the amount of the securities thus withdrawn, and thereupon the custodial official shall be empowered to assign such securities to the owner thereof. All interest coupons attached to securities furnished under the act shall be detached by the holder or trustee thirty days before maturity and returned to such bank, capital stock financial institution, or qualifying mutual financial institution.

Source: Laws 1996, LB 1274, § 8; Laws 2001, LB 362, § 88.

77-2394 Deposit guaranty bond; statement required.

A bank, capital stock financial institution, or qualifying mutual financial institution provides a deposit guaranty bond pursuant to the Public Funds Deposit Security Act if it issues a deposit guaranty bond which runs to the custodial official and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall, at the end of each and every month, render to the custodial official a statement, in duplicate, showing the daily balances and the amounts of public money or public funds of the governing authority held by it during the month and how credited. The public money or public funds shall be paid promptly on the order of the custodial official depositing the public money or public funds.

Source: Laws 1996, LB 1274, § 9; Laws 2001, LB 362, § 89.

77-2395 Custodial official; duties.

(1) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository furnishes securities pursuant to section 77-2389, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

(2) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository furnishes securities pursuant to subsection (1) of section 77-2398, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred five percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

(3) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository provides a deposit guaranty bond pursuant to the Public Funds Deposit Security Act, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has provided to the custodial official a

deposit guaranty bond in an amount not less than the amount on deposit which is in excess of the amount so insured or guaranteed.

Source: Laws 1996, LB 1274, § 10; Laws 2000, LB 932, § 42; Laws 2001, LB 362, § 90; Laws 2009, LB259, § 30.

77-2396 Custodial official; liability.

No custodial official shall be liable on his or her official bond as such custodial official for public money or public funds on deposit in a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository if the depository has furnished securities or provided a deposit guaranty bond pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 11; Laws 2001, LB 362, § 91.

77-2397 Depositories of public money or public funds; powers.

All depositories of public money or public funds belonging to the State of Nebraska or the political subdivisions in this state shall have full authority to deposit, pledge, or grant a security interest in their assets or to provide a deposit guaranty bond for the security and payment for all such deposits and accretions. The State of Nebraska and any political subdivision in this state are given the right and authority to accept such deposit, pledge, or grant of a security interest in assets or the provision of a deposit guaranty bond.

Source: Laws 1996, LB 1274, § 12.

77-2398 Deposits in excess of insured or guaranteed amount; requirements.

(1) As an alternative to the requirements to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation pursuant to sections 77-2389 and 77-2394, a bank, capital stock financial institution, or qualifying mutual financial institution designated as a public depository may secure the deposits of one or more governmental units by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities to secure the repayment of all public money or public funds deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by such governmental units and not otherwise secured pursuant to law, if at all times the total value of the deposit guaranty bond is at least equal to the amount on deposit which is in excess of the amount so insured or guaranteed or the aggregate market value of the pool of securities so deposited, pledged, or in which a security interest is granted is at least equal to one hundred five percent of the amount on deposit which is in excess of the amount so insured or guaranteed. Each such bank, capital stock financial institution, or qualifying mutual financial institution shall carry on its accounting records at all times a general ledger or other appropriate account of the total amount of all public money or public funds to be secured by a deposit guaranty bond or by the pool of securities, as determined at the opening of business each day, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public money or public funds.

(2) Only the securities listed in subdivision (12) of section 77-2387 may be provided and accepted as security for the deposit of public money or public

funds and shall be eligible as collateral. The qualified trustee shall accept no security which is not listed in subdivision (12) of section 77-2387.

Source: Laws 2000, LB 932, § 43; Laws 2001, LB 362, § 92; Laws 2009, LB259, § 31.

77-2399 Governmental unit; deposits in excess of insured amount; rights.

Each governmental unit depositing public money or public funds in a bank, capital stock financial institution, or qualifying mutual financial institution shall have an undivided beneficial interest under the deposit guaranty bond provided or an undivided security interest in the pool of securities deposited, pledged, or in which a security interest is granted by a bank, capital stock financial institution, or qualifying mutual financial institution pursuant to subsection (1) of section 77-2398 in the proportion that the total amount of the governmental unit's public money or public funds secured by the deposit guaranty bond or by the pool of securities bears to the total amount of public money or public funds so secured. Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Source: Laws 2000, LB 932, § 44; Laws 2001, LB 362, § 93.

77-23,100 Deposits in excess of insured or guaranteed amount; qualified trustee; duties.

(1) Any bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds have been deposited which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation by the deposit, pledge, or granting of a security interest in a single pool of securities shall designate a qualified trustee and place with the trustee for holding the securities so deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. The bank, capital stock financial institution, or qualifying mutual financial institution shall give written notice of the designation of the qualified trustee to any custodial official depositing public money or public funds for which such securities are deposited, pledged, or in which a security interest has been granted, and if an affiliate of the bank, capital stock financial institution, or qualifying mutual financial institution is to serve as the qualified trustee, the notice shall disclose the affiliate relationship and shall be given prior to designation of the qualified trustee. The custodial official shall accept the written receipt of the trustee describing the pool of securities so deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution, a copy of which shall also be delivered to the bank, capital stock financial institution, or qualifying mutual financial institution.

(2) Any bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation under the Public Funds Deposit Security Act by providing a deposit guaranty bond pursuant to the provisions of subsection (1) of section 77-2398 shall designate a qualified trustee and cause to be issued a deposit guaranty bond which runs to the qualified trustee and which is conditioned that the bank, capital stock financial institution, or qualifying

mutual financial institution shall render to the qualified trustee the statement required under subsection (3) of this section.

(3) Each bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities shall, on or before the tenth day of each month, render to the qualified trustee a statement showing as of the last business day of the previous month (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (i) by each custodial official separately and (ii) by all custodial officials in the aggregate and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. Any qualified trustee shall be authorized, acting for the benefit of custodial officials, to take any and all actions necessary to take title to or to effect a first perfected security interest in the securities deposited, pledged, or in which a security interest is granted.

(4) Within ten days after receiving the statement required under subsection (3) of this section from a bank, capital stock financial institution, or qualifying mutual financial institution, the qualified trustee shall provide a report to each custodial official listed in such statement reflecting (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution by each custodial official as of the last business day of the previous month that is not insured or guaranteed by the Federal Deposit Insurance Corporation and that is secured pursuant to subsection (1) of section 77-2398 and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted pursuant to subsection (1) of section 77-2398 as of the last business day of the previous month. The report shall clearly notify the custodial official if the value of the securities deposited does not meet the statutory requirement.

Source: Laws 2000, LB 932, § 45; Laws 2001, LB 362, § 94; Laws 2009, LB259, § 32.

77-23,101 Qualified trustee; requirements.

Any Federal Reserve Bank, branch of a Federal Reserve Bank, a federal home loan bank, or another responsible bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, qualifying mutual financial institution which is authorized to exercise trust powers, or trust company, other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution providing the deposit guaranty bond or granting the security interest, is qualified to act as a qualified trustee for the receipt of a deposit guaranty bond or the holding of securities under section 77-23,100. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time substitute, exchange, or release securities deposited with a qualified trustee if such substitution, ex-

change, or release does not reduce the aggregate market value of the pool of securities to an amount that is less than one hundred five percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time reduce the amount of the deposit guaranty bond if the reduction does not reduce the value of the deposit guaranty bond to an amount less than the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation.

Source: Laws 2000, LB 932, § 46; Laws 2001, LB 362, § 95; Laws 2009, LB259, § 33.

77-23,102 Default; procedure.

(1) If a bank, capital stock financial institution, or qualifying mutual financial institution experiences an event of default the qualified trustee shall proceed in the following manner: (a) The qualified trustee shall ascertain the aggregate amounts of public money or public funds secured pursuant to subsection (1) of section 77-2398 and deposited in the bank, capital stock financial institution, or qualifying mutual financial institution which has defaulted, as disclosed by the records of such bank, capital stock financial institution, or qualifying mutual financial institution. The qualified trustee shall determine for each custodial official for whom public money or public funds are deposited in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution the accounts and amount of federal deposit insurance or guarantee that is available for each account. It shall then determine for each such custodial official the amount of public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation and the amount of the deposit guaranty bond or pool of securities pledged, deposited, or in which a security interest has been granted to secure such public money or public funds. Upon completion of this analysis, the qualified trustee shall provide each such custodial official with a statement that reports the amount of public money or public funds deposited by the custodial official in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution, the amount of public money or public funds that may be insured or guaranteed by the Federal Deposit Insurance Corporation, and the amount of public money or public funds secured by a deposit guaranty bond or secured by a pool of securities pursuant to subsection (1) of section 77-2398. Each such custodial official shall verify this information from his or her records within ten business days after receiving the report and information from the qualified trustee; and (b) upon receipt of a verified report from such custodial official and if the defaulting bank, capital stock financial institution, or qualifying mutual financial institution is to be liquidated or if for any other reason the qualified trustee determines that public money or public funds are not likely to be promptly paid upon demand, the qualified trustee shall proceed to enforce the deposit guaranty bond or liquidate the pool of securities held to secure the deposit of public money or public funds and shall repay each custodial official for the public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by the custodial official. In the event

that the amount of the deposit guaranty bond or the proceeds of the securities held by the qualified trustee after liquidation is insufficient to cover all public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for all custodial officials for whom the qualified trustee serves, the qualified trustee shall pay out to each custodial official available amounts pro rata in accordance with the respective public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for each such custodial official.

(2) In the event that a federal deposit insurance agency is appointed and acts as a liquidator or receiver of any bank, capital stock financial institution, or qualifying mutual financial institution under state or federal law, those duties under this section that are specified to be performed by the qualified trustee in the event of default may be delegated to and performed by such federal deposit insurance agency.

Source: Laws 2000, LB 932, § 47; Laws 2001, LB 362, § 96; Laws 2009, LB259, § 34.

77-23,103 Charges or compensation of qualified trustee.

Any charges or compensation of a qualified trustee for acting as such under the Public Funds Deposit Security Act shall be paid by the bank, capital stock financial institution, or qualifying mutual financial institution and in no event shall be chargeable to any governmental unit, to the custodial official, or to any officer of the governmental unit. Such charges or compensation shall not be a lien or charge upon the deposit guaranty bond or the securities held by the qualified trustee prior, superior, or equal to the rights to and interests under such deposit guaranty bond or in such securities of the governmental unit or of the custodial official. The custodial official shall be relieved from any liability to the governmental unit or to the bank, capital stock financial institution, or qualifying mutual financial institution for the loss or destruction of any deposit guaranty bond or securities pledged, deposited, or in which a security interest has been granted.

Source: Laws 2000, LB 932, § 48; Laws 2001, LB 362, § 97.

77-23,104 Assignment of securities; when.

In lieu of placing its unqualified endorsement on each security, a bank, capital stock financial institution, or qualifying mutual financial institution depositing, pledging, or granting a security interest in securities pursuant to subsection (1) of section 77-2398 that are not negotiable without its endorsement or assignment may furnish to the qualified trustee holding the securities an appropriate resolution and irrevocable power of attorney authorizing the trustee to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the trustee prescribes.

Source: Laws 2000, LB 932, § 49; Laws 2001, LB 362, § 98.

77-23,105 Reports required.

Upon request of a custodial official, a bank, capital stock financial institution, or qualifying mutual financial institution shall report as of the date of such request the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (1)

by the custodial official making the request and (2) by all other custodial officials and secured pursuant to subsection (1) of section 77-2398, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted to secure public money or public funds held by the bank, capital stock financial institution, or qualifying mutual financial institution, including those deposited by the custodial official. Upon request of a custodial official, a qualified trustee shall report as of the date of such request the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution and shall provide an itemized list of the securities in the pool. Such reports shall be made on or before the date the custodial official specifies.

Source: Laws 2000, LB 932, § 50; Laws 2001, LB 362, § 99; Laws 2009, LB259, § 35.

77-23,106 Public money or public funds; prompt payment.

The public money or public funds in the bank, capital stock financial institution, or qualifying mutual financial institution shall be paid promptly on the order of the custodial official depositing the public money or public funds in such bank, capital stock financial institution, or qualifying mutual financial institution.

Source: Laws 2000, LB 932, § 51; Laws 2001, LB 362, § 100.

ARTICLE 24

MISCELLANEOUS PROVISIONS

Section

- 77-2401. Transferred to section 33-140.
- 77-2402. Transferred to section 33-140.01.
- 77-2403. Transferred to section 33-140.02.
- 77-2404. Transferred to section 33-140.03.
- 77-2405. Transferred to section 84-616.
- 77-2406. Transferred to section 81-1170.01.
- 77-2407. Repealed. Laws 1988, LB 864, § 72.
- 77-2408. Repealed. Laws 1985, LB 368, § 2.
- 77-2409. Transferred to section 81-1170.02.
- 77-2410. Transferred to section 81-1170.03.
- 77-2411. Vacated town sites; payment of original amount of taxes; penalties remitted.
- 77-2412. Transferred to section 81-1170.04.
- 77-2413. Repealed. Laws 1965, c. 538, § 40.
- 77-2414. Repealed. Laws 1965, c. 538, § 40.
- 77-2415. Repealed. Laws 1953, c. 285, § 3.
- 77-2416. Transferred to section 81-1170.05.
- 77-2417. Transferred to section 49-805.01.
- 77-2418. Transferred to section 72-1601.
- 77-2419. Transferred to section 13-402.
- 77-2420. Electronic funds transfer system; authorized.

77-2401 Transferred to section 33-140.

77-2402 Transferred to section 33-140.01.

77-2403 Transferred to section 33-140.02.

77-2404 Transferred to section 33-140.03.

77-2405 Transferred to section 84-616.

77-2406 Transferred to section 81-1170.01.

77-2407 Repealed. Laws 1988, LB 864, § 72.

77-2408 Repealed. Laws 1985, LB 368, § 2.

77-2409 Transferred to section 81-1170.02.

77-2410 Transferred to section 81-1170.03.

77-2411 Vacated town sites; payment of original amount of taxes; penalties remitted.

Whenever town sites have been located, surveyed, and laid out in this state, under any law of the State of Nebraska, or under any law of the United States, and such town site or any part thereof has been vacated or abandoned as such, all taxes levied on the lots or subdivision therein vacated may be liquidated by payment of the original amount of such taxes without interest or penalties.

Source: Laws 1889, c. 77, § 1, p. 538; R.S.1913, § 6685; C.S.1922, § 6222; C.S.1929, § 77-2611.

77-2412 Transferred to section 81-1170.04.

77-2413 Repealed. Laws 1965, c. 538, § 40.

77-2414 Repealed. Laws 1965, c. 538, § 40.

77-2415 Repealed. Laws 1953, c. 285, § 3.

77-2416 Transferred to section 81-1170.05.

77-2417 Transferred to section 49-805.01.

77-2418 Transferred to section 72-1601.

77-2419 Transferred to section 13-402.

77-2420 Electronic funds transfer system; authorized.

In order to provide greater efficiency in the administration of the taxes collected by the state and convenience for the taxpayers of this state, the Director of Administrative Services and the State Treasurer may establish and operate an electronic funds transfer system for the collection of taxes and the payment of refunds. The Department of Administrative Services and the Department of Revenue shall jointly establish the procedures necessary to implement the system.

The use of electronic funds transfer or any other payment means by the state shall not create any rights that would not have been created had an individual state warrant been used as the payment medium. The use of electronic funds transfer or any other individual payment to the state shall not create any rights that would not have been created had an individual check been used as the payment medium to the state.

Source: Laws 1985, LB 273, § 12.

ARTICLE 25
TAX APPRAISAL BOARD

Section

- 77-2501. Repealed. Laws 1961, c. 284, § 1.
 77-2502. Repealed. Laws 1961, c. 284, § 1.
 77-2503. Repealed. Laws 1961, c. 284, § 1.
 77-2504. Repealed. Laws 1961, c. 284, § 1.
 77-2505. Repealed. Laws 1961, c. 284, § 1.
 77-2506. Repealed. Laws 1961, c. 284, § 1.
 77-2507. Repealed. Laws 1961, c. 284, § 1.
 77-2508. Repealed. Laws 1961, c. 284, § 1.
 77-2509. Repealed. Laws 1961, c. 284, § 1.
 77-2510. Repealed. Laws 1961, c. 284, § 1.

77-2501 Repealed. Laws 1961, c. 284, § 1.

77-2502 Repealed. Laws 1961, c. 284, § 1.

77-2503 Repealed. Laws 1961, c. 284, § 1.

77-2504 Repealed. Laws 1961, c. 284, § 1.

77-2505 Repealed. Laws 1961, c. 284, § 1.

77-2506 Repealed. Laws 1961, c. 284, § 1.

77-2507 Repealed. Laws 1961, c. 284, § 1.

77-2508 Repealed. Laws 1961, c. 284, § 1.

77-2509 Repealed. Laws 1961, c. 284, § 1.

77-2510 Repealed. Laws 1961, c. 284, § 1.

ARTICLE 26
CIGARETTE TAX

Cross References

- License required for sale of tobacco**, see sections 28-1420 to 28-1429.
Tobacco, penalties for violations involving minors, see sections 28-1418 and 28-1419.
Tobacco Products Tax Act, see section 77-4001.
Unfair Cigarette Sales Act, see section 59-1501.

Section

- 77-2601. Terms, defined.
 77-2602. Cigarette tax; rate; disposition of proceeds; priority.
 77-2602.01. Tax; liability of consumer or user; collection.
 77-2602.02. Repealed. Laws 1986, LB 738, § 1.
 77-2602.03. Increase in tax; applicability; cigarette wholesaler; duties; credit to wholesaler.
 77-2602.04. Bonds; limitation on pledge of revenue.
 77-2603. Tax; stamps; tax meter impressions; requirements; corporate surety bond.
 77-2604. Tax Commissioner; forms; reports; contents; when due.
 77-2605. Dealers; records; inspection.
 77-2606. Stamps; affix; cancellation.
 77-2607. Wholesale dealer; stock; exempt from tax; conditions.
 77-2608. Tax Commissioner; duties; audit; discount; funds; disposition.
 77-2609. Stamps; spoiled and unused; destruction; conditions.
 77-2610. Stamps; redemption by Tax Commissioner; errors; adjust.
 77-2611. Stamps; unlawful sale.

§ 77-2601

REVENUE AND TAXATION

Section

- 77-2612. Tax Commissioner; personnel; rules and regulations; wholesale dealer; license; permit; fee.
- 77-2613. State Treasurer; disbursements for administration.
- 77-2614. License; permit; stamp; alter; forge; counterfeit; violations; penalty.
- 77-2615. Violations; penalty; prima facie evidence.
- 77-2615.01. Licensees; disciplinary action; procedure; appeal.
- 77-2616. Use tax; rate.
- 77-2617. Use tax; payment; report.
- 77-2618. Use tax; delinquent; penalty.
- 77-2619. Use tax; violation; penalty.
- 77-2620. Contraband cigarettes; confiscation; sale; notice; proceeds; disposition; liability for confiscation.
- 77-2621. Common carrier; unstamped cigarettes; bond; conditions; permit; fee.
- 77-2622. Common carrier; unstamped cigarettes; bond; permit; violation; penalty.

77-2601 Terms, defined.

For purposes of sections 77-2601 to 77-2615:

- (1) Person means and includes every individual, firm, association, joint-stock company, partnership, limited liability company, syndicate, and corporation;
- (2) Wholesale dealer means a person who sells cigarettes to licensed retail dealers other than branch stores operated by or connected with such wholesale dealer for purposes of resale and is licensed under section 28-1423;
- (3) Retail dealer includes every person other than a wholesale dealer engaged in the business of selling cigarettes in this state irrespective of quantity, amount, or number of sales thereof;
- (4) Tax Commissioner means the Tax Commissioner of the State of Nebraska;
- (5) Cigarette means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco; and
- (6) Consumer means any person, firm, association, partnership, limited liability company, joint-stock company, syndicate, or corporation not having a license to sell cigarettes.

Source: Laws 1947, c. 267, § 1, p. 861; Laws 1978, LB 748, § 41; Laws 1993, LB 121, § 499; Laws 2002, LB 989, § 9; Laws 2003, LB 572, § 9.

77-2602 Cigarette tax; rate; disposition of proceeds; priority.

(1) Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, sixty-four cents per package; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package.

(2) Beginning October 1, 2004, the State Treasurer shall place the equivalent of forty-nine cents of such tax in the General Fund. The State Treasurer shall

reduce the amount placed in the General Fund under this subsection by the amount prescribed in subdivision (3)(d) of this section. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by the tax rate per package of cigarettes containing not more than twenty cigarettes.

(3) The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Health and Human Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(c) Third, beginning October 1, 2002, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. The distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(d) Fourth, until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of five hundred twenty thousand dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of five hundred twenty thousand dollars each year for fiscal year 2003-04 through fiscal year 2008-09;

(e) Fifth, beginning July 1, 2001, and continuing until June 30, 2008, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund. The distribution under this subdivision shall not be less than two million fifty thousand dollars. Any money needed to increase the amount distributed under this subdivision to two million fifty thousand dollars shall reduce the distribution to the General Fund;

(f) Sixth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision;

(g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the

General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision; and

(h) Eighth, beginning July 1, 2008, and continuing until June 30, 2009, the State Treasurer shall place the equivalent of two million fifty thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2009, and continuing until June 30, 2016, the State Treasurer shall place the equivalent of two million five hundred seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of five million seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision.

(4) If, after distributing the proceeds of such tax pursuant to subsections (2) and (3) of this section, any proceeds of such tax remain, the State Treasurer shall place such remainder in the Nebraska Capital Construction Fund.

(5) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Health and Human Services Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, (h) the City of the Metropolitan Class Development Fund, and (i) the Nebraska Public Safety Communication System Cash Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through (i) of this subsection.

Source: Laws 1947, c. 267, § 2, p. 861; Laws 1957, c. 341, § 1, p. 1179; Laws 1963, c. 457, § 1, p. 1483; Laws 1965, c. 501, § 2, p. 1595; Laws 1965, c. 500, § 1, p. 1590; Laws 1969, c. 645, § 10, p. 2562; Laws 1971, LB 87, § 1; Laws 1972, LB 1433, § 1; Laws 1973, LB 447, § 5; Laws 1974, LB 945, § 9; Laws 1975, Spec. Sess., LB 6, § 67; Laws 1976, LB 1004, § 24; Laws 1976, LB 1006, § 6; Laws 1978, LB 109, § 3; Laws 1981, LB 506, § 5; Laws 1982, LB 753, § 1; Laws 1983, LB 192, § 1; Laws 1983, LB 410, § 1; Laws 1983, LB 469, § 4; Laws 1984, LB 862, § 1; Laws 1985, LB 728, § 1; Laws 1985, LB 653A, § 1; Laws 1985, Second Spec. Sess.,

LB 3, § 1; Laws 1986, LB 258, § 16; Laws 1986, LB 842, § 1; Laws 1987, LB 730, § 27; Laws 1987, LB 218, § 1; Laws 1989, LB 683, § 1; Laws 1990, LB 1220, § 1; Laws 1991, LB 703, § 65; Laws 1992, Third Spec. Sess., LB 9, § 1; Laws 1992, Third Spec. Sess., LB 11, § 1; Laws 1993, LB 22, § 1; Laws 1993, LB 595, § 2; Laws 1994, LB 961, § 8; Laws 1996, LB 1044, § 795; Laws 1996, LB 1190, § 15; Laws 1998, LB 1107, § 2; Laws 1999, LB 683, § 1; Laws 2000, LB 1349, § 1; Laws 2001, LB 657, § 5; Laws 2002, LB 1085, § 1; Laws 2003, LB 440, § 2; Laws 2003, LB 759, § 3; Laws 2005, LB 426, § 15; Laws 2007, LB296, § 703; Laws 2007, LB322, § 20.

Cross References

Deferred Building Renewal Act, see section 81-190.

Municipal Infrastructure Redevelopment Fund Act, see section 18-2601.

Task Force for Building Renewal, see section 81-174.

This section does not appropriate revenue placed in the Downtown Education Center and Office Rental Fund and revenue placed in that fund may not be expended without a specific legislative appropriation from that fund. *Ruge v. State*, 201 Neb. 391, 267 N.W.2d 748 (1978).

This act which includes sections 77-2602, 77-2610, 77-2616, and 85-1,100 is valid under the Constitutions of Nebraska and the United States. *Sandberg v. State*, 188 Neb. 335, 196 N.W.2d 501 (1972).

77-2602.01 Tax; liability of consumer or user; collection.

The impact of the tax levied by Chapter 77, article 26, is hereby declared to be on the vendee, user, consumer, or possessor of cigarettes in this state, and when such tax is paid by any other person, such payment shall be construed as an advance payment, and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user. In making sales of cigarettes in this state, a wholesaler or jobber may separately state and show upon the invoice covering such sale the amount of the tax on cigarettes sold. The tax shall be evidenced by appropriate stamps attached to each package of cigarettes sold, and the tax shall be collected by the retailer from the user or consumer. The provisions of this section shall in no way affect the method of collection of such tax on cigarettes as now provided by existing law.

Source: Laws 1955, c. 305, § 1, p. 945; Laws 1957, c. 341, § 2, p. 1179.

77-2602.02 Repealed. Laws 1986, LB 738, § 1.

77-2602.03 Increase in tax; applicability; cigarette wholesaler; duties; credit to wholesaler.

The increase in the tax shall apply to all unused stamps, meter impressions, and packages of stamped cigarettes owned by cigarette wholesalers at 12:01 a.m. on the day the increase becomes operative. On the date any change in the tax takes effect, each cigarette wholesaler shall take an inventory of all unused stamps, meter impressions, and packages of stamped cigarettes owned by the cigarette wholesaler at 12:01 a.m. The additional tax shall be remitted with the return for the last month preceding the date any change in the tax takes effect. The Tax Commissioner shall credit to each wholesaler an amount equal to the additional tax on two weeks of such wholesaler's average purchases of tax stamps.

Source: Laws 1982, LB 753, § 3; Laws 1985, LB 653A, § 2; Laws 1985, Second Spec. Sess., LB 3, § 2; Laws 1987, LB 730, § 28; Laws 2002, LB 989, § 10.

77-2602.04 Bonds; limitation on pledge of revenue.

Notwithstanding any other provision of law, for bonds issued on or after July 1, 2008, funds received by the issuer pursuant to section 77-2602 shall not be pledged for repayment of bonds, except that such funds may be pledged for repayment of refunding bonds issued to refund bonds issued prior to May 20, 2009.

Source: Laws 2008, LB961, § 9; Laws 2009, LB316, § 21.

77-2603 Tax; stamps; tax meter impressions; requirements; corporate surety bond.

The tax, as levied in section 77-2602, shall be paid and the stamps or cigarette tax meter impressions shall be affixed or printed with a cigarette tax meter by the person having possession and ownership of such cigarettes after the same shall have come to rest in this state and intended to be sold or given away in this state. Nothing in sections 77-2601 to 77-2615 shall be construed to require a wholesale dealer to fix the retail price or to require any retailer to sell at any particular price. Subject to such rules and regulations as the Tax Commissioner shall prescribe, tax meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes. Before any wholesale dealer is issued a permit to affix stamps or cigarette tax meter impressions, the wholesale dealer shall make application to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity and, if approval is given by the Tax Commissioner, the dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615, in a sum not less than one thousand dollars. Nothing in sections 77-2601 to 77-2615 shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by wholesalers as determined by such rules and regulations adopted by the Tax Commissioner.

Source: Laws 1947, c. 267, § 3, p. 862; Laws 1949, c. 245, § 1, p. 665; Laws 1951, c. 271, § 1, p. 905; Laws 1963, c. 458, § 1, p. 1484; Laws 2002, LB 989, § 11; Laws 2003, LB 572, § 10.

77-2604 Tax Commissioner; forms; reports; contents; when due.

Every wholesale dealer and retail dealer who is subject to sections 77-2601 to 77-2622 shall make and file with the Tax Commissioner, on or before the tenth day of each calendar month on blanks furnished by the Tax Commissioner, true, correct, and sworn reports covering, for the last preceding calendar month, the number of cigarettes purchased, from whom purchased, the specific kinds and brands thereof, the manufacturer, if known, and such other matters and in such detail as the Tax Commissioner may require.

Source: Laws 1947, c. 267, § 4, p. 862; Laws 2002, LB 989, § 12.

77-2605 Dealers; records; inspection.

The books, records, papers, receipts, invoices and supply of cigarettes of any person, including wholesale and retail dealers and persons transporting cigarettes, subject to the provisions of sections 77-2601 to 77-2615 which pertain to

the purchase or sale of cigarettes shall be subject to inspection at any time during ordinary business hours by the Tax Commissioner or his representatives.

Source: Laws 1947, c. 267, § 5, p. 862.

77-2606 Stamps; affix; cancellation.

Before being delivered to the consumer, each package of cigarettes shall have securely affixed thereto a suitable stamp or cigarette tax meter impression denoting the tax thereon. Any stamp so affixed shall be properly canceled prior to removal or consumption under such regulations as the Tax Commissioner shall prescribe.

Source: Laws 1947, c. 267, § 6, p. 863.

77-2607 Wholesale dealer; stock; exempt from tax; conditions.

Each wholesale dealer may set aside such portion of his stock of cigarettes as is not intended to be sold or given away in this state and it will not be necessary to affix the above-mentioned stamps or tax impressions thereon; *Provided*, that if said stock is not disposed of and out of the possession of the said wholesale dealer within thirty days of the date of receipt thereof, the said cigarettes, packages or pieces, must immediately be stamped as required by the provisions of sections 77-2601 to 77-2615. Each wholesale dealer shall immediately mark in ink on each unopened box, carton or other container of such cigarettes, received and the date of receipt and shall affix his signature thereto. Within forty-eight hours after such box, carton or other container is opened he must immediately affix such stamps or tax impressions to each package therein and cancel the stamps affixed thereto in the manner herein designated.

Source: Laws 1947, c. 267, § 7, p. 863.

77-2608 Tax Commissioner; duties; audit; discount; funds; disposition.

The Tax Commissioner shall prepare and have suitable stamps for use on each kind of piece or package of cigarettes, except when cigarette tax meter impressions are affixed. Requisition for the preparation of such stamps shall be made through the materiel division of the Department of Administrative Services as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsperson shall be liable for the value of all such stamps delivered to him or her. The Auditor of Public Accounts shall audit annually or as often as the auditor deems advisable the records of the Tax Commissioner with respect to the money received from the sale of stamps and as revenue from tax meter impressions for the purpose of determining the accuracy and correctness of the same. The Tax Commissioner shall sell the stamps only to licensed wholesale dealers, as defined in section 77-2601, and he or she shall keep an accurate record of all stamps coming into and leaving his or her hands. Such stamps shall be sold and accounted for at the face value thereof, except that the Tax Commissioner may, by rule and regulation certified to the State Treasurer, authorize the sale thereof to wholesale dealers in this state or outside of this state at a discount of one and eighty-five hundredths percent of such face value of the tax as a commission for affixing and canceling such stamps, except that for stamps sold beginning October 1, 2002, through September 30, 2004, the authorized commission for affixing and canceling such stamps shall be one and seven-tenths percent of the face value of the tax. Any wholesale dealer using a tax meter machine shall be entitled to the same discount as allowed a wholesale

dealer for affixing and canceling the stamps. The money received by the Tax Commissioner from the sale of the stamps and as revenue from such tax meter impressions shall be deposited by him or her daily with the State Treasurer who shall credit such money as provided in section 77-2602. Upon proof by the Tax Commissioner that he or she can affix such stamps or meter impressions, warehouse and distribute such cigarettes, and collect such revenue at a cost less than any discount allowed to wholesale dealers pursuant to this section, he or she may then proceed to affix the stamps himself or herself after giving the wholesale dealers sixty days' notice and purchasing all equipment used by them for the purpose of affixing such stamps or meter impressions at a fair market value.

Source: Laws 1947, c. 267, § 8, p. 863; Laws 1949, c. 245, § 2, p. 666; Laws 1949, c. 246, § 1, p. 668; Laws 1963, c. 458, § 2, p. 1485; Laws 1965, c. 501, § 3, p. 1596; Laws 1965, c. 500, § 2, p. 1591; Laws 1971, LB 87, § 2; Laws 1985, LB 653A, § 3; Laws 1985, Second Spec. Sess., LB 3, § 3; Laws 1987, LB 730, § 29; Laws 2000, LB 654, § 4; Laws 2002, Second Spec. Sess., LB 46, § 1; Laws 2003, LB 572, § 11.

This act which includes sections 77-2602, 77-2610, 77-2616, and 85-1,100 is valid under the Constitutions of Nebraska and the United States. *Sandberg v. State*, 188 Neb. 335, 196 N.W.2d 501 (1972).

77-2609 Stamps; spoiled and unused; destruction; conditions.

Any spoiled or unused stamps in the hands of the Tax Commissioner shall be destroyed upon the joint certificate of the Tax Commissioner, the State Treasurer, and the Secretary of State, setting forth the number, denomination, and face value of the same. Such certificate shall relieve the Tax Commissioner from accountability in the amount thereof.

Source: Laws 1947, c. 267, § 9, p. 864; Laws 2002, LB 989, § 13.

77-2610 Stamps; redemption by Tax Commissioner; errors; adjust.

Upon the written request of the original purchaser thereof and upon the return of any unused stamps, the Tax Commissioner shall redeem such stamps. The Tax Commissioner shall prepare a voucher showing the amount of such returned unused stamps and shall cause to be drawn a warrant upon the State Treasurer for such amount in favor of the person returning such unused stamps. The refunds shall be paid from the various funds named in section 77-2602 in the same proportions as the proceeds of the tax are allocated. By the terms of sections 77-2601 to 77-2615, the Tax Commissioner and the State Treasurer are specifically authorized to adjust all errors in payments for unused stamps.

Source: Laws 1947, c. 267, § 10, p. 864; Laws 1959, c. 353, § 7, p. 1246; Laws 1965, c. 501, § 4, p. 1597; Laws 1965, c. 459, § 20, p. 1462; Laws 1969, c. 645, § 11, p. 2562; Laws 1971, LB 87, § 3.

This act which includes sections 77-2602, 77-2610, 77-2616, and 85-1,100 is valid under the Constitutions of Nebraska and the United States. *Sandberg v. State*, 188 Neb. 335, 196 N.W.2d 501 (1972).

77-2611 Stamps; unlawful sale.

It shall be unlawful for any person to sell unused stamps except as otherwise herein provided.

Source: Laws 1947, c. 267, § 11, p. 864.

77-2612 Tax Commissioner; personnel; rules and regulations; wholesale dealer; license; permit; fee.

The Tax Commissioner may employ, with the advice and consent of the Governor, a sufficient number of inspectors, clerks, assistants, and agents to enforce the provisions of sections 77-2601 to 77-2622, including the collection of all stamp taxes and all revenue from cigarette tax meters. In such enforcement, the Tax Commissioner may call to his or her aid the Attorney General, any county attorney, any sheriff, any deputy sheriff, or any other peace officer. The compensation of all persons employed shall be fixed by the Governor and shall be paid from the revenue derived under sections 77-2601 to 77-2622. The expenses of administering sections 77-2601 to 77-2622, including necessary assistants, clerical help, cost of enforcement, cost of stamps, and incidental expenses, when approved by the Tax Commissioner, shall be paid by warrants, issued against the General Fund, but such warrants shall not exceed four percent of the funds collected under sections 77-2601 to 77-2622, such expenses in each instance to be approved by the Tax Commissioner.

The Tax Commissioner may adopt and promulgate rules and regulations which are consistent with the provisions of sections 77-2601 to 77-2622 and their proper enforcement.

Each wholesale dealer shall annually apply to the Tax Commissioner, upon forms to be furnished by the Tax Commissioner for a permit to use the tax meter machines, as set forth in section 77-2603, or to purchase such stamps as provided in section 77-2608, or both. The permit shall expire on December 31 each year. Each wholesale dealer shall furnish with such application evidence satisfactory to the Tax Commissioner showing that he or she has obtained a license as a wholesale dealer in accordance with section 28-1423. He or she shall accompany the application with a fee of five hundred dollars to be placed in the General Fund if the permit is granted and otherwise to be returned to the applicant. If the applicant is an individual, the application shall include the applicant's social security number. If the application is approved and the bond referred to in section 77-2603 is given and approved, if such bond is required under section 77-2603, the Tax Commissioner shall issue such license which shall be conspicuously posted in the place of business of such wholesale dealer.

Source: Laws 1947, c. 267, § 12, p. 864; Laws 1959, c. 353, § 8, p. 1246; Laws 1965, c. 501, § 5, p. 1597; Laws 1965, c. 500, § 3, p. 1591; Laws 1965, c. 364, § 19, p. 1193; Laws 1978, LB 748, § 43; Laws 1982, LB 928, § 63; Laws 1997, LB 752, § 211; Laws 2002, LB 989, § 14.

77-2613 State Treasurer; disbursements for administration.

The State Treasurer shall place all sums of money received under sections 77-2601 to 77-2615 as provided in section 77-2602, and from time to time, upon voucher approved by the Tax Commissioner, disburse such sum or sums as may be necessary to administer and carry out the provisions of sections 77-2601 to 77-2615 relating to the collection of said tax, subject to the limitations therein provided.

Source: Laws 1947, c. 267, § 13, p. 865; Laws 1949, c. 245, § 3, p. 666; Laws 1959, c. 353, § 9, p. 1247; Laws 1965, c. 501, § 6, p. 1599; Laws 1965, c. 500, § 4, p. 1593.

77-2614 License; permit; stamp; alter; forge; counterfeit; violations; penalty.

Any person who, with intent to defraud the state, shall make, alter, forge or counterfeit any license, permit, stamp or cigarette tax meter impression provided for in sections 77-2601 to 77-2615, or who shall have in his possession any forged, counterfeited, spurious or altered license, permit, stamp or cigarette tax meter impression, with intent to use the same, knowing or having reasonable grounds to believe the same to be such, or shall have in his possession one or more cigarette stamps or cigarette tax meter impressions which he knows have been removed from the pieces or packages of cigarettes to which they were affixed, or who affixes to any piece or package of cigarettes a stamp or cigarette tax meter impression which he knows has been removed from any other piece or package of cigarettes shall be deemed guilty of a Class IV felony.

Source: Laws 1947, c. 267, § 14, p. 865; Laws 1977, LB 39, § 236.

77-2615 Violations; penalty; prima facie evidence.

Any person who shall violate any of the provisions of sections 77-2601 to 77-2615, or any rule or regulation lawfully made in accordance therewith, for which a specific penalty is not otherwise provided or who shall, except as permitted by sections 77-2601 to 77-2615, sell, deliver, or accept, with intent to evade the provisions of sections 77-2601 to 77-2615, any cigarettes upon which the tax provided by section 77-2602 has not been paid shall be deemed guilty of a Class IV felony. Where any person is found to have in his possession more than ten unstamped packages of cigarettes, except as permitted under section 77-2607, it shall be prima facie evidence of attempt to evade the provisions of sections 77-2601 to 77-2615.

Source: Laws 1947, c. 267, § 15, p. 866; Laws 1949, c. 245, § 4, p. 667; Laws 1977, LB 39, § 237.

77-2615.01 Licensees; disciplinary action; procedure; appeal.

(1) In addition to the provisions of sections 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622 or the rules and regulations adopted and promulgated under such sections, the Tax Commissioner may:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429 or 77-2601 to 77-2622. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

(b) Impose an administrative penalty not to exceed one thousand dollars for any violation.

(2) Any person whose license has been so revoked may apply at the expiration of sixty days for a reinstatement of his or her license. The license may be reinstated if it appears to the satisfaction of the Tax Commissioner that the licensee will comply with sections 77-2601 to 77-2622 and the rules and regulations adopted and promulgated under such sections.

(3) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by him or her. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under sections 28-1420 to 28-1429 or 77-2601 to 77-2622.

(4) Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2002, LB 989, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

77-2616 Use tax; rate.

There is hereby levied and imposed a tax upon the use of all cigarettes, as defined by section 77-2601, used in this state, except such cigarettes upon which the tax imposed by section 77-2602 has been paid. The amount of such use tax shall be at the rate provided in section 77-2602 as now existing or as hereafter amended. The tax collected shall be disbursed as provided in section 77-2602.

Source: Laws 1949, c. 224, § 1, p. 628; Laws 1959, c. 353, § 10, p. 1248; Laws 1963, c. 457, § 2, p. 1483; Laws 1965, c. 501, § 7, p. 1559; Laws 1971, LB 87, § 4; Laws 1981, LB 506, § 6; Laws 1982, LB 753, § 2.

This act which includes sections 77-2602, 77-2610, 77-2616, and 85-1,100 is valid under the Constitutions of Nebraska and the United States. *Sandberg v. State*, 188 Neb. 335, 196 N.W.2d 501 (1972).

77-2617 Use tax; payment; report.

Every person, firm, corporation, or association, using cigarettes subject to taxation on the use thereof under the provisions of sections 77-2616 to 77-2619, shall pay such tax and make report thereof to the Tax Commissioner under such rules and regulations as may be prescribed by the Tax Commissioner.

Source: Laws 1949, c. 224, § 2, p. 629; Laws 2002, LB 989, § 16.

77-2618 Use tax; delinquent; penalty.

If the tax provided for in section 77-2616 is not paid within such time as may be prescribed for payment thereof by rules and regulations prescribed by the Tax Commissioner, the same shall become delinquent and a penalty of twenty-five percent shall be added thereto, together with interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, until paid. If attorneys are employed to collect such delinquent tax, ten percent of the tax, penalty, and interest shall be added thereto as a part of the costs of collection.

Source: Laws 1949, c. 224, § 3, p. 629; Laws 1981, LB 167, § 50; Laws 1992, Fourth Spec. Sess., LB 1, § 21.

77-2619 Use tax; violation; penalty.

Any person, firm, corporation, or association, that shall willfully fail, neglect, or refuse to make any report required by sections 77-2616 to 77-2619, or by rules and regulations lawfully promulgated thereunder, or that shall knowingly make any false statement in any such report, shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1949, c. 224, § 4, p. 629; Laws 1977, LB 39, § 238.

77-2620 Contraband cigarettes; confiscation; sale; notice; proceeds; disposition; liability for confiscation.

All cigarettes subject to the tax as imposed by section 77-2602, to which stamps have not been affixed or tax impressions made, as required by sections 77-2601 to 77-2615, except as permitted by the provisions of section 77-2607, when found in any place in this state are declared to be contraband goods and may be seized by the Tax Commissioner, by the Tax Commissioner's agents or employees, or by any peace officer of this state, when directed by the Tax Commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated cigarettes when he or she has reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed under section 77-2602. The Tax Commissioner may, in the absence of proof of good faith, confiscate any unstamped cigarettes or cigarettes without tax impressions found in the possession of any person, except as permitted by section 77-2607, and may within a reasonable time thereafter, by a public notice of at least fifteen days before the day of sale, sell such confiscated cigarettes at public sale and pay the proceeds into the state treasury. The State Treasurer shall credit the proceeds as provided in section 77-2602. Any purchaser of such cigarettes shall be required to purchase and affix the stamps or make the tax impressions, as required by sections 77-2601 to 77-2615. The seizure and sale of any cigarettes under this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of sections 77-2601 to 77-2615. The Tax Commissioner, his or her agents and employees, and any peace officer of this state, when directed so to do, shall not in any way be responsible in any court for the seizure or the confiscation of any unstamped packages of cigarettes or cigarettes without tax impressions.

Source: Laws 1951, c. 272, § 1, p. 906; Laws 1965, c. 501, § 8, p. 1599; Laws 1965, c. 500, § 5, p. 1593; Laws 2002, LB 989, § 17; Laws 2003, LB 572, § 12.

77-2621 Common carrier; unstamped cigarettes; bond; conditions; permit; fee.

Any common carrier of merchandise owning or operating any railroad, express company, bus, truck, or other transportation line or routes for the transportation of merchandise in the State of Nebraska, upon application and filing of a bond in form and penalty and with such sureties as may be approved by the Tax Commissioner, may be designated as a carrier of unstamped cigarettes from any bonded warehouse to a licensed wholesale tobacco dealer in the State of Nebraska, and a carrier's permit shall be issued by the Tax Commissioner upon receipt of a fee of ten dollars. One of the conditions of such bond shall be that the bonded carrier shall be liable to the State of Nebraska in an amount equal to the tax due on the quantity of cigarettes consigned to the licensed tobacco dealer.

Source: Laws 1951, c. 255, § 1, p. 876; Laws 1982, LB 928, § 64.

77-2622 Common carrier; unstamped cigarettes; bond; permit; violation; penalty.

Failure to comply with the provisions of section 77-2621 shall be cause for revocation of the permit issued under the provisions of section 77-2621.

Source: Laws 1951, c. 255, § 2, p. 877.

SALES AND INCOME TAX

ARTICLE 27

SALES AND INCOME TAX

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77-2701.46.	Manufacturing, defined.
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77-2701.52.	Digital books, defined.

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77-2702.01.	Repealed. Laws 1992, LB 871, § 65.
77-2702.02.	Repealed. Laws 1992, LB 871, § 65.
77-2702.03.	Transferred to section 77-2701.04.
77-2702.04.	Transferred to section 77-2701.07.
77-2702.05.	Transferred to section 77-2701.10.
77-2702.06.	Transferred to section 77-2701.13.
77-2702.07.	Transferred to section 77-2701.16.
77-2702.08.	Transferred to section 77-2701.17.
77-2702.09.	Transferred to section 77-2701.24.
77-2702.10.	Transferred to section 77-2701.25.
77-2702.11.	Transferred to section 77-2701.28.
77-2702.12.	Repealed. Laws 2003, LB 282, § 87.
77-2702.13.	Repealed. Laws 2003, LB 282, § 87.
77-2702.14.	Transferred to section 77-2701.32.
77-2702.15.	Transferred to section 77-2701.33.
77-2702.16.	Transferred to section 77-2701.34.
77-2702.17.	Repealed. Laws 2003, LB 282, § 87.
77-2702.18.	Transferred to section 77-2701.36.
77-2702.19.	Transferred to section 77-2701.37.
77-2702.20.	Transferred to section 77-2701.39.
77-2702.21.	Transferred to section 77-2701.40.
77-2702.22.	Transferred to section 77-2701.41.
77-2702.23.	Transferred to section 77-2701.42.
77-2702.24.	Transferred to section 77-2701.06.
77-2702.25.	Transferred to section 77-2701.19.
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77-2704.	Repealed. Laws 1992, LB 871, § 65.
77-2704.01.	Repealed. Laws 1992, LB 871, § 65.
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77-2704.15.	Purchases by state, schools, or governmental units; exemption; purchasing agents.
77-2704.16.	Purchases by Nebraska State Fair Board; exemption.
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77-2704.18.	Repealed. Laws 2006, LB 1189, § 9.
77-2704.19.	Repealed. Laws 2009, LB 154, § 27.
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77-2719.	Repealed. Laws 1987, LB 773, § 30.
77-2720.	Repealed. Laws 1984, LB 962, § 39.
77-2721.	Repealed. Laws 1987, LB 773, § 30.
77-2722.	Repealed. Laws 1984, LB 962, § 39.
77-2723.	Repealed. Laws 1987, LB 773, § 30.
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77-2736.	Repealed. Laws 1984, LB 1124, § 22.
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77-2738.	Repealed. Laws 1984, LB 1124, § 22.
77-2739.	Repealed. Laws 1984, LB 1124, § 22.
77-2740.	Repealed. Laws 1984, LB 1124, § 22.
77-2741.	Repealed. Laws 1984, LB 1124, § 22.
77-2742.	Repealed. Laws 1984, LB 1124, § 22.
77-2743.	Repealed. Laws 1984, LB 1124, § 22.
77-2744.	Repealed. Laws 1984, LB 1124, § 22.
77-2745.	Repealed. Laws 1984, LB 1124, § 22.
77-2746.	Repealed. Laws 1984, LB 1124, § 22.
77-2747.	Repealed. Laws 1984, LB 1124, § 22.
77-2748.	Repealed. Laws 1984, LB 1124, § 22.
77-2749.	Repealed. Laws 1984, LB 1124, § 22.
77-2750.	Repealed. Laws 1984, LB 1124, § 22.
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(a) ACT, RATES, AND DEFINITIONS**77-2701 Act, how cited.**

Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 shall be known and may be cited as the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 1, p. 1533; Laws 1984, LB 1124, § 2; Laws 1985, LB 715, § 1; Laws 1985, LB 273, § 40; Laws 1987, LB 773, § 1; Laws 1987, LB 772, § 1; Laws 1987, LB 775, § 14; Laws 1987, LB 523, § 12; Laws 1989, LB 714, § 1; Laws 1989, LB 762, § 9; Laws 1991, LB 444, § 1; Laws 1991, LB 773, § 6; Laws 1991, LB 829, § 19; Laws 1992, LB 871, § 3; Laws 1992, LB 1063, § 180; Laws 1992, Second Spec. Sess., LB 1, § 153; Laws 1992, Fourth Spec. Sess., LB 1, § 22; Laws 1993, LB 138, § 69; Laws 1993, LB 240, § 1; Laws 1993, LB 345, § 14; Laws 1993, LB 587, § 20; Laws 1993, LB 815, § 22; Laws 1994, LB 901, § 1; Laws 1994, LB 938, § 1; Laws 1995, LB 430, § 2; Laws 1996, LB 106, § 2; Laws 1997, LB 182A, § 1; Laws 1998, LB 924, § 27; Laws 2001, LB 172, § 10; Laws 2001, LB 433, § 2; Laws 2002, LB 57, § 2; Laws 2002, LB 947, § 3; Laws 2003, LB 72, § 1; Laws 2003, LB 168, § 1; Laws 2003, LB 282, § 6; Laws 2003, LB 759, § 4; Laws 2004, LB 1017, § 2; Laws 2005, LB 28, § 1; Laws 2005, LB 312, § 6; Laws 2006, LB 872, § 1; Laws 2006, LB 968,

§ 3; Laws 2006, LB 1189, § 1; Laws 2007, LB223, § 3; Laws 2007, LB343, § 1; Laws 2007, LB367, § 9; Laws 2008, LB916, § 5; Laws 2009, LB9, § 2.

Section 2-1208 imposes a tax directly upon the licensee race-track. Section 77-2701 et seq. impose a sales tax upon the purchaser. Thus, section 77-2701 does not conflict with the provisions of section 2-1208 which prohibit any additional taxes from being imposed upon the licensee. *Governors of Ak-Sar-Ben v. Department of Rev.*, 217 Neb. 518, 349 N.W.2d 385 (1984).

The act authorizes the use of the combined or unitary apportionment method of reporting to determine the income of a

corporation engaged in a unitary business operation. *PMD Investment Co. v. State*, 216 Neb. 553, 345 N.W.2d 815 (1984).

This act does not authorize State Tax Commissioner to exclude partners and partnerships nor Subchapter S corporations from benefit of transitional period regulation. *Altsuler v. Peters*, 190 Neb. 113, 206 N.W.2d 570 (1973).

Nebraska Revenue Act of 1967 does not violate the Constitution of Nebraska. *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

77-2701.01 Income tax; rate.

Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 1990, under the Internal Revenue Code of 1986, as amended, the rate of the income tax levied pursuant to section 77-2715 shall be three and forty-three-hundredths percent. Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 1991, under the Internal Revenue Code of 1986, as amended, the rate of the income tax levied pursuant to section 77-2715 shall be three and seventy-hundredths percent.

Source: Laws 1984, LB 892, § 1; Laws 1985, Second Spec. Sess., LB 35, § 1; Laws 1986, LB 539, § 1; Laws 1987, LB 773, § 2; Laws 1990, LB 1059, § 32.

77-2701.02 Sales tax; rate.

Pursuant to section 77-2715.01:

- (1) Until July 1, 1998, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent;
- (2) Commencing July 1, 1998, and until July 1, 1999, the rate of the sales tax levied pursuant to section 77-2703 shall be four and one-half percent;
- (3) Commencing July 1, 1999, and until the start of the first calendar quarter after July 20, 2002, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent; and
- (4) Commencing on the start of the first calendar quarter after July 20, 2002, the rate of the sales tax levied pursuant to section 77-2703 shall be five and one-half percent.

Source: Laws 1984, LB 892, § 2; Laws 1986, LB 539, § 2; Laws 1990, LB 1059, § 33; Laws 1998, LB 1104, § 12; Laws 2002, LB 1085, § 2; Laws 2003, LB 759, § 5.

77-2701.03 Changes; when effective; relief from liability; conditions.

- (1) The sales tax rate may only be changed effective at the beginning of a calendar quarter.
- (2) Any sales tax exemption or repeal of any sales tax exemption shall only be effective at the beginning of a calendar quarter.
- (3) Any change in sales tax rate or base dealing with a service covering a period of time starting before and ending after the effective date of the change shall be effective as follows: (a) For a rate increase or base expansion, the change shall apply to the first billing period commencing on or after the

effective date; and (b) for a rate decrease or base contraction, the change shall apply to bills rendered on or after the effective date.

(4) A seller shall be relieved of liability for failing to collect tax at the new effective rate if the state fails to provide a period of at least thirty days between enactment of the statute providing for a rate change and the effective date of such rate change, the seller collected tax at the immediately preceding effective rate, and the seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of enactment of the new rate.

(5) Subsection (4) of this section shall not apply if the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate.

Source: Laws 2003, LB 282, § 7; Laws 2009, LB165, § 4.

77-2701.04 Definitions, where found.

For purposes of sections 77-2701.04 to 77-2713, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.53 shall be used.

Source: Laws 1992, LB 871, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 23; Laws 1993, LB 345, § 15; Laws 1998, LB 924, § 28; R.S.Supp.,2002, § 77-2702.03; Laws 2003, LB 282, § 8; Laws 2003, LB 759, § 6; Laws 2004, LB 1017, § 3; Laws 2005, LB 312, § 7; Laws 2006, LB 968, § 4; Laws 2006, LB 1189, § 2; Laws 2007, LB223, § 4; Laws 2007, LB367, § 10; Laws 2008, LB916, § 6; Laws 2009, LB9, § 3.

77-2701.05 Agent, defined.

Agent means a person appointed by a seller to represent the seller before the member states.

Source: Laws 2003, LB 282, § 9.

77-2701.06 Annexed to real estate, defined.

Annexed to real estate means attaching property to real estate so that (1) the property becomes real estate or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional as determined by the Department of Revenue by rule and regulation.

Source: Laws 1993, LB 345, § 29; R.S.1943, (1996), § 77-2702.24; Laws 2003, LB 282, § 10.

77-2701.07 Business, defined.

Business means any activity engaged in by any person or caused to be engaged in by him or her with the object of gain, benefit, or advantage, either direct or indirect.

Source: Laws 1992, LB 871, § 5; R.S.1943, (1996), § 77-2702.04; Laws 2003, LB 282, § 11.

77-2701.08 Certified automated system, defined.

Certified automated system means software certified under the streamlined sales and use tax agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate member state, and maintain a record of the transaction.

Source: Laws 2003, LB 282, § 12.

77-2701.09 Certified service provider, defined.

Certified service provider means an agent certified under the streamlined sales and use tax agreement to perform all of the seller's sales tax collection functions, other than to remit tax on its own retail purchases.

Source: Laws 2003, LB 282, § 13.

77-2701.10 Contractor or repairperson, defined.

Contractor or repairperson means any person who performs any repair services upon property annexed to, or who annexes building materials to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, annexes building materials to the real estate being so repaired or annexed or arranges for such annexation. Contractor or repairperson does not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer is considered to be the consumer of such building materials furnished by him or her and annexed to the real estate being so repaired or annexed for all the purposes of the Nebraska Revenue Act of 1967. The contractor or repairperson:

(1) Shall be permitted to make an election that he or she will be taxed as a retailer in which case he or she shall not be considered the final consumer of building materials annexed to real estate;

(2) Shall be permitted to make an election that he or she will be taxed as the consumer of building materials annexed to real estate, will pay the sales tax or remit the use tax at the time of purchase, and will maintain a tax-paid inventory; or

(3) Shall be permitted to make an election that he or she will be taxed as the consumer of building materials annexed to real estate and may issue a resale certificate when purchasing building materials that will be annexed to real estate. Such person shall then remit the appropriate use tax on any building materials when withdrawn from inventory for the purpose of being annexed to real estate at the rate in effect at the time and place of the withdrawal from inventory.

The provisions of this section shall not excuse any person from the obligation to collect sales tax on retail sales of property not annexed to real estate or from the obligation to pay the sales tax or remit the use tax on tools, services, and other materials consumed that are not annexed to real estate.

The Department of Revenue shall not prescribe any requirements of Nebraska sales revenue, percentage or otherwise, restricting any person's election. Any change in an election shall require prior approval by the Tax Commissioner.

Any change in the election shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next

succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all building materials in inventory which may be annexed to real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on building materials in inventory at the time the building materials are sold. The credit shall be applied against the tax collected on sales of such building materials.

Any contractor or repairperson who has not completed and filed an election as required in this section within three months after beginning to operate as a contractor or repairperson shall be considered a retailer for all periods until an election has been made.

Source: Laws 1992, LB 871, § 6; Laws 1993, LB 345, § 16; R.S.1943, (1996), § 77-2702.05; Laws 2003, LB 282, § 14; Laws 2003, LB 759, § 7; Laws 2004, LB 1017, § 6; Laws 2007, LB367, § 12.

A contractor who incorporates live plants, including sod, into real estate is a retailer for sales tax purposes. Only contractors, not retailers, are allowed to elect their taxation scheme. George

Rose & Sons v. Nebraska Dept. of Revenue, 248 Neb. 92, 532 N.W.2d 18 (1995).

77-2701.11 Delivery charges, defined.

Delivery charges means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

Source: Laws 2003, LB 282, § 15.

77-2701.12 Direct mail, defined.

Direct mail means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

Source: Laws 2003, LB 282, § 16.

77-2701.13 Engaged in business in this state, defined.

Engaged in business in this state means any of the following:

- (1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse, storage place, or other place of business in this state;
- (2) Having any representative, agent, salesperson, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any property;
- (3) Deriving rentals from a lease of property in this state by any retailer;

(4) Soliciting retail sales of property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

(5) Soliciting orders from residents of this state for property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities;

(6) Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state; or

(7) Maintaining or having a franchisee or licensee operating under the retailer's trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967.

Source: Laws 1992, LB 871, § 7; Laws 1993, LB 345, § 17; R.S.1943, (1996), § 77-2702.06; Laws 2003, LB 282, § 17.

77-2701.14 Entity-based exemption, defined.

Entity-based exemption means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

Source: Laws 2003, LB 282, § 18; Laws 2006, LB 887, § 2.

77-2701.15 Governing board, defined.

Governing board means the body containing representatives from each state that is a member of the streamlined sales and use tax agreement that is responsible for approving membership or withdrawal of states to the agreement, registering retailers to collect sales and use tax from purchasers in the member states, certifying service providers and automated systems for collecting sales and use taxes, approving monetary allowances for certified service providers and certified automated systems, resolving disputes among member states or with retailers or certified service providers, and otherwise executing the provisions of the agreement for the benefit of the member states under the terms of the agreement.

Source: Laws 2003, LB 282, § 19.

77-2701.16 Gross receipts, defined.

(1) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service; and

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(d) In the furnishing of community antenna television service or satellite service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite service; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(4) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax. If any or all of the charge for installation is free to the customer and is paid by a third-party service provider to the installer, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid and remitted by the third-party service provider;

(e) The gross income received for services of recreational vehicle parks;

(f) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be

subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(g) The gross income received for animal specialty services except (i) veterinary services, (ii) specialty services performed on livestock as defined in section 54-183, and (iii) animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment; and

(h) The gross income received for detective services.

(5) Gross receipts includes the sale of admissions which means the right or privilege to have access to or to use a place or location. An admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization. When an admission to an activity or a membership constituting an admission pursuant to this subsection is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(6) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(7) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(8) Gross receipts includes the sale of and recharge of prepaid calling service and prepaid wireless calling service.

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

Source: Laws 1992, LB 871, § 8; Laws 1993, LB 345, § 18; Laws 1994, LB 123, § 21; Laws 1994, LB 901, § 2; Laws 1994, LB 977, § 1; Laws 1994, LB 1087, § 1; Laws 1996, LB 106, § 3; Laws 1999, LB 214, § 1; Laws 2002, LB 947, § 4; Laws 2002, LB 1085, § 3; R.S.Supp.,2002, § 77-2702.07; Laws 2003, LB 282, § 20; Laws 2003, LB 759, § 8; Laws 2004, LB 1017, § 7; Laws 2005, LB 216,

§ 4; Laws 2005, LB 753, § 1; Laws 2007, LB367, § 13; Laws 2008, LB916, § 7; Laws 2009, LB165, § 5; Laws 2009, LB 587, § 1.

Pursuant to subsection (2) of this section, definition of gross receipts encompasses every person engaged in furnishing telephone communication services or any person involved in connecting and installing telephone communication services including those services performed on the customer side of the demarcation point, regardless of who owns the inside wiring or terminal equipment. *Capitol City Telephone v. Nebraska Dept. of Rev.*, 264 Neb. 515, 650 N.W.2d 467 (2002).

Management fee and loss reimbursement payments paid by an employer to a food service hired to provide a cafeteria for employees were not subject to either state or city sales or use taxes. *Omaha P. P. Dist. v. Nebraska State Tax Commissioner*, 210 Neb. 309, 314 N.W.2d 246 (1982).

77-2701.17 In this state or within the state, defined.

In this state or within the state means within the exterior limits of the State of Nebraska and includes all the territory within these limits owned by or ceded to the United States of America.

Source: Laws 1992, LB 871, § 9; R.S.1943, (1996), § 77-2702.08; Laws 2003, LB 282, § 21.

77-2701.18 Lease or rental, defined.

(1) Lease or rental means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(2) Lease or rental does not include:

(a) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(b) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(c) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For purposes of this subsection, an operator must do more than maintain, inspect, or set up the tangible personal property.

(3) Lease includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined for federal income tax purposes.

(4) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

(5) This definition shall be applied only prospectively from January 1, 2004, and shall have no retroactive impact on existing leases or rentals.

Source: Laws 2003, LB 282, § 22.

77-2701.19 Maintenance agreement, defined.

(1) Maintenance agreement means any contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is

subject to tax under section 77-2703, for a stated period of time or interval of use. Maintenance agreement includes any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement includes contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

(2) Maintenance agreement does not include any contract or agreement subject to the premium tax under Chapter 77, article 9, from a service contract business operating with a certificate of authority from the Department of Insurance.

(3) The selling price of a maintenance agreement shall not have to be separately stated and may be included as a part of the selling price of the item covered.

Source: Laws 1993, LB 345, § 31; R.S.1943, (1996), § 77-2702.25; Laws 2003, LB 282, § 23.

77-2701.20 Member states, defined.

Member states means any and all states that have been approved initially or later admitted by the governing board for participation in the streamlined sales and use tax agreement.

Source: Laws 2003, LB 282, § 24.

77-2701.21 Model 1 seller, defined.

Model 1 seller means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own retail purchases.

Source: Laws 2003, LB 282, § 25.

77-2701.22 Model 2 seller, defined.

Model 2 seller means a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax.

Source: Laws 2003, LB 282, § 26.

77-2701.23 Model 3 seller, defined.

Model 3 seller means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. Seller includes an affiliated group of sellers using the same proprietary system.

Source: Laws 2003, LB 282, § 27.

77-2701.24 Occasional sale, defined.

Occasional sale means:

(1) A sale, but not a lease or rental, of property which is the subject of any intercompany sale or transfer involving any parent, subsidiary, or brother-sister company relationship under section 77-2704.28 and which was either originally

acquired prior to June 1, 1967, or, if acquired thereafter, the seller or transferor directly or indirectly has previously paid a sales or use tax thereon, including:

(a) From one corporation to another corporation pursuant to a reorganization. For purposes of this subdivision, reorganization means a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

(b) In connection with the winding up, dissolution, or liquidation of a corporation only when there is a distribution of the property of such corporation to the shareholders in kind if the portion of the property so distributed to the shareholder is substantially in proportion to the share of stock or securities held by the shareholder;

(c) To a corporation for the purpose of organization of such corporation or the contribution of additional capital to such corporation when the former owners of the property transferred are immediately after the transfer in control of the corporation and the stock or securities received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(d) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnership and the interest in the partnership received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(e) From a partnership to the members thereof when made in kind in the dissolution of such partnership if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members;

(f) To a limited liability company in the organization of such limited liability company if the former owners of the property transferred are immediately after the transfer members of such limited liability company and the interest in the limited liability company received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(g) From a limited liability company to the members thereof when made in kind in the dissolution of such limited liability company if the portion of the property so distributed to the members of the limited liability company is substantially in proportion to the interest in the limited liability company held by the members;

(h) From one limited liability company to another limited liability company pursuant to a reorganization; or

(i) Any transaction between two persons that qualifies as a tax-free transaction under the Internal Revenue Code;

(2) A sale of household goods, personal effects, and services if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such sales are by an individual at his or her residence or if more than one individual's property is involved such sales are by one of the individuals involved at the residence of one of the individuals or such sales are by an individual on an online auction site;

(b) Such sales do not occur at any residence or on an online auction site for more than three days during a calendar year;

(c) Such individual or individuals or any member of any of their households does not conduct or engage in a trade or business in which similar items are sold or services provided;

(d) Such property sold was originally acquired for and used for personal use or the service provided may be performed at any individual residence without specialized equipment or supplies; and

(e) Such property is not otherwise excepted from the definition of occasional sale;

(3) Commencing with any transaction occurring on or after October 1, 1985, any sale of business or farm machinery and equipment if each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such machinery or equipment was used by the seller or seller's predecessor in a sale described in subdivision (1) of this section as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(b) Such property was originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon; and

(c) Such property is not otherwise excepted from the definition of occasional sale;

(4) Commencing October 1, 1985, a sale by an organization created exclusively for religious purposes or an agent of the organization for such sale if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) All sales occur during an activity conducted by such organization or, if more than one organization is involved, by one of the organizations owning property being sold;

(b) The organization only sells property it owns or provides the service during one such activity in a calendar year; and

(c) The activity does not last longer than three consecutive days; and

(5) Any sale that is made in connection with the sale to a single buyer of all or substantially all of a trade or business if the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon. This subdivision shall apply to any transaction occurring on or after October 1, 1985.

Commencing October 1, 1985, occasional sale does not include any sale directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer.

Except for a sale listed in subdivision (1) of this section, an occasional sale does not mean any sale of motor vehicles, semitrailers, or trailers as defined in the Motor Vehicle Registration Act or any sale of a motorboat as defined in section 37-1204.

Source: Laws 1992, LB 871, § 10; Laws 1993, LB 121, § 500; Laws 1993, LB 345, § 19; Laws 1994, LB 123, § 22; Laws 1995, LB 574,

§ 73; Laws 2002, LB 1085, § 4; R.S.Supp.,2002, § 77-2702.09; Laws 2003, LB 282, § 28; Laws 2005, LB 274, § 273; Laws 2009, LB165, § 6.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-2701.25 Person, defined.

Person means any individual, firm, partnership, limited liability company, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or other group or combination acting as a unit. Person also means the United States or any agency of the United States, this state or any agency of this state, or any city, county, district, or other political subdivision of this state or any agency thereof.

Source: Laws 1992, LB 871, § 11; Laws 1993, LB 8, § 1; Laws 1993, LB 121, § 501; R.S.1943, (1996), § 77-2702.10; Laws 2003, LB 282, § 29.

77-2701.26 Product-based exemption, defined.

Product-based exemption means an exemption based on the description of the product that is the subject of the transaction and not based on the identity of the person purchasing or selling the product or the ultimate use of the product.

Source: Laws 2003, LB 282, § 30.

77-2701.27 Property, defined.

Property means all tangible and intangible property that is subject to tax under subsection (1) of section 77-2703 and all rights, licenses, and franchises that are subject to tax under such subsection. To facilitate the proper administration of the Nebraska Revenue Act of 1967, unless the context clearly requires otherwise, the term property shall be construed to include all services subject to tax.

Source: Laws 1993, LB 345, § 32; R.S.1943, (1996), § 77-2702.26; Laws 2003, LB 282, § 31; Laws 2005, LB 216, § 5.

77-2701.28 Purchase, defined.

Purchase means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means, of property for a consideration, including a transfer of the possession of property in which the seller retains the title as security for the payment of the price and a transfer for a consideration of property which has been produced, fabricated, or printed to the special order of the customer. Purchase also means the provision of a service for a consideration.

Source: Laws 1992, LB 871, § 12; Laws 1993, LB 345, § 20; Laws 2002, LB 1085, § 5; R.S.Supp.,2002, § 77-2702.11; Laws 2003, LB 282, § 32.

77-2701.29 Purchase price, defined.

Purchase price applies to the measure subject to use tax and has the same meaning as sales price.

Source: Laws 2003, LB 282, § 33.

77-2701.30 Purchaser, defined.

Purchaser means a person to whom a sale of personal property is made or to whom a service is furnished.

Source: Laws 2003, LB 282, § 34.

77-2701.31 Retail sale or sale at retail, defined.

Retail sale or sale at retail means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

Source: Laws 2003, LB 282, § 35.

This section does not exclude from taxation material necessary to or consumed in the manufacturing process but which does not actually enter into the final product as an ingredient or component part. Property that is necessary for production but which does not become an ingredient or component part of the product sold is taxable. This section does not exclude from taxation material necessary to or consumed in the manufacturing process which incidentally becomes incorporated into the finished product and which is not an essential ingredient or component of the finished product because such material is not an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail. *Lackawanna Leather Co. v. Nebraska Dept. of Rev.*, 259 Neb. 100, 608 N.W.2d 177 (2000).

A contractor who incorporates live plants, including sod, into real estate is a retailer for sales tax purposes. Only contractors, not retailers, are allowed to elect their taxation scheme. *George Rose & Sons v. Nebraska Dept. of Revenue*, 248 Neb. 92, 532 N.W.2d 18 (1995).

Tangible personal property which is purchased and originally used for a different purpose than as an essential ingredient or component part of steel manufacturing, but which is later used as an ingredient or component part of the steel only after its use for its original purpose has been exhausted, should be subject to sales and use tax. Nebraska's statutory scheme does not exclude from taxation material necessary to or consumed in the manufacturing process but which does not actually enter into the final product as an ingredient or component part. To prevent double taxation, Nebraska provides exemptions from the sales and use taxes for materials that enter into and become an ingredient or component part of a product manufactured, processed, or fabri-

cated for ultimate sale at retail. *Interstate Printing Co. v. Department of Revenue*, 236 Neb. 110, 459 N.W.2d 519 (1990).

Material which only accidentally or incidentally becomes incorporated into a finished product and which is not an essential ingredient of the finished product is subject to sales and use tax because such material is not an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. *Nucor Steel v. Leuenberger*, 233 Neb. 863, 448 N.W.2d 909 (1989).

So long as a material is entered into and is an essential ingredient or component part of a product manufactured, processed, or fabricated for ultimate sale at retail, the material is excluded from the Nebraska sales and use tax, notwithstanding that the material may be used for more than one purpose in manufacturing, processing, or fabricating the product. *Nucor Steel v. Leuenberger*, 233 Neb. 863, 448 N.W.2d 909 (1989).

Under the former law, subsections (1)(a) and (20) of section 77-2702 provide an exemption from the Nebraska sales and use tax. *Nucor Steel v. Leuenberger*, 233 Neb. 863, 448 N.W.2d 909 (1989).

When the primary function of tangible personal property is to aid in the production of goods which are manufactured for ultimate retail sale, the property will not be exempt from the use tax as defined in this section, merely because some undetermined fraction of the property is absorbed into the retail product during its manufacture. *American Stores Packing Co. v. Peters*, 203 Neb. 76, 277 N.W.2d 544 (1979).

Different classification as it affects reusable and nonreusable containers for purpose of sales tax is not arbitrary and unreasonable. *Pepsi Cola Bottling Co. v. Peters*, 189 Neb. 271, 202 N.W.2d 582 (1972).

77-2701.32 Retailer, defined.

(1) Retailer means any seller.

(2) To facilitate the proper administration of the Nebraska Revenue Act of 1967, the following persons have the duties and responsibilities of sellers for the purposes of sales and use taxes:

(a) Any person in the business of making sales subject to tax under section 77-2703 at auction of property owned by the person or others;

(b) Any person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer. The seller does not include the auctioneer in such case;

(c) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 77-2701.10;

(d) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event; and

(e) Every person engaged in the business of providing any service defined in subsection (4) of section 77-2701.16.

(3) For the proper administration of the Nebraska Revenue Act of 1967, the following persons do not have the duties and responsibilities of a seller for purposes of sales and use taxes:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967;

(b) Any person who leases or rents railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(c) Any person engaged in the business of furnishing rooms in a facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days; or

(d) Any person making sales at a flea market, craft show, fair, or similar event when such person does not have a sales tax permit and has arranged to pay sales taxes collected to the person operating, organizing, or promoting such event.

Source: Laws 1992, LB 871, § 15; Laws 1993, LB 345, § 23; Laws 2000, LB 819, § 149; Laws 2002, LB 1085, § 7; R.S.Supp., 2002, § 77-2702.14; Laws 2003, LB 282, § 36; Laws 2003, LB 759, § 10; Laws 2008, LB916, § 8.

Cross References

Health Care Facility Licensure Act, see section 71-401.

77-2701.33 Sale, defined.

Sale means any transfer of title or possession or segregation in contemplation of transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means, of property for a consideration or the provision of service for a consideration. Sale includes, but is not limited to:

(1) The producing, fabricating, processing, printing, or imprinting of property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting; and

(2) The renting or furnishing for periods of less than thirty days of any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a health care facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which

rooms are regularly used to house students for a consideration for periods in excess of thirty days.

Source: Laws 1992, LB 871, § 16; Laws 1993, LB 8, § 2; Laws 1993, LB 345, § 24; Laws 2000, LB 819, § 150; Laws 2002, LB 1085, § 8; R.S.Supp.,2002, § 77-2702.15; Laws 2003, LB 282, § 37.

Cross References

Health Care Facility Licensure Act, see section 71-401.

77-2701.34 Sale for resale, defined.

Sale for resale means a sale of property or provision of a service to any purchaser who is purchasing such property or service for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased or as an attachment to or integral part of other property or service. A sale for resale includes (1) a sale of building materials to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2701.10 or a sale of building materials to a contractor or repairperson being taxed as the consumer of building materials and electing a tax-free inventory under subdivision (3) of section 77-2701.10, (2) a sale of property to a purchaser for the sole purpose of that purchaser renting or leasing such property to another person, with rent or lease payments set at a fair market value, (3) film rentals for use in a place where an admission is charged that is subject to tax under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate, or (4) a sale of digital products, community antenna television services, Internet services, and satellite services to a person who receives by contract the product or service transferred electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service for use in a place where an admission is charged that is subject to sales tax under the Nebraska Revenue Act of 1967.

Source: Laws 1992, LB 871, § 17; Laws 1993, LB 345, § 25; Laws 2002, LB 1085, § 9; R.S.Supp.,2002, § 77-2702.16; Laws 2003, LB 282, § 38; Laws 2004, LB 1017, § 8; Laws 2007, LB367, § 14; Laws 2008, LB916, § 14.

A sale of intangible property does not constitute sale for resale of the product. *May Broadcasting Co. v. Boehm*, 241 Neb. 660, 490 N.W.2d 203 (1992).

The burden is on the party seeking an exemption to establish that it is entitled to an exemption. *Nucor Steel v. Balka*, 2 Neb. App 138, 507 N.W.2d 499 (1993).

77-2701.35 Sales price, defined.

(1) Sales price applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (a) The seller's cost of the property sold;
- (b) The cost of materials used, the cost of labor or service, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (c) Charges by the seller for any services necessary to complete the sale;
- (d) Delivery charges; and

(e) Installation charges.

(2) Sales price includes consideration received by the seller from third parties if:

(a) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(b) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(d) One of the following criteria is met:

(i) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount when the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(ii) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(iii) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(3) Sales price does not include:

(a) Any discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(d) Credit for any trade-in as follows:

(i) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature; or

(ii) The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat.

Source: Laws 2003, LB 282, § 39; Laws 2007, LB223, § 6.

77-2701.36 Seller, defined.

Seller includes every person engaged in the business of selling, leasing, or renting property of a kind the gross receipts from the retail sale, lease, or rental of which are required to be included in the measure of the sales tax.

Source: Laws 1992, LB 871, § 19; Laws 1993, LB 345, § 27; R.S.1943, (1996), § 77-2702.18; Laws 2003, LB 282, § 40.

77-2701.37 Storage, defined.

Storage includes any retention in this state for any purposes except sale in the regular course of business or subsequent use solely outside this state of property purchased from a retailer, other than property which will enter into or become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail.

Source: Laws 1992, LB 871, § 20; Laws 1993, LB 345, § 28; R.S.1943, (1996), § 77-2702.19; Laws 2003, LB 282, § 41.

City use tax was properly imposed upon property stored in the destination within this state. Omaha P. P. Dist. v. Nebraska State Tax Commissioner, 210 Neb. 309, 314 N.W.2d 246 (1982).

77-2701.38 Streamlined sales and use tax agreement, defined.

Streamlined sales and use tax agreement means the streamlined sales and use tax agreement approved by the implementing states on November 12, 2002.

Source: Laws 2003, LB 282, § 42.

77-2701.39 Tangible personal property, defined.

Tangible personal property means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software.

Source: Laws 1992, LB 871, § 21; R.S.1943, (1996), § 77-2702.20; Laws 2003, LB 282, § 43.

77-2701.40 Tax Commissioner, defined.

Tax Commissioner means the Tax Commissioner of the State of Nebraska.

Source: Laws 1992, LB 871, § 22; R.S.1943, (1996), § 77-2702.21; Laws 2003, LB 282, § 44.

77-2701.41 Taxpayer, defined.

Taxpayer means any person subject to a tax imposed by sections 77-2701 to 77-2713.

Source: Laws 1992, LB 871, § 23; R.S.1943, (1996), § 77-2702.22; Laws 2003, LB 282, § 45.

77-2701.42 Use, defined.

Use means the exercise of any right or power over property incident to the ownership or possession of that property, except that use does not include the sale of that property in the regular course of business or the exercise of any right or power over property which will enter into or become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically includes the annexation of building materials to real estate or the withdrawal of property or building materials from inventory, which inventory is subject to sales tax under the Nebraska Revenue Act of 1967 or would be subject to the sales tax under the act except for an election under section 77-2701.10, for annexation to real estate or to improvements upon real estate without regard to the fact that such building materials are manufactured,

processed, or fabricated prior to annexation or that such real estate and improvements may subsequently be sold as such.

Source: Laws 1992, LB 871, § 24; Laws 1993, LB 345, § 30; R.S.1943, (1996), § 77-2702.23; Laws 2003, LB 282, § 46; Laws 2004, LB 1017, § 9.

Containers purchased and used not only for the purpose of state are not exempt from use tax under this section. A-1 Metro transporting the containers out of the state but for use in the Movers v. Egr, 264 Neb. 291, 647 N.W.2d 593 (2002).

77-2701.43 Use-based exemption, defined.

Use-based exemption means an exemption based on a specified use of the product by the purchaser.

Source: Laws 2003, LB 282, § 47; Laws 2006, LB 887, § 3.

77-2701.44 Building materials, defined.

Building materials means any property that will be annexed to real estate or to an improvement on real estate. Building materials does not include tools, supplies, or property that will not be annexed.

Source: Laws 2004, LB 1017, § 4.

77-2701.45 Repealed. Laws 2007, LB 367, § 31.

77-2701.46 Manufacturing, defined.

Manufacturing means an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing does not include retail operations, the generation or transmission of electricity, the production or transmission of information, programming, or data, the preparation of food for immediate consumption, or the purification or transportation of water.

Source: Laws 2005, LB 312, § 8.

77-2701.47 Manufacturing machinery and equipment, defined.

(1) Manufacturing machinery and equipment means any machinery or equipment purchased, leased, or rented by a person engaged in the business of manufacturing for use in manufacturing, including, but not limited to:

(a) Machinery or equipment for use in manufacturing to produce, fabricate, assemble, process, finish, refine, or package tangible personal property;

(b) Machinery or equipment for use in transporting, conveying, handling, or storing by the manufacturer the raw materials or components to be used in manufacturing or the products produced by the manufacturer;

(c) Molds and dies and the materials necessary to create molds and dies for use in manufacturing that determine the physical characteristics of the finished product or its packaging material, whether or not such molds or dies are permanent or temporary in nature, and including any chemicals, solutions, or catalysts utilized in the mold or die process even if such items are consumed during the course of the mold or die process;

(d) Machinery or equipment for use in manufacturing to maintain the integrity of the product or to maintain unique environmental conditions re-

quired for either the product or the machinery and equipment used in manufacturing by a manufacturer;

(e) Testing equipment for use in manufacturing to measure the quality of the finished product;

(f) Computers, software, and related peripheral equipment for use in manufacturing to guide, control, operate, or measure the manufacturing process;

(g) Machinery or equipment for use in manufacturing to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if such produced items are consumed during the course of the manufacturing process or do not become necessary or integral parts of the finished product; and

(h) A repair or replacement part or accessory purchased for use in maintaining, repairing, or refurbishing machinery and equipment used in manufacturing.

(2) Manufacturing machinery and equipment does not include: Vehicles required to be registered for operation on the roads and highways of this state; hand tools; office equipment; and computers, software, and related peripheral equipment not used in guiding, controlling, operating, or measuring of the manufacturing process. Machinery or equipment does not need to come into direct physical contact with any of the raw materials, components, or products that are part of the manufacturing process to be considered manufacturing machinery or equipment.

Source: Laws 2005, LB 312, § 9; Laws 2006, LB 1189, § 4.

77-2701.48 Bundled transaction, defined.

(1) Bundled transaction means the retail sale of two or more products, except real property and services to real property, when (a) the products are otherwise distinct and identifiable and (b) the products are sold for one non-itemized price. Bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) Distinct and identifiable products do not include:

(a) Packaging, such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; and

(c) Items included in the definition of sales price pursuant to section 77-2701.35.

(3) One non-itemized price does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service

agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is (a) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service, (b) the retail sale of services when one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service, or (c) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimus. De minimus means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimus. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimus. Sellers shall use the full term of a service contract to determine if the taxable products are de minimus.

(5) Bundled transaction does not include the retail sale of exempt tangible personal property and taxable tangible personal property if (a) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies and (b) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty-percent determination for a transaction.

Source: Laws 2007, LB223, § 5.

77-2701.49 Delivered electronically, defined.

Delivered electronically means obtained by the purchaser by means other than tangible storage media.

Source: Laws 2008, LB916, § 9.

77-2701.50 Digital audio works, defined.

Digital audio works means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

Source: Laws 2008, LB916, § 10.

77-2701.51 Digital audiovisual works, defined.

Digital audiovisual works means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Source: Laws 2008, LB916, § 11.

77-2701.52 Digital books, defined.

Digital books means works that are generally recognized in the ordinary and usual sense as books.

Source: Laws 2008, LB916, § 12.

77-2701.53 Digital code, defined.

Digital code means a code which provides a purchaser with a right to obtain one or more products delivered electronically. A digital code may be obtained by any means, including email or tangible means.

Source: Laws 2008, LB916, § 13.

(b) SALES AND USE TAX

77-2702 Repealed. Laws 1992, LB 871, § 65.

77-2702.01 Repealed. Laws 1992, LB 871, § 65.

77-2702.02 Repealed. Laws 1992, LB 871, § 65.

77-2702.03 Transferred to section 77-2701.04

77-2702.04 Transferred to section 77-2701.07.

77-2702.05 Transferred to section 77-2701.10.

77-2702.06 Transferred to section 77-2701.13.

77-2702.07 Transferred to section 77-2701.16.

77-2702.08 Transferred to section 77-2701.17.

77-2702.09 Transferred to section 77-2701.24.

77-2702.10 Transferred to section 77-2701.25.

77-2702.11 Transferred to section 77-2701.28.

77-2702.12 Repealed. Laws 2003, LB 282, § 87.

77-2702.13 Repealed. Laws 2003, LB 282, § 87.

77-2702.14 Transferred to section 77-2701.32.

77-2702.15 Transferred to section 77-2701.33.

77-2702.16 Transferred to section 77-2701.34.

77-2702.17 Repealed. Laws 2003, LB 282, § 87.

77-2702.18 Transferred to section 77-2701.36.

77-2702.19 Transferred to section 77-2701.37.

77-2702.20 Transferred to section 77-2701.39.

77-2702.21 Transferred to section 77-2701.40.

77-2702.22 Transferred to section 77-2701.41.

77-2702.23 Transferred to section 77-2701.42.

77-2702.24 Transferred to section 77-2701.06.

77-2702.25 Transferred to section 77-2701.19.

77-2702.26 Transferred to section 77-2701.27.

77-2703 Sales and use tax; rate; collection; understatement; violation; penalty; interest.

(1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state; the gross receipts of every person engaged as a public utility, as a community antenna television service operator, or as a satellite service operator, any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2701.16; the gross receipts from the sale of admissions in this state; the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; the gross receipts from the provision of services defined in subsection (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) of section 77-2701.16. Except as provided in section 77-2701.03, when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to

brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, for periods of one year or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer or designated county official as provided in the Motor Vehicle Registration Act at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, semitrailer, or trailer in this state and does not register it for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or designated county official at the time the purchaser makes application for the registration of the motorboat. At the time of the sale

of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motorboat in this state and does not register it within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or designated county official. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or designated county official shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or designated county official shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer or designated county official violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt

from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal, the advertising agency is and remains liable for the sales

and use tax on the purchase the same as if the principal had made the purchase directly.

Source: Laws 1967, c. 487, § 3, p. 1543; Laws 1967, c. 490, § 2, p. 1652; Laws 1969, c. 684, § 1, p. 2646; Laws 1969, c. 683, § 2, p. 2621; Laws 1974, LB 820, § 2; Laws 1981, LB 179, § 14; Laws 1983, LB 17, § 2; Laws 1983, LB 169, § 1; Laws 1983, LB 571, § 1; Laws 1985, LB 715, § 3; Laws 1985, LB 273, § 42; Laws 1986, LB 1027, § 204; Laws 1987, LB 224, § 28; Laws 1987, LB 523, § 14; Laws 1991, LB 239, § 1; Laws 1991, LB 47, § 7; Laws 1991, LB 829, § 21; Laws 1992, LB 871, § 25; Laws 1992, LB 1063, § 182; Laws 1992, Second Spec. Sess., LB 1, § 155; Laws 1992, Fourth Spec. Sess., LB 1, § 26; Laws 1993, LB 112, § 45; Laws 1993, LB 345, § 33; Laws 1993, LB 767, § 1; Laws 1994, LB 123, § 24; Laws 1994, LB 994, § 1; Laws 1994, LB 1207, § 15; Laws 1995, LB 17, § 1; Laws 1996, LB 1041, § 6; Laws 1996, LB 1218, § 65; Laws 1997, LB 62, § 1; Laws 1997, LB 182A, § 3; Laws 2002, LB 1085, § 11; Laws 2002, Second Spec. Sess., LB 32, § 1; Laws 2003, LB 282, § 48; Laws 2003, LB 381, § 3; Laws 2003, LB 563, § 43; Laws 2003, LB 759, § 12; Laws 2004, LB 1017, § 10; Laws 2005, LB 274, § 274; Laws 2007, LB223, § 7; Laws 2007, LB367, § 15; Laws 2008, LB916, § 15.

Cross References

Motor Vehicle Registration Act, see section 60-301.

1. Sales tax
2. Use tax
3. Miscellaneous

1. Sales tax

Syndicated programming purchased by broadcasters is tangible property and taxable under the Nebraska sales tax. *May Broadcasting Co. v. Boehm*, 241 Neb. 660, 490 N.W.2d 203 (1992).

Sale of reusable bottles, cartons, and shells to bottlers by manufacturers or suppliers is a sale at retail subject to the Nebraska Revenue Act of 1967. *Pepsi Cola Bottling Co. v. Peters*, 189 Neb. 271, 202 N.W.2d 582 (1972).

This section imposes a sales tax upon the purchaser. *Jacob v. State*, 12 Neb. App. 696, 685 N.W.2d 88 (2004).

2. Use tax

The distribution of direct mail catalogs sent from outside Nebraska via common carrier, the U.S. mail, or both to Nebraska residents constitutes a "use" of tangible personal property subjecting the catalogs to a tax under this section. *J.C. Penney Co., Inc. v. Balka*, 254 Neb. 521, 577 N.W.2d 283 (1998).

In view of properly adopted regulations of the Department of Revenue, direct mail advertiser's consumption and use of materials and services purchased by it to produce direct mail advertising are a taxable use under this section. However, use tax does not apply to charges by advertising agency for services that are not a part of the sale of tangible property or do not represent labor or service cost in the agency's production of any tangible personal property which is subject to the tax. *Val-Pak of Omaha v. Department of Revenue*, 249 Neb. 776, 545 N.W.2d 447 (1996).

Where graphite electrodes are used in the manufacture of steel for the dual purpose of providing essential carbon for the steel manufacturing process and for the conduction of electricity which provides heat for the process, and where a substantial part of the graphite electrodes enters into and becomes an essential ingredient or component part of the finished steel and

the remainder is consumed in the manufacturing and refining process, the use of such graphite electrodes in the manufacturing and processing of steel for ultimate sale at retail is not subject to taxation under the provisions of this section. *Nucor Steel v. Herrington*, 212 Neb. 310, 322 N.W.2d 647 (1982).

City use tax was properly imposed upon property stored in the city for approximately one year before shipment to its ultimate destination within this state. Management fee and loss reimbursement payments paid by an employer to a food service hired to provide a cafeteria for employees were not subject to either state or city sales or use taxes. *Omaha P. P. Dist. v. Nebraska State Tax Commissioner*, 210 Neb. 309, 314 N.W.2d 246 (1982).

3. Miscellaneous

The amounts paid by a community antenna television operator to independent contractors to install community antenna television services is subject to use tax. Subsection (2)(a) of this section provides that if a taxpayer pays sales tax on a transaction, his or her liability for use tax is extinguished. *Cox Cable of Omaha, Inc. v. Nebraska Dept. of Revenue*, 254 Neb. 598, 578 N.W.2d 423 (1998).

Section 2-1208 imposes a tax directly upon the licensee race-track. Section 77-2701 et seq. imposes a sales tax upon the purchaser. Thus, section 77-2701 does not conflict with the provisions of section 2-1208 which prohibit any additional taxes from being imposed upon the licensee. *Governors of Ak-Sar-Ben v. Department of Rev.*, 217 Neb. 518, 349 N.W.2d 385 (1984).

Processing oils which function as rust inhibitors in the manufacture of steel bars are essential component parts of the finished product and are not subject to taxation under the provisions of this section. *Vulcraft v. Balka*, 5 Neb. App. 85, 555 N.W.2d 344 (1996).

77-2703.01 General sourcing rules.

(1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 shall be governed by the sourcing rules in sections 77-2703.01 to 77-2703.04.

(2) When the property or service is received by the purchaser at a business location of the retailer, the sale is sourced to that business location.

(3) When the property or service is not received by the purchaser at a business location of the retailer, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the retailer.

(4) When subsection (2) or (3) of this section does not apply, the sale is sourced to the location indicated by an address or other information for the purchaser that is available from the business records of the retailer that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.

(5) When subsection (2), (3), or (4) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsection (2), (3), (4), or (5) of this section does not apply, including the circumstance in which the retailer is without sufficient information to apply the rules in any such subsection, then the location will be determined by the address from which property was shipped, from which the digital good was first available for transmission by the retailer, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(7) The lease or rental of tangible personal property, other than property identified in subsection (8) or (9) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(8) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment under subsection (9) of this section shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(9) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsections (2) through (6) of this section. Transportation equipment means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (9)(a) through (c) of this section.

(10) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser. For purposes of sourcing detective services subject to tax under subdivision (4)(h) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.

(11) The sale, not including lease or rental, of a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act shall be sourced to the place of registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state.

(12) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.

Source: Laws 2003, LB 282, § 49; Laws 2003, LB 759, § 13; Laws 2004, LB 1017, § 11; Laws 2005, LB 274, § 275; Laws 2007, LB367, § 16; Laws 2008, LB916, § 16.

Cross References

Local Option Revenue Act, see section 77-27,148.

Motor Vehicle Registration Act, see section 60-301.

77-2703.02 Repealed. Laws 2007, LB 223, § 36.

77-2703.03 Direct mail sourcing.

(1) Notwithstanding section 77-2703.01, a purchaser of direct mail that is not a holder of a direct payment permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct-pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(4) If the purchaser of direct mail does not have a direct payment permit and does not provide the seller with either a direct mail form or delivery information as required by subsection (1) of this section, the seller shall collect the tax according to subsection (6) of section 77-2703.01. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(5) If a purchaser of direct mail provides the seller with documentation of direct-pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

Source: Laws 2003, LB 282, § 51.

77-2703.04 Telecommunications sourcing rule.

(1) Except for the telecommunications service defined in subsection (3) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications service defined in subsection (3) of this section, a sale of telecommunications service sold on a basis other than a call-by-call basis and ancillary services are sourced to the customer's place of primary use.

(3)(a) For mobile telecommunications service and ancillary services provided and billed to a customer by a home service provider:

(i) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(ii) All taxable charges for such mobile telecommunications service and ancillary services shall be subject to tax by the state or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(iii) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(b) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on July 20, 2002, the Tax Commissioner may, but is not required to:

(i) Provide or contract for a tax assignment data base based upon standards identified in 4 U.S.C. 119, as such section existed on July 20, 2002, with the following conditions:

(A) If such data base is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base; or

(B) If such data base is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on July 20, 2002; and

(ii) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on July 20, 2002.

(c) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to tax unless the home service provider can reasonably separate charges not subject to tax using the records of the home service provider that are kept in the regular course of business.

(d) For purposes of this subsection:

(i) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(ii) Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide mobile telecommunications service;

(iii) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and

by mobile stations communicating among themselves, and includes (A) both one-way and two-way wireless communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any personal communication service;

(iv) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the customer and shall be within the service area of the home service provider; and

(v) Tax means the sales taxes levied under sections 13-319, 77-2703, and 77-27,142, the surcharges levied under the Enhanced Wireless 911 Services Act, the Nebraska Telecommunications Universal Service Fund Act, and the Telecommunications Relay System Act, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

(4) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section 77-2703.01, except that in the case of a sale of a prepaid wireless calling service, the rule provided in section 77-2703.01 shall include as an option the location associated with the mobile telephone number.

(6) A sale of a private communication service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(b) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(7) For purposes of this section:

(a) 800 service means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877, and 888 toll-free calling,

and any subsequent numbers designated by the Federal Communications Commission;

(b) 900 service means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications services to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the Federal Communications Commission;

(c) Air-to-ground radiotelephone service means a radio telecommunication service, as that term is defined in 47 C.F.R. 22.99, as such regulation existed on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(d) Ancillary services means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billings, directory assistance, vertical service, and voice mail services;

(e) Call-by-call basis means any method of charging for telecommunications service where the price is measured by individual calls;

(f) Coin-operated telephone service means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(g) Communications channel means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(h) Conference bridging service means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(i) Customer means the person or entity that contracts with the seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications service under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(j) Customer channel termination point means the location where the customer either inputs or receives the communications;

(k) Detailed telecommunications billing service means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(l) Directory assistance means an ancillary service of providing telephone number information and address information;

(m) End user means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity;

(n) Fixed wireless service means a telecommunications service that provides radio communication between fixed points;

(o) International means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(p) Interstate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in a different state, territory, or possession of the United States;

(q) Intrastate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in the same state, territory, or possession of the United States;

(r) Mobile wireless service means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(s) Paging service means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. Such transmission may include messages and sounds;

(t) Pay telephone services means a telecommunications service provided through pay telephones;

(u) Post-paid calling service means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(v) Prepaid calling service means the right to access exclusively telecommunications service, which is paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(w) Prepaid wireless calling service means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance, that is sold in predetermined units of dollars or which the number declines with use in a known amount;

(x) Private communication service means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(y) Residential telecommunications service means a telecommunications service or ancillary services provided to an individual for personal use at a

residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution;

(z) Service address means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications service first identified either by the seller's telecommunications system, or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If both locations are not known, the service address means the location of the customer's place of primary use;

(aa) Telecommunications service means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Telecommunications service does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ringtones;

(bb) Value-added, nonvoice data service means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(cc) Vertical service means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(dd) Voice mail service means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Source: Laws 2003, LB 282, § 52; Laws 2007, LB223, § 8; Laws 2009, LB165, § 7.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Telecommunications Relay System Act, see section 86-301.

77-2704 Repealed. Laws 1992, LB 871, § 65.

77-2704.01 Repealed. Laws 1992, LB 871, § 65.

77-2704.02 Federal or state constitution or federal statute; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property, the gross receipts from the sale, lease, or rental of which or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of Nebraska.

Source: Laws 1992, LB 871, § 26; Laws 1993, LB 345, § 34.

77-2704.03 Aircraft fuel; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of aircraft fuel as defined under Chapter 3, article 1.

Source: Laws 1992, LB 871, § 27.

77-2704.04 Minerals, oil, or gas; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of minerals, oil, and gas as defined under Chapter 57.

Source: Laws 1992, LB 871, § 28.

77-2704.05 Motor vehicle fuels; diesel and compressed fuels; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of motor vehicle fuels as defined, taxed, or exempted under Chapter 66, article 4, diesel fuel as taxed for use on the highways under Chapter 66, article 4, compressed fuels as taxed for use on the highways under the Compressed Fuel Tax Act, diesel and compressed fuels used to provide motive power for railroad

rolling stock, and diesel and compressed fuels delivered into the fuel supply tanks of other vehicles.

Source: Laws 1992, LB 871, § 29; Laws 1993, LB 345, § 35; Laws 1994, LB 1160, § 122; Laws 1995, LB 182, § 66; Laws 2004, LB 983, § 67.

Cross References

Compressed Fuel Tax Act, see section 66-697.

77-2704.06 Contract entered into prior to June 1, 1967; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property used for the performance of a written contract entered into prior to June 1, 1967.

Source: Laws 1992, LB 871, § 30; Laws 1993, LB 345, § 36.

77-2704.07 Newspaper; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events.

Source: Laws 1992, LB 871, § 31; Laws 1993, LB 345, § 37; Laws 2003, LB 759, § 14.

77-2704.08 Leased property; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of leased property sold to a lessee of that property under an agreement whereby certain rental payments are credited against the purchase price of that property, except that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments.

Source: Laws 1992, LB 871, § 32; Laws 1993, LB 345, § 38.

77-2704.09 Insulin; prescription drugs; mobility enhancing equipment; medical equipment; exemptions.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of (a) insulin, (b) mobility enhancing equipment and drugs, not including over-the-counter drugs, when sold for a patient's use under a prescription, and (c) the following when sold for a patient's use under a prescription and which are of the type eligible for coverage under the medical assistance program established pursuant to the Medical Assistance Act: Durable medical equipment; home medical supplies; prosthetic devices; oxygen; and oxygen equipment.

(2) For purposes of this section:

(a) Drug means a compound, substance, preparation, and component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body;

(b) Durable medical equipment means equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, is appropriate for use in the home, and is not worn in or on the body. Durable medical equipment includes repair and replacement parts for such equipment;

(c) Home medical supplies means supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(d) Mobility enhancing equipment means equipment which is primarily and customarily used to provide or increase the ability to move from one place to another, which is not generally used by persons with normal mobility, and which is appropriate for use either in a home or a motor vehicle. Mobility enhancing equipment includes repair and replacement parts for such equipment. Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(e) Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as such regulation existed on January 1, 2003. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation;

(f) Oxygen equipment means oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories;

(g) Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized under the Uniform Credentialing Act; and

(h) Prosthetic devices means a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any supplies used with such device and repair and replacement parts.

Source: Laws 1992, LB 871, § 33; Laws 1993, LB 345, § 39; Laws 1994, LB 901, § 5; Laws 1999, LB 280, § 1; Laws 2003, LB 282, § 53; Laws 2005, LB 256, § 95; Laws 2006, LB 1248, § 85; Laws 2007, LB463, § 1308; Laws 2008, LB916, § 17; Laws 2009, LB165, § 8.

Cross References

Medical Assistance Act, see section 68-901.

Uniform Credentialing Act, see section 38-101.

77-2704.10 Meals and food products; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(2) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church;

(3) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(4) Meals and food products, including soft drinks and candy, for human consumption when sold at a political event by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act or fees and admissions charged for such political event;

(5) Meals and food products sold to the elderly, handicapped, or recipients of Supplemental Security Income by an organization that actually accepts electronic benefits transfer or food coupons under regulations issued by the United States Department of Agriculture although it is not necessary for the purchaser to use electronic benefits transfer or food coupons to pay for the meal; and

(6) Fees and admissions charged by a public or private elementary or secondary school and fees and admissions charged by a school district, student organization, or parent-teacher association, pursuant to an agreement with the proper school authorities, in a public or private elementary or secondary school during the regular school day or at an approved function of any such school.

Source: Laws 1992, LB 871, § 34; Laws 1993, LB 345, § 40; Laws 2003, LB 282, § 54.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

77-2704.11 Shipment outside this state; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property and any associated labor, or the gross receipts from the provision of services within this state, which is shipped to a point outside this state, when the contract of sale or service is expressly or impliedly contingent upon delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the customer at airport facilities for immediate transport outside this state, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. Such exemption shall include the amount charged for fabrication, installation, or application of

property furnished by the customer which is fabricated, installed, or applied in this state and then shipped by the retailer performing the fabrication, installation, or application to a point outside of this state. This shall also include the gross receipts from sales of property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier.

Source: Laws 1992, LB 871, § 35; Laws 1993, LB 345, § 41; Laws 2002, LB 1085, § 12.

77-2704.12 Nonprofit religious, service, educational, or medical organization; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) any nonprofit private college or university established under sections 85-1101 to 85-1111, (e) any nonprofit (i) hospital, (ii) health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for the mentally retarded, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, or (x) respite care service licensed under the Health Care Facility Licensure Act, (f) any nonprofit licensed child-caring agency, (g) any nonprofit licensed child placement agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or

repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 36; Laws 1993, LB 345, § 42; Laws 1994, LB 977, § 3; Laws 1996, LB 900, § 1063; Laws 2000, LB 819, § 151; Laws 2002, LB 989, § 18; Laws 2004, LB 841, § 1; Laws 2004, LB 1017, § 13; Laws 2005, LB 216, § 6; Laws 2006, LB 1189, § 5; Laws 2008, LB575, § 1.

Cross References

Health Care Facility Licensure Act, see section 71-401.

Subsection (3) of this section and section 77-2704.15(2) delimit the circumstances under which the agent of a tax-exempt organization may assume the tax-exempt status of the principal.

A & D Tech. Supply Co., Inc. v. Nebraska Dept. of Revenue, 259 Neb. 24, 607 N.W.2d 857 (2000).

77-2704.13 Fuel, energy, or water sources; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, butane, wood as fuel, and corn as fuel when more than fifty percent of the amount purchased is for use directly in irrigation or farming;

(2) Sales and purchases of such energy sources or fuels made before April 1, 1993, or after March 31, 1994, when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining, in the generation of electricity, or by any hospital. The state tax paid on purchases of such energy sources or fuels during the period beginning April 1, 1993, and ending March 31, 1994, shall not exceed one hundred thousand dollars for any one location when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining or by any hospital. All purchases of such energy sources or fuels for use in the generation of electricity during the period beginning April 1, 1993, and ending March 31, 1994, shall be taxable. Any taxpayer who has paid the limit of state tax on such energy sources or fuels at one location shall be exempt on all other qualifying purchases at such location. Such taxpayer shall be entitled to a refund of any amount of state or local option tax paid on an energy source or fuel exempt under this subdivision. A refund shall be made pursuant to section 77-2708; and

(3) Sales and purchases of water used for irrigation of agricultural lands and manufacturing purposes.

Source: Laws 1992, LB 871, § 37; Laws 1992, Fourth Spec. Sess., LB 1, § 27; Laws 1993, LB 345, § 43; Laws 1994, LB 977, § 4; Laws 2003, LB 282, § 55; Laws 2009, LB9, § 4.

In light of Nebraska Sales and Use Tax Regulation 1-089.02A(1), 316 Neb. Admin. Code, ch. 1, section 089.02A(1) (1994), the use of electricity to store treated water awaiting distribution does not qualify for an exemption from Nebraska sales tax under this section. *Metropolitan Utilities Dist. v. Balka*, 252 Neb. 172, 560 N.W.2d 795 (1997).

The definitions of "manufacturing" and "processing" contained in Nebraska Sales and Use Tax Regulation 1-089.02A(1),

316 Neb. Admin. Code, ch. 1, section 089.02A(1) (1994), are in conformance with this section. *Metropolitan Utilities Dist. v. Balka*, 252 Neb. 172, 560 N.W.2d 795 (1997).

Oxygen used in a metal cutting process through an "oxyfuel" cutting torch is a gas that is exempt under section 77-2704(1)(k) (Supp. 1983) and its predecessors. *Vulcraft v. Karnes*, 229 Neb. 676, 428 N.W.2d 505 (1988).

77-2704.14 Coin-operated laundering and cleaning machines; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the use of coin-operated machines used for laundering and cleaning except the cleaning or washing of motor vehicles.

Source: Laws 1992, LB 871, § 38; Laws 2003, LB 282, § 56.

77-2704.15 Purchases by state, schools, or governmental units; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resources district, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial operation that does not exclusively benefit the residents of an affordable housing project, or joint entity or agency formed to fulfill the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools or learning communities established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair

upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 39; Laws 1993, LB 345, § 44; Laws 1994, LB 977, § 5; Laws 1994, LB 1207, § 16; Laws 1999, LB 87, § 86; Laws 1999, LB 232, § 1; Laws 2000, LB 557, § 1; Laws 2002, LB 123, § 1; Laws 2004, LB 1017, § 14; Laws 2006, LB 1189, § 6; Laws 2009, LB392, § 8.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Subsection (2) of this section and section 77-2704.12(3) delimit the circumstances under which the agent of a tax-exempt organization may assume the tax-exempt status of the principal.

A & D Tech. Supply Co., Inc. v. Nebraska Dept. of Revenue, 259 Neb. 24, 607 N.W.2d 857 (2000).

77-2704.16 Purchases by Nebraska State Fair Board; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases made by the Nebraska State Fair Board.

Source: Laws 1992, LB 871, § 43; Laws 2002, LB 1236, § 18.

77-2704.17 Purchases by Nebraska Investment Finance Authority; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases made by the Nebraska Investment Finance Authority.

Source: Laws 1992, LB 871, § 47.

Cross References

Nebraska Investment Finance Authority, see section 58-226.

77-2704.18 Repealed. Laws 2006, LB 1189, § 9.

77-2704.19 Repealed. Laws 2009, LB 154, § 27.

77-2704.20 Purchases by licensees of the State Racing Commission; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases made by licensees of the State Racing Commission.

Source: Laws 1992, LB 871, § 50.

77-2704.21 Purchase of motor vehicle for disabled person; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the United States Department of Veterans Affairs or the Department of Health and Human Services for a disabled person.

If the amount contributed is less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed.

Source: Laws 1992, LB 871, § 40; Laws 1996, LB 1044, § 796; Laws 2007, LB296, § 704.

77-2704.22 Manufacturing machinery and equipment and related services; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental and on the storage, use, or other consumption in this state of manufacturing machinery and equipment.

(2) Sales and use taxes shall not be imposed on the gross receipts from the sale of installation, repair, and maintenance services performed on or with respect to manufacturing machinery and equipment.

Source: Laws 2005, LB 312, § 10.

77-2704.23 Semen and insemination services; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of sales and purchases of semen and insemination services for use in ranching or farming or for commercial or industrial uses.

Source: Laws 1992, LB 871, § 42; Laws 2003, LB 759, § 15.

77-2704.24 Food or food ingredients; exemptions.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of food or food ingredients except for prepared food and food sold through vending machines.

(2) For purposes of this section:

(a) Alcoholic beverages means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) Dietary supplement means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subdivisions (2)(b)(i) through (v) of this section; that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not presented as conventional food and is not represented for use as a sole item of a meal or of the diet; and that is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. 101.36, as such regulation existed on January 1, 2003;

(c) Food and food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients does not include alcoholic beverages, dietary supplements, or tobacco;

(d) Food sold through vending machines means food that is dispensed from a machine or other mechanical device that accepts payment;

(e) Prepared food means:

(i) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; and

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item and food sold in a heated state or heated by the seller, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller;

(B) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of its Food Code, as it existed on January 1, 2003, so as to prevent food borne illnesses;

(C) Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118, bakeries;

(D) Food sold in an unheated state by weight or volume as a single item; and

(E) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas; and

(f) Tobacco means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

Source: Laws 1992, LB 871, § 44; Laws 1993, LB 345, § 45; Laws 2003, LB 282, § 57.

77-2704.25 Sales by school organizations; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself.

Source: Laws 1992, LB 871, § 45; Laws 1993, LB 345, § 46; Laws 2005, LB 216, § 7.

77-2704.26 Aircraft; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of an aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days. Sales and use taxes shall not be imposed on the gross receipts from a service listed in subsection (4) of section 77-2701.16 that is rendered to an aircraft brought into this state by an individual who is a resident of another state or any other person who has a business location in

another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days after the service is completed.

Source: Laws 1992, LB 871, § 46; Laws 2002, LB 1085, § 13; Laws 2003, LB 282, § 58; Laws 2003, LB 759, § 16; Laws 2008, LB916, § 18.

77-2704.27 Railroad rolling stock; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of, the service to, and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

Source: Laws 1992, LB 871, § 51; Laws 2002, LB 1085, § 14.

77-2704.28 Leases between related companies; exemption.

A lease of property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967 if such property was either originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or transferor directly or indirectly has previously paid a sales or use tax thereon. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

Source: Laws 1992, LB 871, § 55; Laws 1993, LB 345, § 47.

77-2704.29 Sales tax payment; exemption from use tax.

The storage, use, or other consumption in this state of property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

Source: Laws 1992, LB 871, § 52; Laws 1993, LB 345, § 48.

77-2704.30 Use tax; general exemptions.

The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(1) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair, installation, or application and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers; and

(2) The storage, use, or consumption of property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property and any associated labor would be exempt from the sales or use tax were it purchased within this state.

Source: Laws 1992, LB 871, § 53; Laws 1993, LB 345, § 49; Laws 1994, LB 977, § 6; Laws 2002, LB 1085, § 15.

77-2704.31 Sales or use tax paid in another state; credit given.

If any person who causes property or service to be brought into this state has already paid a tax in another state with respect to the sale or use of such property or service in an amount less than the tax imposed by sections 13-319, 13-2813, 77-2703, and 77-27,142, the provisions of subsection (2) of section 77-2703 shall apply, but at a rate measured by the difference only between the rate imposed by such sections and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by such sections, then no use tax shall be due in this state on such property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

Source: Laws 1992, LB 871, § 54; Laws 1993, LB 345, § 50; Laws 1999, LB 34, § 2; Laws 2001, LB 142, § 55; Laws 2002, LB 1085, § 16.

77-2704.32 Projects outside the United States; refund of tax.

When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on building materials actually annexed to real estate in the project outside of the United States or its territories or possessions.

Source: Laws 1992, LB 871, § 56; Laws 1993, LB 345, § 51; Laws 2004, LB 1017, § 15.

77-2704.33 Fixed-price contract; change in sales tax rate; refund of tax; failure to pay tax; penalty.

(1) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the building materials annexed to real estate in the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a contractor to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

(2) In the event that construction services are removed from the sales and use tax base during the term of a fixed-price contract, the taxpayer shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a taxpayer to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

Source: Laws 1992, LB 871, § 57; Laws 1993, LB 345, § 52; Laws 2003, LB 759, § 18; Laws 2004, LB 1017, § 16; Laws 2007, LB367, § 17.

77-2704.34 Tax included in sale price; authorized.

For purposes of the sales or use tax, if a retailer establishes to the satisfaction of the Tax Commissioner, and has been given prior approval by the Tax Commissioner, that the sales or use tax has been added to the total amount of the sale price and has not been absorbed by him or her, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Source: Laws 1992, LB 871, § 58.

77-2704.35 Agents treated as vendors; joint responsibility.

When the Tax Commissioner determines that it is necessary for the efficient administration of the Nebraska Revenue Act of 1967 to regard any salespersons, representatives, peddlers, canvassers, or auctioneers and persons conducting auction sales as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, auctioneers, or employers, the Tax Commissioner may, at his or her discretion, treat such agent as the vendor jointly responsible with his or her principal, distributor, supervisor, or employer for the purposes of the Nebraska Revenue Act of 1967.

Source: Laws 1992, LB 871, § 59; Laws 1993, LB 345, § 53.

77-2704.36 Agricultural machinery and equipment; exemption.

Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of depreciable agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture.

Source: Laws 1992, Fourth Spec. Sess., LB 1, § 24; Laws 2004, LB 1017, § 17.

77-2704.37 Repealed. Laws 2004, LB 841, § 13.**77-2704.38 State lottery tickets; exemption.**

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of lottery tickets purchased pursuant to the State Lottery Act.

Source: Laws 1993, LB 138, § 70.

Cross References

State Lottery Act, see section 9-801.

77-2704.39 Copyrighted material; used for rebroadcasting; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, license, or rental of or the storage, use, or other consumption in this state of personal property containing copyrighted material if the purchaser, lessee, licensee, or renter is operating under a certificate from the Federal Communications Commission and possesses such personal property for rebroadcasting to the general public, regardless of whether the property is in the form of satellite transmissions, films, records, tapes, discs, or other media.

Source: Laws 1994, LB 901, § 3.

77-2704.40 Molds, dies, and patterns; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of molds, dies, and patterns which have been specifically designed and fabricated to the special order of the customer. This exemption shall not include machinery, equipment, or tools to which molds, dies, and patterns have been connected or attached in order to be used for their intended purpose. For purposes of this section, molds, dies, and patterns shall mean tools that are built specifically for manufacturing a single product, which product is either injection molded from plastic or stamped from metals.

Source: Laws 1995, LB 430, § 1.

77-2704.41 Feed, water, veterinary medicines, and agricultural chemicals; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of feed, water, veterinary medicines, and agricultural chemicals for consumption by, to be used on, or which are otherwise used in caring for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel.

(2) For purposes of this section:

(a) Agricultural chemicals shall include insecticides, fungicides, growth-regulating chemicals, and hormones;

(b) Feed shall include all grains, minerals, salts, proteins, fats, fibers, vitamins, and grit commonly used as feed or feed supplements; and

(c) Veterinary medicines shall include medicines for the prevention or treatment of disease or injury.

Source: Laws 1996, LB 106, § 1.

77-2704.42 Copies of public records; exemption; exception.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of copies of public records as defined in section 84-712.01, except those documents developed, produced, or acquired and made available for commercial sale to the general public if the price or reproduction cost of the document is not fixed by state law, rule, or regulation.

Source: Laws 2002, LB 57, § 3.

77-2704.43 Industrial machinery and equipment; reciprocal exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases of industrial machinery and equipment, including parts for repairs, by another state or a political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivisions of this state.

Source: Laws 2003, LB 168, § 2.

77-2704.44 Use tax; when imposed.

(1) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, use tax shall not be imposed on the keeping, retaining, or exercising of any right or power over property for the purpose of subsequently transporting it outside the state or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other property to be transported outside the state and thereafter used solely outside the state.

(2)(a) Except as provided in subdivisions (b) through (e) of this subsection, when a person purchases property in another state, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country with the intent of using such property in such other state, commonwealth, territory, possession, or country and such property is actually used in the other state, commonwealth, territory, possession, or country for its intended purpose, the property shall not be subject to tax in this state.

(b) Subdivision (a) of this subsection only applies to a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act when it is licensed for operation on the highways of the other state, commonwealth, territory, possession, or country prior to being brought into this state. Licensed for operation on the highways does not include any temporary registration, licensing, or in transit procedure that allows nonresidents to operate the motor vehicle, semitrailer, or trailer on the highways of the other state, commonwealth, territory, possession, or country for a limited time with the intent to remove the motor vehicle, trailer, or semitrailer from the other state, commonwealth, territory, possession, or country.

(c) Subdivision (a) of this subsection does not apply to an aircraft which is brought into this state within one year after purchase and (i) is regularly based within this state or (ii) more than one-half of the aircraft's operating hours are within this state. For purposes of this subdivision, operation of the aircraft for the purpose of maintenance, repair, or fabrication with subsequent removal from this state upon completion of such maintenance, repair, or fabrication shall not be considered operating hours.

(d) Subdivision (a) of this subsection shall only apply to a motorboat as defined in section 37-1204 when it is registered for operation in the other state, commonwealth, territory, possession, or country prior to being brought into this state.

(e) Subdivision (a) of this subsection does not apply to any property that is manufactured, processed, or fabricated in another state and that is not used for its intended purpose in the other state after its manufacture, processing, or fabrication.

Source: Laws 2003, LB 282, § 59; Laws 2005, LB 274, § 276.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-2704.45 Ingredient or component parts; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Property which will enter into and become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail; or

(2) A service listed in subsection (4) of section 77-2701.16 which will become an ingredient or component part of a service listed in subsection (4) of section 77-2701.16 for ultimate sale at retail.

Source: Laws 2003, LB 282, § 60; Laws 2003, LB 759, § 19; Laws 2008, LB916, § 19.

77-2704.46 Food for human consumption; agricultural components; oxygen for aquaculture; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life includes live poultry, other species of game birds subject to permit and regulation by the Game and Parks Commission, and livestock on the hoof when sales are made by the grower, producer, feeder, or any person engaged in the business of bartering, buying, or selling live poultry, other species of game birds subject to permit and regulation by the Game and Parks Commission, or livestock on the hoof;

(2) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products, and seed legumes, seed grasses, and seed grains when sold to be used exclusively for agricultural purposes;

(3) Agricultural chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents for use in commercial agriculture and applied to land or crops and sold in any tax period that has not been closed by the applicable statute of limitations. Agricultural chemicals does not mean chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents applied to harvested grains stored in commercial elevators; or

(4) Oxygen for use in aquaculture as defined in section 2-3804.01.

Source: Laws 2003, LB 282, § 61; Laws 2008, LB916, § 20.

77-2704.47 Containers; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(2) Containers when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(3) Returnable containers when sold with contents in connection with a retail sale of the contents or when resold for refilling.

For purposes of this section, returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers.

Source: Laws 2003, LB 282, § 62.

77-2704.48 Occasional sale; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property or services the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale.

Source: Laws 2003, LB 282, § 63.

77-2704.49 Reciprocal exemption.

Sales tax shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property or services the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state.

Source: Laws 2003, LB 282, § 64; Laws 2004, LB 1017, § 18.

77-2704.50 Railroad rolling stock; common or contract carrier; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state from the purchase in this state or the purchase outside this state, with title passing in this state, of materials and replacement parts and any associated labor used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that the certificate will expire and be null and void as of such date.

Source: Laws 2003, LB 282, § 65.

77-2704.51 Telecommunications services between telecommunications companies; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of sales of telecommunications service between telecommunications companies, including division of revenue, settlements, or carrier access charges.

Source: Laws 2003, LB 282, § 66.

77-2704.52 Prepaid calling service or prepaid wireless calling service; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of

services rendered using a prepaid calling service or a prepaid wireless calling service.

Source: Laws 2003, LB 282, § 67; Laws 2009, LB165, § 9.

77-2704.53 Videotape and film rentals; satellite programming and service; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state from the sale or rental of videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967 and except as provided in section 77-2704.39.

Source: Laws 2003, LB 282, § 68.

77-2704.54 Purchase by electronic benefits transfer or food coupons; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state from the sale or rental of food or food ingredients which are actually purchased by electronic benefits transfer or with food coupons under regulations issued by the United States Department of Agriculture.

Source: Laws 2003, LB 282, § 69.

77-2704.55 Certain contractor labor; refund; procedure; Department of Revenue Contractor Enforcement Fund; created; investment.

(1) Construction services performed on an owner-occupied residential unit shall be subject to tax prior to October 1, 2007, but the owner shall be entitled to a refund of any sales and use taxes paid by the owner on construction services pursuant to this subsection. A taxpayer shall be entitled to a refund of any sales tax paid on the gross receipts for the labor of a contractor for any major addition, remodeling, restoration, repair, or renovation described in this section as it existed prior to October 1, 2007. The refund granted in this subsection shall be conditioned upon filing a claim for the refund on a form developed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the project qualifies for the refund. Any information received pursuant to the requirements of this subsection may be disclosed to any tax official in this state. Any taxpayer who provides false information on the forms required by the Tax Commissioner for purposes of this subsection shall be subject to the penalties provided in subsection (8) of section 77-2705.

(2) The Department of Revenue Contractor Enforcement Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 285, § 2; Laws 2003, LB 759, § 17; Laws 2004, LB 1017, § 19; Laws 2006, LB 968, § 6; Laws 2007, LB367, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-2704.56 Purchase of fine art by museum; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases of fine art by any museum as defined in section 51-702.

Source: Laws 2006, LB 1189, § 3.

77-2704.57 Personal property used in C-BED project or community-based energy development project; exemption; Tax Commissioner; powers and duties; Department of Revenue; recover tax not paid.

(1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

(a) C-BED project or community-based energy development project means a new wind energy project that:

(i) Has an ownership structure as follows:

(A) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) Has a resolution of support adopted:

(A) By the county board of each county in which the C-BED project is to be located; or

(B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(b) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the

C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(c) New wind energy project means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

(d) Qualified owner means:

(i) A Nebraska resident;

(ii) A limited liability company that is organized under the Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(iii) A Nebraska nonprofit corporation organized under the Nebraska Non-profit Corporation Act;

(iv) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(A) Fifteen percent either directly or indirectly by a single electric supplier; and

(B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(v) A tribal council.

(4) Gross power purchase agreement payments are the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments. For the purpose of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind energy easement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would have otherwise have been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Source: Laws 2007, LB367, § 11; Laws 2008, LB916, § 21; Laws 2009, LB561, § 5.

Cross References

Limited Liability Company Act, see section 21-2601.

Nebraska Nonprofit Corporation Act, see section 21-1901.

77-2704.58 Depositions, bills of exceptions, and transcripts sold by court reporter; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption in this state of depositions, bills of exceptions, and transcripts or copies of such depositions, bills of exceptions, and transcripts prepared and sold by a court reporter.

Source: Laws 2008, LB916, § 22.

77-2704.59 Medical records; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption in this state of copies of medical records provided to the patient or a person holding such patient's power of attorney for health care.

Source: Laws 2008, LB916, § 23.

77-2704.60 Mineral oil applied to grain as dust suppressant; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of mineral oil to be applied to grain as a dust suppressant.

Source: Laws 2009, LB9, § 1.

77-2705 Sales and use tax; retailer; registration; permit; form; revocation; restoration; appeal; exempt sale certificate; violations; penalty; wrongful disclosure; online registration system.

(1) Except as provided in subsection (10) of this section, every retailer shall register with the Tax Commissioner and give:

- (a) The name and address of all agents operating in this state;
- (b) The location of all distribution or sales houses or offices or other places of business in this state;
- (c) The name and address of any officer, director, partner, limited liability company member, or employee, other than an employee whose duties are purely ministerial in nature, or any person with a substantial interest in the applicant, who is or who will be responsible for the collection or remittance of the sales tax;

(d) Such other information as the Tax Commissioner may require; and

(e) If the retailer is an individual, his or her social security number.

(2) Every person furnishing public utility service as defined in subsection (2) of section 77-2701.16 shall register with the Tax Commissioner and give:

(a) The address of each office open to the public in which such public utility service business is transacted with consumers; and

(b) Such other information as the Tax Commissioner may require.

(3) It shall be unlawful for any person to engage in or transact business as a seller within this state after June 1, 1967, unless a permit or permits shall have been issued to him or her as prescribed in this section. Every person desiring to engage in or to conduct business as a seller within this state shall file with the

Tax Commissioner an application for a permit for each place of business. There shall be no charge to the retailer for the application for or issuance of a permit except as otherwise provided in this section.

(4) Every application for a permit shall:

- (a) Be made upon a form prescribed by the Tax Commissioner;
- (b) Set forth the name under which the applicant transacts or intends to transact business and the location of his or her place or places of business;
- (c) Set forth such other information as the Tax Commissioner may require; and

(d) Be signed by the owner and include his or her social security number if he or she is a natural person; in the case of an association or partnership, by a member or partner; in the case of a limited liability company, by a member or some person authorized by the limited liability company to sign such kinds of applications; and in the case of a corporation, by an executive officer or some person authorized by the corporation to sign such kinds of applications.

(5) After compliance with subsections (1) through (4) of this section by the applicant, the Tax Commissioner shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued and shall be valid and effective until revoked by the Tax Commissioner.

(6)(a) Whenever the holder of a permit issued under subsection (5) of this section or any person required to be identified in subdivision (1)(c) of this section (i) fails to comply with any provision of the Nebraska Revenue Act of 1967 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under such act, (ii) fails to provide for inspection or audit any book, record, document, or item required by law, rule, or regulation, or (iii) makes a misrepresentation of or fails to disclose a material fact to the Department of Revenue, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commissioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(b) The Tax Commissioner shall have the power to restore permits which have been revoked but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of such act relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been previously suspended or revoked under this subsection shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation.

(c) The action of the Tax Commissioner may be appealed by the taxpayer in the same manner as a final deficiency determination.

(7) For the purpose of more efficiently securing the payment, collection, and accounting for the sales and use taxes and for the convenience of the retailer in

collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations providing a form and method for the registration of exempt purchases and the documentation of exempt sales.

(8) If any person, firm, corporation, association, or agent thereof presents an exempt sale certificate to the seller for property which is purchased by a taxpayer or for a use other than those enumerated in the Nebraska Revenue Act of 1967 as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

(9) Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

(10) Pursuant to the streamlined sales and use tax agreement, the state shall participate in an online registration system that will allow retailers to register in all the member states. The state hereby agrees to honor and abide by the retailer registration decisions made by the governing board pursuant to the agreement.

Source: Laws 1967, c. 487, § 5, p. 1553; Laws 1967, c. 490, § 4, p. 1663; Laws 1982, LB 928, § 65; Laws 1984, LB 962, § 9; Laws 1992, LB 871, § 60; Laws 1993, LB 121, § 502; Laws 1993, LB 345, § 54; Laws 1997, LB 752, § 212; Laws 2002, Second Spec. Sess., LB 32, § 2; Laws 2003, LB 282, § 70; Laws 2003, LB 759, § 20; Laws 2008, LB916, § 24.

77-2705.01 Direct payment permit; issuance; application; fee.

(1) The Tax Commissioner may issue direct payment permits to any person who annually purchases at least three million dollars of taxable property excluding purchases for which a resale certificate could be used.

(2) The applicant for a direct payment permit shall apply on a form prescribed by the Tax Commissioner. The applicant shall pay a nonrefundable fee of ten dollars for processing the application. The application shall include the agreement of the applicant to accrue and pay to the Tax Commissioner on or before the twenty-fifth day of the month following the date of purchase, lease, or rental all sales and use taxes on the taxable property purchased, leased, or rented by the applicant unless the items are exempt from taxation and the tax paid will be treated as a sales tax. The Tax Commissioner may require a description of the accounting methods by which an applicant will differentiate between taxable and exempt transactions.

(3) The Tax Commissioner may issue a direct payment permit to any applicant who meets the requirements of subsections (1) and (2) of this section. The direct payment permit shall become effective on the first day of the month following approval of an application. The decision of the Tax Commissioner under this section is not appealable. An applicant who is denied a direct payment permit may submit an amended application or reapply.

- (4) A direct payment permit is not transferable.
- (5) The holder of a direct payment permit is not entitled to any collection fee otherwise payable to those who collect and remit sales and use taxes.

Source: Laws 1997, LB 182A, § 4.

77-2705.02 Direct payment permit; rights and duties of holder.

The holder of a direct payment permit shall provide a copy of the permit to each retailer who sells, leases, or rents to the permitholder. The retailer shall not collect sales and use taxes on any future sales, leases, or rentals to the permitholder until notified that the permit has been revoked or relinquished. The direct payment permit may not be used for purchases of motor vehicles. The permitholder shall pay all sales and use taxes even on sales for which a refund could be obtained.

Source: Laws 1997, LB 182A, § 5.

77-2705.03 Direct payment permit; revocation; relinquishment.

(1) The holder of a direct payment permit holds the permit as a revocable privilege. The Tax Commissioner may revoke a direct payment permit. The Tax Commissioner shall send notice of revocation to the permitholder by registered or certified mail. The decision of the Tax Commissioner to revoke a direct payment permit is not appealable.

(2) A permitholder may voluntarily relinquish a direct payment permit.

(3) Upon revocation or relinquishment of a direct payment permit, the permitholder shall notify all retailers given copies of the permit that it has been revoked or relinquished. Failure to give the notice shall be treated as a failure to pay sales and use taxes.

Source: Laws 1997, LB 182A, § 6.

77-2705.04 Record of sales tax permits; electronic access; fees.

The record of sales tax permits maintained by the Department of Revenue may be made available electronically through the gateway or electronic network established under section 84-1204. There shall be a fee of five dollars and fifty cents for a monthly listing of all new sales tax permits. All fees collected pursuant to this section for electronic access to records through the gateway shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 1998, LB 924, § 29.

77-2705.05 Direct payment permit; managed compliance agreements; authorized.

(1) The Tax Commissioner may enter into managed compliance agreements with any holder of a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03 if such holder also makes monthly remittances or payments of sales or use taxes by electronic funds transfer as authorized by section 77-1784.

(2) Such managed compliance agreements shall:

(a) Establish a percentage of purchases, or percentages for categories of purchases, that are presumed to be taxable such that the payment of tax on

such percentage or percentages of purchases will result in substantially all of the sales and use tax liability being paid each year;

(b) Establish limits by which the amount of tax paid may vary from the estimated actual tax liability. Such limits may be either a percentage of the estimated actual tax liability or a dollar amount, but the agreed-upon limits must result in an amount between ninety-five percent and one hundred five percent of the estimated actual tax liability; and

(c) Require at least once a year the examination of the reasonableness of the percentage or percentages established in subdivision (a) of this subsection and determine the difference between the amount of sales and use taxes paid and the estimated actual tax liability.

(3) The Tax Commissioner shall adjust the percentage or percentages established in subdivision (2)(a) of this section for future periods as necessary to result in substantially all of the tax liability being paid each year.

(4) If the difference between the amount of sales and use taxes paid and the estimated actual tax liability is within the agreed-upon limits established in subdivision (2)(b) of this section, the percentages or amounts will be considered to have been reasonable for the preceding period, the tax liability shall be considered satisfied for such period, no additional tax payments shall be required for such period, and no refunds shall be allowed for such period. If such difference is not within the agreed-upon limits established in subdivision (2)(b) of this section, the difference shall be remitted to the state or refunded. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be due on the underpayment or refund from the date of the last payment for the period until the date the amount is paid or refunded.

Source: Laws 2001, LB 169, § 1.

77-2706 Sales and use tax; resale certificate; effect; exemption certificate; fee; penalty; wrongful disclosure.

(1) A resale certificate may be given by a purchaser who at the time of purchasing the property intends to sell, lease, or rent it in the regular course of business. A seller making repeated sales of the same type to the same purchaser shall not be required to take a separate resale certificate for each individual sale, but may, at his or her own risk, take a blanket certificate covering all such sales made to the same purchaser.

(2) The resale certificate shall be on such form and require the furnishing of such information as the Tax Commissioner may require by rule and regulation.

(3) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, the use shall be taxable to the purchaser as of the time when the property is first so used and the sales price of the property to him or her shall be deemed the measure of the tax.

(4) Any person who gives a resale certificate to the seller for property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business and each officer of any corporation which so gives a resale certificate shall be guilty of a misdemeanor.

(5) If a purchaser gives a resale certificate with respect to the purchase of tangible goods and thereafter commingles such goods with other tangible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

(6) Any person, firm, or corporation engaged in multistate operations and engaged as a common or contract carrier may apply to the Tax Commissioner for an exemption certificate which will permit such person or corporation to make purchases of any nature within this state or without this state and bring such purchases into this state for use both within and without this state, for storage in this state, and when withdrawn from storage to be used within or without the state without paying the sales or use tax thereon, until such articles, materials, or supplies or finished products are placed in use within this state. When such articles, materials, supplies, or finished products are used within this state, a person to whom such exemption certificate has been issued shall, on the last day of the first following month after which such articles, materials, supplies, or finished products are put to use within this state, make a report to the Tax Commissioner as to the amount of use or sales tax, if any, which is due the state and make the payments to the state at the time of making the return. If the Tax Commissioner, after investigation, finds that the applicant maintains satisfactory books of account and that granting such exemption would not result in the evasion or avoidance of any tax otherwise properly due, he or she shall issue such exemption certificate. Any person granted such an exemption certificate shall furnish a copy thereof to any vendor from whom purchases are made and such vendor may deliver any such purchases to the holder of any such certificate without collection of any such sales tax. The fee for such exemption certificate shall be ten dollars. The revenue from such fees shall be placed in the General Fund.

(7) If any person, firm, corporation, association, or the agent thereof presents a resale certificate to the seller for property which is purchased for a use other than for resale, lease, or rental by him or her in the regular course of business, the Tax Commissioner may impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of a resale certificate. This amount shall be in addition to any tax, interest, or penalty otherwise imposed.

Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

Source: Laws 1967, c. 487, § 6, p. 1555; Laws 1969, c. 683, § 4, p. 2632; Laws 1982, LB 728, § 1; Laws 1982, LB 928, § 66; Laws 1984, LB 962, § 10; Laws 1993, LB 345, § 55; Laws 1994, LB 977, § 7.

77-2706.01 Retailer of aircraft; use tax; option; election; conditions.

(1) Any retailer of aircraft, in lieu of paying tax pursuant to subsection (3) of section 77-2706, may elect to pay a use tax measured by the current sales and use tax rate applied against the total gross receipts realized from the use of

such aircraft, except the receipts realized from transportation for hire as a common or contract carrier. If such election is made, it shall be made pursuant to the following conditions:

(a) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all of the conditions of this section and all rules and regulations of the Tax Commissioner;

(b) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the retailer elects to terminate the election;

(c) Such election shall apply to all aircraft in inventory;

(d) When an aircraft to which such election is applicable is sold, destroyed, or otherwise removed from inventory, no deduction, credit, or refund of use tax paid pursuant to this section shall be taken or allowed; and

(e) The use tax imposed pursuant to this section is a tax upon the retailer so electing.

(2) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this section.

Source: Laws 1980, LB 616, § 1; Laws 1984, LB 962, § 11; Laws 1994, LB 977, § 8.

77-2706.02 Repealed. Laws 2003, LB 282, § 87.

77-2707 Sales and use tax; sale of business; liability for tax.

(1) If any person liable for any sales or use tax under the provisions of the Nebraska Revenue Act of 1967 sells out his business or stock of goods or quits the business, his successor or assign shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Commissioner showing that it has been paid or a certificate stating that no amount is due.

(2) If the purchaser of a business or stock of goods fails to withhold a portion of the purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty days after receiving a written request from the purchaser for a certificate, or within sixty days from the date the former owner's records are made available for audit, whichever period expires the later, the Tax Commissioner shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Commissioner of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Commissioner to mail the notice shall release the purchaser from any further obligation to withhold a portion of the purchase price as provided in this subsection. The time within which the obligation of the successor may be enforced shall start to run at the time the former owner sells out his business or stock of goods or at the time that the determination against the former owner becomes final, whichever event occurs the later.

Source: Laws 1967, c. 487, § 7, p. 1557.

One found to be a "successor" pursuant to this section would logically be considered the kind of "transferee" denominated "successor" under section 77-27,110. A court's duty is to construe the successor liability statute with a fair, unbiased, and

reasonable interpretation, without favor to the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be served are thereby furthered. *Gottsch Feeding Corp. v. State*, 261 Neb. 19, 621 N.W.2d 109 (2001).

77-2708 Sales and use tax; returns; date due; failure to file; penalty; deduction; amount; claim for refund; allowance; disallowance; proceedings.

(1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a designated county official, or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) For all sales tax collected prior to October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. For all sales tax collected on and after October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by

subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. A request for a hearing shall constitute a waiver of the one-hundred-eighty-day period. The claimant and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If a hearing has not been requested and the Tax Commissioner has neither allowed nor disallowed a claim within either the one hundred eighty days or the period agreed to by the claimant and the Tax Commissioner, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of

actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member

states in the streamlined sales and use tax agreement, the state shall permit the allocation.

Source: Laws 1967, c. 487, § 8, p. 1558; Laws 1967, c. 490, § 5, p. 1665; Laws 1969, c. 683, § 5, p. 2635; Laws 1976, LB 996, § 1; Laws 1981, LB 179, § 15; Laws 1981, LB 167, § 51; Laws 1982, Spec. Sess., LB 2, § 1; Laws 1983, LB 101, § 1; Laws 1983, LB 571, § 2; Laws 1984, LB 758, § 1; Laws 1985, LB 715, § 7; Laws 1985, LB 273, § 46; Laws 1987, LB 775, § 15; Laws 1987, LB 523, § 16; Laws 1988, LB 1234, § 1; Laws 1991, LB 829, § 23; Laws 1992, LB 1063, § 183; Laws 1992, Second Spec. Sess., LB 1, § 156; Laws 1992, Fourth Spec. Sess., LB 1, § 28; Laws 1993, LB 128, § 1; Laws 1993, LB 345, § 56; Laws 1995, LB 9, § 1; Laws 1995, LB 118, § 1; Laws 1996, LB 1041, § 7; Laws 2002, Second Spec. Sess., LB 32, § 3; Laws 2003, LB 282, § 71; Laws 2005, LB 216, § 8; Laws 2008, LB916, § 25.

The sales and use tax return contains instructions stating that the entries for each tax remain separate and that the failure to enter "a word, statement, number or figure . . . in the appropriate lines on the return" extends the statute of limitations to 5 years. Where no such entries were made, the department was not given adequate information from which to compute the consumer's use tax owed and the 5-year statute of limitations

controls. *McDonald's Exec. Off. v. Nebraska Dept. of Revenue*, 243 Neb. 82, 497 N.W.2d 377 (1993).

Use tax is payable only once. *Omaha P. P. Dist. v. Nebraska State Tax Commissioner*, 210 Neb. 309, 314 N.W.2d 246 (1982).

This section provides for credit of any sales or use tax erroneously or illegally collected or computed. *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

77-2708.01 Depreciable repairs or parts for agricultural machinery or equipment; refund of sales or use taxes; procedure.

(1) Any purchaser of depreciable repairs or parts for agricultural machinery or equipment used in commercial agriculture may apply for a refund of all of the Nebraska sales or use taxes and all of the local option sales or use taxes paid on the repairs or parts.

(2) The purchaser shall file a claim within three years after the date of purchase with the Tax Commissioner pursuant to section 77-2708. The information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state.

Source: Laws 1992, LB 1063, § 181; Laws 1992, Second Spec. Sess., LB 1, § 154; Laws 1992, Fourth Spec. Sess., LB 1, § 29; Laws 1993, LB 345, § 57; Laws 2003, LB 282, § 72.

77-2709 Sales and use tax; return; Tax Commissioner; deficiency determination; penalty; deficiency; notice; hearing; order.

(1) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. In making a determination, the Tax Commissioner may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for other period or periods, against penalties, and against the interest on the underpayments.

The interest on underpayments and overpayments shall be computed in the manner set forth hereinafter.

(2) If any person fails to make a return, the Tax Commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales, rent, or lease price of property sold, rented, or leased or purchased, by the person, the storage, use, or consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. One or more determinations may be made for one or more than one period.

(3) The amount of the determination of any deficiency exclusive of penalties shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the twenty-fifth of the month following the period for which the amount should have been returned until the date of payment.

(4) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade the Nebraska Revenue Act of 1967 or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination or fifty dollars, whichever is greater, shall be added thereto.

(5)(a) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

(b) The notice may be served personally or by mail, and if by mail the notice shall be addressed to the person at his or her address as it appears in the records of the Tax Commissioner. In case of service by mail of any notice required by the Nebraska Revenue Act of 1967, the service is complete at the time of deposit in the United States post office.

(c) Every notice of a deficiency determination shall be personally served or mailed within three years after the last day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within five years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(d) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

(6) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in this section as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in the Nebraska Revenue Act of 1967.

(7) Any person against whom a determination is made under subsections (1) and (2) of this section or any person directly interested may petition for a redetermination within sixty days after service upon the person of notice thereof. For the purposes of this subsection, a person is directly interested in a deficiency determination when such deficiency could be collected from such person. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(8) If a petition for redetermination is filed within the sixty-day period, the Tax Commissioner shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give him or her ten days' notice of the time and place of the hearing. The Tax Commissioner may continue the hearing from time to time as may be necessary.

(9) The Tax Commissioner may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commissioner at or before the hearing, upon which assertion the petitioner shall be entitled to a thirty-day continuance of the hearing to allow him or her to obtain and produce further evidence applicable to the items upon which the increase is based.

(10) The order or decision of the Tax Commissioner upon a petition for redetermination shall become final thirty days after service upon the petitioner of notice thereof.

(11) All determinations made by the Tax Commissioner under the provisions of subsections (1) and (2) of this section are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(12) Any notice required by this section shall be served personally or by mail in the manner prescribed in subsection (5) of this section.

Source: Laws 1967, c. 487, § 9, p. 1562; Laws 1969, c. 683, § 6, p. 2639; Laws 1976, LB 996, § 2; Laws 1981, LB 167, § 52; Laws 1985, LB 273, § 47; Laws 1992, Fourth Spec. Sess., LB 1, § 30; Laws 1993, LB 345, § 58; Laws 2008, LB914, § 7.

The sales and use tax return contains instructions stating that the entries for each tax remain separate and that the failure to enter "a word, statement, number or figure . . . in the appropriate lines on the return" extends the statute of limitations to 5 years. Where no such entries were made, the department was

not given adequate information from which to compute the consumer's use tax owed and the 5-year statute of limitations controls. *McDonald's Exec. Off. v. Nebraska Dept. of Revenue*, 243 Neb. 82, 497 N.W.2d 377 (1993).

77-2709.01 Repealed. Laws 2007, LB 367, § 31.

77-2710 Sales and use tax; removal of personal property; concealment; Tax Commissioner; action.

(1) If the Tax Commissioner finds that a taxpayer is about to depart from the State of Nebraska, remove his or her personal property therefrom, conceal himself or herself or his or her personal property therein, or do any other act tending to delay, prejudice, or render wholly or partially ineffectual any proceedings to collect the sales or use tax for the preceding or current taxable year unless such proceedings be brought without delay, the Tax Commissioner shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such findings and declaration to be given the taxpayer,

together with a demand for immediate payment of any such tax due for this period, whether or not the time otherwise allowed by law for filing returns and paying such tax has expired. Such tax shall thereupon become immediately due and payable. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, such findings of the Tax Commissioner, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(2) The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to the provisions of section 77-2709. He or she shall file the petition for redetermination with the Tax Commissioner within ten days after the service upon him or her of notice of determination or the determination shall become final at the expiration of the ten-day period and the Tax Commissioner shall not reconsider the determination. The person shall also within the ten-day period deposit with the Tax Commissioner such security as the Tax Commissioner may deem necessary to insure compliance with the Nebraska Revenue Act of 1967. The security may, if necessary, be sold by the Tax Commissioner in the manner prescribed by the provisions of section 77-27,131.

(3) A taxpayer who is not in default in making any return or paying any sales or use taxes assessed under the Nebraska Revenue Act of 1967 may furnish to the Tax Commissioner, under regulations to be prescribed by the Tax Commissioner, security that he or she will duly make the return next thereafter required to be filed and pay such tax next thereafter required to be paid. The Tax Commissioner may approve and accept in like manner security for return and payment of sales or use taxes made due and payable by virtue of this section.

(4) If security is approved and accepted and such further or other security with respect to the tax or taxes covered thereby is given as the Tax Commissioner shall from time to time find necessary, the requirement for payment of such taxes shall not be enforced by any proceedings under this section prior to the expiration of the time otherwise allowed for paying such taxes.

(5) In the case of a bona fide resident of Nebraska about to depart from the state the Tax Commissioner may waive any or all of the requirements placed upon the taxpayer by this section.

(6) If a taxpayer violates or attempts to violate any provision of this section there shall, in addition to all other penalties, be added as part of the tax twenty-five percent of the total amount due or fifty dollars, whichever is greater.

(7) If the taxpayer ignores all demands for payment the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Source: Laws 1967, c. 487, § 10, p. 1564; Laws 1993, LB 161, § 3; Laws 1994, LB 977, § 9.

77-2711 Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.

(1)(a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or

to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, or (g) the disclosure of information pursuant to section 77-27,195 or 77-5731.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-1254 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or Legislative Performance Audit Section shall disclose to any person, other than another Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or Legislative Performance Audit Section employee.

(12) For purposes of this subsection and subsection (11) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names

and addresses of the retailers. The Tax Commissioner may provide additional information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

(14) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(15)(a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (15)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Source: Laws 1967, c. 487, § 11, p. 1566; Laws 1969, c. 683, § 7, p. 2641; Laws 1977, LB 39, § 239; Laws 1981, LB 170, § 6; Laws 1982, LB 705, § 2; Laws 1984, LB 962, § 12; Laws 1985, LB 344, § 4; Laws 1987, LB 523, § 17; Laws 1991, LB 773, § 10; Laws 1992, LB 871, § 61; Laws 1992, Fourth Spec. Sess., LB 1, § 31; Laws 1993, LB 345, § 60; Laws 1994, LB 1175, § 1; Laws 1995, LB 134, § 3; Laws 1996, LB 1177, § 18; Laws 2001, LB 142, § 56; Laws 2003, LB 282, § 73; Laws 2005, LB 216, § 9; Laws 2005, LB 312, § 11; Laws 2006, LB 588, § 8; Laws 2007, LB94, § 1; Laws 2007, LB223, § 9; Laws 2008, LB914, § 8; Laws 2009, LB165, § 10.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Visitors Development Act, see section 81-1263.

77-2712 Repealed. Laws 2003, LB 282, § 87.

77-2712.01 Repealed. Laws 2003, LB 282, § 87.

77-2712.02 Legislative findings.

(1) The Legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all sellers to collect this state's

sales and use tax. The Legislature further finds that this state should participate in a multistate agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

(2) It is the purpose of the streamlined sales and use tax agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of compliance. The agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

- (a) State-level administration of sales and use tax collections;
- (b) Uniformity in the state and local tax bases;
- (c) Uniformity of major tax base definitions;
- (d) A central, electronic registration system for all member states;
- (e) Simplification of state and local tax rates;
- (f) Uniform sourcing rules for all taxable transactions;
- (g) Simplified administration of exemptions;
- (h) Simplified tax returns;
- (i) Simplification of tax remittances; and
- (j) Protection of consumer privacy.

(3) This agreement shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service. However, exemptions granted shall adhere to uniform definitions as set out in the agreement.

Source: Laws 2001, LB 172, § 3; Laws 2003, LB 282, § 74.

77-2712.03 Streamlined sales and use tax agreement; ratified; governing board; members.

(1) The streamlined sales and use tax agreement, as adopted by the streamlined sales tax implementing states on November 12, 2002, including amendments through December 14, 2006, is hereby ratified by the Legislature. The Governor shall enter into the agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members under Articles VII or VIII of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multi-state sellers. The department is further authorized to take other actions permissible under law reasonably required to implement the provisions set forth in the agreement. Other actions authorized by this section include, but are not limited to, the adoption and promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(2) The Tax Commissioner or his or her designee and two representatives of the Legislature appointed by the Executive Board of the Legislative Council are authorized to represent Nebraska before the other member states under the agreement. The state also agrees to participate in and comply with the procedures of and decisions made by the governing board of the member states.

These provisions of the agreement include the creation of the organization as provided in Article VII of the agreement, the requirements for state entry and withdrawal as provided in Article VIII of the agreement, amendments to the agreement as provided in Article IX of the agreement, and a dispute resolution process as provided in Article X of the agreement.

Source: Laws 2001, LB 172, § 4; Laws 2003, LB 282, § 75; Laws 2007, LB223, § 10.

Cross References

Executive Board of the Legislative Council, see section 50-401.01.

77-2712.04 Streamlined sales and use tax agreement; relationship to state law.

No provision of the streamlined sales and use tax agreement in whole or in part invalidates or amends any provision of the law of Nebraska. Adoption and ratification of the agreement by Nebraska does not amend or modify any law of Nebraska. Any provision of the agreement that is in conflict with state law, whether adopted before, at, or after membership of Nebraska in the agreement, shall be implemented by legislation or rule and regulation, as is appropriate.

Source: Laws 2001, LB 172, § 5; Laws 2003, LB 282, § 76.

77-2712.05 Streamlined sales and use tax agreement; requirements.

By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

- (a) Limiting the number of state rates;
- (b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and
- (c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

- (a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;
- (b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;
- (c) Allowances a seller can take for bad debts as provided in section 77-2708; and
- (d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

- (i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of any additional remittance may be determined through a calculation method rather than actual collections. Any additional remittance shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states. Under the system:

(a) A retailer registering under the agreement is registered in this state;

(b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;

(c) A written signature from the retailer is not required;

(d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;

(e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not

relieve the retailer of its liability for remitting to the proper states any taxes collected;

(f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

(i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and

(iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; and

(g) Sellers who register within twelve months after this state's first approval of a certified service provider are relieved from liability, including the local option tax, for tax not collected or paid if the seller was not registered between October 1, 2004, and September 30, 2005. Such relief from liability shall be in accordance with the terms of the agreement;

(5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;

(6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144 that require the following:

(a) No variation between the state and local tax bases;

(b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Complete a taxability matrix approved by the governing board. (a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.

(b) The entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board.

(c) Sellers, model 2 sellers, and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix or for relying on product-based classifications that have been reviewed and approved by the state. The state shall notify the certified service provider or model 2 seller if an item or transaction is incorrectly classified as to its taxability.

(d) Purchasers are relieved from liability for penalty for having failed to pay the correct amount of tax resulting from the purchaser's reliance on erroneous data provided by the member state in the taxability matrix or rates and boundaries data bases or for relying on product-based classifications that have been reviewed and approved by the state;

(8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;

(9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and

(11) Advisory councils. The state agrees to the recognition of an advisory council of private-sector representatives and an advisory council of member and nonmember state representatives to consult with in the administration of the agreement.

Source: Laws 2001, LB 172, § 6; Laws 2003, LB 282, § 77; Laws 2004, LB 1017, § 20; Laws 2005, LB 16, § 1; Laws 2006, LB 887, § 4; Laws 2007, LB223, § 11; Laws 2009, LB165, § 11.

77-2712.06 Agreement; effect.

The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Source: Laws 2001, LB 172, § 7.

77-2712.07 Rights under the agreement.

(1) The agreement binds and inures only to the benefit of Nebraska and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person is established by the laws of Nebraska and the other member states and not by the terms of the agreement.

(2) No person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of Nebraska, or any political subdivision of Nebraska, on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of Nebraska, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Source: Laws 2001, LB 172, § 8.

77-2712.08 Repealed. Laws 2003, LB 282, § 87.**77-2713 Sales and use tax; failure to collect; false return; violations; penalty; statute of limitations.**

(1) Any person required under the provisions of sections 77-2701.04 to 77-2713 to collect, account for, or pay over any tax imposed by the Nebraska Revenue Act of 1967 who willfully fails to collect or truthfully account for or pay over such tax and any person who willfully attempts in any manner to evade any tax imposed by such provisions of such act or the payment thereof shall, in addition to other penalties provided by law, be guilty of a Class IV felony.

(2) Any person who willfully aids or assists in, procures, counsels, or advises the preparation or presentation of a false or fraudulent return, affidavit, claim, or document under or in connection with any matter arising under sections 77-2701.04 to 77-2713 shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, be guilty of a Class IV felony.

(3) A person who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended and each officer of any corporation which so engages in business shall be guilty of a Class IV misdemeanor. Each day of such operation shall constitute a separate offense.

(4) Any person who gives a resale certificate to the seller for property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business shall be guilty of a Class IV misdemeanor.

(5) Any violation of the provisions of sections 77-2701.04 to 77-2713, except as otherwise provided, shall be a Class IV misdemeanor.

(6) Any prosecution under sections 77-2701.04 to 77-2713 shall be instituted within three years after the commission of the offense. If such offense is the failure to do an act required by any of such sections to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date. The failure to do any act required by sections 77-2701.04 to 77-2713 shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution under the provisions of the Nebraska Revenue Act of 1967 may be conducted in any county where the person or corporation to whose liability the proceeding relates resides or has a place of business or in any county in which such criminal act is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of any offenses under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 13, p. 1574; Laws 1977, LB 39, § 240; Laws 1989, LB 459, § 1; Laws 1992, LB 871, § 62; Laws 2003, LB 282, § 78.

(c) INCOME TAX**77-2714 Terms; references; incorporation of federal law.**

Any term used in sections 77-2714 to 77-27123 shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any

reference to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, as the same may be or become effective, at any time or from time to time, for the taxable year. Any reference to either the Internal Revenue Code of 1954, the Internal Revenue Code of 1986, or the Internal Revenue Code shall mean and include a reference to the other, whenever appropriate. All other references to any tax contained within sections 77-2714 to 77-27,123 refer to income tax unless the contrary appears. Any organization to the extent that it is exempt from income taxes under the laws of the United States shall be exempt from income tax under the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 14, p. 1575; Laws 1987, LB 6, § 1; Laws 1987, LB 773, § 3; Laws 1987, LB 523, § 18.

77-2714.01 Terms, defined.

As used in sections 77-2714 to 77-27,123, unless the context otherwise requires:

(1) Nebraska adjusted gross income shall mean (a) for resident individuals, their federal adjusted gross income as modified in section 77-2716 and (b) for nonresident individuals and partial-year resident individuals, the portion of the federal adjusted gross income that is derived from or connected with sources within this state as provided in section 77-2715;

(2) Nebraska taxable income shall mean (a) for resident individuals, the amount of income subject to tax and (b) for nonresident individuals and partial-year resident individuals, the amount of income on which the tax will be computed, before the proration contained in subsection (3) of section 77-2715 to determine the tax attributable to income from sources within this state;

(3) Nonresident estate or trust shall mean an estate or trust that is not a resident estate or trust;

(4) Nonresident individual shall mean an individual who is not a resident of this state at any time during the taxable year;

(5) Partial-year resident individual shall mean an individual who is a resident of this state during any part of the taxable year and a nonresident of this state the rest of the year;

(6) Resident estate or trust shall mean (a) the estate of a decedent who at his or her death was domiciled in this state, (b) a trust or portion of a trust consisting of property transferred by the will of a decedent who at his or her death was domiciled in this state, or (c) a trust or portion of a trust consisting of the property of an individual domiciled in this state at the time such individual may no longer exercise the power to revest title to such property in himself or herself; and

(7) Resident individual shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state.

Source: Laws 1987, LB 773, § 4.

77-2715 Income tax; rate; credits; refund.

(1) A tax is hereby imposed for each taxable year on the entire income of every resident individual and on the income of every nonresident individual and partial-year resident individual which is derived from sources within this state, except that any individual who has additions to adjusted gross income pursuant to section 77-2716 of less than five thousand dollars shall not have an individual income tax liability after nonrefundable credits under the Nebraska Revenue Act of 1967 that exceeds his or her individual income tax liability before credits under the Internal Revenue Code of 1986.

(2) The tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (a) substituting Nebraska taxable income for federal taxable income, (b) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (c) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the act, shall be allowed as a reduction in the income tax due.

(3) The tax for each nonresident individual and partial-year resident individual shall be the portion of the tax imposed on resident individuals which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by subtracting from the liability to this state for a resident individual with the same total income the credit for personal exemptions and multiplying the result by a fraction, the numerator of which is the nonresident individual's or partial-year resident individual's Nebraska adjusted gross income as determined by section 77-2733 or 77-2733.01 and the denominator of which is his or her total federal adjusted gross income, after first adjusting each by the amounts provided in section 77-2716. If this determination attributes more or less tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for or the Tax Commissioner may require the employment of any other method to attribute an amount of tax which is reasonable and equitable in the circumstances.

(4) The tax for each estate and trust, other than trusts taxed as corporations under the Internal Revenue Code of 1986, shall be as determined under section 77-2717.

(5) A refund shall be allowed to the extent that the income tax paid by the individual, estate, or trust for the taxable year exceeds the income tax payable, except that no refund shall be made in any amount less than two dollars.

Source: Laws 1967, c. 487, § 15, p. 1576; Laws 1969, c. 684, § 2, p. 2652; Laws 1972, LB 1367, § 2; Laws 1973, LB 526, § 1; Laws 1974, LB 632, § 1; Laws 1975, LB 430, § 1; Laws 1977, LB 30, § 1; Laws 1977, LB 219, § 1; Laws 1980, LB 44, § 1; Laws 1981, LB 197, § 1; Laws 1982, LB 799, § 5; Laws 1983, LB 124, § 8; Laws 1983, LB 363, § 2; Laws 1984, LB 372, § 15; Laws 1985, LB 273, § 49; Laws 1986, LB 1027, § 207; Laws 1987, LB 773, § 5; Laws 1987, LB 523, § 19; Laws 1989, LB 458, § 1; Laws 1989, LB 459, § 2; Laws 1993, LB 240, § 2; Laws 1994, LB 977, § 10.

A capital gain or loss by a fiscal year partnership prior to January 1, 1968, was not includable in determining the partners' income tax liability for 1968 except for capital gain portions received later under installment contract. *Altsuler v. Peters*, 190 Neb. 113, 206 N.W.2d 570 (1973).

Food sales tax credit, although incorporated in income tax subdivision of Nebraska Revenue Act of 1967, is part of sales tax

provisions. *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

The Legislature may delegate authority to administrative agencies of the state. *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

77-2715.01 Income and sales tax; Legislature; set rate; limitations; primary rate.

(1)(a) Commencing in 1987 the Legislature shall set the rate for the income tax imposed by section 77-2715 and the rate of the sales tax imposed by subsection (1) of section 77-2703. The rate of the income tax set by the Legislature shall be considered the primary rate for establishing the tax rate schedules used to compute the tax.

(b) The Legislature shall set the rates of the sales tax and income tax so that the estimated funds available plus estimated receipts from the sales, use, income, and franchise taxes will be not less than three percent nor more than seven percent in excess of the appropriations and express obligations for the biennium for which the appropriations are made. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations of the state.

(c) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The Speaker of the Legislature and the chairpersons of the Legislature's Executive Board, Revenue Committee, and Appropriations Committee shall meet with the Tax Commissioner within ten days after July 15 and November 15 of each year and shall determine whether the rates for sales tax and income tax should be changed. In making such determination they shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for any session, all miscellaneous claims, deficiency bills, and all emergency appropriations.

In the event it is determined by a majority vote that the rates must be changed as a result of a regular or special session or as a result of a change in the Internal Revenue Code of 1986 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, they shall petition the Governor to call a special session of the Legislature to make whatever rate changes may be necessary.

Source: Laws 1969, c. 684, § 3, p. 2654; Laws 1971, LB 167, § 1; Laws 1973, LB 10, § 1; Laws 1975, LB 589, § 1; Laws 1975, Spec. Sess., LB 4, § 1; Laws 1976, LB 651, § 1; Laws 1978, LB 327, § 1; Laws 1982, LB 304, § 1; Laws 1982, LB 454, § 1; Laws 1982, LB 757, § 1; Laws 1982, LB 693, § 1; Laws 1983, LB 59, § 1; Laws 1983, LB 169, § 2; Laws 1983, LB 363, § 3; Laws 1984, LB 892, § 7; Laws 1985, LB 282, § 1; Laws 1986, LB 258, § 17; Laws 1987, LB 773, § 7; Laws 1988, LB 130, § 1.

77-2715.02 Rate schedules; established; other taxes; tax rate; tax tables.

(1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) For taxable years beginning or deemed to begin before January 1, 2007, income amounts for columns A and E shall be:

- (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;
- (ii) \$0, \$4,000, \$31,000, and \$50,000, for married filing joint returns;
- (iii) \$0, \$3,800, \$25,000, and \$35,000, for head-of-household returns;
- (iv) \$0, \$2,000, \$15,500, and \$25,000, for married filing separate returns; and
- (v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(b) For taxable years beginning or deemed to begin on or after January 1, 2007, income amounts for columns A and E shall be:

- (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;
- (ii) \$0, \$4,800, \$35,000, and \$54,000, for married filing joint returns;
- (iii) \$0, \$4,500, \$28,000, and \$40,000, for head-of-household returns;
- (iv) \$0, \$2,400, \$17,500, and \$27,000, for married filing separate returns; and
- (v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(c) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(d) The amount in column D shall be the rate on the income in excess of the amount in column E;

(e) For taxable years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6784, .9432, 1.3541, and 1.8054;

(f) For taxable years beginning or deemed to begin on or after January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;

(g) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and

(h) One rate schedule shall be established for each federal filing status.

(3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income	but not	pay	plus	of the
over	over			amount over

(4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska

tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Source: Laws 1990, LB 1059, § 34; Laws 1993, LB 240, § 3; Laws 1994, LB 977, § 11; Laws 1997, LB 401, § 1; Laws 1998, LB 1028, § 1; Laws 2002, LB 1085, § 17; Laws 2003, LB 759, § 21; Laws 2006, LB 968, § 7; Laws 2007, LB367, § 19.

This section and section 77-2717, when read together, require conformity with the federal tax code. *FirsTier Bank v. Department of Revenue*, 254 Neb. 918, 580 N.W.2d 537 (1998).

77-2715.03 Repealed. Laws 1983, LB 169, § 5.

77-2715.04 Repealed. Laws 1986, LB 739, § 2.

77-2715.05 Repealed. Laws 1986, LB 739, § 2.

77-2715.06 Repealed. Laws 1986, LB 737, § 1.

77-2715.07 Income tax credits.

(1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Nebraska Advantage Microenterprise Tax Credit Act or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income; and

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount

of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Source: Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB343, § 3; Laws 2007, LB367, § 20; Laws 2007, LB456, § 1; Laws 2009, LB165, § 12.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.

Community Development Assistance Act, see section 13-201.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

77-2715.08 Capital gains; terms, defined.

For purposes of this section and section 77-2715.09, unless the context otherwise requires:

(1) Capital stock means common or preferred stock, either voting or nonvoting. Capital stock does not include stock rights, stock warrants, stock options, or debt securities;

(2)(a) Corporation means any corporation which, at the time of the first sale or exchange for which the election is made, has been in existence and actively doing business in this state for at least three years.

(b) Corporation also includes:

(i) Any corporation which is a member of a unitary group of corporations, as defined in section 77-2734.04, which includes a corporation defined in subdivision (2)(a) of this section; and

(ii) Any predecessor or successor corporation of a corporation defined in subdivision (2)(a) of this section.

(c) All corporations issuing capital stock for which an election under section 77-2715.09 is made shall, at the time of the first sale or exchange for which the election is made, have (i) at least five shareholders and (ii) at least two shareholders or groups of shareholders who are not related to each other and each of which owns at least ten percent of the capital stock.

For purposes of this subdivision, two persons shall be considered to be related when, under section 318 of the Internal Revenue Code of 1986, one is a person who owns, directly or indirectly, capital stock that if directly owned would be attributed to the other person or is the brother, sister, aunt, uncle, cousin, niece, or nephew of the other person who owns capital stock either directly or indirectly;

(3) Extraordinary dividend means any dividend exceeding twenty percent of the fair market value of the stock on which it is paid as of the date the dividend is declared; and

(4) Predecessor or successor corporation means a corporation that was a party to a reorganization that was entirely or substantially tax free and that occurred during or after the employment of the individual making an election under section 77-2715.09.

Source: Laws 1987, LB 775, § 11; Laws 1991, LB 773, § 11; Laws 2007, LB343, § 4.

77-2715.09 Capital stock; sale or exchange; extraordinary dividend and capital gains treatment.

(1) Every resident individual may elect under this section to subtract from federal adjusted gross income, or for trusts qualifying under subdivision (2)(c) of this section from taxable income, the extraordinary dividends paid on and the capital gain from the sale or exchange of capital stock of a corporation acquired by the individual (a) on account of employment by such corporation or (b) while employed by such corporation.

(2)(a) Each individual shall be entitled to one election under subsection (1) of this section during his or her lifetime for the capital stock of one corporation.

(b) The election shall apply to subsequent extraordinary dividends paid and sales and exchanges in any taxable year if the dividend is received on, or the sale or exchange is of, capital stock in the same corporation and such capital stock was acquired as provided in subsection (1) of this section.

(c) After the individual makes an election, such election shall apply to extraordinary dividends paid on, and the sale or exchange of, capital stock of the corporation transferred by inter vivos gift from the individual to his or her spouse or issue or a trust for the benefit of the individual's spouse or issue if such capital stock was acquired as provided in subsection (1) of this section. This subdivision shall apply, in the case of the spouse, only if the spouse was married to such individual on the date of the extraordinary dividend or sale or exchange or the date of death of the individual.

(d) If the individual dies without making an election, the surviving spouse or, if there is no surviving spouse, the oldest surviving issue may make the election for capital stock that would have qualified under subdivision (c) of this subsection.

(3) An election under subsection (1) of this section shall be made by including a written statement with the taxpayer's Nebraska income tax return or an amended return for the taxable year for which the election is made. The written statement shall identify the corporation that issued the stock and the grounds for the election under this section and shall state that the taxpayer elects to have this section apply.

Source: Laws 1987, LB 775, § 12; Laws 1991, LB 773, § 12; Laws 2007, LB343, § 5.

77-2716 Income tax; adjustments.

(1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the

Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed two thousand five hundred dollars per married filing separate return or five thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for

corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insur-

ance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

Source: Laws 1967, c. 487, § 16, p. 1579; Laws 1983, LB 619, § 1; Laws 1984, LB 962, § 15; Laws 1984, LB 1124, § 3; Laws 1985, LB 273, § 50; Laws 1986, LB 774, § 9; Laws 1987, LB 773, § 9; Laws 1987, LB 523, § 20; Laws 1989, LB 458, § 2; Laws 1989, LB 459, § 3; Laws 1991, LB 773, § 13; Laws 1993, LB 121, § 504; Laws 1994, LB 977, § 13; Laws 1997, LB 401, § 2; Laws 1998, LB 1028, § 3; Laws 2000, LB 1003, § 15; Laws 2002, LB 1085, § 18; Laws 2003, LB 596, § 1; Laws 2005, LB 216, § 10; Laws 2006, LB 965, § 6; Laws 2006, LB 968, § 9; Laws 2007, LB338, § 1; Laws 2007, LB368, § 135; Laws 2007, LB456, § 2.

Cross References

Limited Liability Company Act, see section 21-2601.

Long-Term Care Savings Plan Act, see section 77-6101.

77-2716.01 Personal exemptions; standard deduction; computation.

(1) Every individual shall be allowed to subtract from his or her income tax liability an amount for personal exemptions. The amount allowed to be subtracted shall be the credit amount for the year as provided in this section multiplied by the number of exemptions allowed on the federal return. For tax year 1993, the credit amount shall be sixty-five dollars; for tax year 1994, the credit amount shall be sixty-nine dollars; for tax year 1995, the credit amount shall be sixty-nine dollars; for tax year 1996, the credit amount shall be seventy-two dollars; for tax year 1997, the credit amount shall be eighty-six dollars; for tax year 1998, the credit amount shall be eighty-eight dollars; for tax year 1999, and each year thereafter, the credit amount shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. The eighty-eight-dollar credit amount shall be adjusted for cumulative inflation since 1998. If any credit amount is not an even dollar amount, the amount shall be rounded to the nearest dollar. For nonresident individuals and partial-year resident individuals, the personal exemption credit shall be subtracted as specified in subsection (3) of section 77-2715.

(2)(a) For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return except as the amount is adjusted under section 77-2716.03. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers four thousand seven hundred fifty dollars, (ii) for head of household taxpayers seven thousand dollars, (iii) for married filing jointly taxpayers seven thousand nine hundred fifty dollars, and (iv) for married filing separately taxpayers three thousand nine hundred seventy-five dollars. Taxpay-

ers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers, nine hundred fifty dollars, and for single or head of household taxpayers, one thousand one hundred fifty dollars.

(b) For tax years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers three thousand dollars and (ii) for head of household taxpayers four thousand four hundred dollars. The standard deduction for married filing jointly taxpayers shall be double the standard deduction for single taxpayers, and for married filing separately taxpayers, the standard deduction shall be the same as single taxpayers. Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers six hundred dollars and for single or head of household taxpayers seven hundred fifty dollars. The amounts in this subdivision will be indexed using 1987 as the base year.

(c) For tax years beginning or deemed to begin on or after January 1, 2007, the standard deduction amounts, including the additional standard deduction amounts, in this subsection shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. If any amount is not a multiple of fifty dollars, the amount shall be rounded to the next lowest multiple of fifty dollars.

(3) Every individual who itemized deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the standard deduction allowed in subsection (2) of this section or his or her federal itemized deductions, except for the amount for state or local income taxes included in federal itemized deductions before any federal disallowance.

Source: Laws 1987, LB 773, § 10; Laws 1988, LB 1234, § 2; Laws 1989, LB 739, § 3; Laws 1991, LB 300, § 3; Laws 1993, LB 240, § 5; Laws 1997, LB 401, § 3; Laws 1998, LB 1028, § 4; Laws 2003, LB 596, § 2; Laws 2004, LB 355, § 1; Laws 2006, LB 968, § 10; Laws 2007, LB367, § 21.

77-2716.02 Repealed. Laws 2000, LB 886, § 1.

77-2716.03 Income tax; disallowance of itemized deductions; calculation.

(1) Any taxpayer whose federal adjusted gross income is larger than the threshold amount determined under section 68 of the Internal Revenue Code of 1986, as amended, for the disallowance of itemized deductions shall calculate the amount of the excess.

(2) A taxpayer's tax liability shall be increased by an amount determined under this subsection. The amount shall be calculated by multiplying the maximum individual tax rate by ten percent of the excess calculated in

subsection (1) of this section and subtracting the amount of the tax from the tax tables on ten percent of the excess from the result. The difference shall be the increase in the tax liability. If taxable income is less than ten percent of the excess, the calculation in this subsection shall be made using taxable income.

Source: Laws 1993, LB 240, § 6; Laws 1995, LB 300, § 1; Laws 2006, LB 968, § 11.

77-2717 Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.

(1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The

fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

Source: Laws 1967, c. 487, § 17, p. 1579; Laws 1969, c. 690, § 1, p. 2683; Laws 1973, LB 531, § 1; Laws 1985, LB 273, § 51; Laws 1987, LB 523, § 21; Laws 1991, LB 773, § 14; Laws 1994, LB 977, § 14; Laws 2000, LB 1223, § 1; Laws 2001, LB 433, § 5; Laws 2005, LB 312, § 13; Laws 2006, LB 1003, § 6; Laws 2007, LB367, § 22; Laws 2008, LB915, § 1.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

This section and section 77-2715.02, when read together, require the Nebraska Department of Revenue to tax trusts and estates in conformity with the federal tax code. *FirsTier Bank v. Department of Revenue*, 254 Neb. 918, 580 N.W.2d 537 (1998).

77-2718 Repealed. Laws 1987, LB 773, § 30.

77-2719 Repealed. Laws 1987, LB 773, § 30.

77-2720 Repealed. Laws 1984, LB 962, § 39.

77-2721 Repealed. Laws 1987, LB 773, § 30.

77-2722 Repealed. Laws 1984, LB 962, § 39.

77-2723 Repealed. Laws 1987, LB 773, § 30.

77-2724 Nonresident estates or trusts; income; how determined.

(1) For purposes of taxation of nonresident estates or trusts:

(a) Items of income, gain, loss, and deduction shall mean those items entering into the definition of federal distributable income;

(b) Items of income, gain, loss, and deduction entering into the definition of federal distributable net income shall include such items from another estate or trust of which the estate or trust is a beneficiary; and

(c) The source of items of income, gain, loss, or deduction shall be determined under regulations prescribed by the Tax Commissioner in accordance with the general rules in section 77-2733 as if the estate or trust were a nonresident individual.

(2) The taxable income of an estate or trust, before the proration required in subdivision (1)(b) of section 77-2717 to determine the tax attributable to income from sources within this state, shall consist of its share of items of income, gain, loss, and deduction which enter into the federal definition of distributable net income (a) increased or reduced by the amount of any items of income, gain, loss, or deduction which are recognized for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust, (b) less the amount of the deduction for its federal exemption, and (c) increased or reduced by the modifications contained in section 77-2716 which relate to an item of estate or trust income.

Source: Laws 1967, c. 487, § 24, p. 1581; Laws 1987, LB 773, § 11; Laws 1994, LB 977, § 15.

77-2725 Nonresident estate or trust; share of income; how determined.

(1) The share of a nonresident estate or trust of items of income, gain, loss, and deduction entering into the definition of distributable net income and the share for purposes of section 77-2733 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss, and deduction shall be the same amount, subject to the modifications contained in section 77-2716, and have the same character as for federal income tax purposes. When an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust or incurred in the same manner as incurred by the estate or trust.

(2) The Tax Commissioner may by rule and regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state as may be appropriate and equitable.

Source: Laws 1967, c. 487, § 25, p. 1582; Laws 1984, LB 962, § 17; Laws 1987, LB 773, § 12.

77-2726 Repealed. Laws 1984, LB 962, § 39.**77-2727 Income tax; partnership; subject to act; credit.**

(1) A partnership as such shall not be subject to the income tax imposed by the Nebraska Revenue Act of 1967. Persons or their authorized representatives carrying on business as partners shall be liable for the income tax imposed by the Nebraska Revenue Act of 1967 only in their separate or individual capacities.

(2) The partners of such partnership who are residents of this state or corporations shall include in their incomes their proportionate share of such partnership's income.

(3) If any partner of such partnership is a nonresident individual during any part of the partnership's reporting year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the partnership's Nebraska income, as determined under the provisions of sections 77-2728 and 77-2729, allocable to his or her interest in the partnership and shall execute and forward to the partnership, on or before the original due date of the Nebraska partnership return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or attributable to sources in this state, and such agreement shall be attached to the partnership's Nebraska return for such reporting year.

(4)(a) Except as provided in subdivision (c) of this subsection, in the absence of the nonresident individual partner's executed agreement being attached to the Nebraska partnership return, the partnership shall remit a portion of such partner's income which was derived from or attributable to Nebraska sources with its Nebraska return for the reporting year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state.

(b) Any amount remitted on behalf of any partner shall be allowed as a credit against the Nebraska income tax liability of the partner.

(c) Subdivision (a) of this subsection does not apply to a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code of 1986, as amended, that is treated as a partnership for the purposes of the code and that has agreed to file an annual information return with the Department of Revenue reporting the name, address, taxpayer identification number, and other information requested by the department of each unit holder with an income in the state in excess of five hundred dollars.

(5) The Tax Commissioner may allow a nonresident individual partner to not file a Nebraska income tax return if the nonresident individual partner's only source of Nebraska income was his or her share of the partnership's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the partnership has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual partner. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual partner.

(6) For purposes of this section, any partner that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the partner.

Source: Laws 1967, c. 487, § 27, p. 1583; Laws 1973, LB 531, § 2; Laws 1985, LB 273, § 52; Laws 1991, LB 773, § 15; Laws 2005, LB 216, § 11; Laws 2008, LB915, § 2.

Only the partners pay income tax and the character of income of the partnership remains the same when accounted for by the partners. *Altsuler v. Peters*, 190 Neb. 113, 206 N.W.2d 570 (1973).

77-2727.01 Repealed. Laws 1996, LB 898, § 8.

77-2728 Income tax; partnership; income; how determined.

Each item of partnership income, gain, loss, or deduction shall have the same character for a partner under the provisions of the Nebraska Revenue Act of 1967 as it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner as if realized directly from the source from which realized by the partnership or incurred in the same manner as incurred by the partnership.

Source: Laws 1967, c. 487, § 28, p. 1583.

Character of income realized by a partnership remains the same when a partner accounts for it. *Altsuler v. Peters*, 190 Neb. 113, 206 N.W.2d 570 (1973).

77-2729 Nonresident partner; income; how determined.

(1) In determining the tax liability of a nonresident partner of any partnership, there shall be included in Nebraska adjusted gross income only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss, and deduction entering into his or her federal taxable income, as such part is determined under rules and regulations prescribed by the Tax Commissioner in accordance with the general rules in section 77-2733.

(2) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(a) Characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside

this state, a greater proportion of his or her distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subsection (4) of this section; or

(b) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than his or her proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (4) of this section.

(3) Any modification described in subsection (1) of section 77-2716 which relates to an item of partnership income, gain, loss, or deduction, shall be made in accordance with the partner's distributive share, for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this state.

(4) The Tax Commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he or she may require.

(5) The character of partnership items for a nonresident partner shall be determined under section 77-2725.

Source: Laws 1967, c. 487, § 29, p. 1583; Laws 1987, LB 773, § 13.

77-2730 Individual; resident estate or trust; income derived from another state; credit.

(1) A resident individual and a resident estate or trust shall be allowed a credit against the income tax otherwise due for the amount of any income tax imposed on him or her for each taxable year commencing on or after January 1, 1983, by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to income tax under sections 77-2714 to 77-27,123.

(2) The credit provided under sections 77-2714 to 77-27,135 shall not exceed the proportion of the income tax otherwise due under such sections that the amount of the taxpayer's adjusted gross income or total income derived from sources in the other taxing jurisdiction bears to federal adjusted gross income or total federal income.

(3) For purposes of subsection (1) of this section, a resident individual, estate, or trust shall be deemed to have paid a portion of the income tax imposed by another state, a political subdivision thereof, or the District of Columbia on the income of any partnership, trust, or estate when such resident individual, estate, or trust is a partner, or beneficiary and (a) the income taxed is included in the federal taxable income of the resident individual, estate, or trust and (b) the taxation of such partnership, trust, or estate by the other state is inconsistent with the taxation of such entity under the Internal Revenue Code. The amount of income tax deemed paid by the resident individual, estate, or trust shall be the same percentage of the total tax paid by the entity as the income included in federal taxable income of the resident is to the total taxable income of the entity as computed for the other state.

Source: Laws 1967, c. 487, § 30, p. 1584; Laws 1973, LB 526, § 2; Laws 1985, LB 273, § 53; Laws 1987, LB 6, § 2; Laws 1987, LB 773, § 14; Laws 1993, LB 121, § 505; Laws 1994, LB 884, § 90.

77-2731 Income tax; taxpayer; resident of more than one state; tax; credit.

If the taxpayer is regarded as a resident both of this state and another jurisdiction for purposes of personal income taxation, the Tax Commissioner shall reduce the tax on that portion of the taxpayer's income which is subjected to tax in both jurisdictions solely by virtue of dual residence; *Provided*, that the other taxing jurisdiction allows a similar reduction. The reduction shall be in an amount equal to that portion of the lower of the two taxes applicable to the income taxed twice which the tax imposed by this state bears to the combined taxes of the two jurisdictions on the income taxed twice.

Source: Laws 1967, c. 487, § 31, p. 1585.

77-2732 Married persons; separate federal returns; joint returns; how treated; revocation of election.

(1) If the federal tax liability of husband or wife is determined on separate federal returns, their tax liabilities in this state shall be separately determined.

(2) Except as provided in subsection (3) of this section, if the federal tax liability of husband and wife is determined on a joint federal return, their tax liability shall be determined in this state jointly and their tax liability shall be joint and several.

(3) If the federal tax liability of husband and wife is determined on a joint federal return and either husband or wife is a nonresident individual or partial-year resident individual and the other a resident individual, separate taxes shall be determined on their separate tax liabilities in this state on such forms as the Tax Commissioner shall prescribe and their tax liability shall be separate unless both elect to determine their joint tax liability in this state as if both were resident individuals, in which case their tax liability shall be joint and several. If a husband and wife file a joint federal income tax return but determine their tax liabilities in this state separately, they shall compute their tax liabilities in this state as if their federal tax liabilities had been determined separately.

(4) During the time a claim for credit or refund may be filed pursuant to section 77-2793, a husband and wife electing to be taxed as if both were residents of this state may revoke the election by each filing a separate return on such forms and in such manner as may be required by the Tax Commissioner.

Source: Laws 1967, c. 487, § 32, p. 1585; Laws 1987, LB 773, § 15; Laws 1989, LB 459, § 4.

77-2733 Income tax; nonresident; income in Nebraska; method of determination of tax; exception.

(1) The income of a nonresident individual derived from sources within this state shall be the sum of the following:

(a) The net amount of items of income, gain, loss, and deduction entering into his or her federal taxable income which are derived from or connected with sources in this state including (i) his or her distributive share of partnership income and deductions determined under section 77-2729, (ii) his or her share of small business corporation or limited liability company income determined under section 77-2734.01, and (iii) his or her share of estate or trust income and deductions determined under section 77-2725; and

(b) The portion of the modifications described in section 77-2716 which relates to income derived from sources in this state, including any modifications attributable to him or her as a partner.

(2) Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to:

(a) The ownership or disposition of any interest in real or tangible personal property in this state;

(b) A business, trade, profession, or occupation carried on in this state; and

(c) Any lottery prize awarded in a lottery game conducted pursuant to the State Lottery Act.

(3) Income from intangible personal property including annuities, dividends, interest, and gains from the disposition of intangible personal property shall constitute income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(4) Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses, and deductions derived from or connected with sources in this state, under rules and regulations to be prescribed by the Tax Commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment under rules and regulations to be prescribed by the Tax Commissioner.

(6) Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident individual shall not constitute income derived from sources within this state.

(7) Compensation paid by a resident estate or trust for services by a nonresident fiduciary shall constitute income derived from sources within this state.

(8) Compensation paid by a business, trade, or profession shall constitute income derived from sources within this state if:

(a) The individual's service is performed entirely within this state;

(b) The individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state;

(c) The individual's service is performed without this state, but the service performed without this state is related to the transactions and activity of the business, trade, or profession carried on within this state; or

(d) Some of the service is performed in this state and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Source: Laws 1967, c. 487, § 33, p. 1585; Laws 1973, LB 526, § 3; Laws 1984, LB 1124, § 19; Laws 1987, LB 773, § 16; Laws 1987, LB 523, § 22; Laws 1993, LB 121, § 506; Laws 1995, LB 134, § 4.

Cross References

State Lottery Act, see section 9-801.

77-2733.01 Partial-year resident; determination of income.

The income of a partial-year resident individual derived from sources within this state shall be the sum of the following:

(1) All of the income, gain, loss, and deduction which is derived from or connected with sources within this state for a nonresident individual under section 77-2733; and

(2) Any income from intangible personal property, including, but not limited to, annuities, dividends, interest, and gains from the disposition of intangible personal property and any income from a partnership, limited liability company, estate, trust, or electing subchapter S corporation, that is realized while a resident of this state and that is not taxed by another state.

Source: Laws 1987, LB 773, § 17; Laws 1993, LB 121, § 507.

77-2734 Repealed. Laws 1984, LB 1124, § 22.**77-2734.01 Small business corporation shareholders; limited liability company members; determination of income; credit; Tax Commissioner; powers; return; when required.**

(1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the

entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) In the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be

disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Source: Laws 1984, LB 1124, § 4; Laws 1985, LB 273, § 54; Laws 1987, LB 773, § 18; Laws 1987, LB 523, § 23; Laws 1991, LB 773, § 16; Laws 1993, LB 121, § 508; Laws 2005, LB 216, § 12; Laws 2008, LB915, § 3.

Cross References

Limited Liability Company Act, see section 21-2601.

77-2734.02 Corporate taxpayer; income tax rate; how determined.

(1) Except as provided in subsection (2) of this section, a tax is hereby imposed for each taxable year on the taxable income of every corporate taxpayer that is doing business in this state at a rate equal to one hundred fifty and eight-tenths percent of the primary rate imposed on individuals under section 77-2701.01 on the first one hundred thousand dollars of taxable income and at the rate of two hundred eleven percent of such rate on all taxable income in excess of one hundred thousand dollars. The resultant rates shall be rounded to the nearest one hundredth of one percent.

For corporate taxpayers with a fiscal year that does not coincide with the calendar year, the individual rate used for this subsection shall be the rate in effect on the first day, or the day deemed to be the first day, of the taxable year.

(2) An insurance company shall be subject to taxation at the lesser of the rate described in subsection (1) of this section or the rate of tax imposed by the state or country in which the insurance company is domiciled if the insurance company can establish to the satisfaction of the Tax Commissioner that it is domiciled in a state or country other than Nebraska that imposes on Nebraska domiciled insurance companies a retaliatory tax against the tax described in subsection (1) of this section.

(3) For a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15.

(4) Each corporate taxpayer shall file only one income tax return for each taxable year.

Source: Laws 1984, LB 1124, § 5; Laws 1987, LB 773, § 19; Laws 1995, LB 300, § 2; Laws 2008, LB888, § 1.

77-2734.03 Income tax; tax credits.

(1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax

due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

Source: Laws 1984, LB 1124, § 6; Laws 1985, LB 273, § 55; Laws 1986, LB 1114, § 19; Laws 1992, LB 719A, § 176; Laws 1992, LB 1063, § 184; Laws 1993, LB 5, § 4; Laws 1993, LB 815, § 25; Laws 1996, LB 898, § 6; Laws 1997, LB 55, § 4; Laws 1997, LB 61, § 1; Laws 1998, LB 1035, § 24; Laws 2000, LB 1223, § 2; Laws 2001, LB 433, § 6; Laws 2004, LB 983, § 68; Laws 2005, LB 312, § 14; Laws 2007, LB343, § 6; Laws 2007, LB367, § 23.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.

Community Development Assistance Act, see section 13-201.

Joint Public Power Authority Act, see section 70-1401.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

77-2734.04 Income tax; terms, defined.

As used in sections 77-2734.01 to 77-2734.15, unless the context otherwise requires:

(1) Commercial domicile shall mean the principal place from which the trade or business of the taxpayer is directed or managed;

(2) Compensation shall mean wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(3) Corporate taxpayer shall mean any corporation that is not a part of a unitary business or the part of a unitary business, whether it is one or more corporations, that is doing business in this state. Corporate taxpayer shall not include any corporation that has a valid election under subchapter S of the

Internal Revenue Code or any financial institution as defined in section 77-3801;

(4) Corporation shall mean all corporations and all other entities that are taxed as corporations under the Internal Revenue Code;

(5) Doing business in this state shall mean the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax;

(6) Federal taxable income shall mean the corporate taxpayer's federal taxable income as reported to the Internal Revenue Service or as subsequently changed or amended. Except as provided in subsection (5) or (6) of section 77-2716, no adjustment shall be allowed for a change from any election made or the method used in computing federal taxable income. An election to file a federal consolidated return shall not require the inclusion in any unitary group of a corporation that is not a part of the unitary business;

(7) Sales shall mean all gross receipts of the taxpayer;

(8) Single economic unit shall mean a business in which there is a sharing or exchange of value between the parts of the unit. A sharing or exchange of value occurs when the parts of the business are linked by (a) common management or (b) common operational resources that produce material (i) economies of scale, (ii) transfers of value, or (iii) flow of goods, capital, or services between the parts of the unit.

(A) For the purposes of this subdivision, common management shall include, but not be limited to, (I) a centralized executive force or (II) review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations.

(B) For the purposes of this subdivision, common operational resources shall include, but not be limited to, centralization of any of the following: Accounting, advertising, engineering, financing, insurance, legal, personnel, pension or benefit plans, purchasing, research and development, selling, or union relations;

(9) State shall mean any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(10) Subject to the Internal Revenue Code shall mean a corporation that meets the requirements of section 243 of the Internal Revenue Code in order for its distributions to qualify for the dividends-received deduction;

(11) Taxable income shall mean federal taxable income as adjusted and, if appropriate, as apportioned;

(12) Taxable year shall mean the period the corporate taxpayer used on its federal income tax return;

(13) Unitary business shall mean a business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

For the purposes of this subdivision, common ownership shall mean one or more corporations owning fifty percent or more of another corporation; and

(14) Unitary group shall mean the group of corporations that are conducting a unitary business.

Source: Laws 1984, LB 1124, § 7; Laws 1986, LB 774, § 10; Laws 1987, LB 773, § 20.

77-2734.05 Income tax; unitary business; taxable income; how determined.

(1) Except as provided in subsection (1) of section 77-4105, unitary business having income from business activity that is taxable both within and without this state shall, for taxable years beginning or deemed to begin before January 1, 1988, determine its taxable income by multiplying its federal taxable income, as adjusted, by a fraction, which is the average of the property factor plus the payroll factor plus the sales factor. For taxable years beginning or deemed to begin on or after January 1, 1988, the weight given to the property and payroll factors in the average shall be reduced and the fraction shall be determined as provided in section 77-2734.16. For taxable years beginning or deemed to begin on or after January 1, 1992, federal taxable income, as adjusted, shall be multiplied by the sales factor only.

(2) If a unitary business does not have any property, payroll, or sales anywhere, then the average in subsection (1) of this section shall be the average of the remaining factors.

(3) In the computation of the factors only the part of a unitary group that is subject to the Internal Revenue Code shall be included, except as provided in section 77-2734.09.

Source: Laws 1984, LB 1124, § 8; Laws 1987, LB 772, § 2; Laws 1987, LB 775, § 16.

77-2734.06 Income tax; unitary business; apportionment of income.

(1) The entire federal taxable income of a unitary business operating both within and without this state is presumed to be subject to apportionment. Other than for adjustments required to be made under the Nebraska Revenue Act of 1967, for any income that is claimed to be not subject to apportionment, a taxpayer needs to show by a preponderance of the evidence (a) that the income is not a part of the unitary business and (b) that the taxpayer has not claimed the same income is part of the unitary business and subject to apportionment in another state with substantially the same law on apportionability of income.

(2) There shall be subtracted from federal taxable income any income that the taxpayer has shown is not subject to apportionment under subsection (1) of this section. The amount subtracted under this section shall be reduced, but not below zero, by a portion of the interest expense as determined under subsection (3) of this section and any expense incurred in the production of the income described in this section.

(3) The interest expense for the reduction required in subsection (2) of this section shall be determined by dividing the taxpayer's average investment in the activities producing the income by the taxpayer's average total assets and multiplying such ratio by the total interest deduction allowed in the computation of federal taxable income.

(4) For the purposes of this section, investment in activities producing the income described in this section shall mean the tax basis of the assets, both

tangible and intangible, that are used in the activities or are the basis of the receipt of the described income.

(5) Whenever it is necessary to properly reflect the ratio of investment in the activities to total assets, the Tax Commissioner may permit or require the computation of the average provided for in subsection (3) of this section using amounts from interim balance sheets.

(6) The corporation may use, in lieu of the tax basis for the computation in subsection (3) of this section, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the corporation from year to year. The Tax Commissioner may require a corporation to use the alternative amounts in order to maintain consistency or may require the corporation to show that the amounts used do not materially differ from the tax basis.

Source: Laws 1984, LB 1124, § 9; Laws 1986, LB 774, § 11.

77-2734.07 Income tax; adjustments to federal taxable income; rules and regulations.

(1) There shall be added to federal taxable income the amount of any federal deduction because of a carryforward of a net operating loss or any capital loss.

(2) There shall be allowed a deduction for a carryforward of a net operating loss or capital loss that is connected with operations in Nebraska. For a net operating loss or capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 1987, the deduction shall be allowed only for each of the five taxable years succeeding the year of the loss.

(3) Except as otherwise provided in this section, there shall be allowed a carryback of a net operating loss or a capital loss that is connected with operations in Nebraska. For a net operating loss or capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 1987, no such carryback shall be allowed.

(4) The amounts in subsections (2) and (3) of this section shall be computed pursuant to rules and regulations adopted and promulgated by the Tax Commissioner. Such regulations shall be in accord with the laws of the United States regarding carryforwards and carrybacks.

Source: Laws 1984, LB 1124, § 10; Laws 1987, LB 772, § 4.

77-2734.08 Income tax; group of corporations as taxpayer; adjustments to income.

(1) When the corporate taxpayer is a group of corporations that does not file a consolidated federal return, the sum of each corporation's federal taxable income shall be used to determine taxable income.

(2) The sum of the federal taxable income of the group of corporations shall be adjusted to eliminate intercompany transactions.

(3) If the group of corporations includes a domestic international sales corporation or other entity accorded similar treatment under the Internal Revenue Code, the income of the group shall include only that portion of the domestic international sales corporation's income that is considered to be a dividend to the parent.

(a) The sales to the domestic international sales corporation shall be eliminated.

(b) The domestic international sales corporation's property, payroll, and sales shall be included in the factors to the extent of the ownership of the rest of the group.

(c) There shall be no adjustment to the factors when the deferred income is realized by the parent.

Source: Laws 1984, LB 1124, § 11.

77-2734.09 Income tax; unitary group; use of special apportionment formula; effect.

Any member of a unitary group that is required or permitted to use an apportionment formula other than one prescribed by section 77-2734.05 shall be included in a return only with other corporations using the same apportionment formula. The income and the factors of such corporation shall not be used in computing the taxable income of the rest of the unitary group that does not use such special formula. A corporation using a formula required by a regulation issued pursuant to subsection (3) of section 77-2734.15 is using a formula prescribed by section 77-2734.05.

Source: Laws 1984, LB 1124, § 12; Laws 1987, LB 772, § 5.

77-2734.10 Income tax; adjustment of factors.

The factors computed pursuant to sections 77-2734.05 to 77-2734.15 shall be adjusted in the following situations:

(1) The sales factor shall include the income from intangibles such as interest, royalties, or dividends and the net income from gains on the sale of intangibles;

(2) Except as provided in subdivision (1) of this section, the factors shall not include in the denominator any amount that cannot be assigned to a numerator because of the inability to reasonably identify the location of an income-producing activity;

(3) The factors shall not include any amount that was eliminated as an intercompany transaction;

(4) The factors shall not include any property, payroll, or sales that are a part of the production of income that is not subject to apportionment;

(5) The property factor shall include the intangible drilling costs incurred on property that is owned or rented and used during the tax period; and

(6) The property factor of a corporation or unitary business engaged in the exploration and extraction of natural resources shall include undeveloped mineral leases and royalty payments on producing leases, except that those mineral leases determined not suitable for production shall not be included in the property factor.

Source: Laws 1984, LB 1124, § 13; Laws 1985, LB 273, § 56.

77-2734.11 Income tax; corporate taxpayer; when deemed taxable in another state.

(1) A corporate taxpayer is taxable in another state if that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not do so.

(2) The failure to provide upon request of the Tax Commissioner a copy of the return filed and proof of payment of a net income tax imposed by another state creates a rebuttable presumption that the taxpayer is not subject to tax in the other state.

Source: Laws 1984, LB 1124, § 14.

77-2734.12 Income tax; property factor; how determined.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the real and tangible personal property owned or rented and used during the tax period.

(2) Property owned is valued at its original cost. Property rented is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the tax period, but the Tax Commissioner may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the property.

Source: Laws 1984, LB 1124, § 15; Laws 1985, LB 273, § 57.

77-2734.13 Income tax; payroll factor; how determined.

(1) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(2) Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Source: Laws 1984, LB 1124, § 16.

77-2734.14 Income tax; sales factor; how determined.

(1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales everywhere during the tax period.

(2) Sales of tangible personal property in this state include:

(a) Property delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale;

(b) Property shipped from an office, store, warehouse, factory, or other place of storage in this state if (i) the purchaser is the United States Government or

(ii) for all taxable years beginning or deemed to begin before January 1, 1995, under the Internal Revenue Code of 1986, as amended, the taxpayer is not taxable in the state of the purchaser;

(c) For all taxable years beginning or deemed to begin on or after January 1, 1995, and before January 1, 1996, under the Internal Revenue Code of 1986, as amended, two-thirds of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser; or

(d) For all taxable years beginning or deemed to begin on or after January 1, 1996, but before January 1, 1997, under the Internal Revenue Code of 1986, as amended, one-third of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser.

(3) Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Source: Laws 1984, LB 1124, § 17; Laws 1985, LB 273, § 58; Laws 1995, LB 559, § 1.

For purposes of this section, "sales of tangible personal property" include the acquisition of a license to use the physical embodiment of intellectual property. *American Bus. Info. v. Egr*, 264 Neb. 574, 650 N.W.2d 251 (2002).

The delivery of online data electronically over telephone lines is the transmission of a tangible thing. *American Bus. Info. v. Egr*, 264 Neb. 574, 650 N.W.2d 251 (2002).

77-2734.15 Income tax; apportionment; petition for special method of apportionment; Tax Commissioner; powers and duties.

(1) If the apportionment provisions contained in sections 77-2734.01 to 77-2734.14 do not fairly represent the taxable income that is reasonably attributable to the business operations conducted within this state, the taxpayer may petition for or the Tax Commissioner may require, in respect to all or any part of the federal taxable income, if reasonable:

(a) The inclusion of one or more additional factors which will fairly represent the taxpayer's taxable income in this state;

(b) The exclusion of any one or more factors;

(c) Separate accounting; or

(d) The employment of any other method to effectuate an equitable apportionment of the taxpayer's income.

(2) Subsection (1) of this section is intended to apply only in unique and nonrecurring factual situations which would otherwise produce incongruous results under the normal apportionment formula.

(3) The Tax Commissioner may adopt and promulgate rules and regulations for appropriate procedures for the computation of the property, payroll, and sales factors of the apportionment formula for certain industries when necessary to retain uniformity with the taxation methods of other states or when the characteristics of the industry are such that the normal computation methods are not appropriate. Such industries shall include, but are not limited to, transportation, broadcast communications, and insurance.

(4) If the Tax Commissioner fails to mail a notice of final action on any petition under the provisions of this section within thirty days after the filing of such petition, the taxpayer may, prior to notice of action on the petition, consider the petition denied.

Source: Laws 1984, LB 1124, § 18; Laws 1985, LB 273, § 59.

77-2734.16 Income tax; unitary business; three-factor formula.

The fraction used in section 77-2734.05 shall be computed in the following manner for taxable years beginning or deemed to begin on or after January 1 of the given year. The average of the property, payroll, and sales factors, which shall be known as the three-factor formula, shall be computed for each year and then combined with the sales factor only using the following percentages:

(1) For 1987, the weight of the three-factor formula shall be one hundred percent;

(2) For 1988, the weight of the three-factor formula shall be eighty percent and the sales factor shall be twenty percent;

(3) For 1989, the weight of the three-factor formula shall be sixty percent and the sales factor shall be forty percent;

(4) For 1990, the weight of the three-factor formula shall be forty percent and the sales factor shall be sixty percent; and

(5) For 1991, the weight of the three-factor formula shall be twenty percent and the sales factor shall be eighty percent.

For 1992 and each year thereafter, the fraction used in section 77-2734.05 shall be the sales factor only.

Source: Laws 1987, LB 772, § 3.

77-2734.17 Repealed. Laws 2000, LB 886, § 1.

77-2735 Repealed. Laws 1984, LB 1124, § 22.

77-2736 Repealed. Laws 1984, LB 1124, § 22.

77-2737 Repealed. Laws 1984, LB 1124, § 22.

77-2738 Repealed. Laws 1984, LB 1124, § 22.

77-2739 Repealed. Laws 1984, LB 1124, § 22.

77-2740 Repealed. Laws 1984, LB 1124, § 22.

77-2741 Repealed. Laws 1984, LB 1124, § 22.

77-2742 Repealed. Laws 1984, LB 1124, § 22.

77-2743 Repealed. Laws 1984, LB 1124, § 22.

77-2744 Repealed. Laws 1984, LB 1124, § 22.

77-2745 Repealed. Laws 1984, LB 1124, § 22.

77-2746 Repealed. Laws 1984, LB 1124, § 22.

77-2747 Repealed. Laws 1984, LB 1124, § 22.

77-2748 Repealed. Laws 1984, LB 1124, § 22.

77-2749 Repealed. Laws 1984, LB 1124, § 22.

77-2750 Repealed. Laws 1984, LB 1124, § 22.

77-2751 Repealed. Laws 1984, LB 1124, § 22.

77-2752 Repealed. Laws 1984, LB 1124, § 22.

77-2753 Income tax; withholding from wages and other payments.

(1)(a) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (6) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding or at a comparable flat percentage for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages, or payments to independent contractors. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

(b) Notwithstanding the amount of federal withholding or the rules and regulations of the Department of Revenue determining the amount of withholding, every employer and payor employing twenty-five or more employees shall withhold at least one and one-half percent of the gross wages minus tax qualified deductions of each employee unless the employee provides satisfactory evidence that a lesser amount of withholding is justified in the employee's particular circumstances. Such satisfactory evidence may include birth certificates or social security information for dependents or other evidence that reasonably assures the employer that the employee is not improperly or fraudulently evading or defeating the income tax by reducing or eliminating withholding.

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation, partnership, or limited liability company described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section.

The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be four percent, and for all other payments, the percentage shall be six percent.

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not apply to any payment to a nonresident alien, corporation, partnership, or limited liability company if such individual, shareholder, partner, or member provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States or if such payment is subject to withholding under subsection (3) of this section.

(3)(a) Every contractor who is maintaining an office or transacting business within this state and making a payment or payments to any contractor or any person that is not an employee for construction services performed within this state shall deduct and withhold five percent of such payments.

(b) The withholding required by this subsection shall not apply to any payment made to (i) a person that provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States, (ii) a contractor if such a payment or payments does not exceed six hundred dollars, or (iii) a contractor when the payor contractor determines that the payee contractor is in the data base required by section 48-2117.

(c) Any contractor who determines that a contractor is in the data base is relieved from liability for withholding under this subsection for any future payments on a contract in existence at the time the determination is made or made during the same calendar year as such determination is made.

(d) Withholding required by this subsection shall be considered to be withholding of income tax for purposes of the Nebraska Revenue Act of 1967.

(e) For purposes of this subsection:

(i) Construction services means services that are provided as a contractor; and

(ii) Contractor has the same meaning as in section 48-2103.

(4) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to

residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(5) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

(6) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. 3406, (b) payments of gambling winnings, (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments, or (d) payments to independent contractors.

Source: Laws 1967, c. 487, § 53, p. 1594; Laws 1977, LB 355, § 1; Laws 1984, LB 962, § 18; Laws 1986, LB 1027, § 208; Laws 1987, LB 284, § 1; Laws 1987, LB 773, § 21; Laws 1987, LB 523, § 24; Laws 1988, LB 1064, § 1; Laws 1990, LB 896, § 1; Laws 1993, LB 121, § 509; Laws 1993, LB 345, § 61; Laws 1994, LB 1175, § 2; Laws 2005, LB 216, § 13; Laws 2007, LB223, § 12; Laws 2008, LB1001, § 9; Laws 2008, LB1004, § 1; Laws 2009, LB162, § 9.

77-2754 Income tax; withholdings; written statement required.

Every employer or payor, making payment of wages or other payments subject to withholding, shall furnish to each employee or payee in respect to the wages or payments paid by such employer or payor to such employee or payee during the calendar year on or before February 15 of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of wages is made, a written statement as prescribed by the Tax Commissioner showing the amount of wages or payments paid by the employer or payor to the employee or payee, the amount deducted and withheld as tax, and such other information as the Tax Commissioner shall prescribe. Such statement shall be compatible as to form and content with the statement required by the laws of the United States.

Source: Laws 1967, c. 487, § 54, p. 1595; Laws 1984, LB 962, § 19.

77-2755 Income tax; withholdings; deemed paid to Tax Commissioner.

Wages and payments upon which income tax is required to be withheld shall be taxable under the provisions of the Nebraska Revenue Act of 1967 as if no withholding were required, but any amount of income tax actually deducted and withheld under the provisions of such act in any calendar year shall be deemed to have been paid to the Tax Commissioner on behalf of the person from whom withheld, and such person shall be credited with having paid that

amount of income tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the Tax Commissioner.

Source: Laws 1967, c. 487, § 55, p. 1595; Laws 1984, LB 962, § 20.

77-2756 Income tax; employer or payor; withholding for tax.

(1) Except as provided in subsection (2) of this section, every employer or payor required to deduct and withhold income tax under the Nebraska Revenue Act of 1967 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld. When the aggregate amount required to be deducted and withheld by any employer or payor for either the first or second month of a calendar quarter exceeds five hundred dollars, the employer or payor shall, by the fifteenth day of the succeeding month, pay over such aggregate amount to the Tax Commissioner or to a depository designated by the Tax Commissioner. The amount so paid shall be allowed as a credit against the liability shown on the employer's or payor's quarterly withholding return required by this section. The Tax Commissioner may, by rule and regulation, provide for the filing of returns and the payment of the tax deducted and withheld on other than a quarterly basis.

(2) When the aggregate amount required to be deducted and withheld by any employer or payor for the entire calendar year is less than five hundred dollars or the employer or payor is allowed to file federal withholding returns annually, the employer or payor shall, for each calendar year, on or before the last day of the month following the close of such calendar year, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld. The employer or payor may elect or the Tax Commissioner may require the filing of returns and the payment of taxes on a quarterly basis.

(3) Whenever any employer or payor fails to collect, truthfully account for, pay over, or make returns of the income tax as required by this section, the Tax Commissioner may serve a notice requiring such employer or payor to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the Tax Commissioner in a separate account in trust for and payable to the Tax Commissioner, and to keep the amount of such tax in such account until paid over to the Tax Commissioner. Such notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(4) Any employer or payor may appoint an agent in accordance with section 3504 of the Internal Revenue Code of 1986, as amended, for the purpose of withholding, reporting, or making payment of amounts withheld on behalf of the employer or payor. The agent shall be considered an employer or payor for purposes of the Nebraska Revenue Act of 1967 and, with the actual employer or payor, shall be jointly and severally liable for any amount required to be withheld and paid over to the Tax Commissioner and any additions to tax, penalties, and interest with respect thereto.

(5) The employer or payor shall also file on or before March 15 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. Any employer, payor, or agent who furnished more than two hundred fifty statements for a year shall file the required copies electronically in a manner approved by the Tax Commissioner that is compatible with federal electronic filing requirements or methods.

Source: Laws 1967, c. 487, § 56, p. 1596; Laws 1984, LB 962, § 21; Laws 1988, LB 1064, § 2; Laws 1997, LB 62, § 2; Laws 2005, LB 216, § 14; Laws 2007, LB223, § 13.

77-2757 Income tax; employer or payor required to deduct; trust fund.

Every employer or payor required to deduct and withhold income tax under the provisions of the Nebraska Revenue Act of 1967 is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the Tax Commissioner, and any additions to tax, penalties, and interest with respect thereto, shall be considered the tax of the employer or payor. Any amount of tax actually deducted and withheld shall constitute a trust fund in the hands of the employer or payor and shall be owned by the state. No employee or payee shall have any right of action against his or her employer or payor in respect to any money deducted and withheld from his or her wages or other payments and paid over to the Tax Commissioner in compliance or in intended compliance with the provisions of such act.

Source: Laws 1967, c. 487, § 57, p. 1596; Laws 1969, c. 691, § 1, p. 2684; Laws 1984, LB 962, § 22.

77-2758 Income tax; employer or payor; failure to deduct; effect.

If an employer or payor fails to deduct and withhold income tax as required, and thereafter the tax against which such income tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer or payor, but the employer or payor shall not be relieved from liability for any additions to tax, penalties, or interest otherwise applicable in respect to such failure to deduct and withhold.

Source: Laws 1967, c. 487, § 58, p. 1597; Laws 1984, LB 962, § 23.

77-2759 Income tax; taxable year.

(1) For purposes of the income tax imposed by the provisions of the Nebraska Revenue Act of 1967, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

(2) If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of the income tax imposed by the provisions of the Nebraska Revenue Act of 1967 shall be similarly changed in accordance with regulations prescribed by the Tax Commissioner.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, if the Tax Commissioner terminates the taxpayer's taxable year under the provisions of section 77-27,111, relating to tax in jeopardy, the income tax shall be computed for the period determined by such action in accordance with regulations prescribed by the Tax Commissioner.

Source: Laws 1967, c. 487, § 59, p. 1597.

77-2760 Income tax; accounting method.

(1) For purposes of the income tax imposed by the provisions of the Nebraska Revenue Act of 1967, a taxpayer's method of accounting shall be the same as his method of accounting for federal income tax purposes.

(2) If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of the income tax provisions of the Nebraska Revenue Act of 1967 shall similarly be changed.

Source: Laws 1967, c. 487, § 60, p. 1597.

77-2761 Income tax; return; required by whom.

An income tax return with respect to the income tax imposed by the provisions of the Nebraska Revenue Act of 1967 shall be made by the following:

(1) Every resident individual who is required to file a federal income tax return for the taxable year;

(2) Every nonresident individual who has income from sources in this state;

(3) Every resident estate or trust which is required to file a federal income tax return except a simple trust not required to file under subsection (2) of section 77-2717;

(4) Every nonresident estate or trust which has taxable income from sources within this state;

(5) Every corporation or any other entity taxed as a corporation under the Internal Revenue Code which is required to file a federal income tax return except the small business corporations not required to file under subsection (7) of section 77-2734.01;

(6) Every limited liability company having one or more nonresident members or with taxable income derived from sources outside the state except the limited liability companies not required to file under subsection (7) of section 77-2734.01; and

(7) Every partnership having one or more nonresident partners or with taxable income derived from sources outside the state.

Source: Laws 1967, c. 487, § 61, p. 1598; Laws 1987, LB 523, § 25; Laws 1993, LB 121, § 510; Laws 2009, LB165, § 13.

77-2762 Repealed. Laws 1987, LB 773, § 30.**77-2763 Income tax; taxpayer; deceased; return.**

(1) An income tax return for any deceased individual shall be made and filed by his executor, administrator, or other person charged with the care of his property. A joint or separate final return of a decedent shall be due when it would have been due if the decedent had not died.

(2) An income tax return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his duly authorized agent, guardian, conservator, fiduciary, or other person charged with the care of his person or property other than a receiver in possession of only a part of the individual's property.

(3) The income tax return of an estate or trust shall be made and filed by the fiduciary thereof.

(4) If two or more fiduciaries are acting jointly, the return may be made by any one of them.

Source: Laws 1967, c. 487, § 63, p. 1599.

77-2764 Income tax; fiduciary; notice of qualification.

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, shall give notice of his qualification as such to the Tax Commissioner, as may be required by regulation.

Source: Laws 1967, c. 487, § 64, p. 1599.

77-2765 Partial-year resident individual; filing requirements.

If an individual is a partial-year resident individual, the Tax Commissioner may by rule and regulation require him or her to file one return as a partial-year resident individual or to file one return for the portion of the year during which he or she is a resident and one for the portion of the year during which he or she is a nonresident.

Source: Laws 1967, c. 487, § 65, p. 1599; Laws 1987, LB 773, § 22.

77-2766 Repealed. Laws 1987, LB 773, § 30.

77-2767 Income tax; two returns required; when; total taxes due.

Where two returns are required to be filed as provided in section 77-2765:

(1) Personal exemptions and deductions shall be prorated between the two returns, under regulations prescribed by the Tax Commissioner, to reflect the proportions of the taxable year during which the individual was a resident and a nonresident; and

(2) The total of the taxes due thereon shall not be less than would be due if the total of the taxable incomes reported on the two returns were includable in one return.

Source: Laws 1967, c. 487, § 67, p. 1600.

77-2768 Income tax; return; filing; when.

The income tax return required by the provisions of the Nebraska Revenue Act of 1967 shall be filed on or before the dates prescribed by the laws of the United States for filing federal income tax returns. A person required to make and file an income tax return shall, without assessment, notice, or demand, pay any tax due thereon to the Tax Commissioner on or before the date fixed for filing such return, except that a tax amount due which is less than two dollars need not be remitted. The Tax Commissioner shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant hereto and for the payment of any tax.

Source: Laws 1967, c. 487, § 68, p. 1600; Laws 1969, c. 692, § 1, p. 2685; Laws 1987, LB 523, § 26; Laws 1991, LB 773, § 17.

77-2769 Income tax; estimated tax; payment; date.

(1) Every resident and nonresident individual, corporation, and other entity taxed as a corporation under the Internal Revenue Code shall pay the estimated tax for the taxable year, in such form as the Tax Commissioner may prescribe,

except that (a) no payment of estimated tax is required by an individual if the estimated tax can reasonably be expected to be less than five hundred dollars and (b) no payment of estimated tax is required by a corporation or other entity taxed as a corporation under the Internal Revenue Code if the estimated tax can reasonably be expected to be less than four hundred dollars.

(2)(a) Estimated tax for an individual shall mean the amount which the individual estimates to be his or her income tax under sections 77-2714 to 77-27,135 for the taxable year less the amount which he or she estimates to be the sum of any credits allowable.

(b) Estimated tax for a corporation or other entity taxed as a corporation under the Internal Revenue Code shall mean the amount which the corporation or business estimates to be its income tax under sections 77-2714 to 77-27,135 for the taxable year less the amount which is estimated to be the sum of any credits allowable.

(3) If they are eligible to do so for federal tax purposes, a husband and wife may make a joint payment of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint payment is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(4) The payment of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection (2) of section 77-2763 for an income tax return.

(5) The payment of estimated tax shall be paid on or before the dates prescribed by the laws of the United States for payment of estimated federal income tax, except that the Tax Commissioner, by rule and regulation, may establish other dates for payment of estimated tax.

(6) The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

(7) Payment of the estimated income tax or any installment thereof shall be considered payment on account of the income tax imposed under sections 77-2714 to 77-27,135 for the taxable year.

Source: Laws 1967, c. 487, § 69, p. 1600; Laws 1973, LB 526, § 5; Laws 1983, LB 363, § 4; Laws 1984, LB 962, § 24; Laws 1985, LB 344, § 5; Laws 1985, LB 273, § 60; Laws 2008, LB915, § 4.

77-2769.01 Income tax; corporation; overpayment of estimated tax; adjustment; procedure.

(1) A corporation may, after the close of the taxable year and on or before the fifteenth day of the third month thereafter and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this section shall not constitute a claim for credit or refund. The application shall be filed in such manner and form as the Tax Commissioner may prescribe by rules, regulations, and instructions. The application shall set forth: (a) The estimated income tax paid by the corporation during the taxable year; (b) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year; (c) the amount of the

requested adjustment; and (d) such other information for purposes of carrying out this section as may be required by rules and regulations.

(2) Within forty-five days from the date on which an application for adjustment is filed, the Tax Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to discover omissions and errors. The Tax Commissioner shall determine the amount of the adjustment upon the basis of the application and the examination. The Tax Commissioner may disallow, without further action, any application which he or she finds to contain material omissions or errors which he or she deems cannot be corrected within such forty-five days. The decision made by the Tax Commissioner shall be final and not subject to further review.

(3) Upon approval of the application, the Tax Commissioner, within the forty-five-day period, may credit the amount of the adjustment against any existing tax liability on the part of the corporation and shall refund the remainder to the corporation. No application under this section shall be allowed unless the amount of the adjustment equals or exceeds (a) ten percent of the amount estimated by the corporation on its application as its income tax liability for the taxable year and (b) five hundred dollars.

(4) Any adjustment under this section shall be treated as a reduction in the estimated income tax paid, computed on the day the credit is allowed or the refund is paid. Any credit or refund of an adjustment shall be treated as if not made when determining (a) whether there has been any underpayment of estimated income tax under section 77-2790 and (b) if there is an underpayment, the period during which the underpayment existed.

(5) For purposes of this section, income tax liability shall mean the excess of the income tax imposed by sections 77-2714 to 77-27,135 reduced by the credits against the tax provided by state law. The amount of an adjustment authorized under this section shall be equal to the excess of the estimated income tax paid by the corporation during the taxable year reduced by the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year. A corporation seeking an adjustment under this section, which paid its estimated income tax on a consolidated basis or expects to make a consolidated return for the taxable year, shall be subject to such conditions, limitations, and exceptions as the Tax Commissioner may prescribe by rules, regulations, and instructions.

(6) An excessive adjustment shall be equal to the smaller of the amount of the adjustment or the amount by which the income tax liability for the taxable year as shown on the return for the taxable year exceeds the estimated income tax paid during the taxable year, reduced by the amount of the adjustment. The amount of any excessive adjustment made before the fifteenth day of the third month following the close of the taxable year shall bear interest from the date on which the adjustment was allowed to such fifteenth day at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1984, LB 962, § 25; Laws 1985, LB 344, § 6; Laws 1992, Fourth Spec. Sess., LB 1, § 35.

77-2769.02 Income tax; estimated tax; electronic filing and payments; authorized.

Any taxpayer who is required to pay the estimated tax for the taxable year under section 77-2769 may elect to file his or her return electronically and to

make payments or receive refunds using electronic fund transfers. The Tax Commissioner by rule and regulation shall prescribe the dates upon which the estimated individual income tax payments are to be filed. The due date of the taxpayer's first payment of estimated tax shall fall on or after the fifteenth day of the fourth month and on or before the fifteenth day of the fifth month of the taxpayer's taxable year.

Source: Laws 1987, LB 523, § 43.

77-2769.03 Repealed. Laws 2000, LB 886, § 1.

77-2770 Income tax; filing or payment; extension of time; bond; when.

(1)(a) The Tax Commissioner may grant a reasonable extension of time for filing any return, statement, or other document, or for payment of income tax or estimated tax or any installment thereof, on such terms and conditions as he or she may require. Except in the case of a taxpayer who is abroad, no such extension or extensions shall exceed a total of seven months.

(b) An extension of time granted for filing of a return, other than to a corporate taxpayer, shall for the purpose of this subsection extend the time for payment of any tax which may be due. An extension of time for filing any return granted by the Internal Revenue Service shall operate as an extension under this section.

(2) An extension for the filing of the return of corporate income taxes imposed by section 77-2734.02 shall be allowed any corporation or other entity taxed as a corporation if, in such manner and at such time as the Tax Commissioner may by regulation prescribe, there is filed on behalf of such corporation the form prescribed by the Tax Commissioner and if such corporation pays, on or before the date prescribed for payment of the tax determined without regard to any extension of time for filing such return, the amount properly estimated as its tax; but this extension may be terminated at any time by the Tax Commissioner by mailing to the taxpayer notice of such termination at least ten days prior to the date for termination fixed in such notice. No extension of time for filing any corporate return shall be considered an extension of time for payment of corporate income tax unless such request is specifically filed with and granted by the Tax Commissioner.

The Tax Commissioner may grant reasonable additional extensions of time to file any corporate income tax return on such terms and conditions as he or she may require.

(3) If any extension of time is granted for payment of any amount of tax, the Tax Commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount of the tax for which the extension of time for payment is granted, on such terms and conditions as the Tax Commissioner may require.

Source: Laws 1967, c. 487, § 70, p. 1602; Laws 1969, c. 692, § 2, p. 2686; Laws 1984, LB 962, § 26; Laws 1985, LB 344, § 7; Laws 1995, LB 134, § 5.

77-2770.01 Income tax; return; extension; provisions effective after January 1, 1969.

The provisions of sections 77-2768 and 77-2770 shall become operative for all taxable years commencing on and after January 1, 1969.

Source: Laws 1969, c. 692, § 3, p. 2687.

77-2771 Income tax; return, declaration, statement, signature; effect.

(1) Any return, declaration, statement or other document required to be made pursuant to the income tax provisions of the Nebraska Revenue Act of 1967 shall be signed in accordance with regulations or instructions prescribed by the Tax Commissioner. The fact that an individual's name is signed to a return, declaration, statement or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him, and that said individual was authorized to sign the return, declaration, statement or other document.

(2) The making or filing of any return, declaration, statement, or other document or copy of a federal return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

Source: Laws 1967, c. 487, § 71, p. 1602.

77-2772 Income tax; Tax Commissioner; records, form of returns.

The Tax Commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income returns, or portions thereof as filed with the Internal Revenue Service, and determinations, except that such requirements may be waived if such information can be received from another state or federal agency. The Tax Commissioner may require by regulation or notice the making of such returns, rendering of such statements, or keeping of such records as the Tax Commissioner may deem sufficient to show whether or not there is liability for tax or for the collection of tax.

Source: Laws 1967, c. 487, § 72, p. 1603; Laws 1985, LB 273, § 61; Laws 1987, LB 523, § 27.

77-2773 Income tax; partnership; nonresident partner; taxable year; return.

Every partnership having a nonresident partner or having part of its income derived from sources outside the State of Nebraska, determined in accordance with the applicable rules of section 77-2733 as in the case of a nonresident individual, shall make a return for the taxable year setting forth such pertinent information as the Tax Commissioner by rule and regulation may prescribe. Such information may include, but shall not be limited to, all items of income, gain, loss, and deduction, the names and addresses of the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. Such return shall be filed on or before the date prescribed for filing a federal partnership return. For purposes of this section, taxable year shall mean a year or period which would be a taxable year of the partnership if it were subject to tax under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 73, p. 1603; Laws 1987, LB 523, § 28.

77-2774 Income tax; Tax Commissioner; rules and regulations.

The Tax Commissioner may prescribe regulations and instructions requiring returns of information to be made and filed not inconsistent with the information returns required by the laws of the United States.

Source: Laws 1967, c. 487, § 74, p. 1603.

77-2775 Federal income tax return; modified or amended; change in tax liability owed to this state; taxpayer; duties.

(1) If the amount of a taxpayer's federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return for any taxable year is changed or corrected by the Internal Revenue Service or other competent authority or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal adjusted gross income, taxable income, or tax liability within sixty days after the final determination of such change, correction, or renegotiation.

(2) Whenever the amount of a taxpayer's income which is taxable in any state for any taxable year or any tax credits allowable in such state are changed or corrected in a way material to the tax liability owed to this state by the agency having authority to examine returns filed with such state or any other competent authority or whenever an amended return is filed by any taxpayer with a change or correction material to the tax liability owed to this state with another state, such change or correction shall be reported to the Tax Commissioner within sixty days after the final change or correction or filing of the amended return. The Tax Commissioner shall by rule and regulation provide the nature of any change or correction which must be reported.

(3) The taxpayer shall report all changes or corrections required to be reported under this section by filing an amended income tax return and shall give such information as the Tax Commissioner may require. The taxpayer shall concede the accuracy of any change or correction or state why it is erroneous.

(4) Any taxpayer filing an amended federal income tax return shall also file within sixty days thereafter an amended income tax return under the Nebraska Revenue Act of 1967 and shall give such information as the Tax Commissioner may require. For any amended federal income tax return requesting a credit or refund, the amended Nebraska income tax return shall be filed within sixty days after the taxpayer has received proof of federal acceptance of the credit or refund or within the time for filing an amended Nebraska income tax return that would otherwise be applicable notwithstanding the amended federal income tax return, whichever is later.

Source: Laws 1967, c. 487, § 75, p. 1603; Laws 1987, LB 773, § 23; Laws 1993, LB 345, § 62; Laws 1997, LB 62, § 3; Laws 2005, LB 216, § 15; Laws 2008, LB914, § 9.

77-2776 Income tax; Tax Commissioner; return; examination; failure to file; notice; deficiency; notice.

(1) As soon as practical after an income tax return is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the

deficiency proposed to be assessed. If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall credit the overpayment against any taxes due by the taxpayer and refund the difference. The Tax Commissioner shall, upon request, make prompt assessment of taxes due as provided by the laws of the United States for federal income tax purposes.

(2) If the taxpayer fails to file an income tax return, the Tax Commissioner shall estimate the taxpayer's tax liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed by certified or registered mail to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed by certified or registered mail to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner, shareholder, or member of such entity, but only for items of entity income reported by the partner, shareholder, or member.

Source: Laws 1967, c. 487, § 76, p. 1604; Laws 2005, LB 216, § 16.

77-2777 Income tax; deficiency; notice.

Sixty days after the date on which it was mailed, or one hundred fifty days if the taxpayer is outside the United States, a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax, and penalties except only for such amounts as to which the taxpayer has filed a protest with the Tax Commissioner.

Source: Laws 1967, c. 487, § 77, p. 1605; Laws 1993, LB 345, § 63; Laws 1994, LB 977, § 16; Laws 2008, LB914, § 10.

77-2778 Income tax; deficiency; written protest; time.

Within sixty days after the mailing of a deficiency notice, or one hundred fifty days if the taxpayer is outside the United States, the taxpayer or any person directly interested may file with the Tax Commissioner a written protest against the proposed assessment in which he or she shall set forth the grounds on which the protest is based. If a protest is filed, the Tax Commissioner shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his or her authorized representative an oral hearing. For purposes of this section, a person shall be directly interested in a

deficiency determination when such deficiency could be collected from such person.

Source: Laws 1967, c. 487, § 78, p. 1605; Laws 1993, LB 345, § 64; Laws 1994, LB 977, § 17; Laws 2008, LB914, § 11.

77-2779 Income tax; notice of Tax Commissioner's determination; mailing; contents.

Notice of the Tax Commissioner's determination shall be mailed to the taxpayer by certified or registered mail and such notice shall set forth briefly the Tax Commissioner's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

Source: Laws 1967, c. 487, § 79, p. 1605.

77-2780 Income tax; Tax Commissioner; action on taxpayer's protest; when final.

The action of the Tax Commissioner on the taxpayer's protest shall be final upon the expiration of thirty days after the date when the Tax Commissioner mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as provided in the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 80, p. 1605; Laws 1993, LB 345, § 65; Laws 1994, LB 977, § 18; Laws 2008, LB914, § 12; Laws 2009, LB165, § 14.

77-2781 Tax Commissioner; proceedings; burden of proof; exceptions.

In any proceeding before the Tax Commissioner, the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the Tax Commissioner:

- (1) Whether the taxpayer has been guilty of fraud with attempt to evade tax;
- (2) Whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;
- (3) Whether the taxpayer is liable for any increase in a deficiency determination when such increase is asserted initially after the notice of deficiency determination was mailed and a protest petition under section 77-2778 filed, unless such increase in deficiency is the result of a change or correction of federal adjusted gross income, taxable income, or tax liability required to be reported under section 77-2775 and of which change or correction the Tax Commissioner had no notice at the time he or she mailed the notice of deficiency determination; or
- (4) Whether the taxpayer or petitioner is liable for any penalty imposed under subsection (7) or (8) of section 77-2790.

Source: Laws 1967, c. 487, § 81, p. 1605; Laws 1985, LB 273, § 62; Laws 1987, LB 773, § 24.

A taxpayer need not provide the Tax Commissioner with the figures necessary to compute the tax in order to challenge a determination if the challenge is based upon an error of law.

Kellogg Company v. Herrington, 216 Neb. 138, 343 N.W.2d 326 (1984).

77-2782 Income tax; evidence; federal determination; admissible.

Evidence of a federal determination relating to issues raised in a proceeding under the provisions of section 77-2778 shall be admissible, under rules established by the Tax Commissioner.

Source: Laws 1967, c. 487, § 82, p. 1606.

77-2783 Income tax; additional tax; notice; no appeal or protest; when.

In the event that the amount of tax is understated on the taxpayer's return as a result of a mathematical error, the Tax Commissioner shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been assessed and the reasons therefor. Such a notice of additional tax due shall not be considered a notice of deficiency assessment nor shall the taxpayer have any right of protest or appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited.

Source: Laws 1967, c. 487, § 83, p. 1606.

77-2784 Income tax; deficiency; waive restrictions.

The taxpayer at any time, whether or not a notice of deficiency has been issued, shall have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the Tax Commissioner.

Source: Laws 1967, c. 487, § 84, p. 1606.

77-2785 Income tax; assessment; deficiency; date.

(1) The amount of income tax which is shown to be due on an income tax return, including revisions for mathematical errors, shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the Tax Commissioner shall be deemed to be assessed on the date when payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in section 77-2777 if no protest is filed or, if a protest is filed, then upon the date when the determination of the Tax Commissioner becomes final. If an amended return or report filed pursuant to the provisions of section 77-2775 concedes the accuracy of a federal change or correction or a state change or correction which has become final on or after May 1, 1993, any deficiency in the income tax under the Nebraska Revenue Act of 1967 resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of such act. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment notwithstanding any other provision of such act.

(2) If the mode or time for the assessment of income tax under the provisions of the Nebraska Revenue Act of 1967, including interest, additions to tax, and penalties, is not otherwise provided for, the Tax Commissioner may establish the same by regulation.

(3) The Tax Commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of

section 77-2776 when applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

(4) If the Tax Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, by the frivolous objections of any person to compliance with the Nebraska Revenue Act of 1967, or by the attempt of any person to impede the administration of such act, he or she shall, notwithstanding the provisions of section 77-2786, immediately assess such tax, including interest and additions to tax, and penalties as provided by law and give notice and demand for payment to such person. When an assessment is made under this subsection, collection proceedings may be stayed by application for review and the posting of such security as may be required by the Tax Commissioner under section 77-27,129.

Source: Laws 1967, c. 487, § 85, p. 1606; Laws 1984, LB 962, § 27; Laws 1993, LB 345, § 66.

77-2786 Deficiency determination; notice; limitation; extension of time periods.

(1) Except as otherwise provided in the Nebraska Revenue Act of 1967, a notice of a proposed deficiency determination shall be mailed to the taxpayer within three years after the return was filed. Except as otherwise provided in the Nebraska Revenue Act of 1967, no deficiency shall be assessed or collected with respect to the year for which the return was filed unless a notice of a proposed deficiency determination is mailed within three years after the return was filed or the period otherwise fixed.

(2) If the taxpayer omits from Nebraska taxable income an amount properly includable therein which is in excess of twenty-five percent of the amount of taxable income stated in the return or a corporate return omits a properly includable member of the unitary group as defined in section 77-2734.04, a notice of a deficiency determination may be mailed to the taxpayer within six years after the return was filed. A notice of deficiency determination based on the omission of a member of a unitary group shall be limited to the increase in the tax caused by including the omitted member. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Tax Commissioner of the nature and amount of such item and the manner in which such item would affect the computation of Nebraska taxable income.

(3) If no return is filed or a false and fraudulent return is filed with intent to evade the income tax imposed by the Nebraska Revenue Act of 1967, a notice of deficiency determination may be mailed to the taxpayer at any time.

(4) If a taxpayer fails to comply with the requirement of section 77-2775 by not reporting a change or correction increasing his or her federal adjusted gross income, taxable income, or tax liability or a change or correction which is treated in the same manner as if it were a deficiency determination for federal income tax purposes, or by not reporting a change or correction in income taxable in or tax credit allowable by any state to the extent required by the Tax Commissioner by regulation, or in not filing an amended return, a notice of deficiency determination based on a complete examination of the tax liability for the tax years involved may be mailed to the taxpayer at any time.

(5) If the taxpayer, pursuant to section 77-2775, reports a federal change or correction or a state change or correction, files an amended return increasing his or her federal adjusted gross income, taxable income, or tax liability, or reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of a deficiency determination based on a redetermination of Nebraska tax liability to reflect the change or correction may be mailed at any time within two years after such report or amended return was filed.

(6) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to the mailing after such time, the notice of deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

An agreement between the taxpayer and the Internal Revenue Service providing for the extension of the period for the mailing of a notice of deficiency determination of federal income taxes shall constitute an agreement with the Tax Commissioner to extend the period for assessment of income taxes under the Nebraska Revenue Act of 1967 through the ending date shown on the federal agreement. A copy of all such agreements and extensions thereof shall be filed with the Tax Commissioner within thirty days after their execution. If the copy of the extension agreement with the Internal Revenue Service is not filed pursuant to this subsection, the notice of deficiency determination for such taxable year may be mailed at any time within one year of the discovery of the extension by the Tax Commissioner.

(7) For purposes of this section, an income tax return filed before the last day prescribed by the Nebraska Revenue Act of 1967 for the filing thereof, determined without regard to any extension of time to file the return, shall be deemed to be filed on such last day. If a return or withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

(8) When it becomes necessary for the Tax Commissioner to apply for a court order under subsection (2) of section 77-27,109 for the production of books, papers, records, or memoranda or the testimony of any person, the period for the mailing of a notice of deficiency determination shall be tolled from the date the Tax Commissioner first applies to the appropriate court for the order until the last date on which the information or testimony contained in the application for the court order is obtained by the Tax Commissioner.

This subsection shall not apply if the court finds that the information is not relevant to the determination of the tax liability, the information was provided prior to the filing of the application, or the application was not filed within the time period otherwise provided in this section for the mailing of a notice of deficiency determination.

(9) Any extension for an item of entity income that is signed on behalf of the entity or by the entity's tax matters person for federal income tax purposes shall extend the time period during which a notice of deficiency could be mailed to

the partners, shareholders, or members of the entity with respect to any item of entity income.

Source: Laws 1967, c. 487, § 86, p. 1607; Laws 1985, LB 273, § 63; Laws 1987, LB 773, § 25; Laws 1993, LB 345, § 67; Laws 2004, LB 955, § 1; Laws 2005, LB 216, § 17.

77-2787 Income tax; erroneous refund; deficiency; limitation.

An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

Source: Laws 1967, c. 487, § 87, p. 1609.

77-2788 Income tax; delinquency; interest.

(1) If any amount of income tax imposed by the Nebraska Revenue Act of 1967 including tax withheld by an employer or payor is not paid on or before the last date prescribed for payment, interest on such amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, shall be paid for the period from such last date to the date paid.

(2) For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

(3) If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the Tax Commissioner for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(4) Interest prescribed under this section on any income tax including tax withheld by an employer or payor shall be paid on notice and demand and shall be assessed, collected, and paid in the same manner as income taxes. Any reference to the income tax imposed by the Nebraska Revenue Act of 1967 shall be deemed also to refer to interest imposed by this section on such tax.

(5) Interest shall be imposed under this section with respect to any penalty or addition to tax only if such penalty or addition to tax is not paid within ten days of the notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(6) If notice and demand is made for the payment of any amount of tax and if such amount is paid within ten days after the date of such notice and demand, interest under the provisions of this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(7) If any portion of income tax is satisfied by credit of an overpayment, then no interest shall be imposed under the provisions of this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(8) Interest prescribed under this section may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

Source: Laws 1967, c. 487, § 88, p. 1609; Laws 1981, LB 167, § 53; Laws 1984, LB 962, § 28; Laws 1985, LB 273, § 64; Laws 1991, LB 240, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 36.

77-2789 Income tax; failure to file return; penalty.

(1) In case of failure to file any income tax return required under the provisions of the Nebraska Revenue Act of 1967 on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not the result of willful neglect, the Tax Commissioner may add to the amount required to be shown as tax on such return, five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) In case of each failure to file a statement of payment to another person, including the duplicate statement of tax withheld on wages, on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not willful neglect, the Tax Commissioner may assess a penalty against the person so failing to file the statement, in the amount of two dollars for each statement not so filed but the total amount imposed on the delinquent person for all such failure during any calendar year shall not exceed two thousand dollars.

(3) In case of failure to file any return for income tax withheld on the date prescribed therefor, determined with regard to any extension of time to file, the Tax Commissioner may add to the amount required to be shown as tax on such return twenty-five dollars or the amount determined under subsection (1) of this section, whichever is greater.

Source: Laws 1967, c. 487, § 89, p. 1610; Laws 1993, LB 345, § 68.

77-2790 Income tax; deficiency; interest; failure to report or file; prohibited acts; penalties.

(1)(a) If any part of a deficiency is the result of negligence or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the deficiency.

(b) If any part of a requested refund is overstated as a result of negligence, material misstatement, or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the overstatement of the refund.

(2)(a) If any part of a deficiency is the result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the deficiency. This

amount shall be in lieu of any amount determined under subsection (1) of this section.

(b) If any part of a requested refund is overstated as a result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the overstatement of the refund. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(3) If any taxpayer fails to pay all or any part of an installment of any tax due, he or she shall be deemed to have made an underpayment of estimated tax. The Tax Commissioner shall determine the amount of underpayment of estimated tax in accordance with the laws of the United States.

(4) If any taxpayer, with intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, claims an excessive number of exemptions or in any other manner overstates the amount of withholding, he or she shall be guilty of a Class II misdemeanor. If any employer or payor, without intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, fails to make a return and pay a tax withheld by him or her at the time required by or under the act, such employer or payor shall be liable for such taxes and shall pay the same together with interest thereon and any addition to tax assessed pursuant to subsection (1) of this section. Such interest and addition to tax shall not be charged to or collected from the employee or payee by the employer or payor. The Tax Commissioner shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer or payor as are now prescribed by the act for the collection of income tax against a taxpayer.

(5) If any person required to collect, withhold, truthfully account for, and pay over the income tax imposed by the Nebraska Revenue Act of 1967 willfully fails to collect or withhold such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect a penalty equal to the total amount of the tax evaded, not collected, not withheld, or not accounted for and paid over. No addition to tax under subsection (1) or (2) of this section shall be imposed for any offense to which this subsection applies.

(6) If any person with fraudulent intent fails to pay, or to deduct or withhold and pay, any income tax, to make, render, sign, or certify any return of estimated tax, or to supply any information within the time required, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars, in addition to any other amounts required under the income tax provisions of the Nebraska Revenue Act of 1967.

(7) If any person for frivolous or groundless reasons or with the intent to delay or impede the administration of the Nebraska Revenue Act of 1967 (a) fails to pay over any tax due and owing under such act, (b) fails to file any return required under such act, or (c) files what purports to be a return but which does not contain sufficient information from which to determine the correctness of the self-assessment of tax or which contains information that indicates that the self-assessment of tax is substantially incorrect, such person shall pay a penalty of five hundred dollars for each occurrence. The penalty provided by this subsection shall be in addition to any other penalties provided by law.

(8) Any person who aids, procures, advises, or assists in the preparation of any return, affidavit, refund claim, or other document with the knowledge that its use will result in the material understatement of the tax liability of another person or the material overstatement of the amount of a refund of another person shall, in addition to other penalties provided by law, pay a penalty of one thousand dollars with respect to each separate return or other document.

(a) For the purposes of this subsection, a person furnishing typing, reproducing, or other mechanical assistance shall not be treated as having aided or assisted in the preparation of such document.

(b) A determination of a material deficiency shall not be sufficient to show that a person has aided or assisted in a material understatement of the tax liability of another person.

(c) The penalty in this subsection shall not be imposed more than once on any person for having aided or assisted in the preparation of documents for the same taxpayer, the same tax, and the same tax period regardless of the number of documents involved.

(d) Such penalty shall apply whether or not the understatement is with the consent of the person authorized to present the return, affidavit, refund claim, or other document.

(9) The additions to the income tax and penalties relating thereto provided by the Nebraska Revenue Act of 1967 shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes, and any reference in such act to income tax or the tax imposed by the act shall be deemed also to refer to additions to the tax and penalties provided by this section. For purposes of the deficiency procedures provided in section 77-2776, this subsection shall not apply to:

(a) Any addition to tax under subsection (1) of section 77-2789 except as to that portion attributable to a deficiency;

(b) Any addition to tax for underpayment of estimated tax as provided in subsection (3) of this section; or

(c) Any additional penalty under subsection (6), (7), or (8) of this section.

(10) For purposes of subsections (1) and (2) of this section relating to deficiencies resulting from negligence or fraud, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return determined with regard to any extension of time for such filing.

(11) For purposes of subsections (5) and (6) of this section, the term person shall include an individual, corporation, partnership, or limited liability company, or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership or limited liability company, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(12) If any person fails to comply with the reporting or filing requirements of sections 77-2772, 77-2775, and 77-2786 or the rules and regulations adopted and promulgated thereunder, the Tax Commissioner may impose, assess, and collect a penalty against such person for each instance of noncompliance of twenty-five percent of the tax due. Such amount shall be in addition to any

other penalty, tax, or interest otherwise imposed by law for such noncompliance.

(13) If any nonresident individual provides false information or statements to an employer or payor regarding the portion of his or her wages or payments that are subject to withholding for this state which if used would result in the amount withheld being less than seventy-five percent of his or her income tax liability on such wages or payments or if any employer or payor uses such information when the employer or payor knows such information is false or maintains records which show such information is false, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from such individual, payor, or employer the penalties provided in subsections (5) and (6) of this section.

(14) If any employer or payor employing twenty-five or more employees who is required to withhold and pay over income tax imposed by the Nebraska Revenue Act of 1967 fails to either (a) withhold at least one and one-half percent of the wages of any employee or (b) obtain satisfactory evidence from the employee justifying a lower withholding amount as required by subdivision (1)(b) of section 77-2753, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars per violation.

Source: Laws 1967, c. 487, § 90, p. 1611; Laws 1984, LB 962, § 29; Laws 1985, LB 273, § 65; Laws 1988, LB 1064, § 3; Laws 1993, LB 121, § 511; Laws 1993, LB 345, § 69; Laws 2007, LB223, § 14; Laws 2008, LB1004, § 2.

77-2791 Income tax; overpayment; refund; credit; Tax Commissioner; rules and regulations.

(1) The Tax Commissioner, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by the tax laws of this state on the person who made the overpayment, and the balance shall be refunded by the State Treasurer out of the General Fund.

(2) If the amount allowable as a credit for income tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(3) If there has been an overpayment of tax required to be deducted and withheld under section 77-2753, refund shall be made to the employer or the payor only to the extent that the amount of the overpayment was not deducted and withheld by the employer or the payor.

(4) The Tax Commissioner may adopt and promulgate rules and regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year.

(5) If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

Source: Laws 1967, c. 487, § 91, p. 1613; Laws 1984, LB 962, § 30; Laws 1989, LB 258, § 10.

77-2792 Income tax; Tax Commissioner; abate unpaid assessment; waive penalties or interest.

(1) The Tax Commissioner may abate the unpaid portion of the assessment of any income tax or any liability in respect thereto which (a) is excessive in amount, (b) is assessed after the expiration of the period of limitations properly applicable thereto, (c) is erroneously or illegally assessed, or (d) is the result of an inconsistent position under section 1311 of the Internal Revenue Code of 1986.

(2) No claim for abatement shall be filed by a taxpayer in respect to an assessment of any income tax imposed under the Nebraska Revenue Act of 1967.

(3) The Tax Commissioner may abate the unpaid portion of the assessment of any tax or any liability in respect thereto if he or she determines under uniform rules prescribed by him or her that the administration and collection costs involved would not warrant collection of the amount due.

(4) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by such act or interest on delinquent taxes at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1967, c. 487, § 92, p. 1614; Laws 1991, LB 240, § 2; Laws 1991, LB 773, § 18; Laws 1992, Fourth Spec. Sess., LB 1, § 37; Laws 2008, LB914, § 13.

77-2793 Claim for credit or refund; limitation.

(1) A claim for credit or refund of an overpayment of any income tax imposed by the Nebraska Revenue Act of 1967 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund unless a claim for credit or refund is filed by the taxpayer within such period.

(2) If the claim is filed by the taxpayer during the three-year period prescribed in subsection (1) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return if such return was filed prior to the end of the extension of time. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

(3) If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection (1) of this section for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(4) If a taxpayer is required by subsection (1) of section 77-2775 to report a change or correction in federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the Tax Commissioner, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner. If the report or amended return is not filed within the sixty-day period specified in such subsection, interest on any resulting refund or credit shall cease to accrue after such sixtieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(5)(a) If a taxpayer is required by subsection (2) of section 77-2775 to report a change or correction in the amount of income taxable or tax credit allowable in one or more states and such changes or corrections when reflected in the return filed under the Nebraska Revenue Act of 1967 as most recently amended would result in an overpayment of tax, a claim for credit or refund shall be filed by the taxpayer within the earlier of (i) two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner or (ii) ten years from the due date of the return.

(b) If the report or amended return is not filed within the sixty-day period specified in such subsection, interest on any resulting refund or credit shall cease to accrue after such sixtieth day. The amount of such credit or refund shall not exceed the lesser of (i) the reduction in tax attributable to the change or correction in the amount of income taxable or the credit allowable in such other state in the return filed under the Nebraska Revenue Act of 1967 or (ii) the increase in tax actually paid to such other state or states.

(c) This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection. This subsection shall apply to changes or corrections which become final on or after May 1, 1993.

(6) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback derived from or connected with Nebraska sources, the claim may be made under rules and regulations prescribed by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States.

(7) For purposes of this section and section 77-2795, a timely filed petition for redetermination shall be considered a claim for credit or refund filed on the date the notice of deficiency determination was mailed.

Source: Laws 1967, c. 487, § 93, p. 1614; Laws 1985, LB 273, § 66; Laws 1987, LB 773, § 26; Laws 1993, LB 345, § 70; Laws 2008, LB914, § 14.

Though this section provides a procedure by which a taxpayer may obtain a refund of overpayment of income taxes, it is exclusive and does not provide for class actions. *Boersma v. Karnes*, 227 Neb. 329, 417 N.W.2d 341 (1988).

United States District Court had original jurisdiction of cases to enjoin collection of state tax on income earned by Indians on reservations notwithstanding availability of state remedy. *Omaha Tribe of Indians v. Peters*, 516 F.2d 133 (8th Cir. 1975).

77-2794 Income tax; overpayment; interest.

(1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, upon any overpayment in respect to the income tax imposed by the Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) The date of overpayment shall be the last day prescribed for filing the original return of such tax;

(b) Any return filed before the last day prescribed for the filing thereof, determined without regard to any extension of time to file the return, shall be considered as filed on such last day;

(c) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(d) If at the time an overpayment is to be refunded, the taxpayer also has a reported underpayment of the same tax in another year: (i) If the overpayment is for a taxable year ending before the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of underpayment; (ii) if the overpayment is for a taxable year ending after the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of overpayment; or (iii) if the overpayment is one for which interest is not allowed under this section, the overpayment shall be applied as of the date of the filing of the claim for refund; and interest shall be allowed for any remaining overpayment as provided in subdivision (a) of this subsection;

(e) The period of overpayment during which interest shall be allowed shall not include any period during which the overpayment continued due to the unreasonable delay by the taxpayer in filing the claim for refund. For this purpose, the burden of proof shall be on the taxpayer to show that a delay of more than ninety days after all of the facts required to prepare a correct claim for refund are available is not unreasonable; and

(f) The period of overpayment during which interest shall be allowed shall not include any period during which an agreement between the taxpayer and the Internal Revenue Service was not filed as required by subsection (6) of section 77-2786 and the first ninety days after such agreement is filed.

(3) If any overpayment of income tax imposed by the Nebraska Revenue Act of 1967 is refunded within ninety days after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ninety days after any original return, and any amended return filed to carry back a loss was filed, whichever is later, no interest shall be allowed under this section on overpayment. In the case of amended returns filed for any reason other than

to carry back a loss, interest shall be allowed as provided in subsection (1) of this section.

Source: Laws 1967, c. 487, § 94, p. 1616; Laws 1981, LB 167, § 54; Laws 1991, LB 240, § 3; Laws 1992, Fourth Spec. Sess., LB 1, § 38; Laws 1993, LB 345, § 71; Laws 1996, LB 1041, § 8; Laws 2004, LB 955, § 2; Laws 2008, LB915, § 5.

77-2795 Income tax; claim for refund; grounds; state; oral hearing.

Every claim for refund shall be filed with the Tax Commissioner in writing and shall state the specific grounds upon which it is founded. The Tax Commissioner shall grant the taxpayer or his authorized representative an opportunity for an oral hearing if the taxpayer so requests.

Source: Laws 1967, c. 487, § 95, p. 1617.

77-2796 Income tax; Tax Commissioner; claim for refund; denial; notice.

If the Tax Commissioner disallows a claim for refund, he or she shall notify the taxpayer accordingly. The action of the Tax Commissioner denying a claim for refund is final upon the expiration of sixty days after the date when he or she mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as hereinafter provided.

Source: Laws 1967, c. 487, § 96, p. 1617; Laws 2008, LB914, § 15.

77-2797 Income tax; Tax Commissioner; refund claim; notice of action; limitation; effect.

The Tax Commissioner shall mail a notice of action on any refund claim within six months after the claim is filed. The taxpayer may, prior to notice of action on the refund claim, consider the claim disallowed.

Source: Laws 1967, c. 487, § 97, p. 1617.

77-2798 Income tax; claim for refund; action; where brought.

Except in cases involving the proposed assessment of a deficiency, any taxpayer who claims that the income tax he has paid under the Nebraska Revenue Act of 1967 is void in whole or in part, may bring an action, upon the grounds set forth in his claim for refund, against the Tax Commissioner for recovery of the whole or any part of the amount paid. Such suit against the Tax Commissioner may be instituted in a district court of Nebraska of appropriate jurisdiction where the taxpayer resides or in the district court of Lancaster County.

Source: Laws 1967, c. 487, § 98, p. 1617.

This section does not apply when a taxpayer receives a proposed assessment of deficiency. Rather, the exclusive remedy to contest an income tax deficiency assessment is the filing of a written protest with the Tax Commissioner within 90 days of the

date of the mailing of the proposed assessment of a deficiency pursuant to sections 77-27,127 and 77-27,128. If a timely protest is not filed by the taxpayer, the proposed assessment becomes final. *Sack v. State*, 259 Neb. 463, 610 N.W.2d 385 (2000).

77-2799 Income tax; claim for refund; filing required; action.

No suit shall be maintained for the recovery of any income tax imposed by the provisions of the Nebraska Revenue Act of 1967 alleged to have been erroneously paid until a claim for refund has been filed with the Tax Commis-

sioner as provided in section 77-2795 and the Tax Commissioner has denied the refund.

Source: Laws 1967, c. 487, § 99, p. 1617.

77-27,100 Income tax; claim for refund; limitation.

The action authorized in section 77-2798 shall be filed within three years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within sixty days after the denial of a claim for refund by the Tax Commissioner.

Source: Laws 1967, c. 487, § 100, p. 1617; Laws 2008, LB914, § 16.

77-27,101 Income tax; action for refund; judgment.

In any action for a refund, the court may render judgment for the taxpayer for any part of the tax, interest, penalties, or other amounts found to be erroneously paid, together with interest on the amount of the overpayment. The amount of any judgment against the Tax Commissioner shall first be credited against any taxes, interest, penalties, or other amounts due from the taxpayer under the tax laws of Nebraska and the remainder refunded.

Source: Laws 1967, c. 487, § 101, p. 1618.

77-27,102 Income tax; collection; unpaid tax; notice.

(1) The income tax imposed by the Nebraska Revenue Act of 1967 shall be collected by the Tax Commissioner and he may establish the mode or time for the collection of any amount due under the provisions of such act if not otherwise specified. The Tax Commissioner shall, upon request, give a receipt for any income tax collected under such act. The Tax Commissioner may authorize incorporated banks or trust companies which are depositaries or fiscal agents of this state to receive and give a receipt for any income tax imposed under the provisions of such act, in such manner, at such times, and under such conditions as he may prescribe; and the Tax Commissioner shall prescribe the manner, times, and conditions under which the receipt of tax by such banks and trust companies is to be treated as payment of tax to the Tax Commissioner.

(2) The Tax Commissioner shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, additional amount, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof within sixty days of the date of the notice. Such notice shall be left at the dwelling place or usual place of business of such person or shall be sent by mail to such person's last-known address.

Source: Laws 1967, c. 487, § 102, p. 1618.

77-27,103 Income tax; due and unpaid; collection; lien foreclosure.

Any (1) tax due and unpaid under the provisions of the Nebraska Revenue Act of 1967, (2) interest, penalty, or addition to such tax, (3) tax, interest, penalty, or addition to such tax which has been erroneously refunded, and (4) deficiency shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name

of the State of Nebraska, in the district court of the county wherein the taxpayer resides or owns property.

Source: Laws 1967, c. 487, § 103, p. 1618.

77-27,104 Repealed. Laws 1986, LB 1027, § 226.

77-27,105 Repealed. Laws 1986, LB 1027, § 226.

77-27,106 Repealed. Laws 1986, LB 1027, § 226.

77-27,107 Income tax; demand for payment; notice; collection.

When notice and demand for the payment of income tax is given to a taxpayer and it appears to the Tax Commissioner that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he or she shall send a copy of the notice provided for in the Uniform State Tax Lien Registration and Enforcement Act to the taxpayer at his or her last-known address together with a notice that such notice has been filed with the appropriate filing officer. Thereafter, the Tax Commissioner may authorize the institution of any action or proceeding to collect or enforce such claim in any place and by any procedure that a civil judgment of a court of record of this state could be collected or enforced. The Tax Commissioner may also in his or her discretion designate agents or retain counsel for the purpose of collecting any income taxes due under the Nebraska Revenue Act of 1967. He or she may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof and he or she may require of them bonds or other security for the faithful performance of their duties. The Tax Commissioner may enter into agreements with the tax departments of other states and the District of Columbia for the collection of income taxes from persons found in those jurisdictions who are delinquent in the payment of income taxes imposed under such act.

Source: Laws 1967, c. 487, § 107, p. 1623; Laws 1986, LB 1027, § 209; Laws 1993, LB 161, § 4.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-27,108 Income tax; collection; comity with other states.

The courts of this state shall recognize and enforce liabilities for income taxes lawfully imposed by any other state which extends a like comity to this state, and the duly authorized office of any such state may sue for the collection of such a tax in the courts of this state. A certificate by the Secretary of State of such other state that an office suing for the collection of such a tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purpose of this section, the word taxes shall include additions to tax, interest and penalties. Liability for such taxes, additions to tax, interest and penalties shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such taxes, additions to tax, interest and penalties due this state under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 108, p. 1623.

77-27,109 Income tax; refusal to file return; refusal to produce records; Tax Commissioner; powers; contempt proceedings.

(1) If any person willfully refuses to file an income tax return required by the provisions of the Nebraska Revenue Act of 1967, the Tax Commissioner may apply to a judge of the district court for the county in which the person resides, or, in the case of a corporation, the county in which it has its principal place of business in Nebraska, for an order directing such person to file the required return. If such person fails or refuses to obey such order, he shall be guilty of contempt of court.

(2) If any person willfully refuses to make available any books, papers, records or memoranda for examination by the Tax Commissioner or his representative, or willfully refuses to attend and testify, pursuant to the powers conferred on the Tax Commissioner by subsection (3) of section 77-27,119, the Tax Commissioner may apply to a judge of the district court for the county where such person resides, for an order directing such person to comply with the Tax Commissioner's request for books, papers, records or memoranda or for his attendance and testimony. If the books, papers, records or memoranda required by the Tax Commissioner are in the custody of a corporation, the order of the court may be directed to any principal officer of such corporation. If a person fails or refuses to obey such order, he shall be guilty of contempt of court.

Source: Laws 1967, c. 487, § 109, p. 1624.

77-27,110 Income tax; liability of transferee.

(1) The liability, at law or in equity, of a transferee of property of a taxpayer for any income tax, addition to such tax, penalty or interest due the Tax Commissioner under the provisions of the Nebraska Revenue Act of 1967, shall be assessed, paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates. Transferee shall include donee, heir, legatee, devisee, distributee, successor, and assignee.

(2) If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect had death not occurred.

Source: Laws 1967, c. 487, § 110, p. 1624.

One found to be a "successor" pursuant to section 77-2707 inated "successor" under this section. Gottsch Feeding Corp. v. would logically be considered the kind of "transferee" denom- State, 261 Neb. 19, 621 N.W.2d 109 (2001).

77-27,111 Income tax; taxpayer; depart from state; conceal property; Tax Commissioner; powers.

(1) If the Tax Commissioner finds that a taxpayer is about to (a) depart from the State of Nebraska, (b) remove his property therefrom, (c) conceal himself or his property therein, or (d) do any other act tending to prejudice or render wholly or partially ineffectual any proceedings to collect the income tax for the preceding or current taxable year unless such proceedings be brought without delay, the Tax Commissioner shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for immediate payment of any income tax due for this period, whether or not the time otherwise allowed by law for filing returns and paying the tax has expired. Such tax shall thereupon

become immediately due and payable. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, such findings of the Tax Commissioner, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(2) A taxpayer who is not in default in making any income tax return or paying any income taxes assessed under the provisions of the Nebraska Revenue Act of 1967 may furnish to the Tax Commissioner, under regulations to be prescribed by the Tax Commissioner, security that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Tax Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section.

(3) If security is approved and accepted pursuant to the provisions of subsection (2) of this section and such further or other security with respect to the tax or taxes covered thereby is given as the Tax Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes.

(4) In the case of a bona fide resident of Nebraska about to depart from the state the Tax Commissioner may waive any or all of the requirements placed upon the taxpayer by the provisions of this section.

Source: Laws 1967, c. 487, § 111, p. 1625.

77-27,112 Income tax; taxpayer; bankruptcy; Tax Commissioner; tax; assessment; collection.

(1) Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or any state or territory or of the District of Columbia, any deficiency, together with additions to tax and interest provided by law, determined by the Tax Commissioner, may be immediately assessed.

(2) Claims for the deficiency and such additions to income tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the Tax Commissioner under the provisions of section 77-2778. No protest against a proposed assessment shall be filed with the Tax Commissioner after the adjudication of bankruptcy or appointment of the receiver.

Source: Laws 1967, c. 487, § 112, p. 1626.

77-27,113 Income tax; evasion; penalty.

Any person who willfully attempts in any manner to evade any income tax imposed by the provisions of the Nebraska Revenue Act of 1967 or the payment thereof shall, in addition to other penalties provided by law, be guilty of a Class IV felony.

Source: Laws 1967, c. 487, § 113, p. 1626; Laws 1977, LB 39, § 241.

77-27,114 Income tax; failure to collect, withhold, deduct, account for, or pay; penalty.

Any person required under the provisions of the Nebraska Revenue Act of 1967 to collect, withhold, deduct, and truthfully account for and pay over any income tax imposed by the act who willfully fails to collect, withhold, deduct, or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a Class IV felony.

Source: Laws 1967, c. 487, § 114, p. 1626; Laws 1977, LB 39, § 242; Laws 1991, LB 773, § 19.

77-27,115 Income tax; taxpayer; failure to pay, account or keep records; penalty.

Any person required under the provisions of the Nebraska Revenue Act of 1967 to pay any income tax or estimated tax, or required by the provisions of such act to make a return, other than a return of estimated tax, keep any records, or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records, or supply such information, at the time or times required by law, shall, in addition to other penalties provided by law, be guilty of a Class II misdemeanor.

Source: Laws 1967, c. 487, § 115, p. 1627; Laws 1969, c. 645, § 12, p. 2562; Laws 1977, LB 39, § 243.

Portion of this section making violations of regulations of Tax Commissioner a misdemeanor was invalid, but invalid portion was severable. *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

77-27,116 Income tax; false return; penalty.

Any person who willfully makes and subscribes any return, statement or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or willfully aids or procures the preparation or presentation in a matter arising under the income tax provisions of the Nebraska Revenue Act of 1967 of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter shall be guilty of a Class IV felony.

Source: Laws 1967, c. 487, § 116, p. 1627; Laws 1977, LB 39, § 244.

77-27,117 Income tax; prosecution for violation of act; limitation; Attorney General; concurrent jurisdiction.

Any prosecution under income tax provisions of the Nebraska Revenue Act of 1967 shall be instituted within three years after the commission of the offense, except that the period of limitation shall be four years for the offenses described in sections 77-27,113, 77-27,115, and 77-27,116. The failure to do any act required by or under the income tax provisions of such act shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution may be conducted in any county where the person or corporation to whose liability the proceeding relates resides, or has a place of business or in any county in which such crime is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of offenses.

Source: Laws 1967, c. 487, § 117, p. 1627; Laws 2006, LB 1003, § 7.

77-27,118 Income tax; corporate officer or employee; liable for tax; when.

Any corporate officer or employee with the duty to pay income taxes imposed upon a corporation or to perform some other act required of a corporation shall be personally liable under section 77-1783.01 for the payment of such taxes or penalties in the event of willful failure on his or her part to perform such act.

Source: Laws 1967, c. 487, § 118, p. 1628; Laws 1996, LB 1041, § 9.

77-27,119 Income tax; Tax Commissioner; administer and enforce sections; prescribe forms; content; examination of return or report; uniform school district numbering system; audit by Auditor of Public Accounts or Legislative Auditor; wrongful disclosure; exception; penalty.

(1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the high school district in which he or she lives and the county in which the high school district is headquartered. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such

matters and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, any employee of the State Treasurer or the Department of Administrative Services, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of

individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure to the Department of Labor of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Labor to be delinquent in the payment of combined tax or in the repayment of benefit overpayments, and such disclosure shall be strictly limited to information necessary for the administration of the Employment Security Law, (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, or (j) to prohibit the disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child, spousal, or medical support. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the

fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(10)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. The Auditor of Public Accounts or Legislative Performance Audit Section shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts or Legislative Performance Audit Section. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No officer or employee of the Auditor of Public Accounts or Legislative Performance Audit Section employee shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts or former Legislative Performance Audit Section employee.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or

possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts or the Legislative Auditor of the Legislative Performance Audit Section shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts or the Legislative Performance Audit Section shall, as a condition for receiving tax returns and tax return information: (a) Subject employees involved in the audit to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts or Legislative Performance Audit Section for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Source: Laws 1967, c. 487, § 119, p. 1628; Laws 1969, c. 694, § 1, p. 2689; Laws 1971, LB 527, § 1; Laws 1971, LB 571, § 1; Laws 1973, LB 526, § 6; Laws 1979, LB 302, § 1; Laws 1981, LB 170, § 7; Laws 1984, LB 962, § 32; Laws 1985, LB 273, § 68; Laws 1985, LB 344, § 8; Laws 1985, LB 345, § 1; Laws 1989, LB 611, § 3; Laws 1990, LB 431, § 1; Laws 1991, LB 549, § 22; Laws 1993, LB 46, § 17; Laws 1993, LB 345, § 72; Laws 1997, LB 129,

§ 2; Laws 1997, LB 720, § 23; Laws 1997, LB 806, § 3; Laws 2002, LB 989, § 19; Laws 2005, LB 216, § 18; Laws 2005, LB 312, § 15; Laws 2006, LB 588, § 9; Laws 2006, LB 956, § 11; Laws 2008, LB915, § 6.

Cross References

Employment Security Law, see section 48-601.

International Fuel Tax Agreement Act, see section 66-1401.

Nebraska Revenue Act of 1967 was not an unlawful delegation of legislative power to the United States. *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

77-27,119.01 Income tax form; contribution to Wildlife Conservation Fund.

The Tax Commissioner shall include on the individual income tax return form space in which the individual taxpayer may, if a refund is due, designate one dollar or a greater amount of such refund as a contribution to the Wildlife Conservation Fund created in section 37-811.

Source: Laws 1984, LB 466, § 6; Laws 1987, LB 773, § 27; Laws 1998, LB 922, § 408; Laws 2007, LB299, § 19.

77-27,119.02 Tax Commissioner; provide information to Legislative Fiscal Analyst.

Pursuant to section 50-420 and the duties prescribed in section 77-27,159, the Tax Commissioner shall upon request provide the Legislative Fiscal Analyst all information used to develop revenue projections under section 77-27,159 and all information used to develop fiscal notes that may relate to revised revenue forecasts. Such information shall be provided in a form which does not violate section 77-27,119.

Source: Laws 1987, LB 773, § 28; Laws 1992, LB 988, § 17.

77-27,119.03 Disclosure of election to be taxed as retailer; authorized.

Notwithstanding any other provision of the Nebraska Revenue Act of 1967, the Tax Commissioner or any employee of the Department of Revenue may disclose the election of another person made pursuant to section 77-2701.10.

Source: Laws 1989, LB 762, § 8; Laws 1992, LB 871, § 63; Laws 2003, LB 282, § 79.

77-27,119.04 Income tax form; contribution to Campaign Finance Limitation Cash Fund.

Beginning with the tax form filed for the 1994 tax year, the Tax Commissioner shall include on the individual income tax form space in which the individual taxpayer may, if a refund is due, designate one dollar or a greater amount of such refund as a contribution to the Campaign Finance Limitation Cash Fund created in section 32-1610.

Source: Laws 1993, LB 587, § 21; Laws 2003, LB 72, § 4.

77-27,119.05 Income tax form; contribution to Nebraska State Fair.

On the individual income tax return forms for tax years 2003, 2004, and 2005, the Tax Commissioner shall include space in which the individual taxpayer may, if a refund is due, designate one dollar or a greater amount of

the refund as a contribution to the Nebraska State Fair. In the case of a joint return, each spouse may designate one dollar or a greater amount of the refund as a contribution to the fund.

Source: Laws 2003, LB 72, § 2.

77-27,119.06 Nebraska State Fair contributions; disposition.

The Tax Commissioner shall determine the total amount of contributions designated pursuant to section 77-27,119.05 each year, and the State Treasurer shall transfer such amount from the General Fund to the State Fair Cash Fund.

Source: Laws 2003, LB 72, § 3.

77-27,120 Income tax; Tax Commissioner; agreement with; effect.

(1) The Tax Commissioner, or any person authorized in writing by him, is authorized to enter into an agreement with any person relating to the liability of such person, or of the person or estate for whom he acts, in respect to the tax imposed by the provisions of the Nebraska Revenue Act of 1967 for any taxable period.

(2) Such agreement shall be final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(a) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this state; and

(b) In any suit, action or proceeding under such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

Source: Laws 1967, c. 487, § 120, p. 1631.

77-27,121 Income tax; Governor; Secretary of the Treasury; agreement.

The Governor, with the advice and consent of the Legislature, is authorized to enter into an agreement with the Secretary of the Treasury of the United States or his delegate under which, to the extent provided by the terms of the agreement, the secretary or his delegate will administer, enforce, and collect such income tax on behalf of the state. The cost of the services performed by the secretary or his delegate in administering, enforcing or collecting an income tax under the terms of such an agreement may be paid from the appropriations for the general operations of the Tax Commissioner.

Source: Laws 1967, c. 487, § 121, p. 1631.

77-27,122 Income tax; Governor; Secretary of the Treasury; agreement; costs; payment.

The Governor, with the advice and consent of the Legislature, is authorized to enter into an agreement with the Secretary of the Treasury of the United States or his delegate under which, to the extent provided by the terms of the agreement, the Governor or his delegate will undertake to conduct on behalf of the United States any administrative, enforcement or collection function in respect to the federal income tax. Such agreement shall make provision for the payment by the United States of the cost of the services performed on its behalf.

Source: Laws 1967, c. 487, § 122, p. 1631.

77-27,123 Income tax; service in armed forces; effect.

(1) The period of service in the armed forces of the United States in combat zone plus any period of continuous hospitalization outside this state attributable to such service plus the next one hundred eighty days shall be disregarded in determining, under regulations to be promulgated by the Tax Commissioner, whether any act required by the provisions of the Nebraska Revenue Act of 1967 was performed by a taxpayer or his representative within the time prescribed therefor.

(2) In the case of any individual who dies while in active service as a member of the armed forces of the United States, if such death occurred while the individual was serving in a combat zone or as a result of wounds, disease, or injury incurred while so serving, the income tax imposed by the provisions of the Nebraska Revenue Act of 1967 shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year ending on or after the first day he so served in a combat zone.

Source: Laws 1967, c. 487, § 123, p. 1632.

77-27,124 Repealed. Laws 1987, LB 6, § 3.

(d) GENERAL PROVISIONS

77-27,125 Tax, report, claim, notice, petition; mailing; postmark stamped; date of delivery.

If any tax, report, claim, statement, notice, petition, or other document including, to the extent authorized by the Tax Commissioner, a return of estimated tax, required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of the Nebraska Revenue Act of 1967 is, after such period or such date, delivered by United States mail to the Tax Commissioner, or the officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This section shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the Tax Commissioner. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the Tax Commissioner. To the extent that the Tax Commissioner shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. The provisions of this section shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulations of the Tax Commissioner. When the last day prescribed under the authority of the Nebraska Revenue Act of 1967, including any extension of time, for performing any act falls on Saturday, Sunday, or a day considered a holiday by the Tax Commissioner's office, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a day considered a holiday by the Tax Commissioner's office. The Tax Commissioner shall, upon request, give a receipt for any document filed under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 125, p. 1632; Laws 1984, LB 962, § 33.

77-27,126 Lists of taxpayers; other information; department provide; when.

The Department of Revenue shall not be required to provide lists of taxpayers or any other information from applications, returns, or other reports to any person except for statistical compilations and for the purposes of enforcing the tax laws of this state or when the department or the Tax Commissioner is specifically required to provide certain information under the laws of Nebraska.

Source: Laws 1991, LB 773, § 7.

77-27,127 Tax Commissioner; final action; appeal.

Any final action of the Tax Commissioner may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The appeal provided by this section shall be the exclusive remedy available to any taxpayer, and no other legal or equitable proceedings shall issue to prevent or enjoin the assessment or collection of any tax imposed under the Nebraska Revenue Act of 1967. The appeal provided by this section shall be in the district court for Lancaster County except as provided in section 77-2798.

Source: Laws 1967, c. 487, § 127, p. 1634; Laws 1983, LB 101, § 2; Laws 1988, LB 352, § 159; Laws 2005, LB 216, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

The exclusive remedy to contest an income tax deficiency assessment is the filing of a written protest with the Tax Commissioner within 90 days of the date of the mailing of the proposed assessment of a deficiency. If a timely protest is not filed by the taxpayer, the proposed assessment becomes final. *Sack v. State*, 259 Neb. 463, 610 N.W.2d 385 (2000).

The Tax Commissioner is not a person aggrieved as provided in section 84-917 and therefore does not have the right to appeal a decision of the State Board of Equalization and Assessment. *Karnes v. Wilkinson Mfg.*, 220 Neb. 150, 368 N.W.2d 788 (1985).

77-27,128 Judicial review; exclusive remedy.

The review provided by section 77-27,127 shall be the exclusive remedy available to any taxpayer for the review of the action in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of this state to prevent or enjoin the assessment or collection of any tax imposed under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 128, p. 1634; Laws 1983, LB 101, § 3.

The exclusive remedy to contest an income tax deficiency assessment is the filing of a written protest with the Tax Commissioner within 90 days of the date of the mailing of the

proposed assessment of a deficiency. If a timely protest is not filed by the taxpayer, the proposed assessment becomes final. *Sack v. State*, 259 Neb. 463, 610 N.W.2d 385 (2000).

77-27,129 Tax Commissioner; tax; deficiency; collection.

The Tax Commissioner may collect a deficiency notwithstanding that an application for review in respect of such deficiency has been made by the taxpayer, unless the taxpayer at or before the time his application for review is made, has paid the deficiency, or has deposited with the Tax Commissioner the amount of the deficiency or has filed with the Tax Commissioner a bond, in the amount of the deficiency being contested including interest and other amounts as well as all costs and charges which may accrue against him in the prosecution of the proceeding and issued by a person authorized under the laws of this state to act as surety, conditioned upon the payment of the deficiency including interest and other amounts as finally determined and such costs and charges.

Source: Laws 1967, c. 487, § 129, p. 1634.

77-27,130 Tax Commissioner; tax; deficiency; disallowed by court; effect; frivolous objections; damages.

(1) If the amount of a deficiency determined by the Tax Commissioner is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor or, if payment has not been made, shall be abated.

(2) If the deficiency determined by the Tax Commissioner is disallowed by the court of review, the taxpayer shall have his or her costs as they would be allowable under the provisions of section 77-27,129. If the deficiency is disallowed in part, the court in its discretion may award the taxpayer a proportionate part of his or her costs.

(3) An assessment of a proposed income deficiency by the Tax Commissioner shall become final upon the expiration of the period specified in section 77-2777 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided or, if the protest provided in section 77-2778 has been filed, upon the expiration of time provided for filing a petition for judicial review, upon the final judgment of the reviewing court, or upon the rendering by the Tax Commissioner of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making a petition for the review of a determination of the Tax Commissioner, the determination shall be deemed final on the date the notice of decision is sent by certified mail or registered mail to the taxpayer as provided in section 77-2779.

(4) If any person institutes proceedings merely for delay or raises frivolous objections to compliance with the Nebraska Revenue Act of 1967, the Tax Commissioner may apply to a judge of the district court for the county where such person resides for damages in an amount not in excess of five thousand dollars for each tax year to be awarded to the State of Nebraska for expenses incurred by the Tax Commissioner in securing compliance. Damages so awarded by the court shall be payable upon notice and demand by the Tax Commissioner and shall be collected in the same manner as delinquent taxes under such act.

Source: Laws 1967, c. 487, § 130, p. 1635; Laws 1984, LB 962, § 34.

77-27,131 Tax Commissioner; security required; when; sale of security; notice.

(1) Unless otherwise specifically provided, the Tax Commissioner, whenever he or she deems it necessary to insure compliance with the provisions of the Nebraska Revenue Act of 1967, may require any person subject to the act to place with him or her such security as he or she may determine. The amount of the necessary security shall be fixed by the Tax Commissioner but, except as provided in this section, shall not be greater than three times the estimated average amount payable for the reporting period by such persons pursuant to the act. In the case of persons habitually delinquent in their obligations under the act, the amount of the security shall not be greater than five times the estimated average amount payable for the reporting period by such persons pursuant to the act. The amount of the security may be increased or decreased by the Tax Commissioner at any time, subject to the limitations set forth in this subsection.

(2) The Tax Commissioner may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or this state which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest, or penalties due on any amount required to be collected. Notice of the sale shall be given to the person who deposited the security at least ten days before the sale. The notice may be given personally or by mail addressed to the person at the address furnished to the Tax Commissioner and as it appears in the records of the Tax Commissioner. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security.

Source: Laws 1967, c. 487, § 131, p. 1636; Laws 1991, LB 773, § 20; Laws 2007, LB223, § 15.

77-27,132 Revenue Distribution Fund; created; use; collections under act; disposition.

(1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the State Treasurer shall credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers, except that the proceeds equal to any sales tax rate provided for in section 77-2701.02 that is in excess of five percent derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers shall be credited to the Highway Allocation Fund. The balance of all amounts collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Source: Laws 1967, c. 487, § 132, p. 1636; Laws 1969, c. 695, § 1, p. 2692; Laws 1969, c. 313, § 2, p. 1130; Laws 1971, LB 53, § 9; Laws 1972, LB 343, § 23; Laws 1975, LB 233, § 2; Laws 1976, LB 868, § 1; Laws 1984, LB 466, § 5; Laws 1986, LB 599, § 23; Laws 1986, LB 539, § 3; Laws 1987, LB 730, § 30; Laws 1989, LB 258, § 11; Laws 2003, LB 759, § 22; Laws 2006, LB 904, § 4; Laws 2007, LB305, § 1.

77-27,132.01 Tax Refund Fund balance; transfer; allocation.

The balance of the Tax Refund Fund shall, on June 30, 1989, be transferred by the State Treasurer to the Revenue Distribution Fund and shall be allocated as required by the sections crediting amounts to the Tax Refund Fund prior to such date.

Source: Laws 1989, LB 258, § 13.

77-27,133 Nonresident; deficiency; action; process.

Unless otherwise specifically provided for in the Nebraska Revenue Act of 1967, a deficiency assessed against a person not within this state may be prosecuted by an action in any court in this state having jurisdiction of the subject matter, and the court shall have in personam jurisdiction of such person in any such action for taxes imposed and assessed under the provisions of such act.

Source: Laws 1967, c. 487, § 133, p. 1637; Laws 1983, LB 447, § 91.

77-27,134 Tax Commissioner; destroy obsolete returns, when.

Unless specifically provided for in the Nebraska Revenue Act of 1967, after any period of limitations fixed by such act, the Tax Commissioner may destroy obsolete returns.

Source: Laws 1967, c. 487, § 134, p. 1637.

77-27,135 Notice; how given.

Whenever any notice required to be given by the Tax Commissioner under the provisions of the Nebraska Revenue Act of 1967 may be given by mail, it shall be given by either registered or certified mail, return receipt requested, and not otherwise.

Source: Laws 1967, c. 487, § 135, p. 1637.

77-27,135.01 Court ruling of unconstitutionality; effect.

Any decision by a court of competent jurisdiction that a tax exemption or reduction or other special preference provided to an activity by the Nebraska Revenue Act of 1967 is unconstitutional for any reason shall result in the prospective or retroactive taxation of such activity and not the nontaxation of other activity.

Source: Laws 1994, LB 938, § 2.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,136 Aid to certain governmental subdivisions; appropriation.

The Legislature may appropriate funds collected by a general sales tax and income tax for aid to incorporated municipalities, counties, and natural resources districts.

Source: Laws 1967, c. 488, § 1, p. 1638; Laws 1971, LB 707, § 1; Laws 1976, LB 903, § 4; Laws 1977, LB 514, § 2; Laws 1982, LB 816, § 3; Laws 1986, LB 258, § 18; Laws 1992, LB 1063, § 185; Laws 1992, Second Spec. Sess., LB 1, § 157; Laws 2009, LB218, § 4. Operative date July 1, 2011.

77-27,137 Aid to counties; distribution; manner.

(1) The appropriation provided for in section 77-27,136 for aid to counties shall be distributed to the various county treasurers of the state.

(2) A tentative distribution shall be determined by dividing seventeen million dollars on the basis of the ratio of the total amount of property taxes levied by the particular county for county purposes to the total amount of property taxes

levied by all counties for county purposes based on the amounts stated in the most recent certificate of taxes levied submitted by each county to the Property Tax Administrator pursuant to section 77-1613.01.

(3) The tentative distribution to each county computed under subsection (2) of this section shall be reduced by dividing three million five hundred thousand dollars on the basis of the ratio of the total amount of taxable value of agricultural income-producing machinery and equipment in a particular county to the total amount of taxable value of agricultural income-producing machinery and equipment in all counties based on the amounts certified by the counties to the Property Tax Administrator on the certificate of taxes levied pursuant to section 77-1613.01.

(4) The Tax Commissioner shall determine the amount to be distributed to the various counties and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments on the last business day of each month beginning in December. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. The proceeds of the governmental subdivision payments received by the various county treasurers shall be credited to the general fund of the county.

Source: Laws 1967, c. 488, § 2, p. 1638; Laws 1971, LB 707, § 2; Laws 1975, Spec. Sess., LB 3, § 4; Laws 1976, LB 903, § 5; Laws 1977, LB 514, § 3; Laws 1982, LB 816, § 4; Laws 1983, LB 59, § 2; Laws 1985, LB 268, § 28; Laws 1986, LB 929, § 2; Laws 1992, LB 1063, § 186; Laws 1992, Second Spec. Sess., LB 1, § 158; Laws 1997, LB 397, § 25.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

This section is rational, based on reasons of public policy and is therefore constitutional. *County of Antelope v. Stenberg*, 214 Neb. 150, 332, N.W.2d 705 (1983).

77-27,137.01 Aid to incorporated municipalities; distribution; manner.

The appropriation made pursuant to the authority in section 77-27,136 for aid to incorporated municipalities shall be allocated by the Tax Commissioner to the various incorporated municipalities. The Tax Commissioner shall determine the amount to be distributed to the incorporated municipalities and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments on the last business day of each month beginning in December. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. The Tax Commissioner shall compute the amount due the incorporated municipalities on the ratio of the population of the particular incorporated municipality to the total population of all incorporated municipalities in the state as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section

77-3,119, which amounts shall be placed in the general fund of such municipalities.

Source: Laws 1971, LB 707, § 3; Laws 1975, Spec. Sess., LB 3, § 5; Laws 1976, LB 903, § 6; Laws 1977, LB 514, § 4; Laws 1982, LB 816, § 5; Laws 1983, LB 59, § 3; Laws 1986, LB 929, § 3; Laws 1993, LB 726, § 11; Laws 1994, LB 1127, § 7; Laws 2003, LB 440, § 3; Laws 2005, LB 426, § 16; Laws 2009, LB218, § 5.
Operative date July 1, 2011.

Cross References

Municipal Infrastructure Redevelopment Fund Act, see section 18-2601.

77-27,137.02 Aid to natural resources districts; distribution; manner.

The appropriation made pursuant to the authority in section 77-27,136 for aid to natural resources districts shall be distributed to the various natural resources districts of the state on the basis of the ratio of the total amount of property taxes levied by the particular natural resources district to the total amount of property taxes levied by all natural resources districts within the state based on amounts stated in the most recent certificate of taxes levied statement and schedules submitted by each county to the Tax Commissioner pursuant to section 77-1613.01. The Tax Commissioner shall determine the amount to be distributed to the various natural resources districts and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 1, 1982, and each December thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification and vouchers, draw warrants against funds appropriated. The proceeds of the payments received by the various natural resources districts shall be credited to the general fund of the district.

Source: Laws 1982, LB 816, § 6; Laws 1985, LB 268, § 29; Laws 1994, LB 480, § 30; Laws 1996, LB 108, § 77; Laws 2004, LB 962, § 109; Laws 2009, LB218, § 6.
Operative date July 1, 2011.

77-27,137.03 Aid to counties; distribution; manner.

The Legislature shall appropriate funds as aid to counties in an amount equal to a percentage of the total real and personal property valuation of all counties, such percent to be not less than .0075 percent nor more than .0125 percent.

Of the appropriation, each county shall receive thirty thousand dollars and the remaining amount shall be distributed to each county on the basis of the ratio of the total real and personal property valuation in the county to the total real and personal property valuation in the state.

The Tax Commissioner shall determine the amount to be distributed to the various counties under this section and certify such amounts to the Director of Administrative Services on or before July 1 of each year. Each amount shall be

distributed in nine as nearly as possible equal monthly payments on the last business day of each month beginning in September.

Source: Laws 2009, LB218, § 7.
Operative date July 1, 2011.

77-27,138 Repealed. Laws 1971, LB 707, § 4.

77-27,138.01 Repealed. Laws 2004, LB 811, § 3.

77-27,139 Political subdivision; funds received; consideration in determining tax levy.

Each political subdivision receiving funds as provided by sections 77-27,136 to 77-27,137.03 shall take into consideration the amount it will receive under such sections during its fiscal year in determining its tax levy for that fiscal year.

Source: Laws 1967, c. 488, § 4, p. 1639; Laws 1992, LB 1063, § 187; Laws 1992, Second Spec. Sess., LB 1, § 159; Laws 2009, LB218, § 8.
Operative date July 1, 2011.

77-27,139.01 Aid to municipalities; Municipal Equalization Fund; created; use; investment.

The Municipal Equalization Fund is hereby created. The fund shall be used to provide state aid to equalize the property tax capacity of incorporated cities. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1996, LB 1177, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-27,139.02 Aid to municipalities; terms, defined.

For purposes of sections 77-27,139.01 to 77-27,139.04:

(1) Average per capita property tax levy means the total property taxes levied by all incorporated municipalities in each population group for the immediately preceding fiscal year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the current population of all incorporated municipalities as determined by the Department of Revenue pursuant to section 77-27,137.01. The average per capita property tax levy shall be calculated separately for each population group;

(2) Average property tax levy means the total property taxes levied by all incorporated municipalities for the prior year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the total amount of valuation subject to property tax in all incorporated municipalities for the immediately preceding fiscal year;

(3) Population means the population of a municipality as determined in section 77-3,119; and

(4) Population group means one of three groupings of municipalities for which the aid established by sections 77-27,139.01 to 77-27,139.04 is calculated based on the average per capita property tax levy calculated separately for each group. The three population groups shall be (a) municipalities with a population of five thousand inhabitants or more, (b) municipalities with a population between eight hundred and five thousand inhabitants, and (c) municipalities with a population of eight hundred inhabitants or less.

Source: Laws 1996, LB 1177, § 2; Laws 1997, LB 269, § 54.

77-27,139.03 Aid to municipalities; calculation of state aid.

(1) State aid provided to municipalities pursuant to sections 77-27,139.01 to 77-27,139.04 shall be calculated by determining the average property tax levy for operational purposes other than for principal and interest payments on the indebtedness of all incorporated municipalities. The Auditor of Public Accounts shall provide to the Department of Revenue a list of the bond and nonbond tax request amounts from the most recent budgets filed by incorporated municipalities. The information shall be used to calculate the bond and nonbond tax levies for aid purposes under this section. The auditor shall provide the information to the department by February 1 each year.

(2) Each municipality shall receive state aid from the Municipal Equalization Fund equal to (a) the product of the average per capita property tax of the appropriate population group multiplied by the current population of the municipality minus (b) the product of the average property tax levy multiplied by the certified valuation within the incorporated municipality, except that a municipality shall not receive any aid under this section if the calculation results in a negative number.

(3) If a municipal tax levy for operational purposes was less than the average property tax levy in the immediately preceding fiscal year, the state aid provided to such municipality shall be reduced by twenty percent for each one-percent increment the levy was below the average property tax levy.

(4) If the amount of money in the Municipal Equalization Fund is less than the total amount of state aid for all municipalities as required by the allocation formula in subsection (2) of this section, the money in the fund shall be allocated on a prorated basis to such municipalities. If the amount of money in the fund is more than the total amount of state aid for municipalities as required by the allocation formula, (a) one million six thousand dollars of the excess money in the fund for fiscal year 2002-03 shall be distributed along with and in the same manner as provided in section 77-27,137.01 and the remainder shall be credited to the General Fund and (b) the excess money in the Municipal Equalization Fund that is in excess of three hundred thousand dollars for all other fiscal years shall be credited to the General Fund and the first three hundred thousand dollars shall be distributed in the same manner as provided in section 77-27,137.01 to municipalities that have not adopted a local option sales tax by January 1 of the fiscal year for which the fund is distributed.

Source: Laws 1996, LB 1177, § 3; Laws 1997, LB 269, § 55; Laws 1998, LB 989, § 5; Laws 1999, LB 141, § 10; Laws 2000, LB 968, § 72; Laws 2003, LB 622, § 1.

77-27,139.04 Aid to municipalities; funds; how distributed.

The Department of Revenue shall determine the amount to be distributed to the various municipalities and certify such amounts by voucher to the Director of Administrative Services. The Municipal Equalization Fund shall be distributed on or before the first day of October, January, April, and July of each state fiscal year beginning in fiscal year 1998-99. The director shall, upon receipt of such notification and vouchers, draw warrants against funds appropriated. The proceeds of the payments received by the various municipalities shall be credited to the general fund of the municipality.

Source: Laws 1996, LB 1177, § 4.

77-27,140 Repealed. Laws 1992, LB 1063, § 213; Laws 1992, Second Spec. Sess., LB 1, § 181.

(f) EFFECT OF ADOPTION OF INCOME TAX, SALES TAX, OR BOTH

77-27,141 Repealed. Laws 1972, LB 1044, § 1.

(g) LOCAL OPTION REVENUE ACT

77-27,142 Incorporated municipalities; sales and use tax; authorized; election.

(1) Any incorporated municipality by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions that are sourced under the provisions of sections 77-2703.01 to 77-2703.04 within such incorporated municipality on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. No sales and use tax shall be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved such tax pursuant to sections 77-27,142.01 and 77-27,142.02.

(2) A city of the metropolitan class is hereby authorized to increase any city sales and use tax existing on January 1, 1978, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at the primary or general election in 1980 if the city council shall submit a certified copy of a resolution to that effect to the election commissioner not later than forty-one days prior to the primary or general election. Notwithstanding the provisions of section 77-27,143, if the increase is approved by the voters at the primary or general election in 1980, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held. If the increase is not approved by the voters at the primary or general election in 1980, no tax increased pursuant to this section shall remain in effect after December 31, 1980.

(3) A city of the primary class is hereby authorized to increase any city sales and use tax existing on January 1, 1985, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at the next primary or general election or at a special election if the city

council shall submit a certified copy of a resolution proposing the tax increase to the election commissioner within a reasonable time prior to the primary, general, or special election. If the increase is approved by the voters at the primary, general, or special election, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held. If the voters of a city of the primary class have not approved such an increase by December 31, 1987, the question of such an increase shall not be submitted thereafter to the voters and there shall be no increase in the city sales and use tax.

(4) A city of the first or second class or village is hereby authorized to increase any city sales and use tax existing on January 1, 1986, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city or village and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at any primary or general election or at a special election if the city council or village board shall submit a certified copy of a resolution proposing the tax increase to the election commissioner or county clerk within a reasonable time prior to the primary, general, or special election. If the increase is approved by the voters at the primary, general, or special election, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held.

Source: Laws 1969, c. 629, § 1, p. 2530; Laws 1978, LB 394, § 1; Laws 1978, LB 902, § 1; Laws 1979, LB 365, § 1; Laws 1981, LB 40, § 1; Laws 1985, LB 116, § 1; Laws 1986, LB 890, § 1; Laws 2003, LB 282, § 80.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

City use tax was properly imposed upon property stored in the city for approximately one year before shipment to its ultimate destination within this state. *Omaha P. P. Dist. v. Nebraska State Tax Commissioner*, 210 Neb 309, 314 N.W.2d 246 (1982).

This section does not limit the power to propose or reject ordinances concerning a municipal sales tax to the legislative

body of a municipality, and does not except sales tax ordinances from the usual power of initiative and referendum. *State ex rel. Boyer v. Grady*, 201 Neb. 360, 269 N.W.2d 73 (1978).

77-27,142.01 Incorporated municipalities; sales and use tax; modification; election required, when.

The governing body of any incorporated municipality may submit the question of changing any terms and conditions of a sales and use tax previously authorized under section 77-27,142. The question of modification shall be submitted to the voters at any primary or general election or at a special election if the governing body submits a certified copy of the resolution proposing modification to the election commissioner or county clerk within the time prior to the primary, general, or special election prescribed in section 77-27,142.02.

Source: Laws 1978, LB 394, § 2; Laws 1997, LB 182A, § 7; Laws 2009, LB501, § 4.

77-27,142.02 Incorporated municipalities; sales and use tax; election; question; effect.

Except as otherwise provided by section 77-27,142, after February 14, 1978, the power granted by section 77-27,142 shall not be exercised unless and until

the question has been submitted at a primary, general, or special election held within the incorporated municipality and in which all qualified electors shall be entitled to vote on such question. The officials of the incorporated municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk by March 1 for a primary election, by September 1 for a general election, or at least fifty days before a special election. The question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific project or program for which the revenue received from such tax will be allocated, and shall include the following language: Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax? If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of such incorporated municipality shall be empowered as provided by section 77-27,142 and shall forthwith proceed to impose a tax pursuant to the Local Option Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the incorporated municipality shall not impose such a tax.

Source: Laws 1978, LB 394, § 3; Laws 1985, LB 116, § 2; Laws 1986, LB 890, § 2; Laws 2009, LB501, § 5.

77-27,142.03 Incorporated municipality; sales and use tax; petition to submit question.

(1) If the qualified electors of any municipality, equal in number to at least ten percent of the votes cast at the last preceding municipal election, petition the governing body to submit the question at least seventy-five days before the next primary, general, or special election, the governing body shall submit the question at the next primary, general, or special election.

(2) The question of imposing a sales and use tax which has been submitted to the electors and failed shall not be submitted to the electors of an incorporated municipality again until twenty-three months after such failure.

Source: Laws 1978, LB 394, § 4; Laws 1986, LB 890, § 3; Laws 1994, LB 1175, § 3; Laws 2009, LB501, § 6.

A petition seeking to enact a sales tax for the purpose of creating an endowment fund is governed by chapter 77 of the Nebraska Revised Statutes, and the proposed allocation of the tax to create an endowment fund does not remove the proposal from being governed by this section. *Sydow v. City of Grand Island*, 263 Neb. 389, 639 N.W.2d 913 (2002).

77-27,142.04 Incorporated municipality; sales and use tax; election; notice.

The governing body shall give notice of the submission of the question of imposing the sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax, not more than thirty days nor less than ten days previous to the election, by publication one time in one or more newspapers published in or of general circulation in the municipality in which such question is to be submitted. Such notice shall be in addition to any other notice required under the general election laws of this state.

Source: Laws 1978, LB 394, § 5.

77-27,142.05 Incorporated municipality; sales and use tax; previously authorized; continuation without election.

Any incorporated municipality which had, prior to January 1, 1978, authorized a sales and use tax pursuant to section 77-27,142 may continue the tax without submitting the question of continuing such tax to a vote of the qualified electors.

Source: Laws 1978, LB 394, § 6.

77-27,143 Municipalities; sales and use tax laws; administration; termination; data bases; required.

(1) The administration of all sales and use taxes adopted under the Local Option Revenue Act shall be by the Tax Commissioner who may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the act for the making of returns and for the ascertainment, assessment, and collection of taxes imposed under such act. The incorporated municipality shall furnish a certified copy of the adopting or repealing ordinance to the Tax Commissioner in accordance with such rules and regulations as he or she may adopt and promulgate. For ordinances passed after October 1, 1969, the effective date shall be the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the change in tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For ordinances containing a termination date and passed after October 1, 1986, the termination date shall be the first day of a calendar quarter. The incorporated municipality shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days prior to the termination date that the termination date stated in the ordinance is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the department or by other electronic means.

(3) For sales and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the Tax Commissioner and sixty days' notice to sellers.

(4) The state shall provide and maintain a data base that describes boundary changes for all local taxing jurisdictions. This data base shall include a description of any change and the effective date of the change for sales and use tax purposes.

(5) The state shall provide and maintain a data base of all sales and use tax rates for all of the local jurisdictions levying taxes within the state. For the identification of counties, cities, and villages, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology.

(6) The state shall provide and maintain a data base that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. For purposes of the streamlined sales and use tax agreement, the data base shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

(7) For purposes of the streamlined sales and use tax agreement, the state may provide address-based boundary data base records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (6) of this section. The data base records shall be in the same approved format as the data base records pursuant to subsection (6) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a), as such act existed on January 1, 2003. The governing board may allow a member state to require sellers that register under the agreement to use an address-based boundary data base provided by that member state. If any member state develops an address-based boundary data base pursuant to the agreement, a seller or certified service provider may use those data base records in place of the five-digit and nine-digit zip code data base records provided for in subsection (6) of this section. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based boundary data base after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

(8) The state may certify vendor-provided address-based boundary data bases for assigning tax rates and jurisdictions. The data bases shall be in the same approved format as the data base records pursuant to subsection (7) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act existed on January 1, 2003. If a state certifies a vendor-provided address-based boundary data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection (6) or (7) of this section. Vendors providing address-based boundary data bases may request certification of their data bases from the governing board. Certification by the governing

board does not replace the requirement that the data bases be certified by the states individually.

(9) Pursuant to the streamlined sales and use tax agreement, the state shall relieve retailers and certified service providers using data bases pursuant to subsection (6) or (7) of this section from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the retailer or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice determined by the governing board, a member state that provides an address-based boundary data base for assigning taxing jurisdictions pursuant to subsection (7) or (8) of this section may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection (6) of this section. If a seller demonstrates that requiring the use of the address-based boundary data base would create an undue hardship, the state and the governing board may extend the relief of liability to such seller for a designated period of time.

(10) The data bases provided for in this section shall be in a downloadable format approved by the governing board pursuant to the streamlined sales and use tax agreement. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to and subject to all provisions of this section. The data bases shall be provided at no cost to the user of the data base. The provisions of subsections (6) and (7) of this section do not apply when the purchased product is received by the purchaser at the business location of the seller.

(11) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee.

(12) A seller that did not have a requirement to register in this state prior to registering pursuant to the agreement or a certified service provider shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by this section.

Source: Laws 1969, c. 629, § 2, p. 2530; Laws 1969, c. 683, § 8, p. 2644; Laws 1986, LB 890, § 4; Laws 2003, LB 282, § 81; Laws 2003, LB 381, § 4; Laws 2005, LB 274, § 277; Laws 2006, LB 887, § 5.

Cross References

Motor Vehicle Registration Act, see section 60-301.

Where the city of Omaha's ordinance of annexation did not contain a certified map clearly defining the annexed area, the municipality failed to sufficiently comply with the Tax Commis-

sioner's regulations to enforce collection of city sales taxes within the newly annexed area. *McDonald's Exec. Off. v. Nebraska Dept. of Revenue*, 243 Neb. 82, 497 N.W.2d 377 (1993).

77-27,144 Municipalities; sales and use tax; Tax Commissioner; collection; distribution.

The Tax Commissioner shall collect the tax imposed by any incorporated municipality concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the

proceeds of the tax to the incorporated municipalities levying the tax, after deducting the amount of refunds made and three percent of the remainder to be credited to the Municipal Equalization Fund. The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of the Local Option Revenue Act. When proceeds of a tax levy are received but the identity of the incorporated municipality which levied the tax is unknown and is not identified within six months after receipt, the amount shall be credited to the Municipal Equalization Fund. The municipality may request the names and addresses of the retailers which have collected the tax as provided in section 77-2711.

Source: Laws 1969, c. 629, § 3, p. 2530; Laws 1971, LB 53, § 10; Laws 1976, LB 868, § 2; Laws 1996, LB 1177, § 19; Laws 1998, LB 1104, § 13; Laws 2007, LB94, § 2.

77-27,145 Municipalities; sales and use tax; claims; remedies.

Upon any claim of illegal assessment and collection, the taxpayer shall have the same remedies provided for claims of illegal assessment and collection of the state tax, it being the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of taxes illegally assessed and collected under the authority of sections 77-27,142 to 77-27,148.

Source: Laws 1969, c. 629, § 4, p. 2530.

77-27,146 Municipalities; sales and use tax; disposition.

The proceeds of the tax levied by an incorporated municipality under the authority of sections 77-27,142 to 77-27,148 shall be distributed to the incorporated municipality for deposit in its general fund.

Source: Laws 1969, c. 629, § 5, p. 2531.

77-27,147 Municipalities; sales and use tax; laws governing; source of transactions.

All relevant provisions of the Nebraska Revenue Act of 1967, as amended from time to time, and not inconsistent with the Local Option Revenue Act, shall govern transactions, proceedings, and activities pursuant to any tax imposed under the Local Option Revenue Act.

For purposes of the Local Option Revenue Act, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, shall be sourced according to the provisions of sections 77-2703.01 to 77-2703.04.

Source: Laws 1969, c. 629, § 6, p. 2531; Laws 1969, c. 683, § 9, p. 2644; Laws 1986, LB 1027, § 210; Laws 1992, LB 871, § 64; Laws 1994, LB 123, § 25; Laws 1994, LB 994, § 2; Laws 1994, LB 1207, § 17; Laws 1995, LB 17, § 2; Laws 2002, LB 947, § 5; Laws 2003, LB 282, § 82.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-27,148 Act, how cited.

Sections 77-27,142 to 77-27,148 may be cited as the Local Option Revenue Act.

Source: Laws 1969, c. 629, § 8, p. 2531.

(h) AIR AND WATER POLLUTION CONTROL TAX REFUND ACT**77-27,149 Terms, defined.**

As used in sections 77-27,149 to 77-27,155 unless the context otherwise requires:

(1) Facility shall mean any system, equipment or apparatus, or disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery or installation constructed, used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution caused by industrial or agricultural waste, including the generation of electricity; *Provided*, that facilities such as air conditioners, dust collectors, filters, fans, and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions shall not be deemed air pollution control facilities for purposes of this subdivision;

(2) Industrial or agricultural waste shall mean any liquid, gaseous or solid waste substance resulting from any process of industry, manufacture, trade or business, including the generation of electricity, or from the development, processing or recovery of any paper or wood which is capable of polluting the air or waters of this state;

(3) Treatment works shall mean any plant, pumping station, incinerator, air pollution abatement equipment or installation, or other works or reservoir used primarily for the purpose of abating, treating, stabilizing, isolating or holding industrial or agricultural waste; and

(4) Disposal system shall mean any system used primarily for disposing of or isolating industrial or agricultural water and shall include pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting air-borne or water-borne industrial or agricultural waste to a point of disposal, treatment or isolation except that which is necessary to the manufacture of products.

Source: Laws 1972, LB 716, § 1; Laws 1974, LB 820, § 3.

77-27,150 Refund; application; when; contents; hearing; approval.

(1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated therein; (b) a descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; (d) the acquisition cost of the facility for which a refund is claimed; and (e) a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151.

(2) The Tax Commissioner shall offer an applicant a hearing upon request of such applicant. The hearing shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act.

(3) A claim for refund received without a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151 shall not be considered a valid claim and shall be returned to the applicant.

(4) Notice of the Tax Commissioner's refusal to issue a refund shall be sent by certified mail to the applicant.

Source: Laws 1972, LB 716, § 2; Laws 1974, LB 820, § 4; Laws 1977, LB 308, § 1; Laws 1978, LB 244, § 1; Laws 1993, LB 3, § 43; Laws 2002, LB 989, § 20.

77-27,151 Refund; notice to Tax Commissioner; Department of Environmental Quality; duties.

If the Department of Environmental Quality finds that a facility or multiple facilities at a single location are designed and operated primarily for control, capture, abatement, or removal of industrial or agricultural waste from air or water and are suitable, are reasonably adequate, and meet the intent and purposes of the Environmental Protection Act, the Department of Environmental Quality shall so notify the owner of the facility in writing of its findings that the facility, multiple facilities, or the specified portions of any facility are approved. The Department of Environmental Quality shall also notify the Tax Commissioner of its findings and the extent of commercial or productive value derived from any materials captured or recovered by the facility.

Source: Laws 1972, LB 716, § 3; Laws 1974, LB 820, § 5; Laws 1977, LB 308, § 2; Laws 1993, LB 3, § 44; Laws 2002, LB 989, § 21.

Cross References

Environmental Protection Act, see section 81-1532.

77-27,152 Refund; notice by certified mail; modify or revoke; when; effect.

(1) The Tax Commissioner, after giving notice by certified mail to the applicant and giving an opportunity for a hearing, shall modify or revoke the refund whenever the following appears: (a) The refund was obtained by fraud or misrepresentation regarding the payment of tax on materials incorporated into the facility or facilities; or (b) the Department of Environmental Quality has modified its findings regarding the facility covered by the refund.

(2) The Department of Environmental Quality may modify its findings when it determines any of the following: (a) The refund was obtained by fraud or misrepresentation regarding the facility or planned operation of the facility; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c) the facility covered by the refund is no longer used for the primary purpose of pollution control.

(3) On the mailing by certified mail to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation,

all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Source: Laws 1972, LB 716, § 4; Laws 1977, LB 308, § 3; Laws 1993, LB 3, § 45; Laws 2002, LB 989, § 22.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-27,153 Appeal; procedure.

(1) A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax refund may appeal from the finding and order of the Tax Commissioner. The finding and order shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The Department of Environmental Quality shall make its findings for the Air and Water Pollution Control Tax Refund Act in accordance with its normal administrative procedures. Nothing in the act is intended to affect the department's authority to make findings and to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Source: Laws 1972, LB 716, § 5; Laws 1988, LB 352, § 160; Laws 2002, LB 989, § 23.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,154 Rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations that are necessary for the administration of the Air and Water Pollution Control Tax Refund Act. Such rules and regulations shall not abridge the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Source: Laws 1972, LB 716, § 6; Laws 1977, LB 308, § 4; Laws 1993, LB 3, § 46; Laws 2002, LB 989, § 24.

77-27,155 Act, how cited.

Sections 77-27,149 to 77-27,155 shall be known as the Air and Water Pollution Control Tax Refund Act.

Source: Laws 1972, LB 716, § 7; Laws 1974, LB 820, § 6.

(i) ECONOMIC FORECASTING

77-27,156 Nebraska Economic Forecasting Advisory Board; created.

To assist the Governor in developing estimates of revenue pursuant to section 81-125 and the Legislature in setting the rates of the income tax and sales tax pursuant to section 77-2715.01, there is hereby created the Nebraska Economic Forecasting Advisory Board.

Source: Laws 1984, LB 892, § 3.

77-27,157 Board; membership; terms; officers; quorum; expenses.

The Nebraska Economic Forecasting Advisory Board shall consist of nine members, five of whom shall be appointed by and serve at the pleasure of the Executive Board of the Legislative Council and four of whom shall be appointed by and serve at the pleasure of the Governor. The original gubernatorial appointees shall serve for two-year terms. Successive gubernatorial appointees and all legislative appointees shall serve for four-year terms. After appointments are made, the board shall select a chairperson and a vice-chairperson from its membership. The chairperson and vice-chairperson shall serve for two-year terms. The chairperson of the board on September 6, 1985, shall serve until his or her successor is selected. Each member of the board shall have demonstrated expertise in the field of tax policy, economics, or economic forecasting. A majority of the members of the board shall constitute a quorum for the purpose of transacting business and every act of a majority of the members shall be deemed an act of the board. Board members shall serve without compensation but may be reimbursed for actual and necessary expenses. Board members appointed by the Legislative Council shall receive such reimbursement out of the appropriation made to the Legislature's Fiscal and Program Analysis Program. Board members appointed by the Governor shall receive such reimbursement out of the appropriation made to the Department of Revenue for administration.

Source: Laws 1984, LB 892, § 4; Laws 1985, LB 283, § 1.

77-27,158 Board; meetings; duty.

The Nebraska Economic Forecasting Advisory Board shall meet during the months of February and October of each year and during April of each odd-numbered year for the purpose of developing a consensus projection of economic activity in Nebraska. When determined to be necessary to conduct the duties of the board, additional meetings may be held at the call of the chairperson of the board, by a joint call of the Governor and the chairperson of the board, or by a joint call of the chairperson of the Executive Board of the Legislative Council and the chairperson of the board. Notice of all meetings shall be given at least ten days in advance. The board may estimate growth or decline in the state unemployment rate, gross state product, statewide personal income, and such other indices of state economic activity as the board may deem appropriate. The board shall provide an advisory forecast of General Fund receipts.

Source: Laws 1984, LB 892, § 5; Laws 1987, LB 343, § 1.

77-27,159 Board; staff support; development of revenue estimates; considerations.

The Legislative Fiscal Analyst and the Department of Revenue shall provide such staff support as the Nebraska Economic Forecasting Advisory Board may require. The Legislative Fiscal Analyst, in developing revenue estimates pursuant to section 50-419, and the Department of Revenue, in developing revenue estimates for the Governor pursuant to section 81-125, shall consider the estimates of economic activity and the advisory forecast of General Fund receipts developed by the board pursuant to section 77-27,158.

Source: Laws 1984, LB 892, § 6; Laws 1987, LB 343, § 2.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,160 Legislative intent.

It is the intent of the Legislature to establish and maintain a procedure to set off against a debtor's income tax refund or state lottery prize any debt which is assigned to the Department of Health and Human Services or which any individual not eligible as a public assistance recipient is attempting to collect, which has accrued through written contract, subrogation, or court judgment and is in the form of a liquidated amount due and owing for the care, support, or maintenance of a child or for spousal support.

Source: Laws 1984, LB 845, § 6; Laws 1993, LB 138, § 71; Laws 1994, LB 1224, § 84; Laws 1996, LB 1044, § 797; Laws 1997, LB 307, § 199.

77-27,161 Terms, defined.

For purposes of sections 77-27,160 to 77-27,173, unless the context otherwise requires:

(1) Debt shall mean any liquidated amount due and owing any claimant which has accrued through assignment, contract, subrogation, court judgment, or operation of law, regardless of whether there is an outstanding judgment for such amount, and which is for the care, support, or maintenance of a child or for spousal support and shall include the costs of health services subject to section 77-27,163.01;

(2) Debtor shall mean any individual owing money to or having a delinquent account with any claimant which has not been satisfied by court order, set aside by court order, or discharged in bankruptcy;

(3) Claimant shall mean:

(a) The Department of Health and Human Services with respect to collection of a debt owed by a parent in a case involving a recipient of aid to dependent children in which rights to child, spousal, or medical support payments have been assigned to this state;

(b) An individual who is not eligible as a public assistance recipient and to whom a child, spousal, or medical support debt is owed; or

(c) Any person or entity entitled to receive child support, spousal support, or medical support as defined in section 43-1712.01 pursuant to an order issued by a court or agency of another state or jurisdiction, including an agency of another state or jurisdiction to which a person has assigned his or her right to receive such support. Such a claimant shall submit certification and documentation sufficient to satisfy the requirements of section 43-1730;

(4) Refund shall mean any Nebraska state income tax refund which the Department of Revenue determines to be due an individual taxpayer. In the case of a joint income tax return, it is presumed that each partner to the marriage submitting such return contributed one-half of the earnings upon which the refund is based. The presumption may be contested by the state, the delinquent taxpayer, and the innocent spouse by virtue of the hearing process prescribed in section 77-27,169;

(5) Spousal support shall have the same meaning as in section 43-1715; and

(6) State lottery prize shall mean any lottery prize in excess of five hundred dollars to be awarded to an individual pursuant to the State Lottery Act upon

presentation of a winning lottery ticket to the Lottery Division of the Department of Revenue for redemption.

Source: Laws 1984, LB 845, § 7; Laws 1985, Second Spec. Sess., LB 7, § 77; Laws 1991, LB 457, § 45; Laws 1993, LB 138, § 72; Laws 1994, LB 1224, § 85; Laws 1996, LB 1044, § 798; Laws 1997, LB 307, § 200.

Cross References

State Lottery Act, see section 9-801.

77-27,162 Collection system; development; duties.

The Department of Revenue, the Department of Administrative Services, and the Department of Health and Human Services shall develop and implement a collection system to carry out the intent of section 77-27,160.

Source: Laws 1984, LB 845, § 8; Laws 1996, LB 1044, § 799; Laws 2007, LB296, § 705.

77-27,163 Collection system; additional remedy.

The collection remedy authorized by sections 77-27,160 to 77-27,173 is in addition to and not in substitution for any other remedy available by law.

Source: Laws 1984, LB 845, § 9.

77-27,163.01 Costs of health services; setoff; Department of Health and Human Services; duties; amount of setoff; priority of claims.

The Department of Health and Human Services shall use the procedures in this section and sections 77-27,160 to 77-27,173 to setoff against a debtor's income tax refund the costs of health services provided to a child of the debtor if:

- (1) The debtor is required by court or administrative order to provide coverage for the costs of such services; and
- (2) The debtor has received payment from a third party for the costs of such services but has not used the payment to reimburse either the other parent or guardian or the provider of such services.

The amount of the setoff shall be limited to the amount necessary to reimburse the department for its expenditures for the costs of such services under the medical assistance program established pursuant to the Medical Assistance Act. Any claim for current or past-due child support shall take priority over a claim for setoff for the costs of health services.

Source: Laws 1994, LB 1224, § 86; Laws 1996, LB 1044, § 800; Laws 1997, LB 307, § 201; Laws 2006, LB 1248, § 86.

Cross References

Medical Assistance Act, see section 68-901.

77-27,164 Department of Health and Human Services; adopt rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to carry out the purposes of sections 77-27,160 to 77-27,173.

Source: Laws 1984, LB 845, § 10; Laws 1996, LB 1044, § 801; Laws 1997, LB 307, § 202.

77-27,165 Notice of claim to debtor; contents.

Prior to December 1 of each year, the Department of Health and Human Services shall send notification to the debtor of the assertion of the department's rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's income tax refund. The notice shall contain the procedures available to the debtor for protesting the offset, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the department within thirty days of the date of mailing the notice, and the defenses the debtor may raise. The debt shall be certified by the department through a preoffset review.

Source: Laws 1984, LB 845, § 11; Laws 1996, LB 1044, § 802; Laws 1997, LB 307, § 203.

77-27,166 Submission of certified debt; when effective; Lottery Division of the Department of Revenue; duties.

(1) The Department of Health and Human Services may submit any certified debt of twenty-five dollars or more to the Department of Revenue except when the validity of the debt is legitimately in dispute. The submission of debts of past due support shall be a continuous submission process that allows the amount of past due support to fluctuate up or down depending on the actual amount owed. Any submission shall be effective only to initiate setoff for a claim against a refund that would be made for the calendar year subsequent to the year in which such submission is made.

(2) The Lottery Division of the Department of Revenue shall review all current debts on the records of the Department of Health and Human Services at the time of redeeming a lottery ticket for a state lottery prize to certify a debt owed by a winner of a state lottery prize.

Source: Laws 1984, LB 845, § 12; Laws 1993, LB 138, § 73; Laws 1996, LB 1044, § 803; Laws 1997, LB 307, § 204; Laws 2009, LB288, § 36.

77-27,167 Notice of pending refund or state lottery prize.

If a debtor identified by the Department of Health and Human Services pursuant to section 77-27,165 or 77-27,166 is determined by the Department of Revenue to be entitled to a refund of twenty-five dollars or more or a state lottery prize, the Department of Health and Human Services shall be notified that a refund or prize is pending.

Source: Laws 1984, LB 845, § 13; Laws 1993, LB 138, § 74; Laws 1996, LB 1044, § 804; Laws 1997, LB 307, § 205.

77-27,168 Notice of claim to refund or state lottery prize; contents.

(1) Upon receipt of notification pursuant to section 77-27,167 that a debtor is entitled to a refund or a state lottery prize, the Department of Health and

Human Services shall, within twenty days, send written notification to the debtor of an assertion of its rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's refund or state lottery prize.

(2) The written notification shall clearly set forth the basis for the claim to the refund or state lottery prize, the intention to apply the refund or state lottery prize against the debt to a claimant, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Health and Human Services within thirty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and notice that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim, causing a setoff by default.

In the case of a joint tax return, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed. There shall be no affirmative duty placed upon the non-owing spouse of an intercepted tax return to initiate an action to receive payment of the noninterceptable amount.

Source: Laws 1984, LB 845, § 14; Laws 1993, LB 138, § 75; Laws 1996, LB 1044, § 805; Laws 1997, LB 307, § 206.

77-27,169 Debtor; application for hearing; when effective; hearing.

A written application, pursuant to sections 77-27,165 and 77-27,168, by a debtor for a hearing shall be effective upon mailing the application, postage prepaid and properly addressed, to the Department of Health and Human Services.

If the Department of Health and Human Services receives a written application contesting a claim, it shall grant a hearing to the taxpayer or state lottery prize winner to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No issues shall be reconsidered at the hearing which have been previously litigated.

Source: Laws 1984, LB 845, § 15; Laws 1993, LB 138, § 76; Laws 1996, LB 1044, § 806; Laws 1997, LB 307, § 207.

77-27,170 Appeal.

Any appeal of an action taken at or as a result of a hearing held pursuant to section 77-27,169 shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 845, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,171 Certification of debt; when; procedure; deduction from refund or state lottery prize.

(1) Upon final determination of the amount and validity of the debt due and owing by means of the hearing provided for in section 77-27,169 or by the taxpayer's default through failure to request a hearing pursuant to section 77-27,168, the Department of Health and Human Services shall certify the debt

to the Department of Administrative Services within twenty days from the date of the final determination. The final determination shall not delay a refund beyond the period prescribed in section 77-2794.

(2) Upon receipt of the certified debt amount from the Department of Health and Human Services, the Department of Administrative Services shall deduct an amount equal to the certified debt from the refund or state lottery prize due the debtor, up to the amount of the refund or state lottery prize, and shall transfer such amount, by noncash voucher, to the Department of Health and Human Services. In nonpublic assistance cases, the Department of Health and Human Services shall transmit the funds collected to the clerk of the district court for dispersal to the payee. The Department of Administrative Services shall refund or award any remaining balance to the debtor as if the setoff had not occurred.

Source: Laws 1984, LB 845, § 17; Laws 1993, LB 138, § 77; Laws 1996, LB 1044, § 807; Laws 1997, LB 307, § 208.

77-27,172 Completion of setoff; notice.

When the Department of Health and Human Services receives all or a portion of a certified debt pursuant to section 77-27,171, the department shall notify the debtor of the completion of the setoff. Such notice shall include the final amount of the refund or state lottery prize to which the debtor was entitled prior to the setoff, the amount of the certified debt, and the amount of the refund or state lottery prize in excess of the debt, if any.

Source: Laws 1984, LB 845, § 18; Laws 1993, LB 138, § 78; Laws 1996, LB 1044, § 808; Laws 1997, LB 307, § 209.

77-27,173 Costs of setoffs; reimbursement.

The Department of Health and Human Services shall reimburse the Department of Revenue and the Department of Administrative Services for all reasonable and necessary costs incurred by the Department of Revenue and the Department of Administrative Services in setting off debts pursuant to sections 77-27,160 to 77-27,173.

Source: Laws 1984, LB 845, § 19; Laws 1996, LB 1044, § 809; Laws 1997, LB 307, § 210.

(k) TAX REFUND SETOFF ACT

77-27,174 Act, how cited.

Sections 77-27,174 to 77-27,184 shall be known and may be cited as the Tax Refund Setoff Act.

Source: Laws 1985, LB 273, § 1.

77-27,175 Agency, defined.

As used in the Tax Refund Setoff Act, unless the context otherwise requires, agency shall mean the Department of Revenue, any other body in the executive branch of state government, any political subdivision of this state, or the federal Internal Revenue Service.

Source: Laws 1985, LB 273, § 2; Laws 1987, LB 523, § 29.

77-27,176 Purpose of act; limitation.

The purpose of the Tax Refund Setoff Act is to provide the Tax Commissioner with the authority to enter into an agreement with the Commissioner of Internal Revenue to establish a reciprocal tax refund setoff system substantially similar to such act. The Tax Commissioner shall not enter into such agreement unless the Commissioner of Internal Revenue is authorized by federal law to enter into a substantially similar agreement offsetting delinquent state taxes.

Source: Laws 1985, LB 273, § 3.

77-27,177 Tax refund setoff system; operation.

The tax refund setoff system shall allow the state government to offset a person's delinquent federal tax liability against any state tax refund due to such person. The delinquent tax liability shall include all tax liability, interest, penalties, fees, and any other charges accruing pursuant to the taxing laws of the federal government. This tax refund setoff system shall be in addition to and not a substitute for any other remedy available to collect such delinquencies.

Source: Laws 1985, LB 273, § 4.

77-27,178 Delinquent federal tax liability; identification; joint tax return; presumption.

The Commissioner of Internal Revenue shall provide a system to identify persons having delinquent tax liability under federal taxing laws.

On or before dates specified in the agreement, the Commissioner of Internal Revenue shall supply the Department of Revenue with information necessary to identify such persons and shall certify in writing the amount of the liability. Such information shall be confidential.

In the case of a joint tax return it shall be presumed that each spouse contributed one-half of the amount upon which the refund is based. If only one of the spouses filing the return is identified as a person having a delinquent tax liability, the other spouse shall receive one-half of the refund unless this presumption is rebutted by the agency or the spouse.

Source: Laws 1985, LB 273, § 5.

77-27,179 Tax refund setoff; procedure; joint return; how treated.

(1) If the Department of Revenue determines that a person identified as having a delinquent tax liability is entitled to a tax refund:

(a) The Department of Revenue shall transfer the full amount of the refund or the amount equal to any debts owed the state or any of its political subdivisions, whichever is less, as necessary to apply toward satisfaction of the liability;

(b) The Department of Revenue shall transfer the amount of any balance of the refund or the amount certified by the Commissioner of Internal Revenue as delinquent tax liability, whichever is less, to the Commissioner of Internal Revenue; and

(c) Any remaining balance of the refund shall be forwarded to the taxpayer in the usual manner.

(2) In the case of a joint return when only one spouse is a person identified as having a delinquent tax liability, if the Department of Revenue has reason to believe that the spouse having the liability did in fact contribute more or less

than the one-half contribution as provided in section 77-27,178, the Department of Revenue shall transfer the amount of the refund deemed attributable to the spouse with the liability as provided in subsection (1) of this section.

Source: Laws 1985, LB 273, § 6.

77-27,180 Setoff; notice; contents.

Within thirty days of a transfer pursuant to section 77-27,179, the Department of Revenue shall notify the person, and his or her spouse in the case of a joint return, of the transfer. If an agency, other than the Department of Revenue, or the Commissioner of Internal Revenue is involved with the transfer, a copy of the notice and of any correspondence shall be sent to each involved party. The notice shall state:

- (1) The basis for the claim to the refund;
- (2) The application of the refund or a portion thereof against the delinquent tax liability;
- (3) That the person has the opportunity to contest the validity and amount of the delinquent tax liability by applying to the agency requesting the setoff in writing for a hearing and the time period after the date of the mailing of the notice within which the appeal must be filed;
- (4) The name and mailing address of the agency to which the application for a hearing must be sent;
- (5) The effect of a failure to apply in writing for a hearing within the prescribed period; and
- (6) In the case of a joint return (a) the presumption provided in section 77-27,178, (b) that the presumption may be rebutted, (c) whether both or just one of the spouses has a delinquent tax liability, and (d) the percentage of the refund which the agency attributes to the spouse or spouses with the delinquent tax liability.

Source: Laws 1985, LB 273, § 7; Laws 1987, LB 523, § 30.

77-27,181 Application for hearing; when effective.

A written application for a hearing pursuant to section 77-27,180 shall be effective upon mailing the application, postage prepaid and properly addressed, to the appropriate agency.

Source: Laws 1985, LB 273, § 8.

77-27,182 Hearing and appeal; procedure.

If the Department of Revenue receives a written application for a hearing, it shall proceed with notice and hearing as for a contested case pursuant to the Administrative Procedure Act. The validity and amount of the liability shall be determined and any adjustments made. No issues shall be reconsidered at the hearing which have previously been litigated. An appeal of the final decision may be made, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1985, LB 273, § 9; Laws 1988, LB 352, § 161.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,183 Improper setoff; how treated.

In the case of an improper setoff, the agency receiving the benefit of the setoff by having a purportedly delinquent tax paid shall be liable to the taxpayer for payment of any setoff, penalty, and interest.

Source: Laws 1985, LB 273, § 10.

77-27,184 Tax Commissioner; adopt rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations necessary to accomplish the purpose of the Tax Refund Setoff Act.

Source: Laws 1985, LB 273, § 11.

(l) MANUFACTURING AND PROCESSING EQUIPMENT REFUNDS

77-27,185 Repealed. Laws 1987, LB 775, § 19.

77-27,186 Repealed. Laws 1987, LB 775, § 19.

77-27,186.01 Repealed. Laws 1995, LB 9, § 3.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187 Act, how cited.

Sections 77-27,187 to 77-27,195 shall be known and may be cited as the Nebraska Advantage Rural Development Act.

Source: Laws 1986, LB 1124, § 1; Laws 1987, LB 270, § 1; Laws 1997, LB 886, § 1; Laws 1998, LB 1104, § 14; Laws 2002, LB 93, § 19; Laws 2003, LB 608, § 1; Laws 2005, LB 312, § 16; Laws 2009, LB403, § 8.

77-27,187.01 Terms, defined.

For purposes of the Nebraska Advantage Rural Development Act, unless the context otherwise requires:

(1) Any term has the same meaning as used in the Nebraska Revenue Act of 1967;

(2) Equivalent employees means the number of employees computed by dividing the total hours paid in a year to employees by the product of forty times the number of weeks in a year;

(3) Livestock means all animals, including cattle, horses, sheep, goats, hogs, chickens, turkeys, and other species of game birds and animals raised and produced subject to permit and regulation by the Game and Parks Commission or the Department of Agriculture;

(4) Livestock modernization or expansion means the construction, improvement, or acquisition of buildings, facilities, or equipment for livestock housing, confinement, feeding, production, and waste management. Livestock modernization or expansion does not include any improvements made to correct a violation of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, a rule or regulation adopted and promulgated pursuant to such acts, or any order of the Depart-

ment of Environmental Quality undertaken within five years after a complaint issued from the Director of Environmental Quality under section 81-1507;

(5) Livestock production means the active use, management, and operation of real and personal property for the commercial production of livestock, for the commercial breeding, training, showing, or racing of horses, or for the use of horses in a recreational or tourism enterprise. The activity will be considered commercial if the gross income derived from an activity for two or more of the taxable years in the period of seven consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity or, if the operation has been in existence for less than seven years, if the activity is engaged in for the purpose of generating a profit;

(6) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(7) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code of 1986, as amended;

(8) Taxpayer means a corporate taxpayer or other person subject to either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, or a partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are, subject to or exempt from such taxes, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are subject to or exempt from such taxes; and

(9) Year means the taxable year of the taxpayer.

Source: Laws 1997, LB 886, § 2; Laws 1998, LB 1104, § 15; Laws 1999, LB 539, § 1; Laws 2003, LB 608, § 2; Laws 2005, LB 312, § 17; Laws 2006, LB 990, § 2; Laws 2006, LB 1003, § 8; Laws 2007, LB223, § 16; Laws 2007, LB368, § 136; Laws 2008, LB895, § 2.

Cross References

Environmental Protection Act, see section 81-1532.
Integrated Solid Waste Management Act, see section 13-2001.
Livestock Waste Management Act, see section 54-2416.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,187.02 Application; contents; fee; written agreement; contents.

(1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project; and

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county, city, or village.

(b) The Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million five hundred thousand dollars in each of fiscal years 2004-05 and 2005-06, three million dollars in each of fiscal years 2006-07 through 2008-09, and four million dollars in fiscal year 2009-10. For applications filed in calendar year 2010 and each calendar year thereafter, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total four million dollars. Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts.

(c) Applications for benefits shall be considered in the order in which they are received.

(d) Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required level must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) The maximum amount of credits authorized.

Source: Laws 2003, LB 608, § 3; Laws 2005, LB 312, § 18; Laws 2006, LB 990, § 3; Laws 2007, LB223, § 17; Laws 2008, LB895, § 3; Laws 2008, LB914, § 17; Laws 2009, LB164, § 2.

77-27,188 Tax credit; allowed; when; amount; repayment.

(1) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an approved application pursuant to the Nebraska Advantage Rural Development Act, who is engaged in a qualifying business as described in section 77-27,189, and who after January 1, 2006:

(a)(i) Increases employment by two new equivalent employees and makes an increased investment of at least one hundred twenty-five thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in (A) any county in this state with a population of fewer than fifteen thousand inhabitants, according to the most recent federal decennial census, (B) any village in this state, or (C) any area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts; or

(ii) Increases employment by five new equivalent employees and makes an increased investment of at least two hundred fifty thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in any county in this state with a population of less than twenty-five thousand inhabitants, according to the most recent federal decennial census, or any city of the second class; and

(b) Pays a minimum qualifying wage of eight dollars and twenty-five cents per hour to the new equivalent employees for which tax credits are sought under the Nebraska Advantage Rural Development Act. The Department of Revenue shall adjust the minimum qualifying wages required for applications filed after January 1, 2004, and each January 1 thereafter, as follows: The current rural Nebraska average weekly wage shall be divided by the rural Nebraska average weekly wage for 2003; and the result shall be multiplied by the eight dollars and twenty-five cents minimum qualifying wage for 2003 and rounded to the nearest one cent. The amount of increase or decrease in the minimum qualifying wages for any year shall be the cumulative change in the rural Nebraska average weekly wage since 2003. For purposes of this subsection, rural Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties with a population of less than twenty-five thousand inhabitants as reported by October 1 by the Department of Labor.

For purposes of this section, a teleworker working in Nebraska from his or her residence for a taxpayer shall be considered an employee of the taxpayer, and property of the taxpayer provided to the teleworker working in Nebraska from his or her residence shall be considered an investment. Teleworker

includes an individual working on a per-item basis and an independent contractor working for the taxpayer so long as the taxpayer withholds Nebraska income tax from wages or other payments made to such teleworker. For purposes of calculating the number of new equivalent employees when the teleworkers are paid on a per-item basis or are independent contractors, the total wages or payments made to all such new employees during the year shall be divided by the qualifying wage as determined in subdivision (b) of this subsection, with the result divided by two thousand eighty hours.

(2) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an approved application pursuant to the Nebraska Advantage Rural Development Act, (b) is engaged in livestock production, and (c) after January 1, 2007, invests at least fifty thousand dollars for livestock modernization or expansion.

(3) The amount of the credit allowed under subsection (1) of this section shall be three thousand dollars for each new equivalent employee and two thousand seven hundred fifty dollars for each fifty thousand dollars of increased investment. The amount of the credit allowed under subsection (2) of this section shall be ten percent of the investment, not to exceed a credit of thirty thousand dollars. For each application, a taxpayer engaged in livestock production may qualify for a credit under either subsection (1) or (2) of this section, but cannot qualify for more than one credit per application.

(4) An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of this section if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

(5) The credit shall not exceed the amounts set out in the application and approved by the Tax Commissioner.

(6)(a) If a taxpayer who receives tax credits creates fewer jobs or less investment than required in the project agreement, the taxpayer shall repay the tax credits as provided in this subsection.

(b) If less than seventy-five percent of the required jobs in the project agreement are created, one hundred percent of the job creation tax credits shall be repaid. If seventy-five percent or more of the required jobs in the project agreement are created, no repayment of the job creation tax credits is necessary.

(c) If less than seventy-five percent of the required investment in the project agreement is created, one hundred percent of the investment tax credits shall be repaid. If seventy-five percent or more of the required investment in the project agreement is created, no repayment of the investment tax credits is necessary.

(7) For taxpayers who submitted applications for benefits under the Nebraska Advantage Rural Development Act before January 1, 2006, subsection (1) of this section, as such subsection existed immediately prior to such date, shall continue to apply to such taxpayers. The changes made by Laws 2005, LB 312, shall not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2006.

Source: Laws 1986, LB 1124, § 2; Laws 1987, LB 270, § 2; Laws 1989, LB 335, § 1; Laws 1993, LB 725, § 16; Laws 1995, LB 134, § 6;

Laws 1997, LB 886, § 3; Laws 1999, LB 539, § 2; Laws 2001, LB 169, § 2; Laws 2003, LB 608, § 4; Laws 2005, LB 312, § 19; Laws 2006, LB 990, § 4; Laws 2007, LB223, § 18; Laws 2008, LB895, § 4.

Cross References

Ethanol facility eligible for tax credit, requirements, see section 66-1349.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,188.01 Tax credit; claim; use; payment by contractor; how treated; applicability of section.

(1) The credit allowed under section 77-27,188 may be used to obtain a refund of state sales and use taxes paid or against the income tax liability of the taxpayer or may be used as a refundable credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the state sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of state sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any state sales or use taxes paid by a contractor on building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska state sales and use taxes paid on the building materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska state sales and use taxes were paid on all building materials, may presume that fifty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

(5) No claim for refund of sales and use taxes under this section may be filed prior to January 1, 1989.

(6) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary under section 77-27,194 may be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

(7) For taxpayers who met the job and investment thresholds of the Employment Expansion and Investment Incentive Act for a tax year beginning before January 1, 2004, subsection (6) of this section and subdivision (1)(b) of section 77-27,188, as such section existed immediately prior to such date, shall continue to apply to such taxpayer. The changes made by Laws 2003, LB 608, shall not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2004.

Source: Laws 1987, LB 270, § 3; Laws 1989, LB 335, § 2; Laws 1993, LB 121, § 512; Laws 1993, LB 345, § 73; Laws 1993, LB 725, § 17; Laws 1994, LB 884, § 91; Laws 2003, LB 608, § 5; Laws 2004, LB 1017, § 21.

Note: The Employment Expansion and Investment Incentive Act was renamed the Nebraska Advantage Rural Development Act, see section 77-27,187.

77-27,188.02 Failure to maintain investment and employment level; effect.

If the taxpayer does not maintain the increases in the level of investment and employment described in subsection (1) of section 77-27,188 to create a credit for at least three years after the year for which the credit was first allowed, the taxpayer shall lose all used and unused credits. The taxpayer shall repay to the state the amount of the used credits within one year after the failure to maintain such investment and employment.

Source: Laws 1987, LB 270, § 4; Laws 1989, LB 335, § 3; Laws 1997, LB 886, § 4; Laws 2001, LB 169, § 3; Laws 2003, LB 608, § 6; Laws 2006, LB 990, § 5.

77-27,188.03 Employees; verification of status required; exclusion.

(1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Rural Development Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the act prior to October 1, 2009.

Source: Laws 2009, LB403, § 9.

77-27,189 Qualified business, defined.

(1) A qualified business means any business engaged in:

(a) Storage, warehousing, distribution, transportation, or sale of tangible personal property;

(b) Livestock production;

(c) Conducting research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(d) Performing data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, data center, call center, or telemarketing;

(e) Assembly, fabrication, manufacture, or processing of tangible personal property;

(f) Administrative management of any activities, including headquarter facilities relating to such activities; or

(g) Any combination of the activities listed in this subsection.

(2) Qualified business does not include:

(a) Any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (i) assembled, fabricated, manufactured, or processed by the taxpayer or (ii) used by the purchaser in any of the activities listed in subsection (1) of this section; and

(b) Any casino.

Source: Laws 1986, LB 1124, § 3; Laws 1987, LB 270, § 5; Laws 1993, LB 725, § 18; Laws 2003, LB 608, § 7; Laws 2006, LB 990, § 6; Laws 2007, LB223, § 19.

77-27,190 Employment expansion; how determined.

(1) A taxpayer shall be deemed to have new equivalent employees when the new equivalent employees hired during a taxable year are in addition to the number of total equivalent employees in the taxable year preceding the date of application.

(2) Qualifying business employees who work within and without this state shall be considered only to the extent they are paid for work performed within this state.

(3) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation under this section.

Source: Laws 1986, LB 1124, § 4; Laws 1987, LB 270, § 6; Laws 1997, LB 886, § 5; Laws 2003, LB 608, § 8; Laws 2007, LB223, § 20.

77-27,191 Investment increase; how determined.

(1) A taxpayer shall be deemed to have made an increased investment in this state to the extent the value of the property used or available for use exceeds the value of all property used or available for use on the last day of the taxable year previous to the date the application was filed.

(2) To determine the value of property owned by the taxpayer, the tax basis before allowance for depreciation shall be used. To determine the value of property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

(3) Only investment in improvements to real property and tangible personal property that are depreciable under the Internal Revenue Code shall be considered.

(4) Vehicles, planes, or railroad rolling stock shall be excluded in determining the investment under this section.

Source: Laws 1986, LB 1124, § 5; Laws 1987, LB 270, § 7; Laws 1989, LB 335, § 4; Laws 2003, LB 608, § 9; Laws 2006, LB 1003, § 9.

77-27,192 Existing business acquisition, disposal, reorganization, or relocation; computation; certain transactions excluded.

(1)(a) If the taxpayer acquires an existing business, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer

had owned the business for the entire taxable year preceding the date of application.

(b) If the taxpayer disposes of an existing business, and the new owner maintains the minimum increases in the levels of investment and employment required in section 77-27,188 to create a credit, the taxpayer shall not be required to make any repayment under section 77-27,188.02 solely because of the disposition of the business.

(2) If the structure of a business is reorganized, the taxpayer shall compute the increases on a consistent basis for all periods.

(3) If the taxpayer moves a business from one location to another and the business was operated in this state during the taxable year preceding the date of application, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer had operated the business at the new location for the entire taxable year preceding the date of application.

(4) If the taxpayer enters into any of the following transactions, they shall be presumed to be a transaction entered into for the purpose of generating benefits under the Nebraska Advantage Rural Development Act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement except as specifically provided in this subsection:

(a) The purchase or lease of any property which was previously owned by the taxpayer which filed the application or a related taxpayer unless the first purchase by either the taxpayer which filed the application or a related taxpayer was first placed in service in the state after the beginning of the taxable year the application was filed;

(b) The renegotiation of any lease in existence during the taxable year the application was filed which does not materially change any of the terms of the lease other than the expiration date;

(c) The purchase or lease of any property from a related taxpayer, except that the taxpayer which filed the application will be allowed any benefits under the act to which the related taxpayer would have been entitled on the purchase or lease of the property if the related taxpayer was considered the taxpayer;

(d) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(e) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 1986, LB 1124, § 6; Laws 1997, LB 886, § 6; Laws 2001, LB 169, § 4; Laws 2007, LB223, § 21.

Cross References

Ethanol Development Act, see section 66-1330.

77-27,193 Repealed. Laws 2003, LB 608, § 14.

77-27,194 Credit; when transferable.

The credit allowed under the Nebraska Advantage Rural Development Act shall not be transferable except in the following situations:

(1) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners,

limited liability company members, shareholders, patrons, limited cooperative association members, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, estate, or trust shall be liable for any repayment under section 77-27,188.02;

(2) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986;

(3) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act;

(4) The acquiring taxpayer shall be liable for any repayment that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer; and

(5) If a taxpayer operating a qualifying business and allowed a credit under section 77-27,188 dies and there is credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 1986, LB 1124, § 8; Laws 1993, LB 121, § 513; Laws 1994, LB 884, § 92; Laws 1997, LB 886, § 8; Laws 2003, LB 608, § 10; Laws 2005, LB 312, § 20; Laws 2006, LB 1003, § 10; Laws 2007, LB368, § 137.

77-27,194.01 Refund claims; interest not allowable.

For all refund claims filed on or after October 1, 1998, interest shall not be allowable on any refunds paid because of benefits earned under the Nebraska Advantage Rural Development Act.

Source: Laws 1998, LB 1104, § 16; Laws 2005, LB 312, § 21.

77-27,195 Report; contents.

(1) The Tax Commissioner shall prepare a report identifying the amount of investment in this state and the number of equivalent jobs created by each taxpayer claiming a credit pursuant to the Nebraska Advantage Rural Development Act. The report shall include the amount of credits claimed in the aggregate. The report shall be issued on or before March 15 of each year beginning with March 15, 1988, through March 15, 2006, for all credits allowed during the previous calendar year. The report shall be issued on or before July 15 of each year beginning with July 15, 2007, for all credits allowed during the previous calendar year.

(2) Beginning with applications filed on or after January 1, 2006, except for livestock modernization or expansion projects, the report shall provide information on project-specific total incentives used every two years for each approved project and shall disclose (a) the identity of the taxpayer, (b) the

location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the Department of Revenue, but not necessarily received, during the previous two calendar years.

(3) For livestock modernization or expansion projects, the report shall disclose (a) the identity of the taxpayer, (b) the total credits used and refunds approved during the preceding calendar year, and (c) the location of the project.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1986, LB 1124, § 9; Laws 1993, LB 725, § 19; Laws 1997, LB 886, § 9; Laws 2003, LB 608, § 11; Laws 2005, LB 312, § 22; Laws 2006, LB 990, § 7.

77-27,196 Repealed. Laws 2002, LB 93, § 27.

77-27,196.01 Changes to sections; when operative; credits; applicability of act.

(1) The changes made in sections 77-27,188, 77-27,188.02, 77-27,190, 77-27,192, 77-27,193, and 77-27,194 by Laws 1997, LB 886, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1998. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1998, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(2) The changes made in sections 77-27,187.01 and 77-27,188 by Laws 1999, LB 539, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 1999. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(3) The changes made in sections 77-27,188, 77-27,188.02, and 77-27,192 by Laws 2001, LB 169, shall become operative for all credits earned in tax years beginning, or deemed to begin, on and after January 1, 2001. For all credits earned in tax years beginning, or deemed to begin, prior to January 1, 2001, the provisions of the Employment Expansion and Investment Incentive Act as they existed immediately prior to such date shall apply.

(4) The changes made in sections 77-27,187.01 and 77-27,187.02 by Laws 2008, LB 895, become operative for applications filed on and after April 18, 2008. The changes made in section 77-27,188 by Laws 2008, LB 895, become operative for applications filed on and after July 1, 2009.

Source: Laws 1997, LB 886, § 10; Laws 1999, LB 539, § 3; Laws 2001, LB 169, § 5; Laws 2008, LB 895, § 5.

Note: The Employment Expansion and Investment Incentive Act was renamed the Nebraska Advantage Rural Development Act, see section 77-27,187.

(n) SETOFF FOR DEBT OWED TO DEPARTMENT OF LABOR

77-27,197 Legislative intent.

It is the intent of the Legislature to establish and maintain a procedure to set off against a debtor's income tax refund any debt owed to the Department of Labor which has accrued as a result of an individual's liability for the repayment of unemployment insurance benefits determined to be in overpayment pursuant to sections 48-665 and 48-665.01 or an employer's liability for combined tax determined to be due and owing pursuant to sections 48-655 and 48-656.

Source: Laws 1993, LB 46, § 1; Laws 1997, LB 129, § 3.

77-27,198 Collection system; departments implement.

The Department of Revenue, the Department of Administrative Services, and the Department of Labor shall develop and implement a collection system to carry out the intent of section 77-27,197.

Source: Laws 1993, LB 46, § 2.

77-27,199 Terms, defined.

For purposes of sections 77-27,197 to 77-27,209:

(1) Debt means combined tax due and payable to the Department of Labor pursuant to sections 48-655 and 48-656 or erroneous benefit payments due and payable to the department pursuant to sections 48-665 and 48-665.01; and

(2) Refund means any Nebraska state income tax refund which the Department of Revenue determines to be due an individual, corporate, or business taxpayer. In the case of a joint income tax return, it shall be presumed that each partner to the marriage submitting such return contributed one-half of the earnings upon which the refund is based. The presumption may be contested by the state, the debtor, and the innocent spouse by virtue of the hearing process prescribed in section 77-27,203.

Source: Laws 1993, LB 46, § 3; Laws 1997, LB 129, § 4.

77-27,200 Collection remedy; cumulative.

The collection remedy authorized by sections 77-27,197 to 77-27,209 shall be in addition to and not in substitution for any other remedy available by law.

Source: Laws 1993, LB 46, § 4.

77-27,201 Debt; submission for collection; when.

The Department of Labor may submit any debt of twenty-five dollars or more to the Department of Revenue for collection pursuant to sections 77-27,197 to 77-27,209 except when the validity of the debt has not been finally determined by the debtor's exercise or failure to exercise all applicable appeal rights.

Source: Laws 1993, LB 46, § 5.

77-27,202 Department of Labor; Department of Revenue; notifications required.

(1) If a debtor identified by the Department of Labor pursuant to section 77-27,201 is determined by the Department of Revenue to be entitled to a refund of twenty-five dollars or more, the Department of Revenue shall notify the Department of Labor that a refund is pending.

(2) Upon receipt of the notification, the Department of Labor shall, within twenty days, send written notification to the debtor of an assertion of its rights to all or a portion of the debtor's refund.

(3) The notification to the debtor shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Labor within twenty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and notice that failure to apply for a hearing in writing within the twenty-day period will be deemed a waiver of the opportunity to contest the claim, causing a setoff by default. In the case of a joint income tax return, the notice shall also state the name of the taxpayer named in the return against whom no debt is claimed. There shall be no affirmative duty placed upon the non-owing spouse to initiate an action to receive payment of the noninterceptable amount.

Source: Laws 1993, LB 46, § 6.

77-27,203 Application for hearing; adjustment to debt.

A written application pursuant to section 77-27,202 by a debtor for a hearing shall be effective upon receipt of the application by the Department of Labor. If the department receives a timely written application contesting its claim to a refund, it shall grant a hearing to the taxpayer to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No hearing shall be granted upon issues which have been finally determined.

Source: Laws 1993, LB 46, § 7.

77-27,204 Appeal; procedure.

Any appeal of an action taken or as a result of a hearing held pursuant to section 77-27,203 shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 46, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,205 Final determination; certification of debt; Department of Administrative Services; duties.

Upon the final determination of the amount and validity of the debt due and owing, by means of the hearing provided for in section 77-27,203 or by the taxpayer's default through failure to request a hearing, the Department of Labor shall certify the debt to the Department of Administrative Services within twenty days from the date of the final determination. Upon receipt of the certified debt amount from the Department of Labor, the Department of Administrative Services shall deduct an amount equal to the certified debt from the refund due the debtor, up to the amount of the refund, and shall transfer such amount to the Department of Labor. The Department of Administrative

Services shall refund any remaining balance to the debtor as if the setoff had not occurred.

Source: Laws 1993, LB 46, § 9.

77-27,206 Notification to debtor; contents.

When the Department of Labor receives all or a portion of a certified debt pursuant to section 77-27,205, the department shall notify the debtor of the completion of the setoff and amount received. Such notice shall include the final amount of the refund to which the debtor was entitled prior to the setoff, the amount of the certified debt, and the amount of the refund in excess of the debt, if any.

Source: Laws 1993, LB 46, § 10.

77-27,207 Reimbursement of costs.

The Department of Labor shall reimburse the Department of Revenue and the Department of Administrative Services for all reasonable and necessary costs incurred in setting off debts pursuant to sections 77-27,197 to 77-27,209.

Source: Laws 1993, LB 46, § 11.

77-27,208 Setoffs; priorities.

Setoffs against state income tax refunds shall have priority in the following order:

- (1) Setoffs by the Department of Health and Human Services;
- (2) Setoffs by the Internal Revenue Service;
- (3) Setoffs by the Department of Labor; and
- (4) Setoffs by the Department of Motor Vehicles.

Source: Laws 1993, LB 46, § 12; Laws 1996, LB 1044, § 810; Laws 1997, LB 307, § 211; Laws 1997, LB 720, § 24.

77-27,209 Rules and regulations.

The Department of Labor shall adopt and promulgate rules and regulations necessary to carry out sections 77-27,197 to 77-27,209.

Source: Laws 1993, LB 46, § 13.

(o) SETOFF FOR DEBT OWED TO DEPARTMENT OF MOTOR VEHICLES

77-27,210 Legislative intent.

It is the intent of the Legislature to establish and maintain a procedure to set off against a debtor's state income tax refund any debt owed to the Department of Motor Vehicles which has accrued as a result of an individual's liability for motor fuel taxes pursuant to section 66-1405.

Source: Laws 1997, LB 720, § 25.

77-27,211 Collection system; departments implement.

The Department of Revenue, the Department of Administrative Services, and the Department of Motor Vehicles shall develop and implement a collection system to carry out the intent of section 77-27,210.

Source: Laws 1997, LB 720, § 26.

77-27,212 Terms, defined.

For purposes of sections 77-27,210 to 77-27,221:

(1) Debt means motor fuel taxes due and payable to the Department of Motor Vehicles pursuant to section 66-1405; and

(2) Refund means any Nebraska state income tax refund which the Department of Revenue determines to be due an individual, corporate, or business taxpayer. In the case of a joint income tax return, it shall be presumed that each partner to the marriage submitting such return contributed one-half of the earnings upon which the refund is based. The presumption may be contested by the state, the debtor, and the innocent spouse by virtue of the hearing process prescribed in section 77-27,216.

Source: Laws 1997, LB 720, § 27.

77-27,213 Collection remedy; cumulative.

The collection remedy authorized by sections 77-27,210 to 77-27,221 shall be in addition to and not in substitution for any other remedy available by law.

Source: Laws 1997, LB 720, § 28.

77-27,214 Debt; submission for collection; when.

The Department of Motor Vehicles may submit any debt of twenty-five dollars or more to the Department of Revenue for collection pursuant to sections 77-27,210 to 77-27,221 except when the validity of the debt has not been finally determined by the debtor's exercise or failure to exercise all applicable appeal rights.

Source: Laws 1997, LB 720, § 29.

77-27,215 Department of Motor Vehicles; Department of Revenue; notifications required.

(1) If a debtor identified by the Department of Motor Vehicles pursuant to section 77-27,214 is determined by the Department of Revenue to be entitled to a refund of twenty-five dollars or more, the Department of Revenue shall notify the Department of Motor Vehicles that a refund is pending.

(2) Upon receipt of the notification, the Department of Motor Vehicles shall, within twenty days, send written notification to the debtor of an assertion of its rights to all or a portion of the debtor's refund.

(3) The notification to the debtor shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Motor Vehicles within twenty days after the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and notice that failure to apply for a hearing in writing within the twenty-day period will be deemed a waiver of the opportunity to contest the claim, causing a setoff by default. In the case of a joint income tax return, the notice shall also state the name of the taxpayer named in the return against whom no debt is claimed. There shall be no affirmative duty placed upon the non-owing spouse to initiate an action to receive payment of the noninterceptable amount.

Source: Laws 1997, LB 720, § 30.

77-27,216 Application for hearing; adjustment to debt.

A written application pursuant to section 77-27,215 by a debtor for a hearing shall be effective upon receipt of the application by the Department of Motor Vehicles. If the department receives a timely written application contesting its claim to a refund, it shall grant a hearing to the taxpayer to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No hearing shall be granted upon issues which have been finally determined.

Source: Laws 1997, LB 720, § 31.

77-27,217 Appeal; procedure.

Any appeal of an action taken or as a result of a hearing held pursuant to section 77-27,216 shall be in accordance with the Administrative Procedure Act.

Source: Laws 1997, LB 720, § 32.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,218 Final determination; certification of debt; Department of Administrative Services; duties.

Upon the final determination of the amount and validity of the debt due and owing, by means of the hearing provided for in section 77-27,216 or by the taxpayer's default through failure to request a hearing, the Department of Motor Vehicles shall certify the debt to the Department of Administrative Services within twenty days from the date of the final determination. Upon receipt of the certified debt amount from the Department of Motor Vehicles, the Department of Administrative Services shall deduct an amount equal to the certified debt from the refund due the debtor, up to the amount of the refund, and shall transfer such amount to the Department of Motor Vehicles. The Department of Administrative Services shall refund any remaining balance to the debtor as if the setoff had not occurred.

Source: Laws 1997, LB 720, § 33.

77-27,219 Notification to debtor; contents.

When the Department of Motor Vehicles receives all or a portion of a certified debt pursuant to section 77-27,218, the department shall notify the debtor of the completion of the setoff and amount received. Such notice shall include the final amount of the refund to which the debtor was entitled prior to the setoff, the amount of the certified debt, and the amount of the refund in excess of the debt, if any.

Source: Laws 1997, LB 720, § 34.

77-27,220 Reimbursement of costs.

The Department of Motor Vehicles shall reimburse the Department of Revenue and the Department of Administrative Services for all reasonable and necessary costs incurred in setting off debts pursuant to sections 77-27,210 to 77-27,221.

Source: Laws 1997, LB 720, § 35.

77-27,221 Rules and regulations.

The Department of Motor Vehicles shall adopt and promulgate rules and regulations necessary to carry out sections 77-27,210 to 77-27,221.

Source: Laws 1997, LB 720, § 36.

(p) CREDIT FOR BUSINESS CHILD CARE EXPENDITURES**77-27,222 Repealed. Laws 2007, LB 367, § 30.****(q) COUNTY LICENSE OR OCCUPATION TAX ON ADMISSIONS****77-27,223 County; license or occupation tax; authorized; election.**

A county may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business engaged in the sale of admissions to recreational, cultural, entertainment, or concert events that are subject to sales tax under sections 77-2701.04 to 77-2713 that occur outside any incorporated municipality, but within the boundary limits of the county. The tax shall be uniform in respect to the class upon which it is imposed. The tax shall be based upon a certain percentage of gross receipts from sales in the county of the person, partnership, limited liability company, corporation, or business, and may include sales of other goods and services at such locations and events, not to exceed one and one-half percent. A county may not impose the tax on sales that are within an incorporated city or village. No county shall levy and collect a license or occupation tax under this section unless approved by a majority of those voting on the question at a special, primary, or general election.

Source: Laws 2002, LB 259, § 1; Laws 2003, LB 282, § 83.

77-27,224 County board; election; question; effect.

The county board shall submit the question of imposing a license or occupation tax under section 77-27,223 to the registered voters at any primary or general election or at a special election if the county submits a certified copy of the resolution proposing the tax to the election commissioner or county clerk within a reasonable time prior to the primary, general, or special election. The question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific project or program for which the revenue will be allocated, and shall include the following language: Shall the county board impose a license or occupation tax upon any person, partnership, limited liability company, corporation, or business engaged in the sale of admissions to recreational, cultural, entertainment, or concert events within the county on which the State of Nebraska is authorized to impose a sales tax? If a majority of those voting on the question are in favor of the tax, then the county board shall be empowered to impose the tax and shall forthwith proceed to impose the tax. If a majority of those voting on the question are opposed to the tax, then the county board shall not impose the tax.

Source: Laws 2002, LB 259, § 2.

77-27,225 Election; notice.

The county board shall give notice of the submission of the question of imposing a license or occupation tax under section 77-27,223 not more than

thirty days nor less than ten days prior to the election, by publication one time in one or more newspapers published in or of general circulation in the county in which such question is to be submitted. The notice shall be in addition to any other notice required under the general election laws of this state.

Source: Laws 2002, LB 259, § 3.

77-27,226 Petition to submit question.

Whenever, at least forty-five days prior to any county or state election, the registered voters of the county, equal in number to ten percent of the votes cast at the last preceding county election, petition the county board to submit the question of imposing a license or occupation tax under section 77-27,223, the county board shall submit the question at the next primary, general, or special election.

Source: Laws 2002, LB 259, § 4.

77-27,227 Submission of question; limitation.

The question of imposing a license or occupation tax under section 77-27,223 which has been submitted to the registered voters and failed shall not be submitted to the registered voters of the county again until twenty-three months after such failure.

Source: Laws 2002, LB 259, § 5.

(r) CREDIT FOR PLANNED GIFTS

77-27,228 Planned gift, defined.

(1) For purposes of sections 77-27,228 to 77-27,234, subject to subsection (2) of this section, planned gift means an irrevocable contribution to a qualified endowment when the contribution uses any of the following techniques authorized under the Internal Revenue Code of 1986, as amended:

- (a) Charitable remainder unitrusts, as defined by section 664(d)(2) of the code;
- (b) Charitable remainder annuity trusts, as defined by section 664(d)(1) of the code;
- (c) Pooled income fund trusts, as defined by section 642(c)(5) of the code;
- (d) Charitable lead unitrusts qualifying under section 170(f)(2)(B) of the code;
- (e) Charitable lead annuity trusts qualifying under section 170(f)(2)(B) of the code;
- (f) Charitable gift annuities undertaken pursuant to section 1011(b) of the code;
- (g) Deferred charitable gift annuities undertaken pursuant to section 1011(b) of the code;
- (h) Charitable life estate agreements qualifying under section 170(f)(3)(B) of the code; or
- (i) Paid-up life insurance policies qualifying as a deduction under section 170 of the code.

(2)(a) A contribution using a technique described in subdivision (1)(a) or (1)(b) of this section is not a planned gift unless the trust agreement provides

that the trust cannot terminate and the beneficiaries' interest in the trust cannot be assigned or contributed to the qualified endowment sooner than the earlier of:

- (i) The date of death of the beneficiaries; or
- (ii) Five years after the date of the contribution.

(b) A contribution using the technique described in subdivision (1)(g) of this section is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by the Department of Revenue in effect on the date of the contribution. The department may adopt and promulgate rules and regulations adopting life expectancy tables that are derived from the actuarial tables contained in the publications of the Internal Revenue Service.

(c) A contribution using a technique described in subdivision (1)(f) or (1)(g) of this section is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity cannot be assigned to the qualified endowment sooner than the earlier of:

- (i) The date of death of the annuitant or annuitants; or
- (ii) Five years after the date of the contribution.

(d) A contribution using a technique described in subdivision (1)(f) or (1)(g) of this section is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in section 59-1802.

Source: Laws 2005, LB 28, § 2.
Termination date January 1, 2010.

77-27,229 Qualified endowment, defined.

For purposes of sections 77-27,228 to 77-27,234, qualified endowment means a permanent, irrevocable fund that is used for Nebraska charitable purposes and held by a Nebraska incorporated or established organization that:

- (1)(a) Is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- (b) Is a bank or trust company that is holding the fund on behalf of a tax-exempt organization; and
- (2) Holds the fund as a permanent endowment fund.

Source: Laws 2005, LB 28, § 3.
Termination date January 1, 2010.

77-27,230 Individuals; income tax credit; amount; treatment.

(1) A resident individual shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to fifteen percent of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the individual during the tax year to any qualified endowment. The maximum credit per individual per tax year is five thousand dollars. The credit allowed under this section shall not exceed the taxpayer's income tax liability.

(2) The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the planned gift is made.

Source: Laws 2005, LB 28, § 4; Laws 2006, LB 1010, § 1.
Termination date January 1, 2010.

77-27,231 Certain business entities; tax credit; amount; treatment.

A contribution to a qualified endowment by a small business corporation, partnership, or limited liability company carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code or carrying on any rental activity qualifies for the credit provided in section 77-27,230. The credit shall be attributed to shareholders, partners, or members in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for income tax purposes. The maximum credit per shareholder, partner, or member per tax year is five thousand dollars. The credit allowed under this section may not exceed the taxpayer's income tax liability. The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the contribution is made.

Source: Laws 2005, LB 28, § 5; Laws 2006, LB 1010, § 2.
Termination date January 1, 2010.

77-27,232 Corporate income tax credit; amount; treatment.

A corporation shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to ten percent of any contribution made by the corporation to a qualified endowment. The maximum credit that may be claimed by a corporation for contributions made per tax year under this section is five thousand dollars. The credit allowed under this section shall not exceed the taxpayer's income tax liability. The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the contribution is made.

Source: Laws 2005, LB 28, § 6; Laws 2006, LB 1010, § 3.
Termination date January 1, 2010.

77-27,233 Estate or trust; income tax credit; amount; treatment.

A contribution to a qualified endowment by a resident estate or trust qualifies for the credit provided in section 77-27,230 if the contribution is a planned gift or in section 77-27,232 if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Nebraska income tax purposes. The maximum credit per beneficiary is five thousand dollars, and the credit can only be claimed in the tax year in which the contribution is made. The credit cannot be carried back or forward.

Source: Laws 2005, LB 28, § 7; Laws 2006, LB 1010, § 4.
Termination date January 1, 2010.

77-27,234 Termination of sections.

Sections 77-27,228 to 77-27,233 terminate for taxable years beginning or deemed to begin on or after January 1, 2010, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 28, § 8.

(s) RENEWABLE ENERGY TAX CREDIT**77-27,235 Renewable energy tax credit; Department of Revenue; Environmental Quality Council; powers.**

(1) Any producer of electricity generated by a new zero-emission facility shall earn a renewable energy tax credit. For electricity generated on or after July 14, 2006, and before October 1, 2007, the credit shall be .075 cent for each kilowatt-hour of electricity generated by a new zero-emission facility. For electricity generated on or after October 1, 2007, and before January 1, 2010, the credit shall be .1 cent for each kilowatt-hour of electricity generated by a new zero-emission facility. For electricity generated on or after January 1, 2010, and before January 1, 2013, the credit shall be .075 cent per kilowatt-hour for electricity generated by a new zero-emission facility. For electricity generated on or after January 1, 2013, and before January 1, 2018, the credit shall be .05 cent per kilowatt-hour for electricity generated by a new zero-emission facility. The credit may be earned for production of electricity for ten years after the date that the facility is placed in operation on or after July 14, 2006.

(2) For purposes of this section:

(a) Electricity generated by a new zero-emission facility means electricity that is exclusively produced by a new zero-emission facility;

(b) Eligible renewable resources means wind, moving water, solar, geothermal, fuel cell, methane gas, or photovoltaic technology; and

(c) New zero-emission facility means an electrical generating facility located in this state that is first placed into service on or after July 14, 2006, which utilizes eligible renewable resources as its fuel source and for which the operation of the facility results in no pollution or emissions that are or may be harmful to the environment as certified by the Department of Environmental Quality.

(3) The credit allowed under this section may be used to reduce the producer's Nebraska income tax liability or to obtain a refund of state sales and use taxes paid by the producer of electricity generated by a zero-emission facility. A claim to use the credit for refund of the state sales and use taxes paid, either directly or indirectly, by the producer may be filed quarterly for electricity generated during the previous quarter by the twentieth day of the month following the end of the calendar quarter. The credit may be used to obtain a refund of state sales and use taxes paid during the quarter immediately preceding the quarter in which the claim for refund is made, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid during the quarter.

(4) The Department of Revenue may adopt and promulgate rules and regulations to permit verification of the validity and timeliness of any renewable energy tax credit claimed.

(5) The Environmental Quality Council may adopt and promulgate rules and regulations to certify that the operation of a new zero-emission facility results in no pollution or emissions that are or may be harmful to the environment.

(6) The total amount of renewable energy tax credits that may be used by all taxpayers shall be limited to seven hundred fifty thousand dollars without further authorization from the Legislature.

(7) The credit allowed under this section may not be claimed by a producer who received a sales tax exemption under section 77-2704.57 for the new zero-emission facility.

Source: Laws 2006, LB 872, § 2; Laws 2007, LB367, § 24.

(t) BIODIESEL FACILITY INVESTMENT CREDIT

77-27,236 Biodiesel facility tax credit; conditions; facility; requirements; information not public record.

(1) A taxpayer who makes an investment after January 1, 2008, and prior to January 1, 2015, in a biodiesel facility shall receive a nonrefundable income tax credit as provided in this section.

(2) The credit provided in subsection (1) of this section shall be equal to thirty percent of the amount invested by the taxpayer in a biodiesel facility. The credit shall be taken over at least four taxable years subject to the following conditions:

(a) No more than ten percent of the credit provided for in subsection (1) of this section shall be taken in each of the first two taxable years the biodiesel facility produces B100 and no more than fifty percent of the credit provided for in subsection (1) of this section shall be taken in the third taxable year the biodiesel facility produces B100. The credit allowed under subsection (1) of this section shall not exceed fifty percent of the taxpayer's liability in any tax year;

(b) Any amount of credit not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in which the investment was made. The aggregate maximum income tax credit a taxpayer may obtain is two hundred fifty thousand dollars;

(c) The investment shall be at risk in the biodiesel facility. The investment shall be in the form of a purchase of an ownership interest or the right to receive payment of dividends from the biodiesel facility and shall remain in the business for at least three years. The Tax Commissioner may recapture any credits used if the investment does not remain invested for the three-year period. An investment placed in escrow does not qualify under this subdivision;

(d) The entire amount of the investment shall be expended by the biodiesel facility for plant, equipment, research and development, marketing and sales activity, or working capital;

(e) A partnership, a subchapter S corporation, a limited liability company that for tax purposes is treated like a partnership, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or any other pass-through entity that invests in a biodiesel facility shall be considered to be the taxpayer for purposes of the credit limitations. Except for the limitation under subdivision (2)(a) of this section, the amount of the credit allowed to a pass-through entity shall be determined at the partnership, corporate, cooperative, or other organizational level. The amount of the

credit determined at the partnership, corporate, cooperative, or other organizational level shall be allowed to the partners, members, or other owners in proportion to their respective ownership interests in the pass-through entity;

(f) The credit shall be taken only if (i) the biodiesel facility produces B100, (ii) the biodiesel facility in which the investment was made produces at a rate of at least seventy percent of its rated capacity continuously for at least one week during the first taxable year the credit is taken and produces at a rate of at least seventy percent of its rated capacity over a six-month period during each of the next two taxable years the credit is taken, (iii) all processing takes place at the biodiesel facility in which the investment was made and which is located in Nebraska, and (iv) at least fifty-one percent of the ownership interest of the biodiesel facility is held by Nebraska resident individuals or Nebraska entities; and

(g) The biodiesel facility shall provide the Department of Revenue written evidence substantiating that the biodiesel facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The biodiesel facility shall annually provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department. The analysis shall be prepared by an independent laboratory meeting standards of the International Organization for Standardization. Prior to collecting the samples, the biodiesel facility shall notify the department which may observe the sampling procedures utilized by the biodiesel facility to obtain the samples to be submitted for independent analysis.

(3) Any biodiesel facility for which credits are granted shall, whenever possible, employ workers who are residents of the State of Nebraska.

(4) Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with the Tax Commissioner shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the department that the release would not violate this section.

(5) For purposes of this section:

(a) Biodiesel facility means a plant or facility related to the processing, marketing, or distribution of biodiesel; and

(b) B100 means pure biodiesel containing mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated as B100, and meeting the American Society for Testing and Materials standard, ASTM D6751.

Source: Laws 2007, LB343, § 2.

ARTICLE 28

UNPAID TAXES ON GOVERNMENTAL PROPERTY

Section

77-2801. Property; unpaid taxes; sale; when.

77-2802. Property; unpaid taxes; governing body; certify to county treasurer; certify value of property less than total taxes.

Section

- 77-2803. Property; unpaid taxes; sale; date.
 77-2804. Property; unpaid taxes; sale; notice; procedure if no bid is made.
 77-2805. Property; unpaid taxes; notice to state and political subdivisions.
 77-2806. Property; unpaid taxes; sale; who may purchase.
 77-2807. Property; unpaid taxes; sale; proceeds; disposition.
 77-2808. Property; unpaid taxes and costs; cancellation; when.
 77-2809. Property; unpaid taxes; sale; proceeds insufficient; special assessments, interest, penalty; cancel.

77-2801 Property; unpaid taxes; sale; when.

Whenever the state or any of its political subdivisions shall own property upon which there are any unpaid taxes or special assessments and any interest, penalties or costs relating to such taxes or special assessments, and the value of such property is less than the total of such taxes, special assessments, interest, penalties and costs, such property may be sold by the owner and title given as provided in sections 77-2801 to 77-2809.

Source: Laws 1967, c. 483, § 1, p. 1495.

77-2802 Property; unpaid taxes; governing body; certify to county treasurer; certify value of property less than total taxes.

The governing body of the political subdivision owning property described in section 77-2801 and desiring to sell the same shall certify by official action to the county treasurer of the county in which the property is located, the legal description of the property and the street address of such property if within a city or village, that the value of the property is less than the total of all taxes, special assessments and interest, penalties, and cost levied against such property, and that the owner desires that such property be sold.

Source: Laws 1967, c. 483, § 2, p. 1495.

77-2803 Property; unpaid taxes; sale; date.

The county treasurer shall set a date of sale which shall be within two months of the date of the certification made pursuant to section 77-2802 and proceed, as provided in sections 77-2801 to 77-2809, to offer and sell such property to the highest bidder.

Source: Laws 1967, c. 483, § 3, p. 1495.

77-2804 Property; unpaid taxes; sale; notice; procedure if no bid is made.

The county treasurer shall, prior to the sale, cause an advertisement to be printed in a legal newspaper published in the English language in such county or, if none is published in the county, in such a legal newspaper of general circulation in the county at least once a week for three consecutive weeks. Such advertisement shall state the owner of such property and that such property, described by its legal description and if within a city or village by its street address in addition to its legal description, will be sold to the highest bidder on the date set for sale and that a title clear of all liens for taxes, or special assessments and interest, penalties, or costs thereon will be conveyed. If upon the date of sale no bid is made, the county treasurer shall continue such sale until a bid shall have been received, except that the owner, at any time after the

date for sale, may cause the selling of the property to be discontinued by notifying the county treasurer of such desire.

Source: Laws 1967, c. 483, § 4, p. 1496; Laws 1986, LB 960, § 40.

77-2805 Property; unpaid taxes; notice to state and political subdivisions.

Prior to advertising for sale, the county treasurer shall notify the state and all political subdivisions which have any interest in taxes or special assessments levied and assessed against such property of the proposed sale and the date of such sale.

Source: Laws 1967, c. 483, § 5, p. 1496.

77-2806 Property; unpaid taxes; sale; who may purchase.

The state or any other political subdivision may purchase such property.

Source: Laws 1967, c. 483, § 6, p. 1496.

77-2807 Property; unpaid taxes; sale; proceeds; disposition.

The proceeds of such sale shall be first applied toward payment of all taxes or special assessments and all interest, penalties and costs thereon in the same manner as proceeds from tax foreclosure sales. If there are any proceeds remaining, such remainder shall be applied against any other liens held by the owner and if there remain any further proceeds, such proceeds shall be distributed as otherwise provided by law.

Source: Laws 1967, c. 483, § 7, p. 1496.

77-2808 Property; unpaid taxes and costs; cancellation; when.

If after all proceeds have been distributed and there still remains unpaid any portion of taxes, interest and penalties and costs thereon, the county shall by official action cause all such taxes, interest, and penalties and costs, regardless of whether such are for the benefit of the state or any political subdivision, to be stricken from the records of the county. Such action shall forever release such property from such taxes, interest, penalties, and costs thereon.

Source: Laws 1967, c. 483, § 8, p. 1496.

77-2809 Property; unpaid taxes; sale; proceeds insufficient; special assessments, interest, penalty; cancel.

If after the proceeds have been distributed and there still remains unpaid any portion of special assessments, interest, penalties, or costs thereon the governing body of each and every political subdivision interested in the unpaid special assessment shall cause such special assessment, and interest, penalties and costs thereon to be stricken from the records. Such action shall forever release such property from such special assessments and interest, penalties and costs thereon.

Source: Laws 1967, c. 483, § 9, p. 1497.

ARTICLE 29

MULTISTATE TAX COMPACT

Section
77-2901. Repealed. Laws 1985, LB 344, § 9.

Section

77-2902. Repealed. Laws 1985, LB 344, § 9.

77-2903. Repealed. Laws 1985, LB 344, § 9.

77-2901 Repealed. Laws 1985, LB 344, § 9.

77-2902 Repealed. Laws 1985, LB 344, § 9.

77-2903 Repealed. Laws 1985, LB 344, § 9.

ARTICLE 30

MECHANICAL AMUSEMENT DEVICE TAX ACT

Section

77-3001. Terms, defined.

77-3002. Operator; license; application; limitations; renewal; fees; service of process.

77-3003. Distributor; license; application; limitations; fees.

77-3004. Occupation tax; amount; payment.

77-3005. Occupation tax; addition to other taxes and fees.

77-3006. Tax Commissioner; administration of act.

77-3007. Tax; payment; decal; form; display.

77-3008. Municipalities; political subdivisions; power to tax.

77-3009. Violations; penalty.

77-3010. Violations; prosecution; limitation.

77-3011. Act, how cited.

77-3001 Terms, defined.

For purposes of the Mechanical Amusement Device Tax Act, unless the context otherwise requires:

(1) Person means an individual, partnership, limited liability company, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals;

(2) Mechanical amusement device means any machine which, upon insertion of a coin, currency, credit card, or substitute into the machine, operates or may be operated or used for a game, contest, or amusement of any description, such as, by way of example, but not by way of limitation, pinball games, shuffleboard, bowling games, radio-ray rifle games, baseball, football, racing, boxing games, and coin-operated pool tables. Mechanical amusement device also includes game and draw lotteries and coin-operated automatic musical devices. The term does not mean vending machines which dispense tangible personal property, devices located in private homes for private use, pickle card dispensing devices which are required to be registered with the Department of Revenue pursuant to section 9-345.03, or devices which are mechanically constructed in a manner that would render their operation illegal under the laws of the State of Nebraska;

(3) Operator means any person who operates a place of business in which a machine or device owned by him or her is physically located or any person who places and who either directly or indirectly controls or manages any machine or device;

(4) Distributor means any person who sells, leases, or delivers possession or custody of a machine or mechanical device to operators thereof for a consideration either directly or indirectly received;

(5) Whenever in the act, the words machine or device are used, they refer to mechanical amusement device; and

(6) Whenever in the act, the words machine, device, person, operator, or distributor are used, the words in the singular include the plural and in the plural include the singular.

Source: Laws 1969, c. 635, § 1, p. 2541; Laws 1977, LB 353, § 1; Laws 1993, LB 121, § 514; Laws 1997, LB 317, § 1.

Hourly fee pool tables that are not coin operated are excluded from the definition of "mechanical amusement device" in subsection (2) of this section. Because in regard to the legitimate purposes of the Mechanical Amusement Device Tax Act, a substantial difference of situation or circumstance exists be-

tween coin-operated amusement devices and other forms of amusement for which an hourly fee is collected, the act is not "special legislation" in violation of Neb. Const. Article III, section 18. *Big John's Billiards, Inc. v. Balka*, 260 Neb. 702, 619 N.W.2d 444 (2000).

77-3002 Operator; license; application; limitations; renewal; fees; service of process.

(1) Any operator shall be required to procure an annual license from the Tax Commissioner permitting him or her to operate machines or devices within the State of Nebraska. The Tax Commissioner, upon the application of any person, may issue a license, except that if the applicant (a) is not of good character and reputation in the community in which he or she resides, (b) has been convicted of or has pleaded guilty to a felony under the laws of the State of Nebraska, any other state, or of the United States, or (c) has been convicted of or has pleaded guilty to being the proprietor of a gambling house, or of any other crime or misdemeanor opposed to decency and morality, no license shall be issued. If the applicant is a corporation whose majority stockholders could not obtain a license, then such corporation shall not be issued a license. If the applicant is an individual, the application shall include the applicant's social security number. Procuring a license shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action arising out of the operation of machines or devices in this state.

(2)(a) For the period beginning July 1, 1998, through December 31, 1999, if the applicant operates ten or more machines, the application shall be accompanied by a fee of two hundred fifty dollars, and such license will remain in effect until December 31, 1999. If the applicant operates fewer than ten machines, no fee is due. Any licensee that places additional machines into operation during this period which results in a total of ten or more machines in operation becomes subject to the two-hundred-fifty-dollar fee.

(b) Beginning January 1, 2000, the application shall be filed on or before January 1 of each year, and no license fee will be required.

Source: Laws 1969, c. 635, § 3, p. 2542; Laws 1982, LB 928, § 68; Laws 1983, LB 447, § 92; Laws 1997, LB 317, § 2; Laws 1997, LB 752, § 213.

77-3003 Distributor; license; application; limitations; fees.

Any distributor shall be required to procure an annual license from the Tax Commissioner permitting him or her to sell, lease, or deliver possession or custody of a machine or device within the State of Nebraska. The Tax Commissioner, upon the application of any person, may issue a license, subject to the same limitations as an operator's license under section 77-3002. If the applicant is an individual, the application shall include the applicant's social security number. For applications filed for the period beginning July 1, 1998, through

December 31, 1999, such application shall be accompanied by a fee of two hundred fifty dollars, and the license shall remain in effect until December 31, 1999. Beginning January 1, 2000, the application shall be filed on or before January 1 of each year, and no license fee will be required.

Source: Laws 1969, c. 635, § 3, p. 2542; Laws 1982, LB 928, § 68; Laws 1997, LB 317, § 3; Laws 1997, LB 752, § 214.

77-3004 Occupation tax; amount; payment.

(1) An occupation tax is hereby imposed and levied, in the amount and in accordance with the terms and conditions hereafter stated, upon the business of operating mechanical amusement devices within the State of Nebraska for profit or gain either directly or indirectly received. Every person who now or hereafter engages in the business of operating such devices in the State of Nebraska shall pay such tax in the amount and manner specified in this section.

(2) Any operator of a mechanical amusement device within the State of Nebraska shall pay an occupation tax for each machine or device which he or she operates during all of the taxable year. The tax shall be due and payable on January 1 of each year on each machine or device in operation on that date, except that it shall be unlawful to pay any such occupation tax unless the sales or use tax has been paid on such mechanical amusement devices. For every machine or device put into operation on a date subsequent to January 1, and which has not been included in computing the tax imposed and levied by the Mechanical Amusement Device Tax Act, the tax shall be due and payable therefor prior to the time the machine or device is placed in operation. All taxes collected pursuant to the act shall be remitted to the State Treasurer for credit to the General Fund.

(3) The amount of the occupation tax shall be fifty dollars for each machine or device for the period from July 1, 1998, through December 31, 1999, except that for machines placed in operation after April 1, 1999, and before January 1, 2000, the occupation tax shall be twenty-five dollars for each machine or device.

(4) The amount of the occupation tax shall be thirty-five dollars for each machine or device for any period beginning on or after January 1, 2000, except that for machines placed in operation after July 1, and before January 1 of each year, the occupation tax shall be twenty dollars for each machine or device.

Source: Laws 1969, c. 635, § 4, p. 2543; Laws 1977, LB 353, § 2; Laws 1982, LB 928, § 69; Laws 1997, LB 317, § 4.

77-3005 Occupation tax; addition to other taxes and fees.

The occupation tax levied and imposed by the Mechanical Amusement Device Tax Act shall be in addition to any and all taxes or fees, of any form whatsoever, now imposed by the State of Nebraska or any of its subdivisions, upon the business of operating or distributing mechanical amusement devices as defined in section 77-3001, or otherwise defined by the subdivisions and municipalities of the State of Nebraska, except that payment of the tax and license fees due and owing on or before the licensing date of each year shall exempt any such mechanical amusement device from the application of the sales tax which would or could otherwise be imposed under the Nebraska Revenue Act of 1967. Nonpayment of the taxes or fees due and owing on or before the licensing date of each year shall render the exemption provided by this section inapplicable

and the particular machines or devices shall then be subject to all the provisions of the Nebraska Revenue Act of 1967, including the penalty provisions pertaining to the owner or operator of such machines or devices.

Source: Laws 1969, c. 635, § 5, p. 2543; Laws 1997, LB 317, § 5.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-3006 Tax Commissioner; administration of act.

The administration of the provisions of sections 77-3001 to 77-3011 is hereby vested in the Tax Commissioner of the State of Nebraska subject to other provisions of law relating to the Tax Commissioner. The Tax Commissioner may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of the provisions of sections 77-3001 to 77-3011, and may delegate authority to his representatives to conduct hearings, or perform any other duties imposed under the provisions of sections 77-3001 to 77-3011.

Source: Laws 1969, c. 635, § 6, p. 2544.

77-3007 Tax; payment; decal; form; display.

(1) The payment of the tax imposed by the provisions of sections 77-3001 to 77-3011 shall be evidenced by a separate decal for each device signifying payment of the tax, in a form prescribed by the Tax Commissioner.

(2) Every operator shall place such decal in a conspicuous place on each device to denote payment of the tax for each device for the current year.

Source: Laws 1969, c. 635, § 7, p. 2544; Laws 1977, LB 353, § 3.

77-3008 Municipalities; political subdivisions; power to tax.

Nothing in sections 77-3001 to 77-3011 shall be construed to limit, usurp or repeal any power to tax granted to the subdivisions and municipalities of the State of Nebraska by the laws and Constitution of the State of Nebraska.

Source: Laws 1969, c. 635, § 8, p. 2545.

77-3009 Violations; penalty.

(1) Any person who places a mechanical amusement device in operation in the State of Nebraska without the necessary decal being placed conspicuously upon it or without having obtained the necessary license shall be subject to an administrative penalty of seventy-five dollars for each violation.

(2) Any mechanical amusement device which does not have the necessary decal conspicuously displayed upon it shall be subject to being sealed by the Tax Commissioner or his or her delegate. If such seal is broken prior to payment of the occupation tax upon such device, the device shall be subject to forfeiture and sale by the Tax Commissioner.

(3) Any person violating the Mechanical Amusement Device Tax Act shall be guilty of a Class II misdemeanor. Each day on which any person engages in or conducts the business of operating or distributing the machines or devices subject to the Mechanical Amusement Device Tax Act, without having paid the

tax or obtained the required license as provided, shall constitute a separate offense.

Source: Laws 1969, c. 635, § 9, p. 2545; Laws 1977, LB 39, § 245; Laws 1977, LB 353, § 4; Laws 1979, LB 4, § 7; Laws 1997, LB 317, § 6.

77-3010 Violations; prosecution; limitation.

Prosecutions for any violations of sections 77-3001 to 77-3011 shall be brought by the Attorney General or county attorney in the county in which the violation occurs. Any prosecution for the violation of any of the provisions of sections 77-3001 to 77-3011 shall be instituted within three years after the commission of the offense.

Source: Laws 1969, c. 635, § 10, p. 2545.

77-3011 Act, how cited.

Sections 77-3001 to 77-3011 shall be known and may be cited as the Mechanical Amusement Device Tax Act.

Source: Laws 1969, c. 635, § 11, p. 2545.

ARTICLE 31

REGISTRATION BY NONRESIDENT CONTRACTORS

Section

- 77-3101. Repealed. Laws 2009, LB 162, § 12.
- 77-3102. Repealed. Laws 2009, LB 162, § 12.
- 77-3103. Repealed. Laws 2009, LB 162, § 12.
- 77-3104. Repealed. Laws 2009, LB 162, § 12.
- 77-3105. Repealed. Laws 2009, LB 162, § 12.
- 77-3106. Repealed. Laws 2009, LB 162, § 12.
- 77-3107. Repealed. Laws 2009, LB 162, § 12.
- 77-3108. Repealed. Laws 2009, LB 162, § 12.
- 77-3109. Repealed. Laws 2009, LB 162, § 12.
- 77-3110. Repealed. Laws 2009, LB 162, § 12.
- 77-3111. Repealed. Laws 2009, LB 162, § 12.
- 77-3112. Repealed. Laws 2009, LB 162, § 12.

77-3101 Repealed. Laws 2009, LB 162, § 12.

77-3102 Repealed. Laws 2009, LB 162, § 12.

77-3103 Repealed. Laws 2009, LB 162, § 12.

77-3104 Repealed. Laws 2009, LB 162, § 12.

77-3105 Repealed. Laws 2009, LB 162, § 12.

77-3106 Repealed. Laws 2009, LB 162, § 12.

77-3107 Repealed. Laws 2009, LB 162, § 12.

77-3108 Repealed. Laws 2009, LB 162, § 12.

77-3109 Repealed. Laws 2009, LB 162, § 12.

77-3110 Repealed. Laws 2009, LB 162, § 12.

77-3111 Repealed. Laws 2009, LB 162, § 12.

77-3112 Repealed. Laws 2009, LB 162, § 12.

ARTICLE 32

LAND REUTILIZATION AUTHORITY

Section	
77-3201.	Land Reutilization Authority; created; powers; purpose.
77-3202.	Authority; beneficiaries.
77-3203.	Land Reutilization Commission; created; members; appointment; serve without compensation.
77-3204.	Reutilization commission; meeting; officers; bond; oath.
77-3205.	Authority; seal; adopt; conveyances; requirements.
77-3206.	Authority; duties.
77-3206.01.	Authority; sale of real property; notification to adjacent real property owner required.
77-3207.	Authority; employees; disbursements; fiscal year; audit; warrants.
77-3208.	Authority; perpetual inventory.
77-3209.	Authority; set up accounts; proceeds; how disbursed.
77-3210.	Authority; members; employees; prohibited acts; violations; penalty.
77-3211.	Sheriff; no bids; authority deemed purchaser; payment.
77-3212.	Title subject to rights-of-way, easements, covenants, and rights of redemption.
77-3213.	Act, how cited.

77-3201 Land Reutilization Authority; created; powers; purpose.

(1) There may be created within each county an authority for the management, sale, transfer, and other disposition of tax-delinquent lands, which authority shall be known as the Land Reutilization Authority of the County of It shall have authority to accept the grant of any interest in real property made to it or to accept gifts and grant-in-aid assistance. The authority shall have and exercise all the powers conferred by the Land Reutilization Act necessary and incidental to the effective management, sale, transfer, or other disposition of real estate acquired under and by virtue of the foreclosure of the lien for delinquent real estate taxes, and in the exercise of its powers, the authority shall be deemed to be a public corporation acting in a governmental capacity and a political subdivision of this state.

(2) The authority shall foster the public purpose of returning land which is in a nonrevenue-generating nontax-producing status to effective utilization in order to provide housing, new industry, and jobs for the citizens of the county and new tax revenue for the county.

(3) In counties in which a city of the metropolitan class is located, such a city may create an authority for the management, sale, transfer, and other disposition of tax-delinquent lands which shall be known as the Land Reutilization Authority of the City of Such authority shall have all of the powers and duties granted to an authority by the act with regard to property located within the corporate boundaries of that city. Such an authority shall be a division of the planning department of such city and shall not be deemed to be a public corporation acting in a governmental capacity or a political subdivision of this state, independent of the city creating the authority. All of the acts of such an authority shall be the acts of such city. If a land reutilization authority for the county in which is situated a city of the metropolitan class exists at the time of creation of an authority by a city of the metropolitan class,

the existing authority of the county with regard to property located within the corporate boundaries of the city shall cease to exist within one hundred eighty days after the creation of the land reutilization authority of such city and any real property located within the corporate boundaries of the city held by such land reutilization authority of the county shall be conveyed to the newly created authority of the city of the metropolitan class.

(4) Pursuant to the provisions of the Interlocal Cooperation Act, a city of the metropolitan class that creates a land reutilization authority may enter into an agreement with any county to authorize the city's land reutilization authority to exercise on behalf of such county the authority provided by the Land Reutilization Act for its own land reutilization authority upon such terms and conditions as the city and county may agree.

Source: Laws 1973, LB 73, § 1; Laws 1980, LB 862, § 1; Laws 1997, LB 489, § 1; Laws 2009, LB360, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

77-3202 Authority; beneficiaries.

The beneficiaries of the authority shall be the taxing authorities which held or owned tax bills against the respective parcels of real estate sold to the authority at the sheriff's foreclosure sale included in the judgment of the court, and their respective interests in each parcel of real estate shall be to the extent and in the proportion and according to the priorities determined by the court on the basis of the principal amount of the judgment against each such parcel of real estate.

Source: Laws 1973, LB 73, § 2.

77-3203 Land Reutilization Commission; created; members; appointment; serve without compensation.

(1) In each county which creates an authority pursuant to subsection (1) of section 77-3201, there is hereby created a Land Reutilization Commission which shall be composed of at least three members, one of whom shall be appointed by the governing body of the most populous city within the county, one of whom shall be appointed by the board of county commissioners, and one of whom shall be appointed by the board of education of the school district serving the most populous city of the county. At the request of the governing body of a city of the first or second class within the county, which is not the most populous city in the county, or the board of education of a school district located predominately within the county, which is not serving the most populous city of the county, the county board shall authorize the appointment of additional members to the Land Reutilization Commission, not to exceed a maximum total of seven members of the commission. The additional members of the commission shall be appointed by the governing body of the respective city or cities of the first or second class or by the board of education of the respective school district or districts. If necessary to establish an odd number of commission members, the county board may appoint a member from a municipality or school district within the county which is not represented on the commission. The members shall serve at the pleasure of the respective appointing authority and may be employees of the appointing authority. No member shall receive compensation for serving on the commission.

to issue deeds in its name, which deeds shall be signed by the chairperson or vice-chairperson and attested by the secretary, and shall have the general power to administer its business as any other corporate body. A land reutilization authority of a city of the metropolitan class shall issue deeds in the name of such city and such city, through its employees designated as the commission members, shall have general powers to administer the authority's business.

(2) The authority may convey title to any real estate sold or conveyed by it by general or special warranty deed, and may convey an absolute title in fee simple, without in any case procuring any consent, conveyance, or other instrument from the beneficiaries for which it acts. Each such deed shall recite whether the selling price represents a consideration equal to or in excess of two-thirds of the appraised value of such real estate so sold or conveyed. If such selling price represents a consideration of less than two-thirds of the appraised value of such real estate, the approval of such selling price shall be by unanimous action of the authority and evidenced by a copy of such action duly certified to by its secretary and attached to and made a part of such deed. In the event that unanimous action of the authority is not obtained, then the commissioners shall first procure the consent to such selling price of not less than a majority of the appointing authorities, which consent shall be evidenced by a copy of the action of each such appointing authority duly certified to by its clerk or secretary and attached to and made a part of such deed. In the case of a land reutilization authority for a city of the metropolitan class, the commissioners shall procure the planning director's consent.

Source: Laws 1973, LB 73, § 5; Laws 1980, LB 862, § 2; Laws 1997, LB 489, § 4; Laws 2009, LB360, § 4.

77-3206 Authority; duties.

It shall be the duty of such authority to administer the tax-delinquent lands as follows:

(1) Such authority shall immediately assume possession and control of all real estate acquired by it under the Land Reutilization Act and proceed to inventory and appraise such land and thereafter keep and maintain a perpetual inventory of such real estate, except that individual parcels may be consolidated and grouped or regrouped for economy, utility, or convenience;

(2) Such authority shall classify such land as to its use into the following three classifications:

(a) Suitable for private use;

(b) Suitable for use by a public agency; and

(c) Not usable in its present condition or situation and held as a public land reserve. Any parcel of property may be reclassified by a three-fifths vote of the commissioners;

(3) Such authority shall administer all property described in subdivision (2)(a) of this section in accordance with subdivision (4) of this section. Every effort shall be made to sell such property at a price as close to its appraised value as possible. Property described in subdivisions (2)(b) and (2)(c) of this section may be transferred at no cost by the authority upon request of and to a public agency upon submission of a plan of use for the property by such public agency to the land reutilization commissioners. If the property is transferred at no cost to any public agency and such public agency shall then sell or otherwise

dispose of such property within ten years for any consideration, the proceeds of such sale or disposal shall be returned to the commissioners who shall in turn distribute the proceeds in accordance with the act. If the commissioners do not give an affirmative vote to the request for transfer, the authority may dispose of the property in accordance with subdivision (4) of this section. Properties described in subdivision (2)(c) of this section shall be studied and recommendations made to taxing authorities as to possible uses for such real estate. In furtherance of this objective, such authority shall have access to any and all city and county records at any time and may call upon any and all city and county officers, departments, boards, planning commissions, or other commissions for studies, statistics, or recommendations. Such authority shall prepare a list of all land described in subdivision (2)(a) of this section, which list shall be corrected and amended from time to time in the discretion of the commissioners. Such commissioners may make a charge not to exceed one dollar for each copy of such list, which charge shall be used to help defray the costs of preparing such list. Any person may purchase a copy of such list. Any real estate agent or broker licensed to do business in the city may, when authorized by the commissioners, sell any such property upon the terms and conditions imposed by the commissioners, and the commissioners may pay a reasonable real estate commission. Nothing in the act shall prohibit the commissioners from selling or exchanging any such real estate directly to or with any purchaser;

(4) Such commissioners shall manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any such real estate on such terms and conditions as may be determined in the sole discretion of the commissioners in accordance with section 77-3205. Such commissioners may assemble tracts or parcels of real estate for public parks or other public purposes and to such end may exchange parcels and otherwise effectuate such purposes by agreement with any taxing authority; and

(5) Such authority shall adopt rules and regulations consistent with the act and shall keep records of all of its transactions, which records shall be open to inspection of any taxing authority in the county at any time. There shall be an annual audit of the affairs, accounts, expenses, and financial transactions of such authority by certified public accountants as of December 31 of each year, which accountants shall be employed by the commissioners on or before November 1 of each year, and certified copies of such audit shall be furnished to the appointing authorities and shall be available for public inspection at the offices of such appointing authorities.

Source: Laws 1973, LB 73, § 6; Laws 1980, LB 862, § 3; Laws 2008, LB710, § 2.

77-3206.01 Authority; sale of real property; notification to adjacent real property owner required.

No authority created pursuant to section 77-3201 shall offer for sale any parcel of real property without notifying, in writing, each owner of adjacent real property, on record, that the authority intends to offer such parcel for sale. The notice shall include the legal description of such parcel and shall be mailed at least forty-five days before the parcel is offered for sale.

Source: Laws 2008, LB710, § 1.

77-3207 Authority; employees; disbursements; fiscal year; audit; warrants.

(1) The commissioners may appoint a director and such other employees as are deemed necessary to carry out the responsibilities and duties imposed by the Land Reutilization Act and may incur such other reasonable and proper costs and expenses related thereto. A land reutilization authority of a city of the metropolitan class shall utilize only city employees for such responsibilities and duties. If such costs and expenses exceed the amount of funds available to the authority under the act, the authority shall obtain approval for such additional or supplemental needs. Such appropriations shall be considered advances to the authority subject to repayment from funds accumulated by the authority under the act.

The county treasurer's office, or city treasurer's office in the case of an authority created pursuant to subsection (3) of section 77-3201, shall handle all such appropriated expense funds and disburse the same under the provisions for handling other expenditures.

The authority shall deposit all funds received under the act with the county treasurer of the county, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201, and make disbursements therefrom upon receipt of vouchers duly authorized by the authority under the act and in accordance with standard procedures adopted by and approved by the county treasurer, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201.

(2) The fiscal year of the authority shall commence on January 1 of each year. The authority shall audit all claims for the expenditure of money and the chairperson or vice-chairperson thereof shall draw warrants therefor from time to time, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201.

Source: Laws 1973, LB 73, § 7; Laws 2008, LB710, § 3; Laws 2009, LB360, § 5.

77-3208 Authority; perpetual inventory.

Such authority shall set up and maintain a perpetual inventory on each tract of its real estate, except that individual tracts may be consolidated and grouped or regrouped for economy or convenience.

Source: Laws 1973, LB 73, § 8.

77-3209 Authority; set up accounts; proceeds; how disbursed.

(1) The authority shall set up accounts on its books relating to the operation, management, or other expense of each individual parcel of real estate.

(2) When any parcel of real estate is sold or otherwise disposed of by the authority, the proceeds therefrom shall be applied and distributed in the following order, except as provided for in section 77-3206:

(a) To the payment of the expenses of sale, the costs of the care, improvement, operation, demolition, management, and administration of such parcels of real estate as determined by the commissioners and apportioned to such parcel;

(b) To the payment of any penalties, fees, or costs which were included in the judgment originally entered against such parcel of real estate, plus its proportional part of the costs of the sheriff's foreclosure sale, as shown by the court records; and

(c) The balance shall be paid to the respective taxing authorities and tax bill owners, if any, in the proportion that the principal amounts of the tax bills of each such party bears to the total principal amount of all the tax bills included in the original judgment relating to such parcel of real estate and in the order of their respective priorities. After deduction of all sums charged to each account for various expenses, distribution shall be made to the respective taxing authorities and to tax bill owners having an interest in such parcel of real estate on January 1 and July 1 of each year and at such other times as the commissioners in their discretion may determine.

Source: Laws 1973, LB 73, § 9.

77-3210 Authority; members; employees; prohibited acts; violations; penalty.

(1) Neither the members nor any salaried employee of the authority shall receive any compensation, emolument, or other profit directly or indirectly from the rental, management, purchase, sale, or other disposition of any lands held by such authority other than the salaries, expenses, and emoluments provided for in the Land Reutilization Act.

(2) Any person convicted of violating any provision of this section shall be guilty of a felony and shall, upon conviction thereof, be punished by imprisonment in a Department of Correctional Services adult correctional facility not less than two years nor more than five years.

Source: Laws 1973, LB 73, § 10; Laws 1993, LB 31, § 23; Laws 2008, LB710, § 4.

77-3211 Sheriff; no bids; authority deemed purchaser; payment.

(1) If, when the sheriff offers the parcels of real estate for sale under the tax foreclosure laws of this state, there is no bid equal to the full amount of all tax bills included in the judgment, interest, penalties, fees, and costs then due thereon made or received at such sale, the authority shall be deemed to have bid the full amount of all tax bills included in the judgment, interest, penalties, fees, and costs then due, and if no other earlier or later bid be then received by the sheriff as allowed by law in excess of the bid of the authority, then the bid of the authority shall be announced as accepted. The sheriff shall report any such bid or bids so made by the authority in the same way as his or her report of other bids is made.

(2) The authority shall pay, if possible, any penalties, fees, or costs included in the judgment of foreclosure of such parcel of real estate when such parcel is sold or otherwise disposed of by such authority. Upon confirmation by the court of such bid at such sale by such authority, and upon notification by the sheriff, the county treasurer, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201, shall mark the tax bills to the date of such confirmation as canceled by sale to the authority, and shall take credit for the full amount of such tax bills, including principal amount, interest, penalties, fees, and costs, on his or her books and his or her statements with any other taxing authorities.

Source: Laws 1973, LB 73, § 11; Laws 1982, LB 630, § 2; Laws 2009, LB360, § 6.

77-3212 Title subject to rights-of-way, easements, covenants, and rights of redemption.

(1) The title to any real estate which shall vest in the authority under the Land Reutilization Act shall be held by the authority in trust for the tax bill owners and taxing authorities having an interest in any tax liens which were foreclosed, as their interests may appear in the judgment of foreclosure.

(2) The title to any real estate which shall vest in any purchaser or the authority upon confirmation of such sale by the court shall be an absolute estate in fee simple, subject to rights-of-way, easements, and covenants thereon and subject to all rights of redemption provided by law or the Constitution.

Source: Laws 1973, LB 73, § 12; Laws 2008, LB710, § 5.

77-3213 Act, how cited.

Sections 77-3201 to 77-3213 shall be known and may be cited as the Land Reutilization Act.

Source: Laws 1973, LB 73, § 13; Laws 2008, LB710, § 6.

ARTICLE 33**UNIFORM ACT ON INTERSTATE ARBITRATION
AND COMPROMISE OF DEATH TAXES**

Section

- 77-3301. Decedent's domicile; arbitration agreement.
- 77-3302. Arbitration board; hearings.
- 77-3303. Powers of board; contempt proceedings.
- 77-3304. Board; determination of domicile.
- 77-3305. Board; majority vote.
- 77-3306. Filing of determination of domicile and other documents.
- 77-3307. No interest for nonpayment of taxes.
- 77-3308. Compromise by parties to arbitration agreement.
- 77-3309. Board; compensation and expenses.
- 77-3310. Compromise agreement; amount accepted as full satisfaction of death taxes; filing of agreement; interest; how computed.
- 77-3311. Determination of domicile; election to invoke act; notice; rejection; effect.
- 77-3312. Reciprocal application.
- 77-3313. Terms, defined.
- 77-3314. Act, how interpreted.
- 77-3315. Act, how cited.
- 77-3316. Act, time of taking effect.

77-3301 Decedent's domicile; arbitration agreement.

When the Nebraska taxing authority claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Nebraska taxing authority may make a written agreement with the other taxing authorities and with the executor or administrator to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators. The executor or administrator is hereby authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

Source: Laws 1976, LB 584, § 1.

77-3302 Arbitration board; hearings.

The board shall hold hearings at such times and places as it may determine, upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses.

Source: Laws 1976, LB 584, § 2.

77-3303 Powers of board; contempt proceedings.

The board shall have power to administer oaths, take testimony, subpoena, and require the attendance of witnesses and the production of books, papers, and documents and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this state, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt.

Source: Laws 1976, LB 584, § 3.

77-3304 Board; determination of domicile.

The board shall, by majority vote, determine the domicile of the decedent at the time of his death. This determination shall be final for purposes of imposing and collecting death taxes but for no other purpose.

Source: Laws 1976, LB 584, § 4.

77-3305 Board; majority vote.

Except as provided in section 77-3303 in respect of the issuance of subpoenas, all questions arising in the course of the proceeding shall be determined by majority vote of the board.

Source: Laws 1976, LB 584, § 5.

77-3306 Filing of determination of domicile and other documents.

The Nebraska taxing authority, the board, or the executor or administrator shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement, or a duplicate, made pursuant to section 77-3301, with the authority having jurisdiction to determine the death taxes in the state determined to be the domicile and shall file copies of all such documents with the authorities that would have been empowered to determine the death taxes in each of the other states involved.

Source: Laws 1976, LB 584, § 6.

77-3307 No interest for nonpayment of taxes.

In any case where it is determined by the board that the decedent died domiciled in this state, no interest otherwise imposed by sections 77-2010 and 77-2102, for nonpayment of death taxes between the date of the agreement and of filing of the determination of the board as to domicile shall be charged.

Source: Laws 1976, LB 584, § 7.

77-3308 Compromise by parties to arbitration agreement.

Nothing contained herein shall prevent at any time a written compromise as provided by section 77-3310 by all parties to the agreement made pursuant to section 77-3301, fixing the amounts to be accepted by this and any other state involved in full satisfaction of death taxes.

Source: Laws 1976, LB 584, § 8.

77-3309 Board; compensation and expenses.

The compensation and expenses of the members of the board and its employees may be agreed upon among such members and the executor or administrator and if they cannot agree shall be fixed by the probate court of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the executor or administrator.

Source: Laws 1976, LB 584, § 9.

77-3310 Compromise agreement; amount accepted as full satisfaction of death taxes; filing of agreement; interest; how computed.

When the Nebraska taxing authority claims that a decedent was domiciled in this state at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Nebraska taxing authority may make a written agreement of compromise with the other taxing authorities and the executor or administrator that a certain sum shall be accepted in full satisfaction of any and all death taxes imposed by this state, including any interest to the date of filing the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of death taxes. The executor or administrator is hereby authorized to make such agreement. Either the Nebraska taxing authority or the executor or administrator shall file the agreement, or a duplicate, with the authority that would be empowered to determine death taxes for this state if there had been no agreement, and thereupon the tax shall be deemed conclusively fixed as therein provided. Unless the tax is paid within ninety days after filing the agreement, interest as provided for by sections 77-2010 and 77-2102, shall thereafter accrue upon the amount fixed in the agreement but the time between the decedent's death and the filing shall not be included in computing such interest.

Source: Laws 1976, LB 584, § 10.

77-3311 Determination of domicile; election to invoke act; notice; rejection; effect.

In any case in which this state and one or more other states each claims that it was a domicile of a decedent at the time of his or her death and no judicial determination of domicile for death tax purposes has been made in any of such states, any executor or administrator or the taxing official of any such state may elect to invoke the provisions of the Uniform Act on Interstate Arbitration and Compromise of Death Taxes. Such election shall be evidenced by the sending of a notice by certified or registered mail, return receipt requested, to the taxing officials of any such state and to each executor, ancillary administrator, and interested person. Any executor or administrator may reject such election by sending a notice by certified or registered mail, return receipt requested, to the taxing officials involved and to all other executors within forty days after the receipt of such notice of election. If such election is rejected, no further proceedings shall be had under the act. If such election is not rejected, the dispute as to the death taxes shall be determined solely as provided in the act, and no other proceedings to determine or assess such death taxes shall thereafter be instituted in the courts of this state or otherwise.

Source: Laws 1976, LB 584, § 11; Laws 1987, LB 93, § 21.

77-3312 Reciprocal application.

Sections 77-3301 to 77-3316 shall apply only to cases in which each of the states involved has a law identical with or substantially similar to sections 77-3301 to 77-3316.

Source: Laws 1976, LB 584, § 12.

77-3313 Terms, defined.

For purposes of the Uniform Act on Interstate Arbitration and Compromise of Death Taxes, (1) state shall mean any state, territory, or possession of the United States and the District of Columbia and (2) Nebraska taxing authority shall mean (a) the Attorney General or the Tax Commissioner for state estate or generation-skipping transfer tax purposes and (b) the Attorney General or the county attorney for Nebraska inheritance tax purposes.

Source: Laws 1976, LB 584, § 13; Laws 1992, LB 1004, § 20.

77-3314 Act, how interpreted.

Sections 77-3301 to 77-3316 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1976, LB 584, § 14.

77-3315 Act, how cited.

Sections 77-3301 to 77-3316 shall be known and may be cited as the Uniform Act on Interstate Arbitration and Compromise of Death Taxes.

Source: Laws 1976, LB 584, § 15.

77-3316 Act, time of taking effect.

Sections 77-3301 to 77-3316 shall apply to estates of decedents dying before or after their enactment.

Source: Laws 1976, LB 584, § 16.

ARTICLE 34**POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS**

(a) LOCAL OPTION TAX CONTROL ACT

Section	
77-3401.	Act, how cited.
77-3402.	Political subdivisions; budget limitation; petition; election; procedure.
77-3403.	Repealed. Laws 1981, LB 17, § 8.
77-3404.	Budget limitation; approval; effect.
77-3405.	Petition; contents; election; when held.
77-3406.	Election; notice; ballot; form.
77-3407.	Petition; unlawful signature; penalty.
77-3408.	Election; statutes; applicability.
77-3409.	Budget limitation; two or more proposals; how treated; placed on ballot.
77-3410.	Budget limitation; duration; termination; procedure.
77-3410.01.	Budget limitation adopted prior to April 11, 1981; termination.
77-3411.	Statutory limitation on budgets; not applicable; when.

(b) POLITICAL SUBDIVISION BUDGET LIMIT ACT OF 1979

77-3412.	Repealed. Laws 1985, LB 6, § 7.
77-3413.	Repealed. Laws 1985, LB 6, § 7.
77-3414.	Repealed. Laws 1985, LB 6, § 7.

Section

- 77-3415. Repealed. Laws 1985, LB 6, § 7.
- 77-3416. Repealed. Laws 1985, LB 6, § 7.
- 77-3417. Repealed. Laws 1985, LB 6, § 7.
- 77-3418. Repealed. Laws 1985, LB 6, § 7.
- 77-3419. Repealed. Laws 1985, LB 6, § 7.
- 77-3420. Repealed. Laws 1985, LB 6, § 7.
- 77-3421. Repealed. Laws 1985, LB 6, § 7.
- 77-3422. Repealed. Laws 1985, LB 6, § 7.
- 77-3423. Repealed. Laws 1985, LB 6, § 7.
- 77-3423.01. Repealed. Laws 1985, LB 6, § 7.
- 77-3424. Repealed. Laws 1985, LB 6, § 7.
- 77-3425. Repealed. Laws 1985, LB 6, § 7.
- 77-3426. Repealed. Laws 1985, LB 6, § 7.
- 77-3427. Repealed. Laws 1985, LB 6, § 7.
- 77-3428. Repealed. Laws 1985, LB 6, § 7.
- 77-3429. Repealed. Laws 1985, LB 6, § 7.
- 77-3430. Repealed. Laws 1985, LB 6, § 7.

(c) MISCELLANEOUS PROVISIONS

- 77-3431. Repealed. Laws 1985, LB 6, § 7.
- 77-3432. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.01. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.02. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.03. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.04. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.05. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.06. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.07. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.08. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.09. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.10. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.11. Repealed. Laws 1985, LB 6, § 7.
- 77-3432.12. Repealed. Laws 1985, LB 6, § 7.
- 77-3433. Repealed. Laws 1985, LB 6, § 7.
- 77-3434. Repealed. Laws 1985, LB 6, § 7.
- 77-3435. Repealed. Laws 1985, LB 6, § 7.
- 77-3436. Repealed. Laws 1985, LB 6, § 7.

(d) LIMITATION ON PROPERTY TAXES

- 77-3437. Repealed. Laws 1996, LB 299, § 35.
- 77-3438. Repealed. Laws 1996, LB 299, § 35.
- 77-3438.01. Repealed. Laws 1996, LB 299, § 35.
- 77-3438.02. Repealed. Laws 1996, LB 299, § 35.
- 77-3439. Repealed. Laws 1996, LB 299, § 35.
- 77-3440. Repealed. Laws 1996, LB 299, § 35.
- 77-3441. Repealed. Laws 1995, LB 613, § 6.
- 77-3442. Property tax levies; maximum levy; exceptions.
- 77-3443. Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy.
- 77-3444. Authority to exceed maximum levy; procedure.
- 77-3445. Council on public improvements and services; membership; powers and duties.

(e) BASE LIMITATION

- 77-3446. Base limitation, defined.

(a) LOCAL OPTION TAX CONTROL ACT

77-3401 Act, how cited.

Sections 77-3401 to 77-3411 shall be known and may be cited as the Local Option Tax Control Act.

Source: Laws 1978, Spec. Sess., LB 2, § 1.

77-3402 Political subdivisions; budget limitation; petition; election; procedure.

If the voters of any political subdivision of the state authorized to levy a tax or cause a tax to be levied determine that a limitation of the budget of the political subdivision funded by property taxes is needed, they may call for an election for that purpose. When ten percent of the registered voters of any political subdivision sign a petition calling for a limitation on the budget funded by property taxes, the question of such budget limitation shall be placed before the voters at a general, primary, or special election. The petition shall be filed with the governing body of the political subdivision. The budget limitation shall be adopted if approved by a majority of those voting on the question. Voting at such general, primary, or special election shall be by those persons who are authorized to vote for the members of the governing body of such political subdivision. For the purposes of the Local Option Tax Control Act, the term budget funded by property taxes shall include all funds the source of which is a property tax, regardless of the purpose of such funds, except such funds as are necessary to pay interest on and for retiring, funding, or servicing bonded indebtedness during the upcoming fiscal year.

Source: Laws 1978, Spec. Sess., LB 2, § 2; Laws 1981, LB 17, § 1; Laws 1992, LB 1063, § 188; Laws 1992, Second Spec. Sess., LB 1, § 160.

77-3403 Repealed. Laws 1981, LB 17, § 8.**77-3404 Budget limitation; approval; effect.**

When a budget limitation is approved by the voters at a general, primary, or special election held for such purpose, the budget for the years in which taxes will be levied to fund such budget shall, except as provided in section 13-511, be limited as provided in the petition.

Source: Laws 1978, Spec. Sess., LB 2, § 4; Laws 1981, LB 17, § 2.

77-3405 Petition; contents; election; when held.

The petition calling for a budget limitation election and the election notice shall refer to section 77-3402, state the percentage limitation placed on the budget for the ensuing two years, and specify the first year for which such limitation is applicable. All elections held pursuant to section 77-3402 or 77-3410 shall be held at least ninety days prior to the date on which the fiscal year of the affected political subdivision begins and shall affect the budgets for the fiscal years specified subsequent to such election, except that elections for which petitions have been completed prior to April 11, 1981, shall not be subject to such ninety-day limitation but shall be held prior to August 15, 1981.

Source: Laws 1978, Spec. Sess., LB 2, § 5; Laws 1981, LB 17, § 3.

77-3406 Election; notice; ballot; form.

(1) Notice of an election held pursuant to section 77-3402 or 77-3410 shall state the date on which the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in the political subdivision at least fifteen days prior to such election. If no newspaper is published in or of general circulation in the

political subdivision, notice shall be posted in each of three public places therein.

(2) The governing body shall prescribe the form of the ballot to be used at the election, and the proposition appearing on such ballot shall state the percentage limitation to be placed on the budget for the ensuing two years and specify the two years for which such limitation is applicable. The form of submission upon the ballot shall be as follows:

For a budget limitation

Against a budget limitation.

Source: Laws 1978, Spec. Sess., LB 2, § 6; Laws 1981, LB 17, § 4.

77-3407 Petition; unlawful signature; penalty.

Any person who signs a petition under section 77-3402, knowing that he or she is not a qualified voter in the place where such a petition is made, or bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign the petition, shall be guilty of a Class III misdemeanor.

Source: Laws 1978, Spec. Sess., LB 2, § 7.

77-3408 Election; statutes; applicability.

The statutes of this state relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on the question of establishing a budget limitation by the voters under the provisions of sections 77-3401 to 77-3411.

Source: Laws 1978, Spec. Sess., LB 2, § 8.

77-3409 Budget limitation; two or more proposals; how treated; placed on ballot.

If two or more proposals relating to the budget level of a political subdivision are placed upon the ballot at a general, primary, or special election and more than one such proposal receives a majority of affirmative votes, the proposal receiving the largest number of affirmative votes shall be considered the successful proposal.

Source: Laws 1978, Spec. Sess., LB 2, § 9; Laws 1981, LB 17, § 5.

77-3410 Budget limitation; duration; termination; procedure.

Any limitation placed on budgets pursuant to sections 77-3401 to 77-3411 shall remain in effect for only the ensuing two fiscal years, except that the governing body of a political subdivision may, during the first year of a two-year budget limitation, by a majority vote place the issue of terminating the limitation after the first year on the ballot at a general, primary, or special election. Such budget limitation shall be terminated at the end of the first year if such termination is approved by a majority of those voting on the issue. Such election shall be held at least ninety days prior to the date on which the second fiscal year subject to the limitation begins.

Source: Laws 1978, Spec. Sess., LB 2, § 10; Laws 1981, LB 17, § 6.

77-3410.01 Budget limitation adopted prior to April 11, 1981; termination.

Any limitation placed on a budget pursuant to the Local Option Tax Control Act prior to April 11, 1981, which has been in effect for two or more fiscal years shall not apply to any budget for a fiscal year commencing after April 11, 1981. Any limitation placed on a budget pursuant to the Local Option Tax Control Act prior to April 11, 1981, which has been in effect for less than two fiscal years shall be terminated after a total of two fiscal years unless terminated prior to such date pursuant to section 77-3410.

Source: Laws 1981, LB 17, § 7.

77-3411 Statutory limitation on budgets; not applicable; when.

Any statutory limitation on the budget, funded by property taxes, of a political subdivision authorized to levy a tax or cause a tax to be levied shall not apply to any such political subdivision which has adopted a tax or budgetary limitation on property taxes by vote of the electors of the political subdivision pursuant to the Local Option Tax Control Act or any home rule charter.

Source: Laws 1978, Spec. Sess., LB 2, § 11; Laws 1992, LB 1063, § 189; Laws 1992, Second Spec. Sess., LB 1, § 161.

(b) POLITICAL SUBDIVISION BUDGET LIMIT ACT OF 1979

77-3412 Repealed. Laws 1985, LB 6, § 7.

77-3413 Repealed. Laws 1985, LB 6, § 7.

77-3414 Repealed. Laws 1985, LB 6, § 7.

77-3415 Repealed. Laws 1985, LB 6, § 7.

77-3416 Repealed. Laws 1985, LB 6, § 7.

77-3417 Repealed. Laws 1985, LB 6, § 7.

77-3418 Repealed. Laws 1985, LB 6, § 7.

77-3419 Repealed. Laws 1985, LB 6, § 7.

77-3420 Repealed. Laws 1985, LB 6, § 7.

77-3421 Repealed. Laws 1985, LB 6, § 7.

77-3422 Repealed. Laws 1985, LB 6, § 7.

77-3423 Repealed. Laws 1985, LB 6, § 7.

77-3423.01 Repealed. Laws 1985, LB 6, § 7.

77-3424 Repealed. Laws 1985, LB 6, § 7.

77-3425 Repealed. Laws 1985, LB 6, § 7.

77-3426 Repealed. Laws 1985, LB 6, § 7.

77-3427 Repealed. Laws 1985, LB 6, § 7.

77-3428 Repealed. Laws 1985, LB 6, § 7.

77-3429 Repealed. Laws 1985, LB 6, § 7.

77-3430 Repealed. Laws 1985, LB 6, § 7.

(c) MISCELLANEOUS PROVISIONS

77-3431 Repealed. Laws 1985, LB 6, § 7.

77-3432 Repealed. Laws 1985, LB 6, § 7.

77-3432.01 Repealed. Laws 1985, LB 6, § 7.

77-3432.02 Repealed. Laws 1985, LB 6, § 7.

77-3432.03 Repealed. Laws 1985, LB 6, § 7.

77-3432.04 Repealed. Laws 1985, LB 6, § 7.

77-3432.05 Repealed. Laws 1985, LB 6, § 7.

77-3432.06 Repealed. Laws 1985, LB 6, § 7.

77-3432.07 Repealed. Laws 1985, LB 6, § 7.

77-3432.08 Repealed. Laws 1985, LB 6, § 7.

77-3432.09 Repealed. Laws 1985, LB 6, § 7.

77-3432.10 Repealed. Laws 1985, LB 6, § 7.

77-3432.11 Repealed. Laws 1985, LB 6, § 7.

77-3432.12 Repealed. Laws 1985, LB 6, § 7.

77-3433 Repealed. Laws 1985, LB 6, § 7.

77-3434 Repealed. Laws 1985, LB 6, § 7.

77-3435 Repealed. Laws 1985, LB 6, § 7.

77-3436 Repealed. Laws 1985, LB 6, § 7.

(d) LIMITATION ON PROPERTY TAXES

77-3437 Repealed. Laws 1996, LB 299, § 35.

77-3438 Repealed. Laws 1996, LB 299, § 35.

77-3438.01 Repealed. Laws 1996, LB 299, § 35.

77-3438.02 Repealed. Laws 1996, LB 299, § 35.

77-3439 Repealed. Laws 1996, LB 299, § 35.

77-3440 Repealed. Laws 1996, LB 299, § 35.

77-3441 Repealed. Laws 1995, LB 613, § 6.**77-3442 Property tax levies; maximum levy; exceptions.**

(1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivision (2)(e) of this section, school districts and multiple-district school systems, except learning communities and school districts that are members of learning communities, may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levies pursuant to subdivisions (2)(b) and (2)(g) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For school fiscal year 2002-03 through school fiscal year 2007-08, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the temporary aid adjustment factor as defined in section 79-1003 for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided with the temporary aid adjustment factor. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded for the next

school fiscal year pursuant to this subdivision (f) of this subsection on or before February 15 for school fiscal years 2004-05 through 2007-08.

(g) For each fiscal year, learning communities may levy a maximum levy of two cents on each one hundred dollars of taxable property subject to the levy for special building funds for member school districts. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.01.

(h) For each fiscal year, learning communities may levy a maximum levy of five cents on each one hundred dollars of taxable property subject to the levy for elementary learning center facilities and for up to fifty percent of the estimated cost for capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(3) Community colleges may levy a maximum levy calculated pursuant to the Community College Foundation and Equalization Aid Act on each one hundred dollars of taxable property subject to the levy.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2011-12.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health

agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated. Property tax levies for costs of reassumption of the assessment function pursuant to section 77-1340 or 77-1340.04 are not included in the levy limits established in this subsection for fiscal years 2010-11 through 2013-14.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the

extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.

(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

(14) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14; Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5; Laws 2009, LB121, § 11.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Ground Water Management and Protection Act, see section 46-701.

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

77-3443 Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy.

(1) All political subdivisions, other than (a) school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, municipal counties, and sanitary and improvement districts and (b)

political subdivisions subject to municipal allocation under subsection (2) of this section, may levy taxes as authorized by law which are authorized by the county board of the county or the council of a municipal county in which the greatest portion of the valuation is located, which are counted in the county or municipal county levy limit provided in section 77-3442, and which do not collectively total more than fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property for all governments for which allocations are made by the municipality, county, or municipal county, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. The county board or council shall review and approve or disapprove the levy request of all political subdivisions subject to this subsection. The county board or council may approve all or a portion of the levy request and may approve a levy request that would allow the requesting political subdivision to levy a tax at a levy greater than that permitted by law. The county board of a county or the council of a municipal county which contains a transit authority created pursuant to section 14-1803 shall allocate no less than three cents per one hundred dollars of taxable property within the city or municipal county subject to the levy to the transit authority if requested by such authority. For any political subdivision subject to this subsection that receives taxes from more than one county or municipal county, the levy shall be allocated only by the county or municipal county in which the greatest portion of the valuation is located. The county board of equalization shall certify all levies by October 15 to insure that the taxes levied by political subdivisions subject to this subsection do not exceed the allowable limit for any parcel or item of taxable property. The levy allocated by the county or municipal county may be exceeded as provided in section 77-3444.

(2) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, transit authorities established under the Transit Authority Law, and offstreet parking districts established under the Offstreet Parking District Act may be allocated property taxes as authorized by law which are authorized by the city, village, or municipal county and are counted in the city or village levy limit or municipal county levy limit provided by section 77-3442, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For offstreet parking districts established under the Offstreet Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. The city council of a city which has created a transit authority pursuant to section 14-1803 or the council of a municipal county which contains a transit authority shall allocate no less than three cents per one hundred dollars of taxable property subject to the levy to the transit authority if requested by such authority. The city council, village board, or

council shall review and approve or disapprove the levy request of the political subdivisions subject to this subsection. The city council, village board, or council may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the municipality or municipal county may be exceeded as provided in section 77-3444.

(3) On or before August 1, all political subdivisions subject to county, municipal, or municipal county levy authority under this section shall submit a preliminary request for levy allocation to the county board, city council, village board, or council that is responsible for levying such taxes. The preliminary request of the political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude such political subdivision from using procedures set forth in section 77-3444 to exceed the final levy allocation as determined in subsection (4) of this section.

(4) Each county board, city council, village board, or council shall (a) adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions and (b) forward a copy of such resolution to the chairperson of the governing body of each of its political subdivisions. No final levy allocation shall be changed after September 1 except by agreement between both the county board, city council, village board, or council which determined the amount of the final levy allocation and the governing body of the political subdivision whose final levy allocation is at issue.

Source: Laws 1996, LB 1114, § 2; Laws 1997, LB 269, § 57; Laws 1998, LB 306, § 37; Laws 1999, LB 141, § 12; Laws 2001, LB 142, § 58; Laws 2002, LB 994, § 26.

Cross References

Cities Airport Authorities Act, see section 3-514.

Community Development Law, see section 18-2101.

Offstreet Parking District Act, see section 19-3301.

77-3444 Authority to exceed maximum levy; procedure.

(1) A political subdivision, other than a Class I school district, may exceed the limits provided in section 77-3442 or a final levy allocation determination as provided in section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits provided in section 77-3442 or a final levy allocation as provided in section 77-3443 must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits or final levy allocation. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for exceeding the limits or final levy allocation by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition

shall include the amount of levy which would be imposed in excess of the limits provided in section 77-3442 or the final levy allocation as provided in section 77-3443 and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the county clerk or election commissioner no later than thirty days prior to the date of the election, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the county clerk or election commissioner on or after May 1, 1998, the petition shall be in the form as provided in sections 32-628 to 32-631. Any excess levy authority approved under this section shall terminate pursuant to its terms, on a vote of the governing body of the political subdivision to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit or the final levy allocation, or as provided in subsection (4) of this section, whichever is earliest. A governing body may pass no more than one resolution calling for an election pursuant to this section during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this section.

(2) The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the following: "Shall (name of political subdivision) be allowed to levy a property tax not to exceed cents per one hundred dollars of taxable valuation in excess of the limits prescribed by law until fiscal year for the purposes of (general operations; building construction, remodeling, or site acquisition; or both general operations and building construction, remodeling, or site acquisition)?" If a majority of the votes cast upon the ballot question are in favor of such tax, the county board shall authorize a tax in excess of the limits in section 77-3442 or the final levy allocation in section 77-3443 but such tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the governing body of the political subdivision shall not impose such tax.

(3) In lieu of the election procedures in subsection (1) of this section, any political subdivision subject to section 77-3443, other than a Class I school district, and villages may approve a levy in excess of the limits in section 77-3442 or the final levy allocation provided in section 77-3443 for a period of one year at a meeting of the residents of the political subdivision or village, called after notice is published in a newspaper of general circulation in the political subdivision or village at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the political subdivision or village shall constitute a quorum for purposes of taking action to exceed the limits or final levy allocation. A record shall be made of the registered voters residing in the political subdivision or village who are present at the meeting. The method of voting at the meeting shall protect the secrecy of the ballot. If a majority of the registered voters present at the meeting vote in favor of exceeding the limits or final levy allocation, a copy of the record of that action shall be forwarded to the county board prior to October 10 and the county board shall authorize a levy as approved by the residents for the year. If a

majority of the registered voters present at the meeting vote against exceeding the limits or final allocation, the limit or allocation shall not be exceeded and the political subdivision shall have no power to call for an election under subsection (1) of this section.

(4) A political subdivision, other than a Class I school district, may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five years. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The election shall be held pursuant to the Election Act.

(5) For purposes of this section, when the political subdivision is a sanitary and improvement district, registered voter means a person qualified to vote as provided in section 31-735. Any election conducted under this section for a sanitary and improvement district shall be conducted and counted as provided in sections 31-735 to 31-735.06.

(6) For purposes of this section, when the political subdivision is a school district or a multiple-district school system, registered voter includes both (a) persons qualified to vote for the members of the school board of the school district which is voting to exceed the maximum levy limits pursuant to this section and (b) persons in those portions of any Class I district which are affiliated with or a part of the school district which is voting pursuant to this section, if such voter is also qualified to vote for the school board of the affected Class I school district.

Source: Laws 1996, LB 1114, § 3; Laws 1997, LB 269, § 58; Laws 1997, LB 343, § 1; Laws 1997, LB 806, § 4; Laws 1998, LB 306, § 38; Laws 1998, LB 1104, § 18; Laws 1999, LB 141, § 13; Laws 2007, LB289, § 1.

Cross References

Election Act, see section 32-101.

77-3445 Council on public improvements and services; membership; powers and duties.

A council on public improvements and services may be created within each county or for adjoining counties by resolutions of county boards or by joint resolutions passed by at least three different types of political subdivisions located in the county which are authorized to levy property taxes or which may benefit from property taxes affected by the levy limits imposed by sections 77-3442 to 77-3444. Such councils shall include, but are not limited to, one elected official from each school board, county board, incorporated city or village, natural resources district, community college, educational service unit, hospital district, airport authority, fire protection district, and township taxing property within the county or counties. The elected governing body of each political subdivision which has the legal authority to request property tax funding or a levy set by the county board within a county may by resolution of the governing body appoint one elected official from the governing board to the council on public improvements and services.

Councils on public improvements and services may meet, beginning in 1996, as often as necessary prior to the adoption of budgets and property tax requests affected by the levy limits described in sections 77-3442 to 77-3444. The council shall jointly examine the budgets and property tax requests of each governmental agency or quasi-governmental agency with statutory authority to request a share of the property tax. The county clerk or designated county official of each county shall attend such meetings and keep a public record of the proceedings. Each council on public improvements and services which is created by resolution as provided in this section shall hold at least one public meeting prior to the adoption of public budgets affected by the levy limits imposed by sections 77-3442 to 77-3444. Such council may continue to meet to discuss issues of public service provision in an effective and coordinated manner, the impacts of levy limits, state and federal law, program, or aid changes, and the joint provision or use of capital facilities and equipment.

Source: Laws 1996, LB 1114, § 4; Laws 1998, LB 306, § 39.

(e) BASE LIMITATION**77-3446 Base limitation, defined.**

Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal years 2009-10 through 2012-13 is one and one-half percent. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB 989, § 15; Laws 2001, LB 365, § 1; Laws 2003, LB 540, § 3; Laws 2009, LB545, § 2.

REVENUE AND TAXATION

ARTICLE 35

HOMESTEAD EXEMPTION

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77-3501 Definitions, where found.

For purposes of sections 77-3501 to 77-3529, unless the context otherwise requires, the definitions found in sections 77-3501.01 to 77-3505.05 shall be used.

Source: Laws 1979, LB 65, § 1; Laws 1984, LB 809, § 1; Laws 1987, LB 376A, § 1; Laws 1989, LB 84, § 7; Laws 1994, LB 902, § 25; Laws 1995, LB 483, § 2; Laws 1997, LB 182, § 1; Laws 2009, LB94, § 1.

77-3501.01 Exempt amount, defined.

(1) For purposes of section 77-3507, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred percent of the average assessed value of single-family residential property in the claimant’s county of residence as determined in section 77-3506.02 or forty thousand dollars, whichever is greater.

(2) For purposes of sections 77-3508 and 77-3509, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred twenty percent of the average assessed value of single-family residential property in the claimant’s county of residence as determined in section 77-3506.02 or fifty thousand dollars, whichever is greater.

Source: Laws 1994, LB 902, § 27; Laws 2006, LB 968, § 13.

77-3501.02 Closely related, defined.

Closely related shall mean the relationship of being a brother, sister, or parent to another owner-occupant of a homestead.

Source: Laws 1997, LB 182, § 2.

77-3502 Homestead, defined.

Homestead shall mean either (1) a residence or mobile home, and the land surrounding it, not exceeding one acre, in this state actually occupied as such by a natural person who is the owner of record thereof from January 1 through August 15 in each year, (2) a residence or mobile home located on land leased by the owner of the residence or mobile home, which is located within this state, and is actually occupied by the person who is the owner of record from January 1 through August 15 in each year, or so occupied by the surviving spouse and minor children, if any, of such owner of record during the year of the owner’s death, or so much thereof as shall be so occupied, or (3) a residential unit in a dwelling complex, the record title owner of which is a not-for-profit corporation, when the purchase for fair market value of a life tenancy in a taxable unit of the dwelling complex entitles the purchaser to exclusive occupancy of that unit for life, actually occupied by a natural person who has a life tenancy therein from January 1 through August 15 in each year. For purposes of this section, mobile home shall include every transportable or relocatable device of any description without motive power and designed for living quarters, whether or not permanently attached to real estate, but shall

not include a cabin trailer registered for operation upon the highways of this state.

Source: Laws 1979, LB 65, § 2; Laws 1980, LB 647, § 1; Laws 1981, LB 168, § 17; Laws 1987, LB 376A, § 2.

77-3503 Owner, defined.

Owner shall mean the owner of record or surviving spouse, the vendee in possession under a land contract or surviving spouse, one of the joint tenants or tenants in common or surviving spouse, or the beneficiary of a trust of which the trustee is the record title owner and the beneficiary-occupant (1) has a specific right to occupy the premises as stated in the trust instrument, (2) has the right to amend or revoke the trust to obtain such power of occupancy or of title, or (3) has the power to withdraw the homestead premises from the trust and place the record title in such occupant's name. Owner shall also mean a resident of a dwelling complex, the record title owner of which is a not-for-profit corporation, who has by purchase for fair market value secured a life tenancy in a taxable unit of the complex. The deed, trust instrument, contract, or memorandum showing that the criteria of this section have been met shall be on file on the appropriate public record as of January 1 of the year for which exemption is sought, except that if such instrument is not on file as of January 1, a copy of such instrument shall be attached to such application before the homestead exemption shall be granted.

Source: Laws 1979, LB 65, § 3; Laws 1980, LB 647, § 2; Laws 1983, LB 195, § 1.

77-3504 Household income, defined.

Household income means the total federal adjusted gross income, as defined in the Internal Revenue Code, plus (1) any Nebraska adjustments increasing the total federal adjusted gross income, (2) any interest or dividends received by the owner regarding obligations of the State of Nebraska or any political subdivision, authority, commission, or instrumentality thereof to the extent excluded in the computation of gross income for federal income tax purposes, and (3) any social security or railroad retirement benefit to the extent excluded in the computation of gross income for federal income tax purposes, of the claimant and spouse, and any additional owners who are natural persons and who occupy the homestead, for the taxable year of the claimant immediately prior to the year for which the claim for exemption is made, less all medical expenses actually incurred and paid by the claimant, his or her spouse, or any owner-occupant which are in excess of four percent of household income calculated prior to the deduction for medical expenses. For purposes of this section, medical expenses means the costs of health insurance premiums and the costs of goods and services purchased from a person licensed under the Uniform Credentialing Act or a health care facility or health care service licensed under the Health Care Facility Licensure Act for purposes of restoring or maintaining health, including insulin and prescription medicine, but not including nonprescription medicine.

Source: Laws 1979, LB 65, § 4; Laws 1987, LB 376A, § 3; Laws 1988, LB 1105, § 1; Laws 1994, LB 902, § 26; Laws 1995, LB 574, § 74; Laws 1996, LB 1039, § 3; Laws 2000, LB 819, § 152; Laws 2007, LB463, § 1309.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

77-3505 Qualified claimant, defined.

A qualified claimant shall mean an owner of a homestead during the calendar year for which the claim is made who was sixty-five years of age or older before January 1 of such year and who shall be entitled to relief pursuant to section 77-3507.

Source: Laws 1979, LB 65, § 5; Laws 1981, LB 179, § 18; Laws 1986, LB 1258, § 1; Laws 1987, LB 376A, § 4.

77-3505.01 Married, defined.

Married shall mean a person who would file a federal individual income tax return as married filing jointly or separately if required to file a return.

Source: Laws 1994, LB 902, § 28.

77-3505.02 Maximum value, defined.

Maximum value shall mean:

(1) For applicants eligible under section 77-3507, two hundred percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or ninety-five thousand dollars, whichever is greater; and

(2) For applicants eligible under sections 77-3508 and 77-3509, two hundred twenty-five percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or one hundred ten thousand dollars, whichever is greater.

Source: Laws 1994, LB 902, § 29; Laws 1995, LB 483, § 3; Laws 1996, LB 1039, § 4; Laws 1997, LB 182, § 3; Laws 2006, LB 968, § 14.

77-3505.03 Single, defined.

Single shall mean a person who would file a federal individual income tax return as single or head of household if required to file a return.

Source: Laws 1994, LB 902, § 30.

77-3505.04 Single-family residential property, defined.

Single-family residential property shall mean all real property with dwellings designed for occupancy by one family or duplexes designed for occupancy by two families.

Source: Laws 1994, LB 902, § 31.

77-3505.05 Medical condition, defined.

Medical condition means a disease, physical ailment, or injury requiring inpatient care in a hospital, hospice, or residential care facility or involving any period of incapacity due to a condition for which treatment may not be effective.

Source: Laws 2009, LB94, § 2.

77-3506 Repealed. Laws 1983, LB 396, § 8.

77-3506.01 Repealed. Laws 1985, Second Spec. Sess., LB 6, § 9.

77-3506.02 County assessor; duties.

After county board of equalization action pursuant to sections 77-1502 to 77-1504.01 and on or before September 1 each year, the county assessor shall certify to the Department of Revenue the average assessed value of single-family residential property in the county for the current year for purposes of sections 77-3507 to 77-3509.

The county assessor shall determine the current average assessed value of single-family residential property from all real property records containing dwellings, mobile homes, and duplexes all of which are designed for occupancy as single-family residential property and any associated land not to exceed one acre.

The county assessor shall also report to the Department of Revenue the computed exempt amounts pursuant to section 77-3501.01.

Source: Laws 1994, LB 902, § 32; Laws 1995, LB 499, § 1; Laws 2004, LB 973, § 43.

77-3506.03 Exempt amount; reduction; when; homestead exemption; limitation.

For homesteads valued at or above the maximum value, the exempt amount shall be reduced by ten percent for each two thousand five hundred dollars of value by which the homestead exceeds the maximum value and any homestead which exceeds the maximum value by twenty thousand dollars or more is not eligible for any exemption under sections 77-3507 to 77-3509.

Source: Laws 1995, LB 483, § 1.

77-3507 Homesteads; assessment; exemptions; qualified claimants; based on income.

(1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation on homesteads of qualified claimants a percentage of the exempt amount as limited by section 77-3506.03. The percentage of the exempt amount shall be determined based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(2) For 2000, for a qualified married or closely related claimant, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 22,500	100
22,501 through 23,700	85
23,701 through 24,900	70
24,901 through 26,100	55
26,101 through 27,300	40
27,301 through 28,500	25
28,501 and over	0

(3) For 2000, for a qualified single claimant, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant’s household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 19,200	100
19,201 through 20,200	85
20,201 through 21,200	70
21,201 through 22,200	55
22,201 through 23,200	40
23,201 through 24,200	25
24,201 and over	0

(4) For exemption applications filed in calendar year 2001 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2000. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 7; Laws 1980, LB 647, § 4; Laws 1981, LB 179, § 19; Laws 1984, LB 956, § 1; Laws 1988, LB 1105, § 2; Laws 1994, LB 902, § 33; Laws 1995, LB 483, § 4; Laws 1997, LB 182, § 4; Laws 1999, LB 179, § 1.

77-3508 Homesteads; assessment; exemptions; individuals; based on disability and income.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03. The exemption shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) Veterans as defined in section 80-401.01 who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who are totally disabled by a non-service-connected accident or illness;

(ii) Individuals who have a permanent physical disability and have lost all mobility so as to preclude locomotion without the regular use of a mechanical aid or prostheses; and

(iii) Individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent.

(c) Application for the exemption described in subdivision (a) of this subsection shall include certification from a qualified medical physician, physician assistant, or advanced practice registered nurse for subdivisions (b)(i) through

(b)(iii) of this subsection or certification from the United States Department of Veterans Affairs affirming that the homeowner is totally disabled due to non-service-connected accident or illness for subdivision (b)(i) of this subsection. Such certification from a qualified medical physician, physician assistant, or advanced practice registered nurse shall be made on forms prescribed by the Department of Revenue.

(2) For 2000, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 24,700	100
24,701 through 25,900	85
25,901 through 27,100	70
27,101 through 28,300	55
28,301 through 29,500	40
29,501 through 30,700	25
30,701 and over	0

(3) For 2000, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 21,600	100
21,601 through 22,600	85
22,601 through 23,600	70
23,601 through 24,600	55
24,601 through 25,600	40
25,601 through 26,600	25
26,601 and over	0

(4) For exemption applications filed in calendar year 2001 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2000. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 8; Laws 1980, LB 647, § 5; Laws 1981, LB 478, § 1; Laws 1983, LB 195, § 2; Laws 1986, LB 1258, § 2; Laws 1987, LB 376A, § 5; Laws 1988, LB 1105, § 3; Laws 1991, LB 2, § 17; Laws 1994, LB 902, § 34; Laws 1995, LB 483, § 5; Laws 1997, LB 182, § 5; Laws 1999, LB 179, § 2; Laws 2000, LB 1279, § 2; Laws 2005, LB 17, § 1; Laws 2005, LB 54, § 17.

77-3509 Homesteads; assessment; exemptions; certain veterans or unremarried widow or widower; percentage of exemption.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) A veteran described in section 80-401.01 who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), who is drawing compensation from the United States Department of Veterans Affairs because of one hundred percent disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528 or the unremarried widow or widower of a veteran described in this subdivision (i);

(ii) An unremarried widow or widower of any veteran, including a veteran other than a veteran described in section 80-401.01, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who died because of a service-connected disability;

(iii) An unremarried widow or widower of a serviceman or servicewoman who died while on active duty during the periods described in section 80-401.01; and

(iv) An unremarried widow or widower of a serviceman or servicewoman, including a veteran other than a veteran described in section 80-401.01, whose death while on active duty was service-connected.

(c) The exemption described in subdivision (a) of this subsection shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section. Application for exemption under this section shall include certification of the status set forth in this section from the United States Department of Veterans Affairs.

(2) For 2000, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 24,700	100
24,701 through 25,900	85
25,901 through 27,100	70
27,101 through 28,300	55
28,301 through 29,500	40
29,501 through 30,700	25
30,701 and over	0

(3) For 2000, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

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Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 21,600	100
21,601 through 22,600	85
22,601 through 23,600	70
23,601 through 24,600	55
24,601 through 25,600	40
25,601 through 26,600	25
26,601 and over	0

(4) For exemption applications filed in calendar year 2001 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2000. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 9; Laws 1983, LB 195, § 3; Laws 1986, LB 1258, § 3; Laws 1989, LB 762, § 10; Laws 1994, LB 902, § 35; Laws 1995, LB 483, § 6; Laws 1997, LB 182, § 6; Laws 1999, LB 179, § 3; Laws 2005, LB 54, § 18.

77-3509.01 Transfer of exemption to new homestead; procedure.

The owner of a homestead which has been granted an exemption provided in sections 77-3507 to 77-3509, who becomes the owner of another homestead prior to August 15 during the year for which the exemption was granted, may file an application with the county assessor of the county where the new homestead is located, on or before August 15 of such year, for a transfer of the exemption to the new homestead. The county assessor shall examine each application and determine whether or not the new homestead, except for the January 1 through August 15 ownership and occupancy requirement and the income requirements, is eligible for exemption under sections 77-3507 to 77-3509. If the application is approved by the county assessor, he or she shall make a deduction upon the assessment rolls using the same criteria as previously applied to the original homestead. The county assessor may allow the application for transfer to also be considered an application for a homestead exemption for the subsequent year.

Source: Laws 1983, LB 494, § 5; Laws 1984, LB 809, § 4; Laws 1985, Second Spec. Sess., LB 6, § 1; Laws 1987, LB 376A, § 6; Laws 1988, LB 834, § 1; Laws 1996, LB 921, § 1; Laws 2009, LB302, § 1.

77-3509.02 Transfer of exemption to new homestead; disallowance for original homestead; county assessor; duties.

If the owner of any homestead granted an exemption under sections 77-3507 to 77-3509 becomes the owner of another homestead on or before August 15 of any year pursuant to section 77-3509.01 and makes the application for transfer of the homestead exemption and such application is approved, the exemption shall be disallowed for such year as applied to the original homestead if the exemption was granted based on the status of such owner. If the transfer

involves property in more than one county, the county assessor of the county where the new homestead is located shall notify the other county assessor and the Department of Revenue of the application for transfer within ten days after receipt of the application.

Source: Laws 1983, LB 494, § 6; Laws 1984, LB 809, § 5; Laws 1985, Second Spec. Sess., LB 6, § 2; Laws 1987, LB 376A, § 7; Laws 1988, LB 834, § 2; Laws 1996, LB 921, § 2; Laws 2009, LB302, § 2.

77-3509.03 Homesteads; exemptions; property tax statement; contents.

All property tax statements for homesteads granted an exemption in sections 77-3507 to 77-3509 shall show the amount of the exemption, the tax that would otherwise be due, and a statement that the tax loss shall be reimbursed by the state as a homestead exemption.

Source: Laws 1984, LB 956, § 3; Laws 1989, LB 84, § 9; Laws 1991, LB 9, § 3.

77-3509.04 Repealed. Laws 1991, LB 9, § 8.

77-3510 Homesteads; exemptions; transfers; claimants; forms; contents; county assessor; furnish; confidentiality.

On or before February 1 of each year, the Tax Commissioner shall prescribe forms to be used by all claimants for homestead exemption or for transfer of homestead exemption. Such forms shall contain provisions for the showing of all information which the Tax Commissioner may deem necessary to (1) enable the county officials and the Tax Commissioner to determine whether each claim for exemption under sections 77-3507 to 77-3509 should be allowed and (2) enable the county assessor to determine whether each claim for transfer of homestead exemption pursuant to section 77-3509.01 should be allowed. It shall be the duty of the county assessor of each county in this state to furnish such forms, upon request, to each person desiring to make application for homestead exemption or for transfer of homestead exemption. The forms so prescribed shall be used uniformly throughout the state, and no application for exemption or for transfer of homestead exemption shall be allowed unless the applicant uses the prescribed form in making an application. The forms shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The Tax Commissioner shall provide to each county assessor printed claim forms and address lists of applicants from the prior year. The application and information contained on any attachments to the application shall be confidential and available to tax officials only.

Source: Laws 1979, LB 65, § 10; Laws 1983, LB 494, § 2; Laws 1983, LB 396, § 1; Laws 1984, LB 809, § 6; Laws 1985, Second Spec. Sess., LB 6, § 3; Laws 1986, LB 1258, § 4; Laws 1987, LB 376A, § 8; Laws 1989, LB 84, § 10; Laws 1991, LB 9, § 4; Laws 1994, LB 902, § 36; Laws 1995, LB 135, § 1; Laws 1996, LB 921, § 3; Laws 1997, LB 397, § 26; Laws 2003, LB 192, § 1; Laws 2007, LB145, § 1.

77-3511 Homestead; exemption; application; execution.

The application for homestead exemption or for transfer of homestead exemption shall be signed by the owner of the property who qualifies for exemption under sections 77-3501 to 77-3529 unless the owner is an incompetent or unable to make such application, in which case it shall be signed by the guardian. If an owner who in all respects qualifies for a homestead exemption under such sections dies after January 1 and before the last day for filing an application for a homestead exemption and before applying for a homestead exemption, his or her personal representative may file the application for exemption on or before the last day for filing an application for a homestead exemption of that year if the surviving spouse of such owner continues to occupy the homestead. Any exemption granted as a result of such application signed by a personal representative shall be in effect for only the year in which the owner died.

Source: Laws 1979, LB 65, § 11; Laws 1980, LB 647, § 6; Laws 1983, LB 195, § 4; Laws 1983, LB 494, § 3; Laws 1984, LB 809, § 7; Laws 1986, LB 1258, § 5; Laws 1987, LB 376A, § 9; Laws 1988, LB 1105, § 4; Laws 1989, LB 84, § 11; Laws 1994, LB 902, § 37.

77-3512 Homestead; exemption; application; when filed.

It shall be the duty of each owner who applies for the homestead exemption provided in sections 77-3507 to 77-3509 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for that year, except that:

(1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner.

Source: Laws 1979, LB 65, § 12; Laws 1980, LB 647, § 7; Laws 1983, LB 195, § 5; Laws 1983, LB 396, § 2; Laws 1984, LB 809, § 8; Laws 1985, Second Spec. Sess., LB 6, § 4; Laws 1989, LB 84, § 12; Laws 1991, LB 9, § 5; Laws 1991, LB 773, § 21; Laws 1995, LB 133, § 1; Laws 1996, LB 1039, § 5; Laws 1997, LB 397, § 27; Laws 2003, LB 192, § 2; Laws 2009, LB94, § 3.

77-3513 Homestead; exemption; filing requirements; notice; contents.

(1) Except as required by section 77-3514, if an owner is granted a homestead exemption as provided in section 77-3507 or 77-3509 or subdivision (1)(b)(ii) or (iii) of section 77-3508, no reapplication need be filed for succeeding years, in which case the county assessor and Tax Commissioner shall determine whether the claimant qualifies for the homestead exemption in such succeeding years as otherwise provided in sections 77-3501 to 77-3529 as though a claim were made.

(2) It shall be the duty of each claimant who wants the homestead exemption provided in subdivision (1)(b)(i) of section 77-3508 to file an application therefor with the county assessor on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for such year, except that:

(a) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(b) A claimant may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to file the application in a timely manner.

(3) The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which was granted an exemption under subdivision (1)(b)(i) of section 77-3508 in the preceding year unless the claimant has already filed the application for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the application deadlines for the current year, a list of documents that must be filed with the application, and the county assessor's office address and telephone number.

Source: Laws 1979, LB 65, § 13; Laws 1980, LB 647, § 8; Laws 1983, LB 195, § 6; Laws 1983, LB 396, § 3; Laws 1984, LB 809, § 9; Laws 1985, Second Spec. Sess., LB 6, § 5; Laws 1986, LB 1258, § 6; Laws 1987, LB 376A, § 10; Laws 1991, LB 773, § 22; Laws 1994, LB 902, § 38; Laws 1995, LB 133, § 2; Laws 1996, LB 1039, § 6; Laws 1997, LB 397, § 28; Laws 1999, LB 179, § 4; Laws 2005, LB 54, § 19; Laws 2007, LB145, § 2; Laws 2009, LB94, § 4.

77-3514 Homestead; exemption; certification of status; notice; failure to certify; penalty; lien.

A claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, shall certify to the county assessor on or before June 30 of each year that a change in the homestead exemption status has occurred or that no change in the homestead exemption status has occurred. The county board of the county in which the homestead is located may, by majority vote, extend the deadline for certification by a claimant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. In addition, a claimant may make such certification late pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to certify in a timely manner. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, in the preceding year unless the claimant has already filed the certification for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the certification deadlines for the current year, a list of documents that must be filed with the certification, and the county assessor's office address and telephone number. For purposes of this section, change in the homestead exemption status shall include any change in the name of the owner, ownership, residence, occupancy, marital status, veteran status, or rating by the United States Department of Veterans Affairs or any other change that would affect the qualification for or

type of exemption granted, except income checked by the Tax Commissioner under section 77-3517. The certificate shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The certification and the information contained on any attachments to the certification shall be confidential and available to tax officials only. In addition, a claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509 may notify the county assessor by August 15 of each year of any change in the homestead exemption status occurring in the preceding portion of the calendar year as a result of a transfer of the homestead exemption pursuant to sections 77-3509.01 and 77-3509.02. If by his or her failure to give such notice any property owner permits the allowance of the homestead exemption for any year, or in the year of application in the case of transfers pursuant to sections 77-3509.01 and 77-3509.02, after the homestead exemption status of such property has changed, an amount equal to the amount of the taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption, together with penalty and interest on such total sum as provided by statute on delinquent ad valorem taxes, shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property while unpaid. Such lien may be enforced in the manner provided for liens for other delinquent taxes. Any person who has permitted the improper and unlawful allowance of such homestead exemption on his or her property shall, as an additional penalty, also forfeit his or her right to a homestead exemption on any property in this state for the two succeeding years.

Source: Laws 1979, LB 65, § 14; Laws 1983, LB 494, § 4; Laws 1983, LB 195, § 7; Laws 1983, LB 396, § 4; Laws 1984, LB 809, § 10; Laws 1985, Second Spec. Sess., LB 6, § 6; Laws 1987, LB 376A, § 11; Laws 1988, LB 834, § 3; Laws 1988, LB 1105, § 5; Laws 1991, LB 2, § 18; Laws 1991, LB 773, § 23; Laws 1994, LB 902, § 39; Laws 1995, LB 133, § 3; Laws 1995, LB 135, § 2; Laws 1996, LB 1039, § 7; Laws 1997, LB 397, § 29; Laws 2005, LB 54, § 20; Laws 2007, LB145, § 3; Laws 2009, LB94, § 5.

77-3514.01 Homestead; exemption; late application or certification because of medical condition; filing; form; county assessor; powers and duties; rejection; notice; hearing.

(1) A late application or certification filed pursuant to section 77-3512, 77-3513, or 77-3514 because of a medical condition which impaired the claimant's ability to apply or certify in a timely manner shall only be for the current tax year. The late application or certification shall be filed with the county assessor on or before the date on which the first half of the real estate taxes levied on the property for the current year become delinquent.

(2) The application or certification shall include certification of the medical condition affecting the filing from a physician, physician assistant, or advanced practice registered nurse. The medical certification shall be made on forms prescribed by the Tax Commissioner.

(3) The county assessor shall approve or reject the late filing within thirty days of receipt of the late filing. If approved, the county assessor shall mark it approved and sign the application or certification. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to

law, the county assessor shall mark the application or certification as rejected and state the reason for rejection and sign the application or certification. In any case when the county assessor rejects an exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application or certification. The notice shall be on forms prescribed by the Tax Commissioner. In any case when the county assessor rejects an exemption, such applicant may obtain a hearing before the county board of equalization in the manner described by section 77-3519.

Source: Laws 2009, LB94, § 7.

77-3515 Homestead; exemption; new owner of property; when claimed.

Any purchaser, new resident, or new owner of property must claim a homestead exemption as provided in section 77-3512 before the allowance to the owner on such property shall be lawful.

Source: Laws 1979, LB 65, § 15; Laws 1983, LB 195, § 8.

77-3516 Homestead; exemption; application; county assessor; duties.

The county assessor shall examine each application for homestead exemption filed with him or her for an exemption pursuant to sections 77-3507 to 77-3509 and shall determine, except for the income requirements, whether or not such application should be approved or rejected. If the application is approved, the county assessor shall mark the same approved and sign the application. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application rejected and state thereon the reason for such rejection and sign the application. In any case when the county assessor rejects an application for exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application, which notice shall be mailed not later than July 31 of each year, except that in cases of a change in ownership or occupancy from January 1 through August 15 or a late application authorized by the county board or permitted because of a medical condition which impaired the applicant's ability to file in a timely manner, the notice shall be sent within a reasonable time. The notice shall be on forms prescribed by the Tax Commissioner.

Source: Laws 1979, LB 65, § 16; Laws 1980, LB 647, § 9; Laws 1983, LB 396, § 5; Laws 1984, LB 809, § 11; Laws 1985, Second Spec. Sess., LB 6, § 7; Laws 1986, LB 1258, § 7; Laws 1987, LB 376A, § 12; Laws 1989, LB 84, § 13; Laws 1991, LB 9, § 6; Laws 1991, LB 773, § 24; Laws 1995, LB 133, § 4; Laws 1996, LB 1039, § 8; Laws 1997, LB 397, § 30; Laws 2009, LB94, § 6.

77-3516.01 Repealed. Laws 1985, Second Spec. Sess., LB 6, § 9.

77-3517 Homestead; application for exemption; county assessor; Tax Commissioner; duties; refunds; liens.

(1) On or before August 1 of each year, the county assessor shall forward approved applications for homestead exemptions and a copy of the certification of disability status to the Tax Commissioner who shall determine if the applicant meets the income requirements and, on or before November 1, certify his or her determinations to the county assessor. If the application is approved, the

county assessor shall make the proper deduction on the assessment rolls. If the application is denied or approved in part, the Tax Commissioner shall notify the applicant of the denial or partial approval by mailing written notice to the applicant at the address shown on the application. The applicant may appeal the Tax Commissioner's denial or partial approval pursuant to section 77-3520. Late applications authorized by the county board shall be processed in a similar manner after approval by the county assessor.

(2)(a) Upon his or her own action or upon a request by an applicant, a spouse, or an owner-occupant, the Tax Commissioner may review the income information of applicants. Any action taken by the Tax Commissioner pursuant to this subsection shall be taken within three years after December 31 of the year in which the exemption was claimed.

(b) If an exemption should have been approved or increased for reasons of the income requirements, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant and the county treasurer and assessor of his or her determination. The applicant, spouse, or owner-occupant shall receive a refund of the tax, if any, that was paid as a result of the exemption being denied, in whole or in part. The county treasurer shall make the refund and shall amend the county's claim for reimbursement from the state.

(c) If an exemption should have been denied or reduced for reasons of the income requirements, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant of such denial or reduction. The applicant, the spouse, and any owner-occupant may appeal the Tax Commissioner's denial or reduction pursuant to section 77-3520. Upon the expiration of the appeal period in section 77-3520, the Tax Commissioner shall notify the county assessor of the denial or reduction and the county assessor shall remove or reduce the exemption from the tax rolls of the county. Upon notification by the Tax Commissioner to the county assessor, the amount of tax due as a result of the action of the Tax Commissioner shall become a lien on the homestead until paid. Upon attachment of the lien, the county treasurer shall refund to the Tax Commissioner the amount of tax equal to the denied or reduced exemption for deposit into the General Fund. No lien shall be created if a change in ownership of the homestead or death of the applicant, the spouse, and all other owner-occupants has occurred prior to the Tax Commissioner's notice to the county assessor.

Source: Laws 1979, LB 65, § 17; Laws 1980, LB 647, § 10; Laws 1986, LB 1258, § 8; Laws 1987, LB 376A, § 13; Laws 1989, LB 84, § 14; Laws 1991, LB 9, § 7; Laws 1991, LB 773, § 25; Laws 1995, LB 133, § 5; Laws 1995, LB 499, § 2; Laws 1996, LB 1039, § 9; Laws 1997, LB 397, § 31.

77-3518 Repealed. Laws 1987, LB 376A, § 21.

77-3519 Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.

In any case when the county assessor rejects an application for homestead exemption, such applicant may obtain a hearing before the county board of equalization by filing a written complaint with the county clerk within thirty days from receipt of the notice from the county assessor showing such rejection. Such complaint shall specify his or her grievances and the pertinent facts in relation thereto, in ordinary and concise language and without repetition,

and in such manner as to enable a person of common understanding to know what is intended. The board may take evidence pertinent to such complaint, and for that purpose may compel the attendance of witnesses and the production of books, records, and papers by subpoena. Notice of the board's decision shall be mailed by the county clerk to the applicant within seven days after the decision. The taxpayer shall have the right to appeal from the board's decision with reference to the application for homestead exemption to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 19; Laws 1987, LB 376A, § 14; Laws 1995, LB 490, § 177; Laws 2004, LB 973, § 44.

77-3520 Homestead; exemption; Tax Commissioner; rejection or reduction; petition; contents; hearing; appeal.

In any case when the Tax Commissioner rejects or reduces a claim for exemption, the applicant may obtain a hearing before the Tax Commissioner by filing a written petition with the Tax Commissioner within thirty days from the receipt of the notice of rejection or reduction. The petition shall state, in clear and concise language, (1) the amount in controversy, (2) the issues involved, (3) the name and address of the applicant, and (4) a demand for relief. The hearing shall be conducted in accordance with the Administrative Procedure Act. Notice of the Tax Commissioner's decision shall be mailed to the applicant within seven days after the decision. The applicant may appeal the Tax Commissioner's decision to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 20; Laws 1987, LB 376A, § 15; Laws 2004, LB 973, § 45.

Cross References

Administrative Procedure Act, see section 84-920.

77-3521 Tax Commissioner; rules and regulations.

It shall be the duty of the Tax Commissioner to adopt and promulgate rules and regulations for the information and guidance of the county assessors and county boards of equalization, not inconsistent with sections 77-3501 to 77-3529, affecting the application, hearing, assessment, or equalization of property which is claimed to be entitled to the exemption granted by such sections.

Source: Laws 1979, LB 65, § 21; Laws 1984, LB 809, § 12; Laws 1989, LB 84, § 15; Laws 1994, LB 902, § 40.

77-3522 Violations; penalty.

(1) Any person who makes any false or fraudulent claim for exemption or any false statement or false representation of a material fact in support of such claim or any person who assists another in the preparation of any such false or fraudulent claim or enters into any collusion with another by the execution of a fictitious deed or other instrument for the purpose of obtaining unlawful exemption under sections 77-3501 to 77-3529 shall be guilty of a Class II misdemeanor and shall be subject to a forfeiture of any such exemption for a period of two years from the date of conviction. Any person who shall make an

oath or affirmation to any false or fraudulent application for homestead exemption knowing the same to be false or fraudulent shall be guilty of a Class I misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, if any person files a claim for exemption as provided in section 77-3507, 77-3508, or 77-3509 which is excessive due to misstatements by the owner filing such claim, the claim may be disallowed in full and, if the claim has been allowed, an amount equal to the amount of taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property until paid and a penalty equal to the amount of taxes lawfully due but claimed for exemption shall be assessed.

Source: Laws 1979, LB 65, § 22; Laws 1984, LB 809, § 13; Laws 1986, LB 1258, § 9; Laws 1989, LB 84, § 16; Laws 1994, LB 902, § 41.

77-3523 Homestead; exemption; county treasurer; certify tax revenue lost within county; reimbursed; manner; distribution.

The county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner the total tax revenue that will be lost to all taxing agencies within his or her county from taxes levied and assessed in that year because of exemptions allowed under sections 77-3501 to 77-3529. The county treasurer may amend the certification to show any change or correction in the total tax that will be lost until May 30 of the next succeeding year. If a homestead exemption is approved, denied, or corrected by the Tax Commissioner under subsection (2) of section 77-3517 after May 1 of the next year, the county treasurer shall prepare and submit amended reports to the Tax Commissioner and the political subdivisions covering any affected year and shall adjust the reimbursement to the county and the other political subdivisions by adjusting the reimbursement due under this section in later years. The Tax Commissioner shall, on or before January 1 next following such certification or within thirty days of any amendment to the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the funds lost shall be made to each county according to the certification and shall be distributed in six as nearly as possible equal monthly payments on the last business day of each month beginning in January. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. Out of the amount so received the county treasurer shall distribute to each of the taxing agencies within his or her county the full amount so lost by such agency, except that one percent of such amount shall be deposited in the county general fund and that the amount due a Class V school district shall be paid to the district and the county shall be compensated pursuant to section 14-554. Each taxing agency shall, in preparing its annual or biennial budget, take into account the amount to be received under this section.

Source: Laws 1979, LB 65, § 23; Laws 1983, LB 494, § 7; Laws 1986, LB 1258, § 10; Laws 1987, LB 376A, § 16; Laws 1994, LB 902, § 42;

Laws 1995, LB 499, § 3; Laws 1996, LB 1040, § 5; Laws 1997, LB 397, § 32; Laws 2000, LB 1116, § 17; Laws 2009, LB166, § 18.

77-3524 Homestead; exemption; categories; Department of Revenue; maintain statistics.

The Department of Revenue shall maintain statistics to demonstrate the number of claimants and the amount of relief granted for the categories of homestead exemption.

Source: Laws 1979, LB 65, § 24; Laws 1981, LB 545, § 26; Laws 1983, LB 396, § 6; Laws 1984, LB 956, § 2; Laws 1996, LB 1039, § 10.

77-3525 Repealed. Laws 1987, LB 376A, § 21.

77-3526 Paraplegic, multiple amputee; terms, defined.

As used in sections 77-3526 to 77-3528:

(1) Paraplegic shall mean a veteran who is paralyzed in both legs such as to preclude locomotion without the aid of braces, crutches, canes, or wheelchair;

(2) Multiple amputee shall mean a veteran who has undergone amputation of (a) either both lower extremities or one lower extremity and one upper extremity, such as to preclude locomotion without the aid of braces, crutches, canes, wheelchair, or artificial limbs, or (b) both upper extremities;

(3) Home shall mean one housing unit and necessary land therefor not to exceed one acre occupied by the veteran or his or her unmarried surviving spouse when the veteran or surviving spouse is the owner of record from January 1 through August 15 in each year; and

(4) Substantially contributed by the United States Department of Veterans Affairs shall mean any amount received by a veteran from the department under Public Law 85-857 adopted September 2, 1958, as amended and in effect on January 1, 1979.

Source: Laws 1979, LB 65, § 26; Laws 1987, LB 376A, § 17; Laws 1991, LB 2, § 19; Laws 2004, LB 986, § 1.

77-3527 Property taxable; paraplegic veteran; multiple amputee; exempt; value; transfer of property; effect.

The value of a home substantially contributed by the United States Department of Veterans Affairs for a paraplegic veteran or multiple amputee shall be exempt from taxation during the life of such veteran or until the death of his or her surviving spouse or his or her remarriage. If such veteran or his or her unmarried surviving spouse disposes of such home and within one year uses the proceeds therefrom or part of such proceeds to acquire another home for occupancy by such veteran or his or her surviving spouse, such home shall be deemed to be one substantially contributed to by the department and the exemption provided for in this section shall apply to such substituted home during the life of such veteran or until the death of his or her surviving spouse or his or her remarriage. Application for exemption under this section shall include certification from the department affirming that the department has

substantially contributed to the purchase, construction, remodeling, or special adaptation of a home by the applicant.

Source: Laws 1979, LB 65, § 27; Laws 1983, LB 195, § 9; Laws 1991, LB 2, § 20; Laws 2004, LB 986, § 2.

77-3528 Property taxable; paraplegic; multiple amputee; claim exemption.

Any veteran claiming the exemption as provided by section 77-3527 shall make application to the county assessor upon forms prescribed and furnished by the Tax Commissioner. Such application shall be made on or before June 30 of each year. Exemptions claimed before June 30 shall apply for the year such exemption is claimed.

Source: Laws 1979, LB 65, § 28; Laws 1995, LB 133, § 6; Laws 1996, LB 1039, § 11; Laws 1997, LB 397, § 33.

77-3529 Homestead; exemption; application; denied; other exemption allowed.

If any application for exemption pursuant to sections 77-3501 to 77-3529 is denied and the applicant would be qualified for any other exemption under such sections, then such denied application shall be treated as an application for the highest exemption for which qualified. Any additional documentation necessary for such other exemption shall be submitted to the county assessor within a reasonable time after receipt of the notice of denial.

Source: Laws 1979, LB 65, § 29; Laws 1983, LB 195, § 10; Laws 1984, LB 809, § 14; Laws 1987, LB 376A, § 18; Laws 1989, LB 84, § 17; Laws 1994, LB 902, § 43.

77-3530 Repealed. Laws 2004, LB 811, § 3.

ARTICLE 36

LOCAL GOVERNMENT ASSISTANCE

Section

- 77-3601. Repealed. Laws 1981, LB 284, § 14.
- 77-3602. Repealed. Laws 1981, LB 284, § 14.
- 77-3603. Repealed. Laws 1981, LB 284, § 14.
- 77-3604. Repealed. Laws 1981, LB 284, § 14.
- 77-3605. Repealed. Laws 1982, LB 816, § 10.
- 77-3606. Repealed. Laws 1982, LB 816, § 10.
- 77-3607. Repealed. Laws 1982, LB 816, § 10.
- 77-3608. Repealed. Laws 1982, LB 816, § 10.
- 77-3609. Repealed. Laws 1982, LB 816, § 10.
- 77-3610. Repealed. Laws 1982, LB 816, § 10.
- 77-3611. Repealed. Laws 1982, LB 816, § 10.
- 77-3612. Repealed. Laws 1982, LB 816, § 10.
- 77-3613. Repealed. Laws 1982, LB 816, § 10.
- 77-3614. Repealed. Laws 1982, LB 816, § 10.
- 77-3615. Repealed. Laws 1982, LB 816, § 10.
- 77-3616. Repealed. Laws 1997, LB 397, § 51.
- 77-3617. Repealed. Laws 1997, LB 397, § 51.
- 77-3618. County Property Tax Relief Program; created; use; distributions.

77-3601 Repealed. Laws 1981, LB 284, § 14.

77-3602 Repealed. Laws 1981, LB 284, § 14.

77-3603 Repealed. Laws 1981, LB 284, § 14.

77-3604 Repealed. Laws 1981, LB 284, § 14.

77-3605 Repealed. Laws 1982, LB 816, § 10.

77-3606 Repealed. Laws 1982, LB 816, § 10.

77-3607 Repealed. Laws 1982, LB 816, § 10.

77-3608 Repealed. Laws 1982, LB 816, § 10.

77-3609 Repealed. Laws 1982, LB 816, § 10.

77-3610 Repealed. Laws 1982, LB 816, § 10.

77-3611 Repealed. Laws 1982, LB 816, § 10.

77-3612 Repealed. Laws 1982, LB 816, § 10.

77-3613 Repealed. Laws 1982, LB 816, § 10.

77-3614 Repealed. Laws 1982, LB 816, § 10.

77-3615 Repealed. Laws 1982, LB 816, § 10.

77-3616 Repealed. Laws 1997, LB 397, § 51.

77-3617 Repealed. Laws 1997, LB 397, § 51.

77-3618 County Property Tax Relief Program; created; use; distributions.

(1) The County Property Tax Relief Program is created. The program shall be used to distribute money to county governments to provide property tax relief and equalize county capacity to pay for public services from property taxes. Funds shall be distributed on or before September 1 each year by the Department of Revenue according to the formula created in this section.

(2) The department shall calculate the amount to be distributed to each county as follows:

(a) The county capacity shall be determined for each county. This amount is the assessed value of the county for the prior year multiplied by the county local effort rate, which is a tax rate of one and seven-tenths cents per one hundred dollars valuation, divided by the number of road miles maintained by the county;

(b) The statewide county capacity shall be determined. This amount is the statewide assessed value for the prior year multiplied by the county local effort rate, which is a tax rate of one and seven-tenths cents per one hundred dollars valuation, divided by the number of road miles maintained by all counties;

(c) The amount of aid due a county shall be determined by subtracting the county capacity from the statewide county capacity, if the result is a positive number, this amount multiplied by the number of county road miles is the amount to be distributed to the county subject to subdivision (d) of this subsection; and

(d) The amount distributed to a county shall not exceed an amount equal to the result of a tax rate of five cents per one hundred dollars on the assessed value of the county.

(3) A minimum levy adjustment shall be made for any county that would otherwise receive aid under subsections (1) and (2) of this section that has a levy for all purposes except bonded indebtedness for the prior year that is less than forty cents per one hundred dollars of valuation. The Department of Revenue shall reduce the amount to be distributed by a minimum levy adjustment which shall be calculated by subtracting the nonbond levy of the county for the prior year from forty cents and multiplying the result by the valuation of the county divided by one hundred. If the resulting aid amount after subtracting the minimum levy adjustment from the aid calculated under subsections (1) and (2) of this section is zero or less, the county shall receive no aid.

(4) The Department of Roads shall provide the county road-mile information for all counties each year to the Department of Revenue. The information provided shall be the same as determined under section 39-2507.

(5) If sufficient funds are not appropriated to fully fund the provisions of this section, the Department of Revenue shall make a proportionate reduction in each distribution made pursuant to this section. There shall be no funds appropriated to the County Property Tax Relief Program for fiscal years 2003-04 and 2004-05. Distributions under the program will resume in fiscal year 2005-06.

Source: Laws 1998, LB 695, § 7; Laws 1998, LB 1104, § 29; Laws 1999, LB 669, § 1; Laws 2002, LB 994, § 27; Laws 2003, LB 622, § 2.

Note: This section was repealed by Laws 2009, LB218, section 14, operative on July 1, 2011.

ARTICLE 37 MOBILE HOMES

Section

- 77-3701. Mobile home, defined.
 77-3702. Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.
 77-3703. Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.
 77-3704. Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.
 77-3705. Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.
 77-3706. Owner, lessee, or manager of land; report mobile homes; form; contents of report; failure to report; penalty.
 77-3707. Owner, lessee, or manager of land; permit; fee; disbursement; annual renewal.
 77-3708. Mobile home; movement on road or highway; permit; conditions.
 77-3709. Violations; penalty.
 77-3710. Sections, how construed.

77-3701 Mobile home, defined.

For purposes of sections 77-3701 to 77-3708, unless the context otherwise requires, mobile home shall mean every portable or relocatable device of any description, without motive power, and designed for living quarters, whether or not permanently attached to the land, but shall not include a cabin trailer registered for operation upon the highways of this state.

Source: Laws 1981, LB 168, § 1; Laws 1992, LB 1063, § 195; Laws 1992, Second Spec. Sess., LB 1, § 166.

77-3702 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-3703 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-3704 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-3705 Repealed. Laws 1992, LB 1063, § 212; Laws 1992, Second Spec. Sess., LB 1, § 180.

77-3706 Owner, lessee, or manager of land; report mobile homes; form; contents of report; failure to report; penalty.

The owner, lessee, or manager of land upon which is parked or located a mobile home, shall report by January 15 of each year to the county assessor, upon forms sent by the county assessor, in the county in which such land is located all mobile homes located thereon as of January 1 of each year, the year, make, model, and size of each mobile home, the name, post office address of the owner or occupant thereof, and the date the mobile home was first parked or located on such land. Failure to make any report required by this section shall result in cancellation of the permit issued and forfeiture of the fee paid pursuant to section 77-3707.

Source: Laws 1959, c. 303, § 8, p. 1134; R.R.S.1943, § 60-1608; Laws 1969, c. 519, § 1, p. 2131; Laws 1969, c. 516, § 13, p. 2126; R.S.1943, (1978), § 60-1609; Laws 1981, LB 168, § 7.

77-3707 Owner, lessee, or manager of land; permit; fee; disbursement; annual renewal.

Every owner, lessee, or manager of land upon which are located or to be located two or more mobile homes shall obtain a permit therefor from the county treasurer upon payment of an annual fee of five dollars which shall be deposited in the county general fund. Such annual permit shall be renewed during January of each year. Application for such permit shall be made on forms prescribed and furnished by the Tax Commissioner. If the applicant is an individual, the application for a permit shall include the applicant's social security number.

Source: Laws 1969, c. 516, § 14, p. 2126; Laws 1977, LB 396, § 1; R.S.1943, (1978), § 60-1609.01; Laws 1981, LB 168, § 8; Laws 1997, LB 752, § 215.

77-3708 Mobile home; movement on road or highway; permit; conditions.

A mobile home may not be moved upon any road or highway in the state without first obtaining a movement permit as required by law for the movement of any oversize vehicle. No movement permit shall be issued by any governmental agency charged with issuance thereof unless a tax certificate issued by the county treasurer showing payment of all taxes due or to become due because of the location of such mobile home in such county on assessment day is displayed by the owner. A tax certificate shall not be required if the movement contemplated is between a manufacturer and a licensed dealer or between two licensed dealers or between a licensed dealer's place of business or storage area and a bona fide customer to whom title to the mobile home has passed or does pass within a reasonable time after movement. For the purposes of this section, taxes and fees shall include those of all governmental subdivisions. Nothing in

this section shall alter or amend any other existing regulations, rules, or statutes governing the movement of mobile homes.

Source: Laws 1969, c. 516, § 16, p. 2126; R.S.1943, (1978), § 60-1611; Laws 1981, LB 168, § 9.

77-3709 Violations; penalty.

Any person violating any of the provisions of section 77-3706, 77-3707, or 77-3708 shall be guilty of a Class IV misdemeanor.

Source: Laws 1959, c. 303, § 10, p. 1134; R.R.S.1943, § 60-1610; Laws 1969, c. 516, § 17, p. 2128; Laws 1977, LB 39, § 97; R.S.1943, (1978), § 60-1612; Laws 1981, LB 168, § 10.

77-3710 Sections, how construed.

Nothing in sections 77-3706, 77-3707, and 77-3708 shall be construed as altering or affecting in any manner, any zoning, planning, building or land-use, laws, ordinances, rules, or regulations.

Source: Laws 1969, c. 516, § 18, p. 2128; R.S.1943, (1978), § 60-1613; Laws 1981, LB 168, § 11.

ARTICLE 38

FINANCIAL INSTITUTION TAXATION

Section

77-3801. Terms, defined.

77-3802. Franchise tax imposed.

77-3803. Franchise tax; rate.

77-3804. Franchise tax; limitation rate; limitation amount.

77-3805. Franchise tax; multistate financial institution; computation.

77-3806. Franchise tax; filing requirements; general provisions applicable; refunds; credit.

77-3807. Tax Commissioner; powers and duties.

77-3801 Terms, defined.

For purposes of sections 77-3801 to 77-3807, unless the context otherwise requires:

(1) All terms shall have the same meaning as provided in the Nebraska Revenue Act of 1967;

(2) Average deposits shall mean (a) for a financial institution on a calendar year, the total of the deposits held on the last day of the preceding year and the last day of each calendar quarter, divided by five or (b) for a financial institution on a fiscal year other than a calendar year, the total of the deposits held on the last day of the preceding fiscal year, the last day of each calendar quarter within the fiscal year, and the last day of the fiscal year, divided by the number of amounts added together;

(3) Deposits shall mean the amount of money placed in the custody of a financial institution for safety or convenience that may be withdrawn at the will of the depositor or under the rules or regulations agreed upon by the financial institution and the depositor. Deposits shall also include amounts for which a certificate may be issued and which are payable on demand, on certain notice, or at a fixed future date or time. Deposits shall not include any money placed in a fiduciary capacity in the custody of a trust department of any financial

institution having trust powers granted by appropriate regulatory authority which is not placed by the trust department as a deposit in such financial institution;

(4) Financial institution shall mean:

(a) Any bank, building and loan association, credit union, savings and loan association, or savings bank chartered or qualified to do business in this state, or any subsidiary of such financial institution; or

(b) Any bank, bank holding company or subsidiary of a bank holding company as defined in 12 U.S.C. 1841, as such section existed on July 20, 2002, affiliate of a bank holding company as defined in 12 U.S.C. 221a, as such section existed on July 20, 2002, building and loan association, credit union, industrial loan and investment company, savings and loan association, or savings bank which is not chartered to do business in this state but maintains a permanent place of business in this state and actively solicits deposits from residents of this state for an affiliate, regardless of whether the affiliate maintains an office in this state, in which event the deposits of the affiliate shall be deemed deposits of such institution;

(5) Net financial income shall mean the income of the financial institution, including its subsidiaries, after ordinary and necessary expenses but before income taxes and extraordinary gains or losses. Net financial income shall include, but not be limited to, income from fiduciary activities, interest, rent, or service charges. Ordinary and necessary expenses shall include, but not be limited to, fees, depreciation on furniture and equipment, interest, salaries and benefits, and supplies. Income and expenses shall be computed according to the regular books and records of the institution; and

(6) Subsidiary shall not include any bank, bank holding company, or savings and loan association which is owned fifty percent or more by a mutual savings and loan association and which does not actively solicit deposits from residents of this state.

Source: Laws 1986, LB 774, § 1; Laws 1995, LB 26, § 1; Laws 2002, LB 1094, § 17; Laws 2003, LB 131, § 38.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-3802 Franchise tax imposed.

(1) There is hereby imposed for each taxable year for the privilege of doing business in this state a franchise tax on all financial institutions with business locations in this state. Such franchise tax shall be based on the average deposits of the financial institution.

(2) The amount of the tax imposed by this section shall be the number of cents, as determined by section 77-3803, multiplied by the amount of average deposits of the financial institution in thousands of dollars.

(3) The franchise tax imposed by this section shall not exceed the limitation amount prescribed in section 77-3804.

(4) Each financial institution shall file a separate franchise tax return.

Source: Laws 1986, LB 774, § 2.

77-3803 Franchise tax; rate.

The rate of tax on deposits shall be twelve and three-tenths times the limitation rate as determined in section 77-3804, expressed in cents and rounded to the nearest cent.

Source: Laws 1986, LB 774, § 3.

77-3804 Franchise tax; limitation rate; limitation amount.

(1) The limitation rate shall be forty-eight and eight-tenths percent of the maximum corporate income tax rate in effect for the taxable year, as prescribed in section 77-2734.02, rounded to the nearest hundredth of one percent.

(2) The limitation amount shall be the product of the net financial income of the financial institution multiplied by the limitation rate.

Source: Laws 1986, LB 774, § 4.

77-3805 Franchise tax; multistate financial institution; computation.

If a financial institution is subject to tax in more than one state:

(1) The tax imposed in section 77-3802 shall be based on the amount of average deposits connected with the financial institution's operations in this state. Such deposits shall be (a) deposits which are accepted at the financial institution's offices located in this state plus (b) deposits which are solicited from residents in this state even if accepted at an office of the financial institution outside of this state; and

(2) The limitation on the tax prescribed in subdivision (2) of section 77-3804 shall be computed using the portion of the net financial income of the financial institution that is apportioned to this state through the use of the property and payroll factors contained in sections 77-2734.12 and 77-2734.13.

Source: Laws 1986, LB 774, § 5.

77-3806 Franchise tax; filing requirements; general provisions applicable; refunds; credit.

(1) The tax return shall be filed and the total amount of the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, or (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency.

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(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Community Development Assistance Act.

Source: Laws 1986, LB 774, § 6; Laws 1990, LB 1241, § 16; Laws 2001, LB 433, § 7; Laws 2007, LB367, § 25.

Cross References

Community Development Assistance Act, see section 13-201.

77-3807 Tax Commissioner; powers and duties.

(1) The Tax Commissioner shall prescribe the necessary forms and the supporting documentation to be filed for the reporting and payment of the tax imposed by section 77-3802 and for the calculation of credits allowable under subsection (5) of section 77-2715.07.

(2) The Tax Commissioner shall adopt and promulgate rules and regulations to carry out sections 77-3801 to 77-3807.

(3) The Tax Commissioner may use electronic funds transfers to collect the tax imposed by section 77-3802 or to pay any refunds allowed under section 77-3806. The use of electronic funds transfers shall not change the rights of any party from the rights such party would have if a different method of payment is used.

Source: Laws 1986, LB 774, § 7; Laws 2007, LB456, § 3.

ARTICLE 39

UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT

Section

- 77-3901. Act, how cited.
- 77-3902. Terms, defined.
- 77-3903. Notice of lien; filing; requirements; fee.
- 77-3904. Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.
- 77-3905. Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.
- 77-3906. Distraint and sale of taxpayer’s property; procedures; conditions; powers and duties.
- 77-3907. Demand upon security; authorized; abatement; when.
- 77-3908. Actions prohibited; construction of act.
- 77-3909. Repealed. Laws 2004, LB 811, § 3.

77-3901 Act, how cited.

Sections 77-3901 to 77-3908 shall be known and may be cited as the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1986, LB 1027, § 214; Laws 1993, LB 345, § 74; Laws 2004, LB 811, § 1.

77-3902 Terms, defined.

For purposes of the Uniform State Tax Lien Registration and Enforcement Act:

(1) Appropriate filing officer means (a) with respect to real property subject to a tax lien, the register of deeds of the county or counties in which the real property is situated and (b) with respect to personal property subject to a tax lien, the Secretary of State; and

(2) Any reference to tax, taxes, fee, or tax program shall be construed to include any tax, fee, or in-lieu-of-tax contribution which is imposed by the laws of this state and administered or collected and enforced by the Tax Commissioner or Commissioner of Labor, unless a tax lien is otherwise provided for by law.

Source: Laws 1986, LB 1027, § 215; Laws 1987, LB 523, § 31; Laws 1995, LB 490, § 178; Laws 1998, LB 1321, § 99; Laws 1999, LB 165, § 3; Laws 1999, LB 550, § 45; Laws 2007, LB334, § 88.

77-3903 Notice of lien; filing; requirements; fee.

(1)(a) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon real property shall be presented in the office of the Secretary of State. Such notice of lien shall be transmitted by the Secretary of State to and filed in the office of the register of deeds by the register of deeds of the county or counties in which the real property subject to the lien is situated as designated in the notice of lien. The register of deeds shall enter the notice in the alphabetical state tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such presentments to the Secretary of State may be made by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(b) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon personal property shall be filed in the office of the Secretary of State. The Secretary of State shall enter the notice in the state's central tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such filings with the Secretary of State may be filed by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices.

(2) Beginning July 1, 1999, the uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this section in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this section, the Secretary of State shall remit three dollars to the register of deeds of a county for each

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designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(3) The Secretary of State shall bill the Tax Commissioner or Commissioner of Labor on a monthly basis for fees for documents presented to or filed with the Secretary of State. No payment of any fee shall be required at the time of presenting or filing any such lien document.

Source: Laws 1986, LB 1027, § 216; Laws 1987, LB 523, § 32; Laws 1995, LB 490, § 179; Laws 1998, LB 1321, § 100; Laws 1999, LB 165, § 4; Laws 1999, LB 550, § 46; Laws 2007, LB223, § 23; Laws 2007, LB334, § 89.

77-3904 Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.

(1) If any person liable to pay any tax or fee under any tax program administered by the Tax Commissioner or Commissioner of Labor neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax and such additional costs that may accrue, shall be a lien in favor of the State of Nebraska upon all property and rights to property, whether real or personal, then owned by such person or acquired by him or her thereafter and prior to the expiration of the lien. Unless another date is specifically provided by law, such lien shall arise at the time of the assessment and shall remain in effect (a) for three years from the time of the assessment if the notice of lien is not filed for record in the office of the appropriate filing officer, (b) for ten years from the time of filing for record in the office of the appropriate filing officer, or (c) until such amounts have been paid or a judgment against such person arising out of such liability has been satisfied or has become unenforceable by reason of lapse of time, unless a continuation statement is filed prior to the lapse.

(2)(a) The Tax Commissioner or Commissioner of Labor may present for filing or file for record in the office of the appropriate filing officer a notice of lien specifying the year the tax was due, the tax program, and the amount of the tax and any interest, penalty, or addition to such tax that are due. Such notice shall be filed for record in the office of the appropriate filing officer within three years after the time of assessment. Such notice shall contain the name and last-known address of the taxpayer, the last four digits of the taxpayer's social security number or federal identification number, the Tax Commissioner's or Commissioner of Labor's serial number, and a statement to the effect that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the particular tax program which he or she administers in the determination of the amount of the tax and any interest, penalty, and addition to such tax required to be paid.

(b) If the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any state or the District of Columbia, before the end of the three-year period in subdivision (2)(a) of this section, the notice shall be filed for record within the three-year period or within six months after the assets are released by the court, whichever is later.

(3)(a)(i) A lien imposed upon real property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been presented for

filing by the Tax Commissioner or Commissioner of Labor in the office of the Secretary of State and filed in the office of the register of deeds.

(ii) A lien imposed upon personal property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been filed by the Tax Commissioner or Commissioner of Labor in the office of the Secretary of State.

(b) In the case of any prior mortgage on real property or secured transaction covering personal property so written as to secure a present debt and future advances, the lien provided in the act, when notice thereof has been filed in the office of the appropriate filing officer, shall be subject to such prior lien unless the Tax Commissioner or Commissioner of Labor has notified the lienholder in writing of the recording of such tax lien, in which case the lien of any indebtedness thereafter created under such mortgage or secured transaction shall be junior to the lien provided for in the act.

(4) The lien may, within ten years from the date of filing for record of the notice of lien in the office of the appropriate filing officer, be extended by filing for record a continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original notice shall be continued for ten years after the last date to which the filing was effective. After such period the notice shall lapse in the manner prescribed in subsection (1) of this section unless another continuation statement is filed prior to such lapse.

(5) When a termination statement of any tax lien issued by the Tax Commissioner or Commissioner of Labor is filed in the office where the notice of lien is filed, the appropriate filing officer shall enter such statement with the date of filing in the state tax lien index where notice of the lien so terminated is entered and shall file the termination statement with the notice of the lien.

(6) The Tax Commissioner or Commissioner of Labor may at any time, upon request of any party involved, release from a lien all or any portion of the property subject to any lien provided for in the Uniform State Tax Lien Registration and Enforcement Act or subordinate a lien to other liens and encumbrances if he or she determines that (a) the tax amount and any interest, penalties, and additions to such tax have been paid or secured sufficiently by a lien on other property, (b) the lien has become legally unenforceable, (c) a surety bond or other satisfactory security has been posted, deposited, or pledged with the Tax Commissioner or Commissioner of Labor in an amount sufficient to secure the payment of such taxes and any interest, penalties, and additions to such taxes, or (d) the release, partial release, or subordination of the lien will not jeopardize the collection of such taxes and any interest, penalties, and additions to such tax.

(7) A certificate by the Tax Commissioner or Commissioner of Labor stating that any property has been released from the lien or the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has in fact been released or the lien has been subordinated pursuant to the certificate.

Source: Laws 1986, LB 1027, § 217; Laws 1987, LB 523, § 33; Laws 1993, LB 345, § 75; Laws 1995, LB 490, § 180; Laws 1999, LB 165, § 5; Laws 1999, LB 550, § 47; Laws 2007, LB223, § 24; Laws 2007, LB334, § 90.

77-3905 Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.

(1) At any time within three years after any amount of tax to be collected under any tax program administered by the Tax Commissioner or Commissioner of Labor is assessed or within ten years after the last filing for record as set forth in the Uniform State Tax Lien Registration and Enforcement Act, the Tax Commissioner or Commissioner of Labor may bring an action in the courts of this state, any other state, or the United States in the name of the people of the State of Nebraska to collect the delinquent amount together with penalties, any additions to such tax, costs, and interest.

(2)(a) The Attorney General shall prosecute the action on behalf of the Tax Commissioner, (b) the Commissioner of Labor shall be represented in an action under the act as provided in section 48-667, and (c) the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(3) In the action, a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

(4) In the action, a certificate by the Tax Commissioner or Commissioner of Labor showing the delinquency shall be prima facie evidence of the determination of such tax or the amount of such tax, the delinquency of the amounts set forth, and the compliance by the Tax Commissioner or Commissioner of Labor with all provisions of the applicable tax program which he or she administers in relation to the computation and determination of the amounts set forth.

(5) The tax amounts required to be paid by any person under any tax program administered by the Tax Commissioner or Commissioner of Labor together with any interest, penalties, and additions to such tax shall be satisfied first in any of the following cases: When the person is insolvent; when the person makes a voluntary assignment of his or her assets; when the estate of the person in the hands of executors, personal representatives, administrators, or heirs is insufficient to pay all the debts due from the deceased; or when the estate and effects of an absconding, concealed, or absent person required to pay any amount under any tax program administered by the Tax Commissioner or Commissioner of Labor are levied upon by process of law.

(6) Any tax which by law must be deducted and withheld by an employer or payor or is collected by a retailer or any other designated person as agent for the State of Nebraska on any transaction governed by a tax program administered by the Tax Commissioner or Commissioner of Labor shall constitute a trust fund in the hands of the employer, payor, or retailer or such other designated person and shall be owned by the state as of the time the tax is deducted and withheld or is owing to the employer, payor, or retailer or such other designated person.

Source: Laws 1986, LB 1027, § 218; Laws 1987, LB 523, § 34; Laws 1993, LB 345, § 76; Laws 1995, LB 490, § 181; Laws 1999, LB 165, § 6; Laws 2007, LB334, § 91.

77-3906 Distraint and sale of taxpayer's property; procedures; conditions; powers and duties.

(1) In addition to all other remedies or actions provided by law under any tax program administered by the Tax Commissioner or Commissioner of Labor, it

shall be lawful for the Tax Commissioner or Commissioner of Labor, after making demand for payment, to collect any delinquent taxes, together with any interest, penalties, and additions to such tax by distraint and sale of the real and personal property of the taxpayer. If the Tax Commissioner finds that the collection of any tax is in jeopardy pursuant to section 77-2710, 77-27,111, or 77-4311, notice and demand for immediate payment of such tax may be made by the Tax Commissioner and, upon failure or refusal to pay such tax, collection by levy shall be lawful.

(2)(a) In case of failure to pay taxes or deficiencies, the Tax Commissioner, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Tax Commissioner to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(b) In case of failure to pay taxes or deficiencies, the Commissioner of Labor, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Department of Labor to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(c) As used in this section, exempt property shall mean such property as is exempt from execution under the laws of this state.

(3) When a warrant is issued or a levy is made by the Tax Commissioner or Commissioner of Labor, or his or her duly authorized employee, for the collection of any tax and any interest, penalty, or addition to such tax imposed by law under any tax program administered by the Tax Commissioner or Commissioner of Labor or for the enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner or Commissioner of Labor shall pay the levying sheriff the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publications in a newspaper shall be subject to approval by the Tax Commissioner or Commissioner of Labor. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the identity of the tax program, the year for which such tax and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the applicable tax program which he or she administers in the determination of the amount required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

(4)(a) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the taxpayer under his or her control at the time the levy was served or thereafter. Such person may be subject to collection provisions as set forth in the act.

(b) The effect of a levy on salary, wages, or other regular payments due to or received by a taxpayer shall be continuous from the date the levy is served until the amount of the levy, with accrued interest, is satisfied.

(5) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such sale in the following manner: The notice shall be sent by certified mail, return receipt requested, to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be given by publication at least once each week for four weeks prior to the date of the sale in the newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or such security as may be determined by the Tax Commissioner or Commissioner of Labor is placed with the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(6) At the sale the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized shall remain in the custody and control of the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, until offered for sale again in accordance with this section or redeemed by the taxpayer.

(7) Whenever any property which is seized and sold under this section is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff or duly authorized employee of the Tax Commissioner or Department of Labor may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists until the amount due from such taxpayer, together with all expenses, is fully paid.

(8) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax Commissioner or Commissioner of Labor shall return the excess to the person liable for the amounts and obtain a receipt. If any person having an interest or lien upon the property files with the Tax Commissioner or Commissioner of Labor prior to the sale notice of his or her interest or lien, the Tax Commissioner or Commissioner of Labor shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner or Commissioner of Labor shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to

the order of the person liable for the amount or his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

(9) All persons and officers of companies or corporations shall, on demand of a sheriff or duly authorized employee of the Tax Commissioner or Department of Labor about to distraint or having distrained any property or right to property, exhibit all books containing evidence or statements relating to the property or rights of property liable to distraint for the tax due.

Source: Laws 1986, LB 1027, § 219; Laws 1990, LB 260, § 17; Laws 1993, LB 345, § 77; Laws 1995, LB 490, § 182; Laws 1999, LB 36, § 33; Laws 1999, LB 165, § 7; Laws 2007, LB334, § 92.

77-3907 Demand upon security; authorized; abatement; when.

(1) To enforce collection of any tax not paid when due, the Tax Commissioner or Commissioner of Labor may make demand upon any security which is provided for by law and which has been submitted to the Tax Commissioner or Commissioner of Labor on behalf of the person liable for the tax, together with any interest, penalties, additions to tax, and costs thereon. The security may, if necessary, be sold by the Tax Commissioner or Commissioner of Labor in the manner provided by section 77-27,131.

(2) The Tax Commissioner or Commissioner of Labor may abate the unpaid portion of the assessment of any tax, or other liability in respect thereof, if he or she determines that the administration and collection costs involved would not warrant collection of the amount due.

Source: Laws 1986, LB 1027, § 220; Laws 1995, LB 490, § 183; Laws 1999, LB 165, § 8; Laws 2007, LB334, § 93.

77-3908 Actions prohibited; construction of act.

(1) No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state to enjoin the collection of any tax, fee, or any amount of tax required to be collected under any tax program administered by the Tax Commissioner or Commissioner of Labor.

(2) The methods of enforcement and collection provided in the Uniform State Tax Lien Registration and Enforcement Act, including distraint and sale, shall be fully independent so that pursuit of any one method shall not be conditioned upon pursuit of any other, nor shall pursuit of any one method in any way affect or limit the right of the Tax Commissioner or Commissioner of Labor to subsequently pursue any of the other methods of enforcement or collection.

Source: Laws 1986, LB 1027, § 221; Laws 1995, LB 490, § 184; Laws 1999, LB 165, § 9; Laws 2007, LB334, § 94.

77-3909 Repealed. Laws 2004, LB 811, § 3.

**ARTICLE 40
TOBACCO PRODUCTS TAX**

Cross References

Cigarette tax, see sections 77-2601 to 77-2622.

License required for sales of tobacco, see sections 28-1420 to 28-1429.

Smokeless tobacco, distribution, when prohibited, see sections 69-1901 to 69-1904.
Tobacco, penalties for violations involving minors, see sections 28-1418 and 28-1419.

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77-4001 Act, how cited.

Sections 77-4001 to 77-4025 shall be known and may be cited as the Tobacco Products Tax Act.

Source: Laws 1987, LB 730, § 1; Laws 2009, LB89, § 1.

77-4002 Definitions; where found.

For purposes of the Tobacco Products Tax Act, unless the context otherwise requires, the definitions found in sections 77-4003 to 77-4007 shall be used.

Source: Laws 1987, LB 730, § 2; Laws 2009, LB89, § 2.

77-4003 Cancel, defined.

Cancel shall mean to discontinue for up to five years all rights and privileges under a license.

Source: Laws 1987, LB 730, § 3.

77-4004 First owner, defined.

First owner shall mean any person:

(1) Engaged in the business of selling tobacco products in this state who brings or causes to be brought into this state from outside this state any tobacco products for sale in this state, including a retailer who purchases directly from suppliers outside this state who are not licensed pursuant to subsection (2) of section 77-4009;

(2) Who makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(3) Engaged in business outside this state who ships or transports tobacco products to retailers in this state and who becomes licensed pursuant to subsection (2) of section 77-4009.

Source: Laws 1987, LB 730, § 4.

77-4005 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges of a person to obtain a license.

Source: Laws 1987, LB 730, § 5.

77-4005.01 Snuff, defined.

Snuff means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Source: Laws 2009, LB89, § 3.

77-4006 Suspend, defined.

Suspend shall mean to temporarily interrupt for up to one year all rights and privileges under a license.

Source: Laws 1987, LB 730, § 6.

77-4007 Tobacco products, defined.

Tobacco products shall mean (1) cigars, (2) cheroots, (3) stogies, (4) periques, (5) granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, (6) snuff, (7) snuff flour, (8) cavendish, (9) plug and twist tobacco, (10) fine cut and other chewing tobacco, (11) shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and (12) other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise or both for chewing and smoking, except that tobacco products shall not mean cigarettes as defined in section 77-2601.

Source: Laws 1987, LB 730, § 7.

77-4008 Tax imposed; payment.

(1)(a) A tax is hereby imposed upon the first owner of tobacco products to be sold in this state.

(b) The tax on snuff shall be forty-four cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(c) The tax on tobacco products other than snuff shall be twenty percent of (i) the purchase price of such tobacco products paid by the first owner or (ii) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others.

(d) The tax on tobacco products shall be in addition to all other taxes.

(2) Whenever any person who is licensed under section 77-4009 purchases tobacco products from another person licensed under section 77-4009, the seller shall be liable for the payment of the tax.

(3) Amounts collected pursuant to this section shall be used and distributed pursuant to section 77-4025.

Source: Laws 1987, LB 730, § 8; Laws 2002, LB 1085, § 20; Laws 2003, LB 759, § 24; Laws 2009, LB89, § 4.

77-4009 License required; when; application; contents.

(1) Each first owner of tobacco products to be sold in this state shall be licensed by the Tax Commissioner. Every application for such license shall be made on a form prescribed by the Tax Commissioner. The application shall include: (a) The name and address of the applicant or, if the applicant is a firm, partnership, limited liability company, or association, the name and address of each of its members or, if the applicant is a corporation, the name and address of each of its officers and the address of its principal place of business; (b) the location of the place of business to be licensed; and (c) such other information as the Tax Commissioner may require for the purpose of administering the Tobacco Products Tax Act.

(2) A person outside of this state who ships or transports tobacco products to any person in this state to be sold in this state may make application for a license and be granted such a license by the Tax Commissioner. If a license is granted, such person shall be subject to the Tobacco Products Tax Act and shall be entitled to act as a licensee. A person outside this state who receives a license shall have established sufficient contact with this state for the exercise of personal jurisdiction over the person in any matter or issue arising under the act.

Source: Laws 1987, LB 730, § 9; Laws 1993, LB 121, § 516.

77-4010 Application; place of business; fee.

An application for a license shall be required for each place of business of a first owner and shall be accompanied by a fee of twenty-five dollars. Such license shall be a continuing license unless the license is revoked, canceled, or suspended, and the fees shall be nonrefundable.

Source: Laws 1987, LB 730, § 10.

77-4011 Issuance of license; rights.

Upon receipt of an application in proper form and payment of the fee, the Tax Commissioner shall issue a license to the applicant, except as provided in section 77-4013. The license shall permit the applicant to whom it is issued to engage in business at the place of business shown on the license. A license shall not be assignable, shall be valid only for the person in whose name it is issued, and shall be valid unless suspended, canceled, or revoked by the Tax Commissioner.

Source: Laws 1987, LB 730, § 11.

77-4012 License; revoke, cancel, or suspend; procedure.

The Tax Commissioner may revoke, cancel, or suspend any license for a violation of the Tobacco Products Tax Act or any rule or regulation adopted and promulgated by the Tax Commissioner in administering the act. If a license is revoked, canceled, or suspended, the licensee shall immediately surrender such license to the Tax Commissioner. No determination of revocation, cancellation,

or suspension shall be made until notice has been given and a hearing has been held by the Tax Commissioner as provided in section 77-4019, if requested by the licensee.

Source: Laws 1987, LB 730, § 12.

77-4013 License; restoration; fee.

The Tax Commissioner may restore licenses which have been revoked, canceled, or suspended, but the Tax Commissioner shall not issue a new license after the revocation of such a license unless he or she is satisfied that the former licensee will comply with the Tobacco Products Tax Act. A person whose license has previously been revoked, canceled, or suspended shall pay the Tax Commissioner a fee of twenty-five dollars for the issuance of a license after each revocation, cancellation, or suspension.

Source: Laws 1987, LB 730, § 13.

77-4014 Licensee; file return; contents; pay tax.

(1) On or before the tenth day of each calendar month, every person licensed under subsection (1) of section 77-4009 shall file a return with the Tax Commissioner showing either the quantity and the price of each tobacco product brought or caused to be brought into this state for sale or the quantity and the price of each tobacco product made, manufactured, or fabricated in this state for sale in this state, whichever is applicable, during the preceding calendar month. For snuff, such return shall also include the net weight as listed by the manufacturer.

(2) Every person licensed pursuant to subsection (2) of section 77-4009 shall, in the manner described in subsection (1) of this section, file a return showing in detail the different kinds, quantity, and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by such retailers during the preceding calendar month. For snuff, such return shall also include the net weight as listed by the manufacturer.

(3) Returns shall be made upon forms furnished and prescribed by the Tax Commissioner. Each return shall be accompanied by a remittance for the full tax liability shown, less an amount of such liability equal to any amount allowed a payer of the sales and use tax pursuant to subdivision (1)(d) of section 77-2708 as compensation to reimburse the licensee for his or her expenses incurred in complying with the Tobacco Products Tax Act.

Source: Laws 1987, LB 730, § 14; Laws 2002, Second Spec. Sess., LB 32, § 4; Laws 2009, LB89, § 5.

77-4015 Return; review; deficiency.

As soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the Tax Commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from the licensee is unpaid, he or she shall notify the licensee of the deficiency. Such notice shall be sent to the licensee by registered or certified mail.

Source: Laws 1987, LB 730, § 15.

77-4016 Failure to file return; return and assessment by Tax Commissioner.

(1) If any licensee fails to file a return within the time prescribed, the Tax Commissioner may make a return for the licensee from his or her own knowledge and from such information as he or she can obtain through investigation and inspection or otherwise and shall assess a tax on such basis.

(2) Such tax shall be paid within ten days after the Tax Commissioner sends a written notice of the amount by registered or certified mail to the licensee. Any such return and assessment made by the Tax Commissioner on account of the failure of the licensee to make a return shall be deemed prima facie correct and valid, and the licensee shall have the burden of establishing that such return and assessment is incorrect or invalid in any action or proceeding based on such return and assessment.

Source: Laws 1987, LB 730, § 16.

77-4017 Licensee; records; inspection of business.

(1) Every licensee shall keep complete and accurate records for all places of business, including itemized invoices of tobacco products (a) held, purchased, manufactured, or brought in or caused to be brought into this state or (b) for a licensee located outside of this state, shipped or transported to retailers in this state. For snuff, such records shall also include the net weight as listed by the manufacturer.

(2) All books, records, and other papers and documents required to be kept by this section shall be preserved for a period of at least three years after the due date of the tax imposed by the Tobacco Products Tax Act unless the Tax Commissioner, in writing, authorizes their destruction or disposal at an earlier date.

(3) At any time during usual business hours, duly authorized agents or employees of the Tax Commissioner may enter any place of business of a licensee and inspect the premises, the records required to be kept pursuant to this section, and the tobacco products contained in such place of business for purposes of determining whether or not such licensee is in full compliance with the act. Refusal to permit such inspection by a duly authorized agent or employee of the Tax Commissioner shall be grounds for revocation, cancellation, or suspension of the license.

Source: Laws 1987, LB 730, § 17; Laws 2009, LB89, § 6.

77-4018 Tax refund or credit.

When tobacco products for which the tax imposed by the Tobacco Products Tax Act has been reported and paid are (1) sold, shipped, or transported by the licensee to retailers, licensees, or ultimate consumers outside this state or (2) returned to the manufacturer by the licensee, a refund or credit of the tax shall be made to the licensee. For the purpose of making such credit or refund, the Tax Commissioner may issue a tax credit or may prepare a voucher showing the net amount of such refund due. The Tax Commissioner shall have a warrant drawn upon the State Treasurer for the amount of any such refund certified by the Tax Commissioner.

Source: Laws 1987, LB 730, § 18.

77-4019 Hearing; procedure.

A licensee may request a hearing on any proposed notice of deficiency issued by the Tax Commissioner. A licensee may also request a hearing after notice that the Tax Commissioner intends to revoke, cancel, or suspend a license. Such request shall be made within twenty days after the receipt of the notice of deficiency or the notice that the Tax Commissioner intends to revoke, cancel, or suspend a license. At such hearing the Tax Commissioner, or any officer or employee of the Tax Commissioner designated in writing, may examine any books, papers, or memoranda bearing upon the matter at issue and require the attendance of any licensee or any officer or employee of such licensee having knowledge pertinent to such hearing. The Tax Commissioner or his or her designee shall have the power to administer oaths to persons testifying at such hearing.

During the hearing, the Tax Commissioner or his or her designee shall not be bound by the technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony shall invalidate any order or decision made or approved by the Tax Commissioner.

Source: Laws 1987, LB 730, § 19.

77-4020 Final decision; notification; appeal.

Within a reasonable time after the hearing pursuant to section 77-4019, the Tax Commissioner shall make a final decision or final determination and notify the licensee by registered or certified mail of such decision or determination. If any tax or additional tax becomes due, such notice shall be accompanied by a demand for payment of any tax due. A licensee may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1987, LB 730, § 20; Laws 1988, LB 352, § 162.

Cross References

Administrative Procedure Act, see section 84-920.

77-4021 Recovery of tax, interest, or penalty; effect.

The Tax Commissioner may recover the amount of any tax, interest, or penalty imposed under the Tobacco Products Tax Act in a civil action. The Uniform State Tax Lien Registration and Enforcement Act shall apply to such taxes, interest, or penalties. The collection of such tax, interest, or penalty shall not be a bar to any criminal prosecution pursuant to section 77-4024.

Source: Laws 1987, LB 730, § 21.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-4022 Tax; interest; penalty.

(1) Any tax imposed by section 77-4008 which is not paid on the due date shall bear interest at the rate prescribed by section 45-104.02, as such rate may from time to time be adjusted, from the due date until paid.

(2) If the Tax Commissioner finds that a licensee has made a false and fraudulent return with intent to evade the Tobacco Products Tax Act, the Tax

Commissioner shall assess a penalty of twenty-five percent of the entire tax due for which the false and fraudulent return was made, excluding interest.

Source: Laws 1987, LB 730, § 22; Laws 1992, Fourth Spec. Sess., LB 1, § 39.

77-4023 Tax Commissioner; adopt rules and regulations.

The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to administer and enforce the Tobacco Products Tax Act.

Source: Laws 1987, LB 730, § 23.

77-4024 Violation; penalty.

Any person who violates the Tobacco Products Tax Act or any person who sells, delivers, or accepts tobacco products with the intent to evade the act shall be guilty of a Class IV felony.

Source: Laws 1987, LB 730, § 24.

77-4025 Tobacco Products Administration Cash Fund; created; use; investment.

There is hereby created a cash fund in the Department of Revenue to be known as the Tobacco Products Administration Cash Fund. All revenue collected or received by the Tax Commissioner from the license fees and taxes imposed by the Tobacco Products Tax Act shall be remitted to the State Treasurer for credit to the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund. Credits and refunds allowed under the act shall be paid from the Tobacco Products Administration Cash Fund. Any receipts, after credits and refunds, in excess of the amounts sufficient to cover the costs of administration may be transferred to the General Fund at the direction of the Legislature. Any money in the Tobacco Products Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1987, LB 730, § 25; Laws 1989, LB 258, § 12; Laws 1994, LB 1066, § 85; Laws 2002, LB 1085, § 21; Laws 2002, LB 1310, § 10; Laws 2009, LB89, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 41

EMPLOYMENT AND INVESTMENT GROWTH ACT

Section	
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§ 77-4101

REVENUE AND TAXATION

Section

- 77-4106. Credits; use; refund claims; procedures; interest; appointment of purchasing agent.
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77-4101 Act, how cited.

Sections 77-4101 to 77-4112 shall be known and may be cited as the Employment and Investment Growth Act.

Source: Laws 1987, LB 775, § 1; Laws 1988, LB 1234, § 3; Laws 1998, LB 1104, § 19; Laws 1999, LB 539, § 4.

77-4102 Legislative findings.

(1) The Legislature hereby finds and declares that:

(a) Current economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of jobs, and difficulty in attracting and retaining business operations; and

(b) Major revisions in Nebraska's tax structure are necessary to accomplish economic revitalization of Nebraska and to be competitive with other states involved in economic revitalization and development.

(2) It is the policy of this state to make revisions in Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska, retain existing businesses and aid in their expansion, promote the creation and retention of new jobs in Nebraska, and attract and retain investment capital in the State of Nebraska.

Source: Laws 1987, LB 775, § 2.

77-4103 Terms, defined.

For purposes of the Employment and Investment Growth Act, unless the context otherwise requires:

(1) Any term shall have the same meaning as used in Chapter 77, article 27;

(2) Base year shall mean the year immediately preceding the year during which the application was submitted;

(3) Base-year employee shall mean any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;

(4) Compensation shall mean the wages and other payments subject to withholding for federal income tax purposes;

(5) Entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next six years;

(6) Equivalent employees shall mean the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(7) Investment shall mean the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(8) Motor vehicle shall mean any motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act and subject to licensing for operation on the highways;

(9) Nebraska employee shall mean an individual who is either a resident or partial-year resident of Nebraska;

(10) Number of new employees shall mean the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year;

(11) Qualified business shall mean any business engaged in the activities listed in subdivisions (b)(i) through (v) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business shall not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision shall only include financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in this subdivision;

(12) Qualified employee leasing company shall mean a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(13) Qualified property shall mean any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, or the components of such property, that will be located and used at the project. Qualified property shall not include (a) aircraft, barges, motor

vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Employment and Investment Growth Act to another person;

(14) Related persons shall mean any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986;

(15) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such taxes, and any other partnership, limited liability company, S corporation, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such taxes; and

(16) Year shall mean the taxable year of the taxpayer.

The changes made in this section by Laws 1997, LB 264, apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Source: Laws 1987, LB 775, § 3; Laws 1988, LB 1234, § 4; Laws 1993, LB 121, § 517; Laws 1997, LB 264, § 2; Laws 1999, LB 539, § 5; Laws 2004, LB 1065, § 10; Laws 2005, LB 274, § 278.

Cross References

Motor Vehicle Registration Act, see section 60-301.
Nebraska Revenue Act of 1967, see section 77-2701.

The definition of "tangible property" under subsection (13) of this section shall be interpreted using the Internal Revenue Code of 1986. Computer software in this case constitutes tangible property within the definition of "qualified property" in subsection (13) of this section. *First Data Corp. v. State*, Dept. of Revenue, 263 Neb. 344, 639 N.W.2d 898 (2002).

77-4103.01 Qualified employee leasing company; employees; duty.

An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Employment and Investment Growth Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 1999, LB 539, § 6.

77-4104 Incentives; application; contents; fee; approval; agreements; contents.

(1) In order to utilize the incentives set forth in the Employment and Investment Growth Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-4110 and 77-4113.

(3) Once satisfied that the plan in the application defines a project consistent with the purposes stated in section 77-4102 in one or more qualified business activities within this state, that the plans will result in either (a) the investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (b) the investment in qualified property resulting in a net gain in the total value of tangible property in this state of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986 of at least twenty million dollars, and that the required levels of employment and investment for the project will be met prior to the end of the sixth year after the year in which the application was submitted, the Tax Commissioner shall approve the application. In determining the net gain in value for purposes of this subsection, all tangible personal property shall be valued in a manner consistent with the value determined for qualified property, and the total value on the last day of each year shall be compared with the total value on the last day of the base year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Employment and Investment Growth Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable

of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(5) The incentives contained in section 77-4105 shall be in lieu of the tax credits allowed by section 77-27,188 for any project. In computing credits under section 77-27,188, any investment or employment which is eligible for benefits under the Employment and Investment Growth Act shall be subtracted from the increases computed for determining the credits under section 77-27,188.

(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment and investment belongs.

Source: Laws 1987, LB 775, § 4; Laws 1988, LB 1234, § 5; Laws 1990, LB 431, § 2; Laws 1994, LB 1066, § 86; Laws 1996, LB 1290, § 2; Laws 1999, LB 87A, § 1; Laws 2008, LB914, § 18.

77-4104.01 Incentives; credits or benefits; limitation.

The following transactions or activities shall not create any credits or allow any benefits under the Employment and Investment Growth Act except as specifically allowed by this section:

(1) The acquisition of a business which is continued by the taxpayer and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All employees of the acquired business during such period shall be considered base-year employees, and the compensation paid during the base year or the year before acquisition, whichever is later shall be the base-year compensation. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the Employment and Investment

Growth Act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(7) For applications received after April 16, 2004, any activity that results in benefits under the Ethanol Development Act.

Source: Laws 1988, LB 1234, § 6; Laws 2004, LB 479, § 9.

Cross References

Ethanol Development Act, see section 66-1330.

77-4105 Incentives; income tax, personal property tax, sales and use tax; credits.

(1) A taxpayer who has signed an agreement under section 77-4104 may elect to determine taxable income for purposes of the Nebraska income tax using the sales factor only. The election may be made for the year during which the application was filed and for each year thereafter through the eighth year after the end of the entitlement period. The election shall be made for the year of the election by computing taxable income using the sales factor only on the tax return.

(2) A taxpayer who has signed an agreement under section 77-4104 shall receive the incentive provided in this subsection if the agreement contains one or more projects which together will result in the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. Such ten-million-dollar investment and hiring of at least one hundred new employees shall be considered a required level of investment and employment for this subsection and for the recapture of personal property tax only.

The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(b) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computers. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers; and

(c) Personal property which is business equipment located in a single project if (i) the business equipment is involved directly in the manufacture or process-

ing of agricultural products and (ii) the investment in the single project exceeds ten million dollars.

Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (2)(a) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (2)(b) and (2)(c) of this section, through the sixteenth December 31 after the filing of the application. In order to receive the property tax exemptions allowed by subdivisions (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(3) When the taxpayer has met the required levels of employment and investment contained in the agreement, the taxpayer shall also be entitled to the following incentives:

(a) A refund of all sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of the sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(4) Any taxpayer who qualifies for the incentives contained in subsections (1) and (3) of this section and who has added at least thirty new employees at the project shall also be entitled to:

(a) A credit equal to five percent of the amount by which the total compensation paid during the year to employees who are either Nebraska employees or base-year employees while employed at the project exceeds the average com-

pensation paid at the project multiplied by the number of equivalent base-year employees.

For the computation of such credit, average compensation shall mean the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(b) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (a) and (b) of this subsection shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

The credit prescribed in subdivision (b) of this subsection shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

Source: Laws 1987, LB 775, § 5; Laws 1988, LB 1234, § 7; Laws 1996, LB 1177, § 20; Laws 2000, LB 968, § 73; Laws 2001, LB 142, § 59; Laws 2007, LB223, § 25; Laws 2007, LB334, § 95; Laws 2008, LB965, § 19.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-4106 Credits; use; refund claims; procedures; interest; appointment of purchasing agent.

(1)(a) The credits prescribed in section 77-4105 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. The credits may be used to obtain a refund of sales and use taxes under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project.

(b) The credits may be used as allowed in subdivision (a) of this subsection and shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(c) The credit may be carried over until fully utilized, except that such credit may not be carried over more than eight years after the end of the entitlement period.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Employment and Investment Growth Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Any refund claim for sales and use tax on materials incorporated into real estate as a part of the project shall be filed by and the refund paid to the owner of the improvement to real estate. A refund claim for such materials purchased by a purchasing agent shall include a copy of the purchasing agent appoint-

ment, the contract price, and a certification by the contractor or repairperson of the percentage of the materials incorporated into the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Employment and Investment Growth Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) Interest shall not be allowed on any sales and use taxes refunded under the Employment and Investment Growth Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

Source: Laws 1987, LB 775, § 6; Laws 1996, LB 1177, § 21; Laws 2001, LB 142, § 60.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-4107 Recapture or disallowance of incentives.

(1) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the sixth year after the end of the year the application was submitted for such project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Employment and Investment Growth Act shall be recaptured or disallowed.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a taxpayer who failed to meet the required levels within the required time period, all reduction in the personal property tax because of the Employment and Investment Growth Act shall be recaptured and any reduction in the corporate income tax arising solely because of an election under subsection (1) of section 77-4105 shall be deemed an underpayment of the income tax for the year in which the election was exercised and shall be immediately due and payable; and

(b) In the case of a taxpayer who has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subdivision (3)(a) of section 77-4105, and any refunds or reduction in tax allowed because of the use of a credit allowed under subsection (4) of section 77-4105 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds, one-seventh of the reduction in person-

al property tax, and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers and the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable.

When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(4) Any personal property tax that would have been due except for the exemption allowed under the Employment and Investment Growth Act, to the extent it becomes due under this section, shall be considered an underpayment of such tax and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(5) Notwithstanding any other limitations contained in the laws of this state, collections of any taxes deemed to be underpayments by this section shall be allowed for a period of ten years after the signing of the agreement or three years after the end of the entitlement period, whichever is later.

(6) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Employment and Investment Growth Act unless the recapture was in error.

(7) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 1987, LB 775, § 7; Laws 1988, LB 1234, § 8.

By its terms, this section does not provide for the retroactive assessment of interest on recaptured personal property taxes. *Ameritas Life Ins. Corp. v. Balka*, 257 Neb. 878, 601 N.W.2d 508 (1999).

77-4108 Incentives; transfer; when; effect.

(1) The incentives allowed under the Employment and Investment Growth Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-4107; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 1987, LB 775, § 8; Laws 1993, LB 121, § 518.

77-4108.01 Refund claims; interest not allowable.

For all refund claims filed on or after October 1, 1998, interest shall not be allowable on any refunds paid because of benefits earned under the Employment and Investment Growth Act.

Source: Laws 1998, LB 1104, § 20.

77-4109 Application; valid; when; limitation on new applications.

(1) Any complete application filed on or after the date of passage of Laws 1987, LB 775, shall be considered a valid application on the date submitted for the purposes of the Employment and Investment Growth Act.

(2) No new applications shall be filed under the act on or after January 1, 2006. All project applications filed before January 1, 2006, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to project applications filed before January 1, 2006. All project agreements pending, approved, or entered into before such date with respect to the act shall continue in full force and effect.

Source: Laws 1987, LB 775, § 9; Laws 2005, LB 312, § 57.

77-4110 Annual report; contents.

(1) The Tax Commissioner shall submit an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the

total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1987, LB 775, § 10; Laws 1990, LB 431, § 3; Laws 2007, LB223, § 26.

77-4111 Tax Commissioner; adopt rules and regulations.

The Tax Commissioner shall adopt and promulgate all rules and regulations necessary to carry out the purposes of the Employment and Investment Growth Act.

Source: Laws 1988, LB 1234, § 9.

77-4112 Change in law; effect; operative date.

(1) The changes made in sections 77-4103 to 77-4105 and 77-4107 by Laws 1988, LB 1234, shall become operative for all applications filed on and after January 1, 1988. For all applications filed prior to January 1, 1988, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

(2) Section 77-4113 and the changes made in section 77-4104 by Laws 1996, LB 1290, shall become operative for all applications filed on or after May 1, 1996.

(3) The changes made in sections 77-4101 and 77-4103 by Laws 1999, LB 539, and section 77-4103.01 shall become operative for any taxpayer with an agreement in effect on or after January 1, 1999. Such changes and section 77-4103.01 shall be applied on a consistent basis for determining benefits for tax years beginning, or deemed to begin, on and after January 1, 1999. For all benefit determinations in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

Source: Laws 1988, LB 1234, § 11; Laws 1996, LB 1290, § 3; Laws 1999, LB 539, § 7.

77-4113 Department of Revenue; estimate of sales tax refunds under Employment and Investment Growth Act; duties.

The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales tax refunds to be paid under the Employment and Investment Growth Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (4)(e) of section 77-4104. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Source: Laws 1996, LB 1290, § 1.

Cross References

Employment and Investment Growth Act, see section 77-4101.

**ARTICLE 42
PROPERTY TAX CREDIT ACT**

Section

- 77-4201. Repealed. Laws 1991, LB 9, § 8.
- 77-4202. Repealed. Laws 1991, LB 9, § 8.
- 77-4203. Repealed. Laws 1991, LB 9, § 8.
- 77-4204. Repealed. Laws 1991, LB 9, § 8.
- 77-4205. Repealed. Laws 1991, LB 9, § 8.
- 77-4206. Repealed. Laws 1991, LB 9, § 8.
- 77-4207. Repealed. Laws 1991, LB 9, § 8.
- 77-4208. Repealed. Laws 1998, LB 1110, § 5.
- 77-4209. Act, how cited.
- 77-4210. Purpose of act.
- 77-4211. Property Tax Credit Cash Fund; created; use; investment.
- 77-4212. Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

77-4201 Repealed. Laws 1991, LB 9, § 8.

77-4202 Repealed. Laws 1991, LB 9, § 8.

77-4203 Repealed. Laws 1991, LB 9, § 8.

77-4204 Repealed. Laws 1991, LB 9, § 8.

77-4205 Repealed. Laws 1991, LB 9, § 8.

77-4206 Repealed. Laws 1991, LB 9, § 8.

77-4207 Repealed. Laws 1991, LB 9, § 8.

77-4208 Repealed. Laws 1998, LB 1110, § 5.

77-4209 Act, how cited.

Sections 77-4209 to 77-4212 shall be known and may be cited as the Property Tax Credit Act.

Source: Laws 2007, LB367, § 1.

77-4210 Purpose of act.

The purpose of the Property Tax Credit Act is to provide property tax relief for property taxes levied against real property. The property tax relief will be made to owners of real property in the form of a property tax credit.

Source: Laws 2007, LB367, § 2.

77-4211 Property Tax Credit Cash Fund; created; use; investment.

The Property Tax Credit Cash Fund is created. The fund shall only be used pursuant to the Property Tax Credit Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB367, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-4212 Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

(1) For tax year 2007, the amount of relief granted under the Property Tax Credit Act shall be one hundred five million dollars. For tax year 2008, the amount of relief granted under the act shall be one hundred fifteen million dollars. It is the intent of the Legislature to fund the Property Tax Credit Act for tax years after tax year 2008 using available revenue. The relief shall be in the form of a property tax credit which appears on the property tax statement.

(2) To determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subsection (4) of this section by the ratio of the real property valuation of the parcel to the total real property valuation in the county. The amount determined shall be the property tax credit for the property.

(3) If the real property owner qualifies for a homestead exemption under sections 77-3501 to 77-3529, the owner shall also be qualified for the relief provided in the act to the extent of any remaining liability after calculation of the relief provided by the homestead exemption. If the credit results in a property tax liability on the homestead that is less than zero, the amount of the credit which cannot be used by the taxpayer shall be returned to the State Treasurer by July 1 of the year the amount disbursed to the county was disbursed. The State Treasurer shall immediately credit any funds returned under this section to the Property Tax Credit Cash Fund.

(4) The amount disbursed to each county shall be equal to the amount available for disbursement determined under subsection (1) of this section multiplied by the ratio of the real property valuation in the county to the real property valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subsection to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located.

(5) The State Treasurer shall transfer from the General Fund to the Property Tax Credit Cash Fund one hundred five million dollars by August 1, 2007, and one hundred fifteen million dollars by August 1, 2008.

(6) The Legislature shall have the power to transfer funds from the Property Tax Credit Cash Fund to the General Fund.

Source: Laws 2007, LB367, § 4.

ARTICLE 43**MARIJUANA AND CONTROLLED SUBSTANCES TAX**

Section
77-4301. Terms, defined.

Section	
77-4302.	Possession by dealer; payment of tax required.
77-4303.	Imposition of tax; rates.
77-4304.	Stamps, labels, or other indicia; purchase; Tax Commissioner; duties.
77-4305.	Tax; due and payable; when.
77-4306.	Stamps, labels, or other indicia; affixed; when.
77-4307.	Tax Commissioner; rules and regulations.
77-4308.	Sections, how construed.
77-4309.	Dealer; violations; penalties; statute of limitations.
77-4310.	Tax Commissioner; assessment and collection of tax and penalties; duties.
77-4310.01.	Tax proceeds; distribution.
77-4310.02.	Overpayment of tax; Tax Commissioner; powers and duties; stamps, non-returnable.
77-4310.03.	Marijuana and Controlled Substances Tax Administration Cash Fund; created; use; investment.
77-4311.	Tax determination; notice; requirements; jeopardy determination; effect.
77-4312.	Jeopardy determination; petition for redetermination; procedure; deficiency; interest; seized property; sale; when; procedure; return of property; conditions; injunction; Tax Commissioner; powers.
77-4313.	Injunction; suit prohibited.
77-4314.	Tax and penalties; presumption; admissibility of evidence.
77-4315.	Report; confidential; information; inadmissible; when.
77-4316.	Tax Commissioner; powers; subpoena; enforcement.

77-4301 Terms, defined.

For purposes of sections 77-4301 to 77-4316:

(1) Controlled substance shall mean any drug or substance, including an imitation controlled substance, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Nebraska law. Controlled substance shall not include marijuana;

(2) Dealer shall mean a person who, in violation of Nebraska law, manufactures, produces, ships, transports, or imports into Nebraska or in any manner acquires or possesses six or more ounces of marijuana, seven or more grams of any controlled substance which is sold by weight, or ten or more dosage units of any controlled substance which is not sold by weight;

(3) Imitation controlled substance shall have the meaning as provided in section 28-401; and

(4) Marijuana shall have the meaning as provided in section 28-401.

Source: Laws 1990, LB 260, § 1; Laws 1991, LB 773, § 26.

In a case involving cocaine and methamphetamine, the 7 or more grams of controlled substance which would make one a "dealer" under subsection (2) of this section, and therefore subject to conviction under section 77-4309, must be composed of (1) 7 or more grams of cocaine in isolation, or (2) 7 or more grams of a mixture which contains methamphetamine, or (3) 7 or more grams combined of cocaine in isolation and a mixture which contains methamphetamine. State v. Utter, 263 Neb. 632, 641 N.W.2d 624 (2002).

Section 28-416(6) and subsection (2) of this section address different types of misconduct and are not inconsistent. Nebraska's Marijuana and Controlled Substances Tax Act, construed to grant derivative-use immunity, provides protection to taxpayers coextensive with the constitutional right against compulsory self-incrimination. State v. Garza, 242 Neb. 573, 496 N.W.2d 448 (1993).

77-4302 Possession by dealer; payment of tax required.

No dealer may possess marijuana or controlled substances upon which a tax is imposed by section 77-4303 unless the tax has been paid on the marijuana or controlled substance as evidenced by an official stamp, label, or other indicium.

Source: Laws 1990, LB 260, § 2.

77-4303 Imposition of tax; rates.

(1) A tax is hereby imposed on marijuana and controlled substances at the following rates:

(a) On each ounce of marijuana or each portion of an ounce, one hundred dollars;

(b) On each gram or portion of a gram of a controlled substance that is customarily sold by weight or volume, one hundred fifty dollars; or

(c) On each fifty dosage units or portion thereof of a controlled substance that is not customarily sold by weight, five hundred dollars.

(2) For purposes of calculating the tax under this section, marijuana or any controlled substance that is customarily sold by weight or volume shall be measured by the weight of the substance in the dealer's possession. The weight shall be the actual weight, if known, or the estimated weight as determined by the Nebraska State Patrol or other law enforcement agency. Such determination shall be presumed to be the weight of such marijuana or controlled substances for purposes of sections 77-4301 to 77-4316.

(3) The tax shall not be imposed upon a person registered or otherwise lawfully in possession of marijuana or a controlled substance pursuant to Chapter 28, article 4.

Source: Laws 1990, LB 260, § 3; Laws 1991, LB 773, § 27.

The tax levied by Nebraska's Marijuana and Controlled Substances Tax Act is an excise tax and need not be levied by valuation. *State v. Garza*, 242 Neb. 573, 496 N.W.2d 448 (1993).

77-4304 Stamps, labels, or other indicia; purchase; Tax Commissioner; duties.

(1) Subject to the rules and regulations of the Tax Commissioner, official stamps, labels, or other indicia to be affixed to all marijuana and controlled substances shall be purchased from the Department of Revenue. The purchaser shall pay one hundred percent of face value for each official stamp, label, or other indicium purchased and shall not be required to give his or her name, address, social security number, or other identifying information.

(2) The Tax Commissioner shall adopt a uniform system of providing, affixing, and displaying an official stamp, label, or other indicium for marijuana and controlled substances on which a tax is imposed. Official stamps, labels, or other indicia shall expire six months from the date of issuance.

Source: Laws 1990, LB 260, § 4.

77-4305 Tax; due and payable; when.

The tax imposed upon marijuana and controlled substances by section 77-4303 shall be due and payable immediately upon acquisition or possession of marijuana and controlled substances in this state by a dealer.

Source: Laws 1990, LB 260, § 5.

77-4306 Stamps, labels, or other indicia; affixed; when.

If a dealer acquires or ships, transports, or imports into this state marijuana or a controlled substance and if the official stamp, label, or indicium evidencing the payment of the tax has not already been affixed, the dealer shall have it permanently affixed on the marijuana or controlled substance immediately

upon acquisition or possession of the marijuana or controlled substance. Each official stamp, label, or other indicium may be used only once.

Source: Laws 1990, LB 260, § 6.

77-4307 Tax Commissioner; rules and regulations.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out sections 77-4301 to 77-4316.

Source: Laws 1990, LB 260, § 7; Laws 1991, LB 773, § 28.

77-4308 Sections, how construed.

Nothing in sections 77-4301 to 77-4316 shall in any manner provide immunity for a dealer from criminal prosecution pursuant to Nebraska law.

Source: Laws 1990, LB 260, § 8; Laws 1991, LB 773, § 29.

77-4309 Dealer; violations; penalties; statute of limitations.

Any dealer violating sections 77-4301 to 77-4316 shall be subject to a penalty of one hundred percent of the tax in addition to the tax imposed by section 77-4303. The penalty shall be collected as part of the tax.

A dealer distributing or possessing marijuana or a controlled substance without affixing the official stamp, label, or other indicium shall be guilty of a Class IV felony. Notwithstanding any other provision of the criminal laws of this state, an indictment may be found and filed or an information or complaint filed upon any criminal offense specified in this section in the proper court within six years after the commission of such offense.

Source: Laws 1990, LB 260, § 9; Laws 1991, LB 773, § 30.

In a case involving cocaine and methamphetamine, the 7 or more grams of controlled substance which would make one a "dealer" under subsection (2) of section 77-4301, and therefore subject to conviction under this section, must be composed of (1) 7 or more grams of cocaine in isolation, or (2) 7 or more

grams of a mixture which contains methamphetamine, or (3) 7 or more grams combined of cocaine in isolation and a mixture which contains methamphetamine. *State v. Utter*, 263 Neb. 632, 641 N.W.2d 624 (2002).

77-4310 Tax Commissioner; assessment and collection of tax and penalties; duties.

The Tax Commissioner shall (1) based on personal knowledge or information available to the commissioner, assess the tax and applicable penalties upon any dealer subject to tax under section 77-4302 who has not paid the tax when due, (2) mail to the dealer at the dealer's last-known address as shown by the records of the Tax Commissioner or serve in person a written notice of the determination under section 77-4311, (3) demand immediate payment of the tax, and (4) if payment is not immediately made, collect the tax and penalties by any method prescribed in the Uniform State Tax Lien Registration and Enforcement Act as limited by section 77-4312.

Source: Laws 1990, LB 260, § 10.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-4310.01 Tax proceeds; distribution.

Proceeds of the tax imposed by section 77-4303 shall be remitted to the State Treasurer for credit as follows:

(1) Five percent of such proceeds shall be credited to the Marijuana and Controlled Substances Tax Administration Cash Fund; and

(2) Of the remaining proceeds:

(a) Fifty percent shall be remitted to the respective counties from which the proceeds originated for credit to the County Drug Law Enforcement and Education Fund of each such county. Money remitted to a county pursuant to this subdivision shall be remitted to the county treasurer of such county for credit to such fund. For purposes of this subdivision, county from which the proceeds originated shall mean: (i) If the proceeds result from seizure under the Uniform State Tax Lien Registration and Enforcement Act of property located in a county other than the county in which the dealer resides, the county in which the seizure was made; and (ii) in all other cases, the county in which the dealer resides; and

(b) All remaining funds, including those which did not originate in a county, shall be credited to the Nebraska State Patrol Drug Control and Education Cash Fund.

Source: Laws 1991, LB 773, § 31.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-4310.02 Overpayment of tax; Tax Commissioner; powers and duties; stamps, nonreturnable.

(1) If the Tax Commissioner determines that any tax imposed by sections 77-4301 to 77-4316 has been paid more than once or has been erroneously or illegally collected or computed, the Tax Commissioner shall set forth that fact in his or her records and the amount collected may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(2) No stamps that have been issued under such sections by the department can be returned.

(3) The Tax Commissioner may waive all or part of any penalties provided by such sections but may not waive interest on delinquent amounts.

Source: Laws 1991, LB 773, § 38.

77-4310.03 Marijuana and Controlled Substances Tax Administration Cash Fund; created; use; investment.

There is hereby created the Marijuana and Controlled Substances Tax Administration Cash Fund. Money in the fund shall be used by the Tax Commissioner for the purposes of administering, collecting, and enforcing the tax imposed by section 77-4303. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 773, § 32; Laws 1994, LB 1066, § 87.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-4311 Tax determination; notice; requirements; jeopardy determination; effect.

Notice of a determination that the tax imposed by section 77-4303 is due and owing shall be personally served or mailed to the dealer within six years after the Tax Commissioner knows or has information available to make such determination. A determination that a dealer does not possess an official stamp, label, or other indicium showing that the tax imposed by section 77-4303 has been paid or has not paid the tax imposed by section 77-4303 shall be considered a jeopardy determination. In any proceedings in court brought to enforce payment of taxes and applicable penalties under sections 77-4301 to 77-4316, a jeopardy determination, made with or without notice to the dealer, shall be for all purposes prima facie evidence of the dealer's failure to pay such taxes.

Source: Laws 1990, LB 260, § 11; Laws 1991, LB 773, § 33.

77-4312 Jeopardy determination; petition for redetermination; procedure; deficiency; interest; seized property; sale; when; procedure; return of property; conditions; injunction; Tax Commissioner; powers.

(1) Any person who receives a notice of jeopardy determination of the tax imposed by section 77-4303 may petition the Tax Commissioner for a redetermination of the amount of the assessed deficiency.

(2) The petition for redetermination shall be filed within ten days of the receipt of the notice of jeopardy determination whenever service is in person or within ten days of the mailing of such notice by certified or registered mail to the last-known address of the person.

(3) The petition for redetermination shall be in writing and shall state the specific grounds upon which the claim is founded.

(4) The petition for redetermination shall be accompanied by the payment of the tax or suitable security for the payment of the tax.

(5) The consideration of the petition for redetermination shall be made pursuant to the Administrative Procedure Act to the extent the act is not in conflict with sections 77-4301 to 77-4316.

(6) The determination of the amount of the deficiency shall become final and the amount shall be deemed to be assessed on the date provided in subsection (2) of this section if the person fails to file the petition for the redetermination and the appropriate security within the ten-day time period.

(7) When a petition for redetermination and the appropriate security is filed within the ten-day period, the amount of the deficiency shall be deemed to be assessed upon the date the determination of the Tax Commissioner becomes final.

(8) If the amount of the deficiency determined under such sections is not paid upon the receipt of the notice, the deficiency shall accrue interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, for the period from the date the tax was due until the date such deficiency is paid.

(9)(a) When a jeopardy determination or any other final determination has been made by the Tax Commissioner, the property seized for collection of the taxes and any penalty shall not be sold until the time has expired for filing an appeal. If an appeal has been filed, no sale shall be made unless the taxes and any penalty remain unpaid for a period of more than thirty days after final determination of the appeal by the district court.

(b) Notwithstanding subdivision (a) of this subsection, seized property may be sold if the taxpayer consents in writing to the sale or the Tax Commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping or that such property cannot be kept without great expense.

(c) The property seized shall be returned by the Tax Commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the Tax Commissioner, or deposits with the Tax Commissioner security in such form and amount as the Tax Commissioner deems necessary to insure payment of the liability but not more than twice the liability.

(d) Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(e) Any action taken by the Tax Commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

(f) After the Tax Commissioner has seized the property of any person, that person may, upon giving forty-eight hours notice to the Tax Commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court deems equitable.

(10) If the taxpayer ignores all demands for payment, the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Source: Laws 1990, LB 260, § 12; Laws 1991, LB 773, § 34; Laws 1992, Fourth Spec. Sess., LB 1, § 40; Laws 1993, LB 161, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

Because subsection (4) of this section requires the payment of the assessed drug tax or posting of a suitable security for the tax as a jurisdictional prerequisite for a redetermination hearing without furnishing other means for indigents to obtain a hearing, subsection (4) as applied to indigent individuals is un-

constitutional. Further, subsection (4) is an unconstitutional and invalid delegation of legislative authority and power to an executive or administrative officer of the state. *Boll v. Department of Revenue*, 247 Neb. 473, 528 N.W.2d 300 (1995).

77-4313 Injunction; suit prohibited.

No person may bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by sections 77-4301 to 77-4316.

Source: Laws 1990, LB 260, § 13; Laws 1991, LB 773, § 35.

77-4314 Tax and penalties; presumption; admissibility of evidence.

The tax and penalties assessed by the Tax Commissioner shall be presumed to be valid and correctly determined and assessed. The burden shall be upon the taxpayer to show their incorrectness or invalidity. Any statement or any other certificate by the Tax Commissioner of the amount of tax and penalties determined or assessed shall be admissible in evidence and shall be prima facie evidence of the facts it contains.

Source: Laws 1990, LB 260, § 14.

77-4315 Report; confidential; information; inadmissible; when.

Neither the Tax Commissioner nor a public employee may reveal facts contained in a report required by sections 77-4301 to 77-4316. Information contained in any report required by the Tax Commissioner shall not be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due from the taxpayer making the report. Official stamps, labels, or other indicia denoting payment of the tax imposed by section 77-4303 shall not be used against the dealer in any criminal proceeding.

Source: Laws 1990, LB 260, § 15; Laws 1991, LB 773, § 36.

Any written information received by the Tax Commissioner from a taxpayer complying with Nebraska's Marijuana and Controlled Substances Tax Act shall be considered part of the "report" referred to in this section. Such information is confidential. Under Nebraska's Marijuana and Controlled Substances Tax Act, information may be "directly" confidential under this section or "derivatively" confidential, if gained through the use of otherwise confidential information. All such confidential in-

formation is inadmissible against the taxpayer in a criminal proceeding, except when independently obtained or when being used in a prosecution to enforce the act. If a taxpayer, by unjustified nonpayment of a tax due under Nebraska's Marijuana and Controlled Substances Tax Act, forces the Tax Commissioner to file a tax lien or bring an action for unpaid taxes, disclosures resulting from the filing will not be confidential. *State v. Garza*, 242 Neb. 573, 496 N.W.2d 448 (1993).

77-4316 Tax Commissioner; powers; subpoena; enforcement.

For purposes of determining the correctness of any report, determining the amount of tax that should have been paid, determining whether or not the dealer should have made a report or paid taxes, or collecting any taxes under sections 77-4301 to 77-4316, the Tax Commissioner may examine or cause to be examined any books, papers, records, or memoranda that may be relevant to making such determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the dealer or another person. The Tax Commissioner may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon request of the Tax Commissioner, the judge of any court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, and memoranda. The Tax Commissioner may also issue subpoenas. Disobedience of subpoenas issued under this section shall be punishable by the district court of the county in which the subpoena is issued or, if the subpoena is issued by the Tax Commissioner, by the district court of the county in which the party served with the subpoena is located, in the same manner as contempt of district court.

Source: Laws 1990, LB 260, § 16; Laws 1991, LB 773, § 37.

ARTICLE 44**COMMERCIAL FERTILIZER FEE**

Section

77-4401. Repealed. Laws 2001, LB 329, § 16.

77-4401 Repealed. Laws 2001, LB 329, § 16.

ARTICLE 45

RENTAL OF MOTOR VEHICLES

Section

77-4501. Rental company; collect fee; when; use; effect on growth limit on budget; collection.

77-4501 Rental company; collect fee; when; use; effect on growth limit on budget; collection.

(1) Except as provided in subsection (6) of this section, rental companies engaged in the business of renting private passenger motor vehicles used to carry fifteen passengers or less for periods of thirty-one days or less shall collect, at the time the vehicle is rented in Nebraska, a fee of four and one-half percent of each rental contract amount, not including sales tax. For purposes of this section, a vehicle is rented in Nebraska if it is picked up by the renter in Nebraska. The fee shall be computed in accordance with the method used for the sales tax imposed by the state on those charges subject to sales tax. The fee shall not be subject to sales tax. The fee shall be noted in the rental contract and collected in accordance with the terms of the contract. The fee shall be retained by the vehicle owner or the rental company engaged in the business of renting private passenger motor vehicles. Fees collected pursuant to this section shall be used by the vehicle owner or the rental company for reimbursement of the amount of motor vehicle taxes and fees imposed and paid in Nebraska upon the vehicles by the vehicle owner or rental company.

(2) On February 15 of each year, the fees imposed by this section for the preceding calendar year, to the extent the fees exceed the motor vehicle taxes and fees imposed and paid in Nebraska upon the vehicles for the preceding calendar year, shall be due and payable to the county treasurer of the county where the transactions occurred. The fee shall be remitted on forms prescribed by the county treasurer. The county shall allocate and distribute such proceeds in the same manner as the proceeds from motor vehicle taxes are allocated and distributed pursuant to section 60-3,186. The revenue received by the county under this section may be expended for any lawful purpose.

(3) The revenue received by the county under this section shall be included and considered as proceeds of motor vehicle taxes and fees for purposes of any growth limitation on budgets of political subdivisions funded by property taxes.

(4) The fee imposed under this section shall be in addition to any other tax or fee authorized by law to be levied on the business activities described in this section and shall be in addition to the sales tax imposed by the state or any municipality.

(5) The county treasurer, county board, and county sheriff may use any method specified in Chapter 77, article 17, for the collection of property taxes to collect the fee imposed by this section.

(6) A fee shall not be collected if the renter is exempt from the payment of sales tax.

Source: Laws 1993, LB 345, § 79; Laws 1993, LB 346, § 21; Laws 1994, LB 1083, § 1; Laws 1997, LB 271, § 52; Laws 2005, LB 274, § 279.

ARTICLE 46

REVENUE FORECASTING

Section

- 77-4601. Estimate of General Fund net receipts; certification by Tax Commissioner and Legislative Fiscal Analyst.
- 77-4602. Actual General Fund net receipts; public statement by Tax Commissioner; transfer of funds; when.
- 77-4603. Special session of Legislature; new certification required; recertification; when.

77-4601 Estimate of General Fund net receipts; certification by Tax Commissioner and Legislative Fiscal Analyst.

On or before July 15 of each year, the Tax Commissioner and the Legislative Fiscal Analyst shall certify the monthly estimate of General Fund net receipts for each month of the current fiscal year. Such certification shall be filed with the Clerk of the Legislature. The certification shall include estimates of gross receipts to the General Fund and refunds for sales, corporate income, individual income, and other miscellaneous receipts and refunds by month. The total of the monthly estimates for the fiscal year shall take into consideration the most recent net receipts forecast provided during a regular legislative session by the Nebraska Economic Forecasting Advisory Board pursuant to section 77-27,158 plus any revisions due to legislation enacted which has an impact on receipts that were not included in the forecast. If the total of monthly estimates so certified is at variance with the estimates of the Nebraska Economic Forecasting Advisory Board, the certification shall include a statement of the specific statistical or economic reasons for the variance.

Source: Laws 1993, LB 38, § 1.

77-4602 Actual General Fund net receipts; public statement by Tax Commissioner; transfer of funds; when.

(1) Within fifteen days after the end of each month, the Tax Commissioner shall provide a public statement of actual General Fund net receipts and a comparison of such actual net receipts to the monthly estimate certified pursuant to section 77-4601.

(2) Within fifteen days after the end of each fiscal year, the public statement shall also include a summary of actual General Fund net receipts and estimated General Fund net receipts for the fiscal year.

(3) If the actual General Fund net receipts for the fiscal year as reported in subsection (2) of this section exceed estimated receipts for the fiscal year, the Tax Commissioner shall immediately certify to the director such excess amount. The State Treasurer shall immediately transfer an amount equal to such excess amount from the General Fund to the Cash Reserve Fund upon certification by the director of such excess amount.

Source: Laws 1993, LB 38, § 2; Laws 1996, LB 1290, § 4.

77-4603 Special session of Legislature; new certification required; recertification; when.

(1) If an estimate of General Fund net receipts is changed in a regular or extraordinary meeting of the Nebraska Economic Forecasting Advisory Board and such change results in a special session of the Legislature to revise current

fiscal year General Fund appropriations, the Tax Commissioner and the Legislative Fiscal Analyst shall certify the monthly receipt estimates, taking into consideration the most recent estimate of General Fund net receipts made by the Nebraska Economic Forecasting Advisory Board plus legislation enacted which has an impact on receipts that was not included in the forecast. The new monthly certification shall be made by the fifteenth day of the month following the adjournment of the special session of the Legislature.

(2) If an estimate of General Fund net receipts is reduced in a regular or extraordinary meeting of the Nebraska Economic Forecasting Advisory Board, the Tax Commissioner and the Legislative Fiscal Analyst shall recertify the monthly receipt estimates, taking into consideration the most recent estimate of General Fund net receipts made by the Nebraska Economic Forecasting Advisory Board plus legislation enacted which has an impact on receipts that was not included in the forecast. The new monthly certification shall be made by the fifteenth day of the month following the meeting of the Nebraska Economic Forecasting Advisory Board.

(3) The new certified annual and monthly receipt estimates shall be used for the public statements required under section 77-4602.

Source: Laws 1993, LB 38, § 3; Laws 1996, LB 1290, § 5.

**ARTICLE 47
PHYSICIAN TAX**

- Section
- 77-4701. Repealed. Laws 1996, LB 891, § 1.
- 77-4702. Repealed. Laws 1996, LB 891, § 1.
- 77-4703. Repealed. Laws 1996, LB 891, § 1.
- 77-4704. Repealed. Laws 1996, LB 891, § 1.
- 77-4705. Repealed. Laws 1996, LB 891, § 1.
- 77-4706. Repealed. Laws 1996, LB 891, § 1.

77-4701 Repealed. Laws 1996, LB 891, § 1.

77-4702 Repealed. Laws 1996, LB 891, § 1.

77-4703 Repealed. Laws 1996, LB 891, § 1.

77-4704 Repealed. Laws 1996, LB 891, § 1.

77-4705 Repealed. Laws 1996, LB 891, § 1.

77-4706 Repealed. Laws 1996, LB 891, § 1.

**ARTICLE 48
HEALTH CARE PROVIDER INCOME TAX**

- Section
- 77-4801. Repealed. Laws 1996, LB 898, § 8.
- 77-4802. Repealed. Laws 1996, LB 898, § 8.
- 77-4803. Repealed. Laws 1996, LB 898, § 8.
- 77-4804. Repealed. Laws 1996, LB 898, § 8.
- 77-4805. Repealed. Laws 1996, LB 898, § 8.
- 77-4806. Repealed. Laws 1996, LB 898, § 8.
- 77-4807. Repealed. Laws 1996, LB 898, § 8.

77-4801 Repealed. Laws 1996, LB 898, § 8.

77-4802 Repealed. Laws 1996, LB 898, § 8.

77-4803 Repealed. Laws 1996, LB 898, § 8.

77-4804 Repealed. Laws 1996, LB 898, § 8.

77-4805 Repealed. Laws 1996, LB 898, § 8.

77-4806 Repealed. Laws 1996, LB 898, § 8.

77-4807 Repealed. Laws 1996, LB 898, § 8.

ARTICLE 49

QUALITY JOBS ACT

Section

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77-4903.	Definitions, where found.
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77-4928.	Wage benefit credit; application for agreement; contents; fee; approval.
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77-4933.	Report; contents.
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77-4934.01.	Changes to act; applicability.
77-4934.02.	Laws 1997 changes to act; applicability.
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77-4901 Act, how cited.

Sections 77-4901 to 77-4935 shall be known and may be cited as the Quality Jobs Act.

Source: Laws 1995, LB 829, § 1; Laws 1996, LB 1368, § 1; Laws 1997, LB 264, § 3; Laws 1998, LB 1104, § 21.

77-4902 Policy.

It is the policy of this state to make revisions in its statutory structure if this will encourage both new and existing businesses to relocate to and expand in Nebraska and to provide appropriate inducements to encourage them to do so if this will aid in the economic and population growth of the state and help create better jobs for the citizens of the State of Nebraska and if this can be done in a fiscally sound and effective manner.

Source: Laws 1995, LB 829, § 2.

77-4903 Definitions, where found.

For purposes of the Quality Jobs Act, the definitions found in sections 77-4904 to 77-4926 shall be used.

Source: Laws 1995, LB 829, § 3.

77-4904 Additional definitions.

Any term defined in the Nebraska Revenue Act of 1967 and used in the Quality Jobs Act has the same meaning in the Quality Jobs Act unless the context requires a different meaning.

Source: Laws 1995, LB 829, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-4905 Agreement, defined.

Agreement means the agreement between the company and the state.

Source: Laws 1995, LB 829, § 5.

77-4906 Base year, defined.

Base year means the year immediately preceding the year during which the application was submitted.

Source: Laws 1995, LB 829, § 6.

77-4907 Base-year employee, defined.

Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the project.

Source: Laws 1995, LB 829, § 7.

77-4908 Board, defined.

Board means the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council.

Source: Laws 1995, LB 829, § 8.

Cross References

Nebraska Investment Council, see section 72-1237.

77-4909 Company, defined.

Company means any person subject to the sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes.

Source: Laws 1995, LB 829, § 9; Laws 1997, LB 264, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-4910 Company training program, defined.

Company training program means any program developed or operated by or for the benefit of the company which screens, trains, or educates recruits, potential employees, or actual employees of the company, or any combination thereof, in order to enable the recruits or employees to perform employment activities at the project and includes recruitment, screening, customized training, job-specific training, on-the-job training, and generalized training programs.

Source: Laws 1995, LB 829, § 10.

77-4911 Company workplace safety program, defined.

Company workplace safety program means any program developed by or operated by or for the benefit of the workplace safety of employees employed at the project.

Source: Laws 1995, LB 829, § 11.

77-4912 Compensation, defined.

Compensation means the wages and other payments subject to withholding for federal income tax purposes.

Source: Laws 1995, LB 829, § 12.

77-4913 Educational institution training program, defined.

Educational institution training program means any training program established by or operated by any public or private educational institution that provides training or education for recruits, potential employees, or actual employees of the company, or any combination thereof, with regard to employment or potential employment at the project.

Source: Laws 1995, LB 829, § 13.

77-4914 Employee, defined.

Employee means a person employed at the project.

Source: Laws 1995, LB 829, § 14.

77-4915 Employee benefit program, defined.

Employee benefit program means health and dental benefits, dependent care, life insurance, disability insurance, or relocation costs provided to or for the benefit of employees, which programs are qualified under the Internal Revenue Code of 1986, as amended.

Source: Laws 1995, LB 829, § 15.

77-4916 Entitlement period, defined.

Entitlement period is ten years, meaning the year after which the required increases in employment and investment were met or exceeded and the next one hundred eight months.

Source: Laws 1995, LB 829, § 16.

77-4917 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year.

Source: Laws 1995, LB 829, § 17.

77-4918 Investment, defined.

Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

Source: Laws 1995, LB 829, § 18.

77-4919 Number of new employees, defined.

Number of new employees means the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year.

Source: Laws 1995, LB 829, § 19.

77-4920 Project, defined.

Project means a project described in the Quality Jobs Act and approved by the board.

Source: Laws 1995, LB 829, § 20.

77-4921 Project year, defined.

Project year means any year or portion of a year during the entitlement period of the project.

Source: Laws 1995, LB 829, § 21.

77-4922 Qualified business, defined.

Qualified business means any business engaged in the activities listed in subdivisions (1) through (5) of this section or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

- (1) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;
- (2) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, shall only include financial services provided by any financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;
- (3) The assembly, fabrication, manufacture, or processing of tangible personal property;
- (4) The administrative management of any activities, including headquarter facilities, relating to such activity; or
- (5) Any combination of the activities listed in this section.

Source: Laws 1995, LB 829, § 22.

77-4923 Qualified property, defined.

Qualified property means any tangible property of the type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property that will be located and used at the project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the qualified company to another person.

Source: Laws 1995, LB 829, § 23.

77-4924 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under section 267(b) and (c) of the Internal Revenue Code of 1986, as amended, or section 707(b) of the code.

Source: Laws 1995, LB 829, § 24; Laws 1997, LB 264, § 5.

77-4925 Wage benefit credit, defined.

Wage benefit credit means the credit described in the Quality Jobs Act.

Source: Laws 1995, LB 829, § 25; Laws 1996, LB 1368, § 2.

77-4926 Year, defined.

Year means the taxable year of the company.

Source: Laws 1995, LB 829, § 26.

77-4927 Wage benefit credit; calculation; excess withholding; refund.

(1) If a company has entered into an agreement with the state pursuant to section 77-4928, employees who are employed at the project covered by the agreement, other than base-year employees, shall during each project year receive the wage benefit credit in the manner provided in the Quality Jobs Act.

(2) The wage benefit credit shall be paid or applied by the employee for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as designated by the employee or as agreed to by the company and employee.

(3) Except as provided in subsection (4) of this section, the wage benefit credit per employee shall be an amount equal to the Nebraska income tax withholding attributable to the employee's compensation for services rendered in connection with the project for the project year without regard to the credit calculation under subsection (6) of this section.

(4) The wage benefit credit total for the project per year shall not exceed five percent of the total compensation paid by the company in the year to all employees, other than base-year employees, for services rendered in connection with the project. If the total of the wage benefit credit exceeds five percent of the total compensation paid to all employees, other than base-year employees, the withholding in excess of five percent of each employee's compensation shall be returned to the Department of Revenue in the manner provided in section 77-2756.

(5) The wage benefit credit shall be allowed for each project year.

(6) The wage benefit credit shall be withheld by the company from the employee's compensation in the normal manner provided by section 77-2753, except that the amount shall not be required to be paid over to the state under section 77-2756 and shall not constitute part of the trust fund or be owned by the state as provided in section 77-2757, but instead shall, to the extent of attributable tax liability, represent a credit in the calculation of each such employee's tax liability and shall be paid or applied for the programs in the manner that the company and employee have determined as allowed by the act. For purposes of the withholding reporting provisions of sections 77-2754 and 77-2756, the company shall report the wage benefit credit separately to the state and to the employee as a wage benefit credit. Each employee shall be allowed on his or her Nebraska income tax return a nonrefundable credit against the tax imposed by sections 77-2714 to 77-27,123 equal to the wage benefit credit not to exceed (a) his or her income tax liability minus (b) the amount that Nebraska income tax liability would be if the total compensation paid by the company in the taxable year were excluded from the employee's adjusted gross income. The calculation of this nonrefundable credit shall be included with the employee's tax return and reported as determined by the Department of Revenue. If any amount allowable as a wage benefit credit has been through error or otherwise improperly paid to the state, it shall be refunded to the person who paid it upon application for refund filed within three years after payment. If the wage benefit credit withheld by the company exceeds the nonrefundable credit allowed the employee as calculated in this

subsection, the company shall refund the difference to the employee. The company may request verification or substantiation of the amount claimed. Such verification or substantiation shall be confidential and used only for the determination of the claim filed by the employee. A company shall notify employees individually in writing at the time the company reports the wage benefit credit to the employee of the right to claim a refund under this subsection by April 1 of each year. The claim for the refund from the company shall be made by September 1 of the year when the employee files his or her tax return or fifteen days after the employee files such tax return, whichever is later. The company shall pay the refund to an employee within thirty days after the date a claim is filed.

Source: Laws 1995, LB 829, § 27; Laws 1996, LB 1368, § 4.

77-4927.01 Alternate wage benefit credit; calculation; use.

(1) The policy of the state in adopting the Quality Jobs Act as stated in section 77-4902 is to encourage new businesses to relocate to and existing businesses to expand in Nebraska and to provide appropriate inducements to encourage them to do so. Depending on the nature of the company and its employees, the state recognizes the inducements contained in the act may be more appropriate and administratively more convenient and efficient for the state, the company, and the employees, if the wage benefit credit is charged against the company's income tax rather than individually computed and used against each employee's income tax. Therefore if the company uses the wage benefit credit for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company as otherwise provided for in the act and if the board has approved the project application, then in lieu of the wage benefit credit allowed in section 77-4927, the company shall be allowed a wage benefit credit to be determined, used, and calculated as provided in this section.

(2) If the company has entered into an agreement with the state pursuant to section 77-4928 and if that agreement provides that this section shall apply in lieu of section 77-4927, then the company shall receive the wage benefit credit in the manner provided in this section.

(3) The wage benefit credit shall be paid or applied by the company for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company. Nothing in this section shall be construed to limit the right of an employee or employees subject to a collective-bargaining agreement to negotiate relative to such programs.

(4) The wage benefit credit shall be an amount equal to the percentage specified in subsection (5) of this section multiplied by the amount by which the total compensation paid during each project year to employees of the company while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees. For purposes of computation of the credit, average compensation means the total compensation paid during each project year divided by the total number of equivalent employees at the project.

(5) The percentage used to determine the wage benefit credit shall be:

If the average compensation for the project year is over	But not over	Then the credit percentage shall be
\$0	\$20,000	0%
\$20,000	\$30,000	3%
\$30,000	\$40,000	4%
\$40,000		5%

(6) The wage benefit credit shall be allowed for each project year.

(7) The wage benefit credit shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credit may be used to reduce the taxpayer’s Nebraska income tax liability. The credits shall be applied in the order in which they were first allowed. The credit may be carried over until fully utilized, except that the credit may not be carried over more than eight years after the end of the entitlement period. If a credit is subsequently recaptured under section 77-4929, the credit shall be treated as if it had never been allowed.

(8) The wage benefit credit shall not be transferable.

Source: Laws 1996, LB 1368, § 3.

77-4927.02 Refund claims; interest not allowable.

For all refund claims filed on or after October 1, 1998, interest shall not be allowable on any refunds paid because of benefits earned under the Quality Jobs Act.

Source: Laws 1998, LB 1104, § 22.

77-4928 Wage benefit credit; application for agreement; contents; fee; approval.

(1) In order for the employee and company to be eligible for the wage benefit credit, the company shall file an application for an agreement with the board.

(2) The application shall contain:

(a) The exact name of the company and any related companies which will be included in the project;

(b) A statement describing, in detail, the nature of the company’s business, including the products sold and respective markets;

(c) A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements;

(d) A request that the company be considered for approval under the Quality Jobs Act;

(e) If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

(f) A copy of the corporate authorization for the project;

(g) A copy of the company’s most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number;

(h) The number of base-year employees, the expected number of new employees, the expected timing of the hiring of the new employees, the anticipated

timing and amounts of new investment in buildings and equipment, and the average salaries expected by category for the new employees to be employed at the project; and

(i) A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue. The fee shall be remitted to the Nebraska Incentives Fund.

(3) The application and all supporting information shall be confidential except for the name of the company, the location of the project, the amounts of increased employment and investment, the result of the net benefit calculations, and whether the application has been approved.

(4) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Quality Jobs Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount, and types of investment in qualified property to be made at the project; and

(d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(5) The board shall notify the company in writing as to whether it has approved or not approved the application. The board shall decide and mail such notice within thirty days after receipt of the application whether it approves or disapproves the application, unless such time is extended by mutual written consent of the board and the company.

(6) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the legislative purposes contained in section 77-4902 in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred or (b) the investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty. The new investment and employment shall occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(7) If the project application is approved by the board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner. In the agreement the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the

act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment have been attained and maintained.

(8) The address of the board shall be the address of the Department of Revenue.

Source: Laws 1995, LB 829, § 28; Laws 1998, LB 939, § 1; Laws 2008, LB914, § 19.

The Legislature has determined that most of the information in applications under the Quality Jobs Act should be kept confidential, without exception or limitation. Wasikowski v. Nebraska Quality Jobs Bd., 264 Neb. 403, 648 N.W.2d 756 (2002).

77-4929 Wage benefit credit; recapture or disallowance; interest and penalties.

(1) If the company fails either to meet the required levels of employment or investment for the project by the end of the sixth year after the end of the year the application was filed for such project or to utilize such project in a qualified business at or above the required levels of employment and investment required in the Quality Jobs Act for the entire entitlement period, all or a portion of the wage benefit credit shall be recaptured directly by the state from the company or shall be disallowed. In no event shall any wage benefit credit be required to be paid back directly or indirectly by the employees, but instead shall be paid by the company.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a company which has failed to meet the required levels within the required time period, all wage benefit credits shall be disallowed, and if any have been received, they shall be recaptured or paid by the company to the state; and

(b) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period: (i) No wage benefit credits shall be allowed, and if already allowed shall be recaptured, for the actual year or years in which the required levels of employment or investment were not maintained; (ii) for wage benefit credits allowed in prior years, one-tenth of the credits shall be recaptured from the company for each year the required levels of employment or investment were not maintained; and (iii) as to wage benefits credits for future years, one-tenth of the credits shall not be allowed for each year the required levels of employment or investment were not maintained in previous years.

(3) Any amounts required to be recaptured shall be deemed to be an underpayment of tax, shall be immediately due and payable, and shall constitute a lien on the assets of the company. When wage benefit credits were received in more than one year, the credits received in the most recent year shall be recovered first and then the credits received in earlier years up to the extent of the required recapture.

(4) Interest and penalties accrue as follows:

(a) In the case of a company which has failed to meet the required levels within the required time period, interest accrues from the time the withholding should have been returned to the state;

(b) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period,

interest first accrues from the time of the due date for the return for the year in which the company failed to maintain the required levels; and

(c) Penalties do not accrue until ninety days after the requirement for recapture or disallowance becomes known or should have become known to the company.

(5) The recapture or disallowance required by this section may be waived by the board if the board finds the failure to attain or maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

Source: Laws 1995, LB 829, § 29; Laws 1998, LB 939, § 2.

77-4930 Transfer of project.

A project covered by an agreement may be transferred in its entirety by sale or lease to another person or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended. The acquiring persons shall be entitled to the same benefits as the original company and shall be subject to the same obligations, including recapture and disallowance, as the original company.

Source: Laws 1995, LB 829, § 30.

77-4931 Transactions and activities excluded.

The following transactions or activities shall not create any investment, result in an increase in the number of new employees, or create any wage benefit credits under the Quality Jobs Act except as specifically allowed by this section:

(1) The acquisition of a business located in this state which is continued by the company and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All of the employees of the acquired business during such period shall be considered base-year employees. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location in this state to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the company or a related person. The first purchase by either the company or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of the meeting of any required levels of investment under the agreement;

(5) Any purchase or lease of property from a related person, except that the company will be allowed benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the company; and

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in this state.

Source: Laws 1995, LB 829, § 31.

77-4932 Rules and regulations.

The Department of Revenue, in consultation with the Governor and the Department of Economic Development, may, but is not required to, adopt and promulgate all rules and regulations determined by the Tax Commissioner in his or her discretion to be necessary or appropriate to carry out the purposes of the Quality Jobs Act.

Source: Laws 1995, LB 829, § 32; Laws 2001, LB 620, § 47.

77-4933 Report; contents.

(1) The Department of Revenue shall submit an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits allowed under the Quality Jobs Act, (b) the number of direct jobs created at the project, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the project.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1995, LB 829, § 33; Laws 2007, LB223, § 27.

77-4934 Act; applicability.

The Quality Jobs Act applies to applications filed, board actions taken, and agreements entered into on or after February 1, 1995.

Source: Laws 1995, LB 829, § 34.

77-4934.01 Changes to act; applicability.

Section 77-4927.01 and the changes made to sections 77-4901 and 77-4925 by Laws 1996, LB 1368, apply to any agreement entered into under the Quality Jobs Act after July 19, 1996.

The changes made to sections 77-4928 and 77-4929 by Laws 1998, LB 939, apply to all applications filed on or after January 1, 1998. For all applications filed prior to such date, the provisions of the Quality Jobs Act as they existed immediately prior to such date apply.

Source: Laws 1996, LB 1368, § 5; Laws 1998, LB 939, § 3.

77-4934.02 Laws 1997 changes to act; applicability.

The changes made in sections 77-4901, 77-4909, and 77-4924 by Laws 1997, LB 264, apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Source: Laws 1997, LB 264, § 6.

77-4935 Filing of applications; limitation.

There shall be no project applications filed on or after February 1, 2000, without further authorization of the Legislature, except that all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

Source: Laws 1995, LB 829, § 35; Laws 1997, LB 344, § 3.

ARTICLE 50**TAX EQUALIZATION AND REVIEW COMMISSION ACT****Cross References**

Tax Equalization and Review Commission, authority, see Article IV, section 28, Constitution of Nebraska.

Section

- 77-5001. Act, how cited.
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- 77-5003. Tax Equalization and Review Commission; created; commissioners; term.
- 77-5004. Commissioner; qualifications; conflict of interests; continuing education; expenses.
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- 77-5016.05. Witnesses; attendance required; fees.
- 77-5016.06. Witness; demand fees; when.
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- 77-5025. Repealed. Laws 2005, LB 261, § 13.

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77-5026.	Commission; change of value; hearing; procedure.
77-5027.	Commission; change valuation; Property Tax Administrator; duties.
77-5028.	Commission; enter order.
77-5029.	County assessor; recertify county abstract; Property Tax Administrator; duties.
77-5030.	Property Tax Administrator; certify distributed taxable value.
77-5031.	Tax Equalization and Review Commission Cash Fund; created; use; investment.
77-5032.	Repealed. Laws 2005, LB 15, § 15.

77-5001 Act, how cited.

Sections 77-5001 to 77-5031 shall be known and may be cited as the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 1; Laws 1997, LB 270, § 100; Laws 1997, LB 397, § 34; Laws 1998, LB 1104, § 23; Laws 2003, LB 291, § 4; Laws 2004, LB 973, § 46.

77-5002 Terms, defined.

For purposes of the Tax Equalization and Review Commission Act:

- (1) Commission means the Tax Equalization and Review Commission;
- (2) Commissioner means a member of the commission; and
- (3) Special master means a person appointed by the commission pursuant to section 77-5009.

Source: Laws 1995, LB 490, § 2.

77-5003 Tax Equalization and Review Commission; created; commissioners; term.

(1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. The commission shall have three commissioners, one from each congressional district, and beginning on and after January 1, 2002, the commission shall have four commissioners. One at-large commissioner shall be appointed in addition to the commissioners representing the congressional districts. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature.

(2) The term of the commissioner from district 1 expires January 1, 2010, the term of the commissioner from district 2 expires January 1, 2012, and the term of the commissioner from district 3 expires January 1, 2008. The term of the at-large commissioner expires on January 1, 2008. After the terms of the commissioners are completed as provided in this section, each subsequent term shall be for six years beginning and ending on January 1 of the applicable year. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The Governor shall designate one commissioner, who is an attorney admitted to practice before the Nebraska Supreme Court, to serve as the chairperson of the commission from January 1, 2002, through December 31, 2003. Beginning on January 1, 2004, the commission shall designate pursuant

to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis among the commissioners who are attorneys admitted to practice before the Nebraska Supreme Court.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Source: Laws 1995, LB 490, § 3; Laws 1998, LB 1104, § 24; Laws 2001, LB 465, § 3; Laws 2003, LB 291, § 5; Laws 2007, LB167, § 4.

77-5004 Commissioner; qualifications; conflict of interests; continuing education; expenses.

(1) Each commissioner shall be a qualified voter and resident of the state and, for each commissioner representing a congressional district, a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) One commissioner shall possess any certification or training required to become a licensed real property appraiser as set forth in section 76-2230.

(4) Prior to January 1, 2002, the chairperson, and on and after January 1, 2002, at least two commissioners, shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.

(5) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be

appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.

(6)(a) Each commissioner who meets the requirements of subsection (4) of this section on or after January 1, 2002, shall annually attend a seminar or class of at least two days' duration that is:

(i) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or

(ii) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(b) Each commissioner who does not meet the requirements of subsection (4) of this section on or after January 1, 2002, shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.

(7) The commissioners shall be considered employees of the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

(8) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for their actual and necessary expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 4; Laws 1996, LB 1038, § 2; Laws 1999, LB 32, § 1; Laws 2001, LB 170, § 19; Laws 2001, LB 465, § 4; Laws 2002, LB 994, § 28; Laws 2003, LB 292, § 15; Laws 2004, LB 973, § 47; Laws 2006, LB 778, § 73; Laws 2007, LB186, § 25; Laws 2008, LB965, § 20.

77-5005 Commission; meetings; quorum; orders.

(1) Within ten days after appointment, the commissioners shall meet at their office in Lincoln, Nebraska, and enter upon the duties of their office.

(2) A majority of the commission or, in cases when a panel of three commissioners hears a case, a majority of the panel shall at all times constitute a quorum to transact business, and one vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by or before a panel of three commissioners.

(4) All investigations, inquiries, hearings, and decisions of a panel of commissioners and every order made by a panel of commissioners shall be deemed to be the order of the commission. The full commission may grant a rehearing and determine de novo any decisions of or orders made by a panel of commissioners. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.

(5) All hearings or proceedings of the commission shall be open to the public.

(6) The Open Meetings Act applies only to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Source: Laws 1995, LB 490, § 5; Laws 1998, LB 1104, § 25; Laws 2001, LB 465, § 5; Laws 2003, LB 291, § 6; Laws 2004, LB 821, § 23; Laws 2005, LB 15, § 7.

Cross References

Open Meetings Act, see section 84-1407.

77-5006 Office space.

The state shall furnish the commission and its commissioners with appropriate office space in Lincoln, Nebraska, together with suitable equipment, furniture, and supplies.

Source: Laws 1995, LB 490, § 6.

77-5007 Commission; powers and duties.

The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining adjusted valuation pursuant to section 79-1016;

(5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3,188;

(9) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Property Tax Administrator made before July 1, 2007, and decisions made by the Tax Commissioner regarding property valuation, exemption, or taxation made on or after July 1, 2007;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520; and

(13) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions.

Source: Laws 1995, LB 490, § 7; Laws 1996, LB 1038, § 3; Laws 1997, LB 270, § 102; Laws 1997, LB 397, § 35; Laws 1998, LB 306, § 40; Laws 1999, LB 140, § 2; Laws 1999, LB 194, § 33; Laws

2001, LB 170, § 20; Laws 2004, LB 973, § 48; Laws 2005, LB 15, § 8; Laws 2005, LB 261, § 8; Laws 2005, LB 274, § 280; Laws 2007, LB334, § 96.

A county assessor is not required to file a protest with the county board, as described in section 77-1504, before taking an appeal to the Nebraska Tax Equalization and Review Commission under this section. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

This section does not create a duty on the part of the Tax Equalization and Review Commission to compel the taxpayer to

produce more probative evidence at the hearing. *J.C. Penney Co., Inc. v. Lancaster Cty. Bd. of Equal.*, 6 Neb. App. 838, 578 N.W.2d 465 (1998).

The commission has the power under this statute to hear and determine appeals of any decision of any county board of equalization. *McLaughlin v. Jefferson Cty. Bd. of Equal.*, 5 Neb. App. 781, 567 N.W.2d 794 (1997).

77-5007.01 Appeals by county assessor; appointment of attorney.

In appeals by a county assessor in his or her official capacity pursuant to section 77-5007, the county assessor may request that the district court appoint an attorney to represent the county assessor before the commission. Upon a showing of good cause, the district court may make such an appointment by an order to be entered upon the minutes of the court. Any attorney so appointed shall receive no compensation from the county except as provided for in section 23-1204.01.

Source: Laws 1998, LB 1104, § 26.

77-5008 Commission; writs of mandamus.

In addition to its other powers and duties, the commission may issue writs of mandamus compelling compliance with its orders and compelling the Tax Commissioner to enforce its orders and may charge the party which has not complied with the commission's orders with costs borne by the Tax Commissioner or by the Property Tax Administrator before July 1, 2007.

Source: Laws 1995, LB 490, § 8; Laws 2007, LB334, § 97.

77-5009 Personnel; special masters; referees.

(1) The commission may employ legal, clerical, and other assistants as may be necessary to carry out the powers and duties of the commission.

(2)(a) For purposes of finding facts or conducting an investigation on behalf of the commission with regard to any matters relating to taxation or assessment, the commission may appoint by an order in writing a special master or special masters whose duties are prescribed in the order, except that the duties of a special master shall not include the determination of conclusions of law or the final disposition of any case or controversy.

(b) Special masters may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the special master renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

(3) In the discharge of his or her duties, a special master shall have all the investigative and factfinding powers of the commission.

(4)(a) The commission may conduct a number of factfindings or investigations contemporaneously through different special masters and may delegate to

a special master the taking of all testimony bearing upon any investigation or hearing.

(b) The decision of the commission shall be based upon its examination of all testimony and records.

(c) The recommendations made by any special master shall be advisory only and shall not preclude the taking of further testimony if the commission orders further investigation.

(5)(a) For purposes of mediating valuation disputes between the county and the owner of the property, the commission by order may also contract with or appoint a referee or referees. The purpose of the referee is to meet with the parties and facilitate agreement on facts and issues prior to the hearing on the appeal. The referee may not be called as a witness in a hearing on the merits nor may evidence of any statements made by the parties or the referee pertaining to or at the referee meeting be received by the commission in a hearing on the merits. If the parties fail to resolve their differences, a hearing on the merits of the appeal shall be held before the commission. If the parties resolve their differences, the commission shall enter an order that reflects the agreement of the parties.

(b) Referees may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the referee renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

Source: Laws 1995, LB 490, § 9; Laws 1998, LB 1104, § 27; Laws 2000, LB 968, § 74; Laws 2001, LB 465, § 6; Laws 2006, LB 808, § 41.

77-5010 Political subdivisions; levy not restricted.

County boards, city councils, school boards, and all other bodies legally authorized to make levies are free to make the rate of levy for their respective political subdivisions or municipalities at any amount not prohibited by the Constitution of Nebraska or the laws of the state.

Source: Laws 1995, LB 490, § 10.

77-5011 Chairperson; powers and duties.

The chairperson may call special meetings of the commission at such times as its business requires. The chairperson may also administer oaths and affirmations and sign all orders, certificates, and process in the name of the commission. The chairperson shall attest all orders, certificates, and process with the official seal of the commission. In the absence of the chairperson the vice-chairperson may perform the duties of the chairperson. Orders, certificates, and process under the official seal of the commission may be enforced by the district court for Lancaster County.

Source: Laws 1995, LB 490, § 11; Laws 1997, LB 397, § 36; Laws 2003, LB 291, § 7; Laws 2007, LB167, § 5.

77-5012 Repealed. Laws 2001, LB 170, § 30.**77-5013 Commission; jurisdiction; time for filing; filing fee.**

(1) The commission obtains exclusive jurisdiction over an appeal or petition when:

- (a) The commission has the power or authority to hear the appeal or petition;
- (b) An appeal or petition is timely filed;
- (c) The filing fee, if applicable, is timely received and thereafter paid; and
- (d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor acting in his or her official capacity or a county board of equalization acting in its official capacity.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Source: Laws 1995, LB 490, § 13; Laws 1998, LB 1104, § 28; Laws 2001, LB 170, § 21; Laws 2004, LB 973, § 49.

77-5014 Repealed. Laws 2007, LB 167, § 13.**77-5015 Appeals; hearing; notice.**

Appeals regarding the valuation or exemption of multiple parcels involving the same owner and the same issues may be consolidated in the manner prescribed by the commission. Any multiple filing fees paid for consolidated appeals shall be refunded by the commission. In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time and place of the hearing. Opportunity shall be afforded all parties to present evidence and argument. The commission shall prepare an official record, which includes testimony and exhibits, in each case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purposes of rehearing, in which event the transcript and record shall be furnished by the commission upon request and tender of the cost of preparation. Informal disposition may also be made of any case by stipulation, agreed settlement, consent order, or default.

Source: Laws 1995, LB 490, § 15; Laws 1999, LB 140, § 3; Laws 2003, LB 291, § 8; Laws 2004, LB 973, § 50.

This section provides that opportunity shall be afforded all parties to present evidence and argument at a hearing before the Tax Equalization and Review Commission. *Krusemark v. Thurston Cty. Bd. of Equal.*, 10 Neb. App. 35, 624 N.W.2d 328 (2001).

77-5016 Hearing or proceeding; commission; powers and duties; false statement; penalty; costs.

Any hearing or proceeding of the commission shall be conducted as an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In any hearing or proceeding heard by the commission or a panel of commissioners:

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The requesting party shall be liable for the payment of fees and costs of a court reporter pending a final decision. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered, and all other costs shall be allocated as the commission may determine;

(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;

(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations. All other evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case. No other factual information or evidence other than that set forth in this section shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or

subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

(6) Any person testifying under oath at a hearing who knowingly and intentionally makes a false statement to the commission or its designee is guilty of perjury. For the purpose of this section, perjury is a Class I misdemeanor;

(7) The commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal;

(8) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

(9) If the appeal concerns a decision by the county board of equalization that property is, in whole or in part, exempt from taxation, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(10) If the appeal concerns a decision by the county board of equalization that property owned by the state or a political subdivision is or is not exempt and there has been no final determination of the value of the property, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(11) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county; and

(12) The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted.

Source: Laws 1995, LB 490, § 16; Laws 1997, LB 397, § 38; Laws 1999, LB 140, § 4; Laws 2000, LB 968, § 75; Laws 2001, LB 170, § 22; Laws 2001, LB 419, § 1; Laws 2001, LB 465, § 7; Laws 2002, LB 994, § 29; Laws 2003, LB 291, § 9; Laws 2004, LB 973, § 51; Laws 2005, LB 15, § 9; Laws 2007, LB167, § 6.

A presumption exists that a board of equalization has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. This presumption remains until there is competent evidence to the contrary presented. Once the presumption has been rebutted, the burden shifts to the party requesting the exemption to prove its entitlement

thereto. *City of York v. York Cty. Bd. of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003).

The only material difference between an appeal from a board of equalization before the passage of LB 490 and after is that subsection (5) of this section allows the Tax Equalization and Review Commission to take judicial notice of general, technical, or scientific facts within its specialized knowledge or statistical

information regarding general levels of assessment. J.C. Penney Co., Inc. v. Lancaster Cty. Bd. of Equal., 6 Neb. App. 838, 578 N.W.2d 465 (1998).

77-5016.01 Oath, affirmation, or statement; perjury.

Each appeal or petition filed with the commission shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or should know. Any person who willfully falsifies any such representation shall be guilty of perjury and shall, upon conviction thereof, be punished as provided by section 28-915.

Source: Laws 2004, LB 973, § 52.

77-5016.02 Subpoena for witness; authorized.

The chairperson of the commission shall, on application of any person having a cause or any matter pending before it, issue a subpoena for a witness or witnesses under the seal of the commission, inserting all the names required by the applicant in one subpoena.

Source: Laws 2004, LB 973, § 53.

77-5016.03 Subpoena for witness; contents.

A subpoena of the commission shall be directed to the person named therein, requiring him or her to attend at a particular time and place and to testify as a witness. The subpoena may contain a clause directing the witness to bring with him or her any book, writing, or other thing under his or her control, which he or she is bound by law to produce as evidence.

Source: Laws 2004, LB 973, § 54.

77-5016.04 Subpoena for witness; service.

The subpoena shall be served in the manner requested by the applicant, by either (1) personally serving a copy or (2) mailing a copy by registered or certified mail, return receipt requested, not less than six days before the day of the hearing or deposition which the witness is required to attend. The person making such service shall make a return thereof showing the manner of service. A subpoena may be served by any person not interested in the matter or by the sheriff. When served by any person other than a sheriff, proof of service shall be shown by affidavit, but no costs of serving shall be allowed, except when served by a sheriff.

Source: Laws 2004, LB 973, § 55.

77-5016.05 Witnesses; attendance required; fees.

(1) Witnesses cannot be compelled to attend a hearing out of the state where they are served or at a distance of more than one hundred miles from the place of their residence or from the place where they are served with a subpoena, unless within the same county. Witnesses shall not be obliged to attend a deposition outside the county of their residence or outside the county where the subpoena is served.

(2) The chairperson of the commission may, upon deposit with the commission of sufficient money to pay the legal fees and mileage and reasonable expenses for hotel and meals of such a witness who attends at points so far removed from his or her residence as to make it reasonably necessary that such

expenses be incurred, order a subpoena to issue requiring the hearing attendance, but excluding a deposition appearance, of such witness from a greater distance within the state than that provided in subsection (1) of this section. Mileage shall be computed at the rate provided in section 81-1176. The subpoena shall show that it is issued under this section. After the appearance of such witness in response to any such subpoena, the chairperson of the commission shall enter an order directing the payment to the witness from such deposit of such legal fees, mileage, and the actual expenses for hotel and meals incurred by such witness. If such deposit is not adequate for such purpose, the chairperson of the commission shall direct the party procuring the issuance of such subpoena to pay to such witness the deficiency.

Source: Laws 2004, LB 973, § 56.

77-5016.06 Witness; demand fees; when.

(1) Except as provided in subsection (2) of this section, a witness may demand his or her traveling fees and fee for one day's attendance when the subpoena is served upon him or her, and if the same is not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and nonpayment shall be stated in the return.

(2) When a subpoena is issued at the request of any agency of state government, the witness shall not be entitled to demand his or her traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him or her, he or she is furnished a statement prepared by the agency advising him or her of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he or she will be paid at such rates following his or her attendance.

Source: Laws 2004, LB 973, § 57.

77-5016.07 Witness; demand for fees; effect.

At the commencement of each day, after the first day, a witness may demand his or her fees for that day's attendance in obedience to a subpoena, and if the same is not paid he or she shall not be required to remain.

Source: Laws 2004, LB 973, § 58.

77-5016.08 Prohibited acts; penalty.

Disobedience of a subpoena or a refusal to be sworn, to answer as a witness, or to subscribe a deposition, when lawfully ordered, shall be a Class V misdemeanor.

Source: Laws 2004, LB 973, § 59.

77-5016.09 Death or disability of party; transfer of property; effect on proceeding.

An appeal or petition shall not be dismissed by reason of the death or other disability of a party or by the transfer of any interest in property during its pendency. In the case of the death or other disability of a party, the commission may allow the action to continue by the party's representative or successor in interest. In case of any other transfer of interest in property, the action may be continued in the name of the original party or the commission may allow the

party to whom the transfer is made to be substituted in the action in accordance with the party's interests.

Source: Laws 2004, LB 973, § 60.

77-5017 Appeals or petitions; orders authorized.

(1) In resolving an appeal or petition, the commission may make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed. The commission may make prospective orders requiring changes in assessment practices which will improve assessment practices or affect the general level of assessment or the measures of central tendency in a positive way. If no other relief is adequate to resolve disputes, the commission may order a reappraisal of property within a county, an area within a county, or classes or subclasses of property within a county.

(2) In an appeal specified in subdivision (9) or (10) of section 77-5016 for which the commission determines exempt property to be taxable, the commission shall order the county board of equalization to determine the taxable value of the property, unless the parties stipulate to such taxable value during the hearing before the commission. The order shall require the county board of equalization to (a) assess such property using procedures for assessing omitted property, (b) determine such taxable value within ninety days after the issuance of the commission's order, and (c) apply interest, but not penalty, to the taxable value as of the date the commission's order was issued or the date the taxes were delinquent, whichever is later.

(3) A determination of the taxable value of the property made by the county board of equalization pursuant to subsection (2) of this section may be appealed to the commission within thirty days after the board's decision.

Source: Laws 1995, LB 490, § 17; Laws 2001, LB 419, § 2; Laws 2004, LB 973, § 61; Laws 2007, LB167, § 7.

77-5018 Appeals; decisions and orders; requirements; correction of errors.

(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.

Source: Laws 1995, LB 490, § 18; Laws 1997, LB 397, § 39; Laws 2001, LB 465, § 8; Laws 2005, LB 15, § 10; Laws 2007, LB166, § 11.

77-5019 Appeals; judicial review; procedure.

(1) Any party aggrieved by a final decision in a case appealed to the commission, any party aggrieved by a final decision of the commission on a petition, or any party aggrieved by an order of the commission issued pursuant to section 77-5020 or sections 77-5023 to 77-5028 shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals within thirty days after the date on which a final appealable order is entered by the commission. All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1504.01 or 77-5020 or sections 77-5023 to 77-5028. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in section 25-510.02. The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Upon receipt of a petition the date for submission of the official record shall be determined by the court. The commission shall prepare a certified copy of the official record of the proceedings had before the commission in the case. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The official record in an appeal of a commission decision issued pursuant to

sections 77-5023 to 77-5028 may be limited by the request of a petitioner to those parts of the record pertaining to a specific county. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. If payment is required, payment of the cost, as estimated by the commission, for preparation of the official record shall be paid to the commission prior to preparation of the official record and the commission shall not transmit the official record to the court until payment of the actual costs of its preparation is received.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Source: Laws 1995, LB 490, § 19; Laws 1997, LB 165, § 4; Laws 1999, LB 140, § 5; Laws 2000, LB 968, § 76; Laws 2001, LB 465, § 9; Laws 2005, LB 15, § 11; Laws 2006, LB 808, § 42; Laws 2008, LB965, § 21.

1. Tax Equalization and Review Commission
2. Jurisdiction
3. Miscellaneous

1. Tax Equalization and Review Commission

The plain language in subsection (2)(a) of this section referring to "the action complained of" refers to the particular Tax Equalization and Review Commission order being appealed and does not refer to a previous order of the commission which might be relevant to issues in the current appeal. *Marshall v. Dawes Cty. Bd. of Equal.*, 265 Neb. 33, 654 N.W.2d 184 (2002).

Pursuant to subsection (1) of this section, because the Tax Equalization and Review Commission performs essentially the same functions that were performed by the State Board of Equalization and Assessment, the appellate court considers appeals from the commission's decisions under the same standards and principles that were applied to appeals from equalization proceedings before the board. Pursuant to subsection (5) of this section, appellate review of a Tax Equalization Review Commission decision shall be conducted for error on the record of the commission. *County of Douglas v. Nebraska Tax Equal. & Rev. Comm.*, 262 Neb. 578, 635 N.W.2d 413 (2001).

Pursuant to subsection (2) of this section, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or section 77-5023, the commission is not a proper party to a proceeding for judicial review of an order of the commission. *Widtfeldt v. Holt Cty. Bd. of Equal.*, 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Appellate review of the decisions of the Nebraska Tax Equalization and Review Commission is limited to error on the record. *Lyman-Richey Corp. v. Cass Cty. Bd. of Equal.*, 258 Neb. 1003, 607 N.W.2d 806 (2000); *Ash Grove Cement Co. v. Cass Cty. Bd. of Equal.*, 258 Neb. 990, 607 N.W.2d 810 (2000); *Kawasaki Motors Corp. v. Lancaster Cty. Bd. of Equal.*, 7 Neb. App. 655, 584 N.W.2d 63 (1998).

Decisions of the Tax Equalization and Review Commission are reviewed for error appearing on the record. *Washington Cty. Bd. of Equal. v. Rushmore Borglum*, 11 Neb. App. 377, 650 N.W.2d 504 (2002).

2. Jurisdiction

Pursuant to subsection (2) of this section, failure to accomplish service of process upon the county board of equalization

within 30 days after filing the petition for judicial review is necessary to confer subject matter jurisdiction upon the reviewing court. *Widtfeldt v. Holt Cty. Bd. of Equal.*, 12 Neb. App. 499, 677 N.W.2d 521 (2004).

The Nebraska Court of Appeals did not have jurisdiction under subsection (1) of this section to hear county's appeal of claim brought pursuant to section 77-1504.01 because the claim was not a decision appealed to the Nebraska Tax Equalization and Review Commission and was not brought pursuant to section 77-5028. *Boone Cty. Bd. of Equal. v. Nebraska Tax Equal. and Rev. Comm.*, 9 Neb. App. 298, 611 N.W.2d 119 (2000).

Under this section, service of summons within 30 days of the filing of a petition for review of the commission's decision is necessary to confer subject matter jurisdiction on the Court of Appeals. *McLaughlin v. Jefferson Cty. Bd. of Equal.*, 5 Neb. App. 781, 567 N.W.2d 794 (1997).

3. Miscellaneous

Pursuant to subsection (2) of this section, the county board of equalization is a necessary party to a proceeding for judicial review of an order of the Nebraska Tax Equalization and Review Commission. *Widtfeldt v. Holt Cty. Bd. of Equal.*, 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Pursuant to subsection (5) of this section, when reviewing a judgment of the Tax Equalization and Review Commission for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm.*, 10 Neb. App. 927, 639 N.W.2d 683 (2002).

Pursuant to subsection (5) of this section, appellate review of a Tax Equalization and Review Commission decision shall be conducted for error on the record; the appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Krusemark v. Thurston Cty. Bd. of Equal.*, 10 Neb. App. 35, 624 N.W.2d 328 (2001).

77-5020 County assessor or deputy assessor; invalidation or suspension of certificate; appeal.

The commission, subject to rules and regulations, shall have the power to invalidate or suspend the certificate issued pursuant to section 77-422 of any county assessor or deputy assessor who willfully fails or refuses to comply with any order of the commission. No certificate shall be invalidated or suspended except upon a hearing before the commission.

Any county assessor or deputy assessor whose certificate has been so invalidated or suspended may appeal the decision to the Court of Appeals in accordance with section 77-5019.

No action shall be brought under this section more than two years after the date of the act, last date of a series of actions complained of, or the last date the county assessor or deputy assessor could have acted to comply, whichever is later.

Source: Laws 1995, LB 490, § 20; Laws 2004, LB 973, § 62; Laws 2007, LB167, § 8.

77-5021 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out its constitutional or statutory purposes, powers, or authority. The commission may adopt and promulgate rules and regulations necessary to regulate persons and proceedings within the commission's jurisdiction and authority.

Source: Laws 1995, LB 490, § 21; Laws 2003, LB 291, § 10.

77-5022 Commission; annual meeting; powers and duties.

The commission shall annually equalize the assessed value or special value of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property that is valued by the state. The commission shall have the power to adjourn from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-505; Laws 1969, c. 653, § 1, p. 2569; Laws 1987, LB 508, § 18; Laws 1992, LB 1063, § 57; Laws 1992, Second Spec. Sess., LB 1, § 55; R.S.1943, (1996), § 77-505; Laws 1997, LB 397, § 40; Laws 1999, LB 140, § 6; Laws 2003, LB 291, § 12; Laws 2004, LB 973, § 63; Laws 2006, LB 808, § 43; Laws 2009, LB166, § 19.

Authority to equalize the assessments of property among counties has been reserved exclusively to the State Board of Equalization and Assessment. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993).

The State Board of Equalization and Assessment values and equalizes the property of centrally assessed taxpayers pursuant to this section. In reviewing the county abstracts pursuant to this section, the State Board of Equalization and Assessment deals only with the values of the taxable property of a county in the aggregate. *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991).

Under former law, state board met on first Monday in July. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954); *County*

of Buffalo v. State Board of Equalization and Assessment, 158 Neb. 353, 63 N.W.2d 468 (1954); *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63 N.W.2d 441 (1954); *County of Douglas v. State Board of Equalization and Assessment*, 158 Neb. 325, 63 N.W.2d 449 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954).

Where taxpayer sought a reduction of assessment based on alleged errors in method of computation and elements entering into value, the procedure under this section was not applicable. *Mid-Continent Airlines, Inc. v. State Board of Equalization and Assessment*, 154 Neb. 371, 48 N.W.2d 81 (1951).

Under former law State Board of Equalization and Assessment was required to hold regular meeting on first Monday in July. *Antelope County v. State Board of Equalization and Assessment*, 146 Neb. 661, 21 N.W.2d 416 (1946).

Under former law board of equalization was required to forward an abstract of assessment rolls to state board on or

before July 10 of each year. *Farmers Co-op. Creamery & Supply Company v. McDonald*, 100 Neb. 33, 158 N.W. 369 (1916); *Farmers Co-op. Creamery & Supply v. McDonald*, 97 Neb. 510, 150 N.W. 640 (1915), overruling 97 Neb. 512, 150 N.W. 656 (1915).

77-5023 Commission; power to change value; acceptable range.

(1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-506; Laws 1955, c. 289, § 4, p. 918; Laws 1957, c. 323, § 1, p. 1145; Laws 1957, c. 320, § 3, p. 1139; Laws 1979, LB 187, § 193; Laws 1985, LB 268, § 2; Laws 1987, LB 508, § 19; Laws 1992, LB 1063, § 58; Laws 1992, Second Spec. Sess., LB 1, § 56; Laws 1995, LB 137, § 1; R.S.1943, (1996), § 77-506; Laws 1997, LB 397, § 41; Laws 2000, LB 968, § 77; Laws 2001, LB 170, § 23; Laws 2003, LB 291, § 13; Laws 2004, LB 973, § 64; Laws 2006, LB 808, § 44; Laws 2006, LB 968, § 15; Laws 2007, LB167, § 9; Laws 2009, LB166, § 20.

- 1. Powers and duties
- 2. Modification of valuation
- 3. Miscellaneous

1. Powers and duties

It is the primary duty of the State Board of Equalization and Assessment to establish uniformity between the various counties. *Hanna v. State Board of Equalization & Assessment*, 181 Neb. 725, 150 N.W.2d 878 (1967).

Basic powers and duties of State Board of Equalization and Assessment are set out in this section. *Carpenter v. State Board of Equalization & Assessment*, 178 Neb. 611, 134 N.W.2d 272 (1965).

State board has duty to equalize assessments on farm lands between counties. *Lafin v. State Board of Equalization and Assessment*, 156 Neb. 427, 56 N.W.2d 469 (1953).

State Board of Equalization is not a board of review with power to correct errors of the county boards of equalization or assessors. *Scotts Bluff County v. State Board of Equalization & Assessment*, 143 Neb. 837, 11 N.W.2d 453 (1943).

2. Modification of valuation

Although the State Board of Equalization and Assessment has the power to increase or decrease the actual valuation of a class

or subclass of real or personal property of any county or tax district pursuant to this section, it may do so only to change the value of the taxable property of a county in the aggregate so that there will be equalization between counties and centrally assessed property considered in the aggregate. *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991).

Increase or decrease should be by percentage. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

Pursuant to subsection (1) of this section, the Tax Equalization and Review Commission lacked the authority to create a new market area in a county for the purpose of increasing the overall valuation of the agricultural range in that county so that it fell within the acceptable statutory range. *Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm.*, 10 Neb. App. 927, 639 N.W.2d 683 (2002).

Pursuant to subsection (2) of this section, the decision of the Tax Equalization and Review Commission to increase the value of all unimproved agricultural property in a county by 5 percent was proper, since the increase resulted in a median level valuation countywide of 77 percent, which is the midpoint of the acceptable range required by statute. *Dodge County Bd. v.*

Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

3. Miscellaneous

Under this section, locally assessed taxpayers do not have the right to request that the State Board of Equalization and Assessment equalize their individual property, as part of a class or subclass, with a class or subclass or centrally assessed property in other counties. *John Day Co. v. Douglas Cty. Bd. of Equal.*, 243 Neb. 24, 497 N.W.2d 65 (1993); *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991).

State board is not required to have before it all of the abstracts of assessment of all counties before commencement of its meetings. *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63 N.W.2d 441 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954).

Pursuant to subsection (2) of section 77-5019, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or this section, the commission is not a proper party to a proceeding for judicial review of an order of the commission. *Widtfeldt v. Holt Cty. Bd. of Equal.*, 12 Neb. App. 499, 677 N.W.2d 521 (2004).

77-5024 Repealed. Laws 2005, LB 261, § 13.

77-5024.01 Notice; contents.

The commission shall give notice of the time and place of the first meeting held pursuant to sections 77-1504.01 and 77-5026 by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the commission during normal business hours. The agenda shall be continually revised to remain current. The commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided in section 77-1504.01 or 77-5026. The commission shall publish in its notice a list of those counties certified under section 77-5027 as having assessments which may fail to satisfy the requirements of law.

Source: Laws 2003, LB 291, § 11; Laws 2005, LB 261, § 9.

77-5025 Repealed. Laws 2005, LB 261, § 13.

77-5026 Commission; change of value; hearing; procedure.

Pursuant to section 77-5023, if the commission finds that the level of value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A county assessor or other legal representative of the county may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-508; Laws 1969, c.

653, § 2, p. 2569; Laws 1987, LB 508, § 21; Laws 1992, LB 1063, § 60; Laws 1992, Second Spec. Sess., LB 1, § 58; Laws 1993, LB 734, § 44; Laws 1995, LB 490, § 56; R.S.1943, (1996), § 77-508; Laws 1997, LB 397, § 44; Laws 2001, LB 170, § 25; Laws 2005, LB 15, § 12; Laws 2007, LB167, § 10.

Pursuant to this section, if the Tax Equalization and Review Commission determines that equitable assessment of property in the state cannot be made without adjusting the value of a class or subclass of property in a county which it deems overvalued or undervalued, the commission may hold a hearing during which legal representatives of the county may show cause as to why the adjustment should not be made. *Bartlett v. Dawes Cty. Bd. of Equal.*, 259 Neb. 954, 613 N.W.2d 810 (2000).

Because of the statutory time limits placed upon the State Board of Equalization by sections 77-505, 77-509, and 77-1514, R.R.S.1943, the five-day notice provision of section 77-508, R.R.S.1943, is reasonable. Where a notice of hearing was sent out and amended the next day without changing the hearing date, the date of the first notice is used to determine if the notice requirement of this section was met. *Box Butte County v. State Board of Equalization & Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).

This section does not require a formal and explicit finding by the board, prior to any hearing, that equalization could not be made without increasing or decreasing property values. *Box Butte County v. State Board of Equalization & Assessment*, 206 Neb. 696, 295 N.W.2d 670 (1980).

A notice issued by the State Board of Equalization and Assessment should specify the percentage of increase or decrease which the board intends to make in the county. *County of Brown v. State Board of Equalization and Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Kimball v. State Board of Equalization and Assessment*, 180 Neb. 482, 143 N.W.2d 893 (1966); *County of Blaine v. State Board of Equalization and Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

Reference is made to valuation of property in proceedings of state board. *Fromkin v. State*, 158 Neb. 377, 63 N.W.2d 332 (1954).

Notice sent to counties was sufficient. *County of Buffalo v. State Board of Equalization and Assessment*, 158 Neb. 353, 63 N.W.2d 468 (1954); *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63 N.W.2d 441 (1954); *County of Douglas v. State Board of Equalization and Assessment*, 158 Neb. 325, 63 N.W.2d 449 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954).

Notice to county is a condition precedent to a valid order. *Laffin v. State Board of Equalization and Assessment*, 156 Neb. 427, 56 N.W.2d 469 (1953).

Without giving of statutory notice, State Board of Equalization and Assessment has no jurisdiction to order decrease of assessed valuation of a class or classes of property in all counties of the state. *Antelope County v. State Board of Equalization & Assessment*, 146 Neb. 661, 21 N.W.2d 416 (1946).

Increase in assessment valuation without notice or sufficient opportunity for hearing is violative of this section and amounts to confiscation of property without due process of law. *American Tel. & Tel. Co. v. State Board of Equalization and Assessment*, 119 Neb. 142, 227 N.W. 455 (1929); *Northwestern Bell Tel. Co. v. State Board of Equalization and Assessment*, 119 Neb. 138, 227 N.W. 452 (1929); *Lincoln Tel. & Tel. Co. v. State Board of Equalization and Assessment*, 119 Neb. 137, 227 N.W. 454 (1929); *Stanton County v. State Board of Equalization and Assessment*, 119 Neb. 136, 227 N.W. 454 (1929).

77-5027 Commission; change valuation; Property Tax Administrator; duties.

(1) The commission shall, pursuant to section 77-5026, raise or lower the valuation of any class or subclass of real property in a county when it is necessary to achieve equalization.

(2) On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the commission and to each county assessor his or her annual reports and opinions.

(3) The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.

(4) In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by the commission.

(5) The Property Tax Administrator shall employ the methods specified in section 77-112, the comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and an analysis of the assessment practices employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may use sales of comparable real property in market areas similar to the county or area

in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant information in providing the annual reports and opinions to the commission.

Source: Laws 1969, c. 628, § 1, p. 2528; Laws 1987, LB 508, § 22; Laws 1988, LB 1207, § 1; Laws 1989, LB 361, § 6; Laws 1995, LB 490, § 57; Laws 1997, LB 342, § 2; R.S.1943, (1996), § 77-508.01; Laws 1997, LB 397, § 45; Laws 2001, LB 170, § 26; Laws 2004, LB 973, § 65; Laws 2005, LB 263, § 15.

Pursuant to this section, when ordering an adjustment for purposes of equalization, the Tax Equalization and Review Commission is authorized to adjust only by class or subclass. *Bartlett v. Dawes Cty. Bd. of Equal.*, 259 Neb. 954, 613 N.W.2d 810 (2000).

It is only when the appraisal made by the Tax Commissioner, under proper statutory provisions, fails to reflect current values

to use in an assessment/sales ratio that this section requires the use of qualified appraisers. *Banner County v. State Board of Equalization & Assessment*, 206 Neb. 715, 295 N.W.2d 682 (1980).

The requirement of section 77-1315, R.R.S.1943, for notice of increase in valuation is not applicable hereunder. *Hansen v. County of Lincoln*, 188 Neb. 461, 197 N.W.2d 651 (1972).

77-5028 Commission; enter order.

After a hearing conducted pursuant to section 77-5026, the commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to each parcel of real property in the class or subclass affected. The specified changes shall be made by the county assessor to each parcel of real property in the county so affected.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-509; Laws 1959, c. 359, § 1, p. 1275; Laws 1969, c. 656, § 1, p. 2573; Laws 1969, c. 653, § 3, p. 2570; Laws 1979, LB 159, § 1; Laws 1987, LB 508, § 23; Laws 1991, LB 732, § 138; Laws 1992, LB 1063, § 61; Laws 1992, Second Spec. Sess., LB 1, § 59; Laws 1993, LB 734, § 45; Laws 1995, LB 452, § 14; Laws 1995, LB 490, § 58; Laws 1996, LB 1040, § 2; R.S.1943, (1996), § 77-509; Laws 1997, LB 397, § 46; Laws 2001, LB 170, § 27; Laws 2005, LB 15, § 13; Laws 2005, LB 261, § 10; Laws 2007, LB167, § 11.

A notice issued by the State Board of Equalization and Assessment should specify the percentage of increase or decrease which the board intends to make in the county. *County of Brown v. State Board of Equalization and Assessment*, 180 Neb. 487, 143 N.W.2d 896 (1966); *County of Kimball v. State Board of Equalization and Assessment*, 180 Neb. 482, 143 N.W.2d 893 (1966); *County of Blaine v. State Board of Equalization and Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966).

Hearing held by state board was sufficient. *County of Howard v. State Board of Equalization and Assessment*, 158 Neb. 339, 63 N.W.2d 441 (1954); *County of Douglas v. State Board of Equalization and Assessment*, 158 Neb. 325, 63 N.W.2d 449 (1954); *County of Grant v. State Board of Equalization and Assessment*, 158 Neb. 310, 63 N.W.2d 459 (1954).

The State Board of Equalization, in the equalization of farm land as between counties, is not required to have a formal hearing. *Boyd County v. State Board of Equalization & Assessment*, 138 Neb. 896, 296 N.W. 152 (1941).

Burden of proof is on the railroad seeking to set aside assessment of property by Board of Equalization. *Chicago, R. I. & P. Ry. Co. v. State Board of Equalization & Assessment*, 112 Neb. 727, 200 N.W. 996 (1924).

The Nebraska Court of Appeals did not have jurisdiction under subsection (1) of section 77-5019 to hear county's appeal of a claim brought pursuant to section 77-1504.01 because the claim was not a decision appealed to the Nebraska Tax Equalization and Review Commission and was not brought pursuant

to this section. Boone Cty. Bd. of Equal. v. Nebraska Tax Equal. and Rev. Comm., 9 Neb. App. 298, 611 N.W.2d 119 (2000).

77-5029 County assessor; recertify county abstract; Property Tax Administrator; duties.

On or before June 5 of each year, the county assessor of any county adjusted by an order of the commission shall recertify the county abstract of assessment to the Property Tax Administrator. On or before August 1 of each year, the Property Tax Administrator shall certify to the commission that any order issued pursuant to sections 77-5023 to 77-5028 was or was not implemented by the county assessor as of June 1 of each year pursuant to section 77-1315. The Property Tax Administrator shall audit the records of the county assessor to determine whether the orders were implemented.

Source: Laws 1992, LB 1063, § 62; Laws 1992, Second Spec. Sess., LB 1, § 60; Laws 1993, LB 734, § 46; Laws 1995, LB 452, § 15; R.S.1943, (1996), § 77-509.01; Laws 1997, LB 397, § 47; Laws 2006, LB 808, § 45.

77-5030 Property Tax Administrator; certify distributed taxable value.

On or before August 10 of each year, the Property Tax Administrator shall certify the distributed taxable value of the property valued by the state, as equalized by the commission, to each county assessor.

Source: Laws 1995, LB 452, § 16; Laws 1995, LB 490, § 59; R.S.1943, (1996), § 77-509.02; Laws 1997, LB 397, § 48; Laws 1998, LB 306, § 41.

77-5031 Tax Equalization and Review Commission Cash Fund; created; use; investment.

The Tax Equalization and Review Commission Cash Fund is hereby created. All money received by the commission for appeals and services performed and billed to other agencies or persons shall be credited to the fund. The commission shall only bill for the actual amount expended in performing services. The fund shall be used to carry out the provisions of the Tax Equalization and Review Commission Act. Expenditures from the fund shall be made only when such funds are available. Any unexpended balance in the fund at the end of each fiscal year shall not lapse to the General Fund. Any money in the Tax Equalization and Review Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 270, § 101.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-5032 Repealed. Laws 2005, LB 15, § 15.

ARTICLE 51

REVIEW INCENTIVES PROGRAM COMMITTEE

Section
77-5101. Repealed. Laws 2000, LB 1135, § 34.

Section

- 77-5102. Repealed. Laws 2000, LB 1135, § 34.
- 77-5103. Repealed. Laws 2000, LB 1135, § 34.
- 77-5104. Repealed. Laws 2000, LB 1135, § 34.
- 77-5105. Repealed. Laws 2000, LB 1135, § 34.

77-5101 Repealed. Laws 2000, LB 1135, § 34.

77-5102 Repealed. Laws 2000, LB 1135, § 34.

77-5103 Repealed. Laws 2000, LB 1135, § 34.

77-5104 Repealed. Laws 2000, LB 1135, § 34.

77-5105 Repealed. Laws 2000, LB 1135, § 34.

ARTICLE 52

BEGINNING FARMER TAX CREDIT ACT

Section

- 77-5201. Act, how cited.
- 77-5202. Legislative findings.
- 77-5203. Terms, defined.
- 77-5204. Beginning Farmer Board; created; duties.
- 77-5205. Board; members; vacancies; removal.
- 77-5206. Board; officers; expenses.
- 77-5207. Board; quorum.
- 77-5208. Board; meetings; application; approval.
- 77-5209. Beginning farmer or livestock producer; qualifications.
- 77-5209.01. Tax credit for financial management program participation.
- 77-5209.02. Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption.
- 77-5210. Board; annual report.
- 77-5211. Owner of agricultural assets; tax credit; when.
- 77-5212. Rental agreement; requirements; appeal.
- 77-5213. Tax credit; amount; agreement; review.
- 77-5214. Board; study.
- 77-5215. Changes; when operative.

77-5201 Act, how cited.

Sections 77-5201 to 77-5215 shall be known and may be cited as the Beginning Farmer Tax Credit Act.

Source: Laws 1999, LB 630, § 2; Laws 2006, LB 990, § 8; Laws 2008, LB1027, § 2.

77-5202 Legislative findings.

(1) The Legislature hereby finds and declares that:

(a) Current farm economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of agricultural jobs, and difficulty in attracting and retaining farm operations; and

(b) Major revisions in Nebraska’s tax structure are necessary to accomplish economic revitalization of rural Nebraska and to be competitive with other states involved in economic revitalization and development of agriculture.

(2) It is the policy of this state to make revisions in Nebraska’s tax structure in order to encourage persons to seek careers in the farming industry, retain

existing and established farm operations, promote the creation and retention of new farm jobs in Nebraska, and attract and retain investment capital in rural Nebraska.

Source: Laws 1999, LB 630, § 3.

77-5203 Terms, defined.

For purposes of the Beginning Farmer Tax Credit Act:

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

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

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

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

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

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

(7) Owner of agricultural assets means:

(a) An individual or a trustee having an ownership interest in an agricultural asset located within the State of Nebraska who meets any qualifications determined by the board;

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

(c) A partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska which meets any additional qualifications determined by the board;

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

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

Source: Laws 1999, LB 630, § 4; Laws 2000, LB 1223, § 3; Laws 2006, LB 990, § 9; Laws 2008, LB1027, § 3.

77-5204 Beginning Farmer Board; created; duties.

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

(1) To approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, for eligibility to claim tax credits authorized by section 77-5209.01, and for eligibility to claim an exemption of taxable tangible personal property tax as provided by section 77-5209.02;

(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213;

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

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

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

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

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

(8) To encourage licensed financial institutions and individuals to use alternative amortization schedules for loans and land contracts granted to beginning farmers and livestock producers;

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

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

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

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

Source: Laws 1999, LB 630, § 5; Laws 2000, LB 1223, § 4; Laws 2008, LB1027, § 5.

77-5205 Board; members; vacancies; removal.

The board shall consist of the following members:

- (1) The Director of Agriculture or his or her designee;
- (2) The Tax Commissioner or his or her designee;
- (3) One individual representing lenders of agricultural credit;
- (4) One individual of the academic community with extensive knowledge and insight in the analysis of agricultural economic issues; and
- (5) Three individuals, one from each congressional district, who are currently engaged in farming or livestock production and are representative of a variety of farming or livestock production interests based on size of farm, type of farm operation, net worth of farm operation, and geographic location.

All members of the board shall be resident individuals as defined in section 77-2714.01. Members of the board listed in subdivisions (3) through (5) of this section shall be appointed by the Governor with the approval of a majority of the Legislature. All appointments shall be for terms of four years.

Vacancies in the appointed membership of the board shall be filled for the unexpired term by appointment by the Governor. Members of the board shall serve the full term and until a successor has been appointed by the Governor and approved by the Legislature. Any member is eligible for reappointment. Any member may be removed from the board by the Governor or by an affirmative vote by any four members of the board for incompetence, neglect of duty, or malfeasance.

Source: Laws 1999, LB 630, § 6.

77-5206 Board; officers; expenses.

Once every two years, the members of the board shall elect a chairperson and a vice-chairperson. A member of the board may be reelected to the position of chairperson or vice-chairperson upon the discretion of the board. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1999, LB 630, § 7.

77-5207 Board; quorum.

Four of the members of the board shall constitute a quorum for the transaction of official business. The affirmative vote of at least four members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall constitute an impairment of a quorum to exercise any and all rights and perform all duties of the board.

Source: Laws 1999, LB 630, § 8.

77-5208 Board; meetings; application; approval.

The board shall meet at least twice during the year. The board shall review pending applications in order to approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, to approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213, and to approve and certify qualified beginning farmers and livestock producers as eligible for the tax credit authorized by section 77-5209.01 and for qualification to claim an exemption of taxable tangible personal property as provided by section 77-5209.02. Any action taken by the board regarding approval and certification of program eligibility, granting of tax credits, or termination of rental agreements shall require the affirmative vote of at least four members of the board.

Source: Laws 1999, LB 630, § 9; Laws 2006, LB 990, § 10; Laws 2008, LB1027, § 6.

77-5209 Beginning farmer or livestock producer; qualifications.

(1) The board shall determine who is qualified as a beginning farmer or livestock producer based on the qualifications found in this section. A qualified beginning farmer or livestock producer shall be an individual who: (a) Has a net worth of not more than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value; (b) provides the majority of the day-to-day physical labor and management of his or her farming or livestock production operations; (c) has, by the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; (d) demonstrates to the board a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; (e) demonstrates to the board a need for assistance; (f) participates in a financial management program approved by the board; (g) submits a nutrient management plan and a soil conservation plan to the board on any applicable agricultural assets purchased or rented from an owner of agricultural assets; and (h) has such other qualifications as specified by the board. The qualified beginning farmer or livestock producer net worth thresholds in subdivision (a) of this subsection shall be adjusted annually beginning October 1, 2009, and each October 1 thereafter, by taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods divided by the Producer Price Index for 2008 and multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of twenty-five thousand dollars, the amount shall be rounded to the next lowest twenty-five thousand dollars.

(2) A qualified beginning farmer or livestock producer who has participated in a board approved and certified three-year rental agreement with an owner of agricultural assets shall not be eligible to file a subsequent application with the board but may refer to the board for additional support and participate in programs, including educational and financial programs and seminars, established or recommended by the board that are applicable to the continued success of such farmer or livestock producer.

Source: Laws 1999, LB 630, § 10; Laws 2000, LB 1223, § 5; Laws 2006, LB 990, § 11; Laws 2008, LB1027, § 7; Laws 2009, LB447, § 1.

77-5209.01 Tax credit for financial management program participation.

A qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement shall be allowed a one-time credit to be applied against the state income tax liability of such individual for the cost of participation in the financial management program required for eligibility under section 77-5209. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five hundred dollars.

Source: Laws 2006, LB 990, § 12.

77-5209.02 Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption.

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

(2) A qualified beginning farmer or livestock producer seeking an exemption of taxable agricultural and horticultural machinery and equipment from tangible personal property tax under this section shall apply for an exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is to begin. Application shall be on forms prescribed by the Tax Commissioner. For the initial year of application, an applicant shall provide the original documentation of certification provided by the board pursuant to section 77-5208 with the application. Failure to provide the required documentation shall result in a denial of the exemption for the following year but shall be considered as an application for the year thereafter.

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

(4) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the applicant within seven days after the board's decision. Any 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. Any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the agricultural and horticultural machinery and equipment will receive the exemption for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section.

(5) A properly granted exemption for taxable agricultural and horticultural machinery and equipment under this section shall continue for a period of three years if each year a Nebraska personal property tax return and supporting schedules and depreciation worksheet, showing a list and value of all taxable tangible personal property, are provided and filed by the beginning farmer or livestock producer with the county assessor when due. The value of taxable agricultural and horticultural machinery and equipment exempted in any year shall not exceed one hundred thousand dollars. The exemption allowed under this section shall continue irrespective of whether the person claiming the exemption no longer meets the qualification of a beginning farmer or livestock producer pursuant to section 77-5209 during the exemption period unless the beginning farmer or livestock producer discontinues farming or livestock production.

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

Source: Laws 2008, LB1027, § 4.

77-5210 Board; annual report.

The board shall submit an annual report of the activities and actions of the board for the preceding fiscal year to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. Each member of the Legislature shall receive a copy of such report by request to the chairperson of the board. Each report shall include the following information:

- (1) A complete operating and financial statement for the board for the prior fiscal year;
- (2) The number of qualified beginning farmers and livestock producers receiving assistance from the board;
- (3) The number of owners of agricultural assets claiming tax credits and the monetary amount of credits granted by the board; and
- (4) Any other relevant information which the board deems necessary to report.

No information furnished to the board shall be disclosed in the report in such a way as to reveal information from a tax return of any person.

Source: Laws 1999, LB 630, § 11; Laws 2000, LB 1223, § 6.

77-5211 Owner of agricultural assets; tax credit; when.

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

(2) The credit allowed shall be for renting agricultural assets used for farming or livestock production. Such credit shall be granted by the Department of Revenue only after approval and certification by the board and a written three-

year rental agreement for such assets is entered into between an owner of agricultural assets and a qualified beginning farmer or livestock producer. An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement for reasonable cause upon approval by the board. If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the board, the tax credit shall not be retroactively disallowed. If an agreement is terminated with fault on the part of the owner of agricultural assets as determined by the board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska.

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

(4) Any credit allowable to a partnership, a corporation, a limited liability company, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed.

(5) The credit allowed under this section shall not be allowed to an owner of agricultural assets for a rental agreement with a beginning farmer or livestock producer who is a relative, as defined in section 36-702, of the owner of agricultural assets or of a partner, member, shareholder, or trustee of the owner of agricultural assets unless the rental agreement is included in a written succession plan. Such succession plan shall be in the form of a written contract or other instrument legally binding the parties to a process and timetable for the transfer of agricultural assets from the owner of agricultural assets to the beginning farmer or livestock producer. The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except that when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. The owner of agricultural assets shall be allowed the credit provided for qualified rental agreements under this section if the board certifies the plan as providing a reasonable manner and probability of successful transfer.

Source: Laws 1999, LB 630, § 12; Laws 2000, LB 1223, § 7; Laws 2006, LB 990, § 13; Laws 2008, LB1027, § 8; Laws 2009, LB165, § 15.

77-5212 Rental agreement; requirements; appeal.

In evaluating a rental agreement between an owner of agricultural assets and a qualified beginning farmer or livestock producer, the board shall not approve and certify credit for an owner of agricultural assets who (1) has, with fault, terminated a prior board approved and certified rental agreement with a qualified beginning farmer or livestock producer or (2) is proposing a rental agreement of agricultural assets which, if rented to a qualified beginning farmer or livestock producer, would cause the lessee to be responsible for

managing or maintaining a farm which, based on the discretion of the board, is of greater scope and scale than necessary for a viably sized farm as established by the guidelines implemented by the board in order to adequately support a beginning farmer or livestock producer. Any person aggrieved by a decision of the board may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1999, LB 630, § 13; Laws 2006, LB 990, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

77-5213 Tax credit; amount; agreement; review.

(1) The tax credit approved and certified by the board under section 77-5211 for an owner of agricultural assets in the first, second, or third year of a qualifying rental agreement shall be equal to (a) ten percent of the gross rental income stated in a rental agreement that is a cash rent agreement or (b) fifteen percent of the cash equivalent of the gross rental income in a rental agreement that is a share-rent agreement. Tax credits shall only be approved and certified for rental agreements that are approved and certified by the board under the Beginning Farmer Tax Credit Act.

(2) To qualify for the greater rate of credit allowed under subdivision (1)(b) of this section, a share-rent agreement shall provide for sharing of production expenses or risk of loss, or both, between the agricultural asset owner and the qualified beginning farmer or livestock producer. The board may adopt and promulgate rules and regulations, consistent with the policy objectives of the act, to further define the standards that share-rent agreements shall meet for approval and certification of the tax credit under the act.

(3) The board shall review each existing three-year rental agreement between a beginning farmer or livestock producer and an owner of agricultural assets on a semiannual basis and shall either certify or terminate program eligibility for beginning farmers or livestock producers or tax credits granted to owners of agricultural assets on an annual basis.

Source: Laws 1999, LB 630, § 14; Laws 2006, LB 990, § 15.

77-5214 Board; study.

The board shall conduct a study in order to ascertain the fiscal impact of future tax credits granted by the board to owners of agricultural assets. Such study shall attempt to reasonably estimate the number of qualified beginning farmers or livestock producers that would be eligible to enter into a board approved and certified three-year share-rental agreement with an owner of agricultural assets and other such relevant facts and information for review by the board. The findings of such study by the board shall be submitted to the Governor, the Clerk of the Legislature, and the Legislative Fiscal Analyst by January 3, 2000. In order to carry out the study and the provisions of the Beginning Farmer Tax Credit Act, the Department of Agriculture shall provide any and all of the necessary support and assistance to the board.

Source: Laws 1999, LB 630, § 15.

77-5215 Changes; when operative.

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

(2) The changes made in sections 77-5203, 77-5209, and 77-5211 by Laws 2008, LB 1027, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2008, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2008, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

Source: Laws 2006, LB 990, § 16; Laws 2008, LB1027, § 9.

ARTICLE 53**RELIEF TO PROPERTY TAXPAYERS ACT**

Section

- 77-5301. Repealed. Laws 2001, Spec. Sess., LB 3, § 13.
- 77-5302. Repealed. Laws 2001, Spec. Sess., LB 3, § 13.
- 77-5303. Repealed. Laws 2001, Spec. Sess., LB 3, § 13.
- 77-5304. Repealed. Laws 2001, Spec. Sess., LB 3, § 13.

77-5301 Repealed. Laws 2001, Spec. Sess., LB 3, § 13.

77-5302 Repealed. Laws 2001, Spec. Sess., LB 3, § 13.

77-5303 Repealed. Laws 2001, Spec. Sess., LB 3, § 13.

77-5304 Repealed. Laws 2001, Spec. Sess., LB 3, § 13.

ARTICLE 54**RURAL ECONOMIC OPPORTUNITIES ACT**

Section

- 77-5401. Act, how cited.
- 77-5402. Legislative findings and declaration.
- 77-5403. Terms, defined.
- 77-5404. Employee of qualified employee leasing company; how treated.
- 77-5405. Incentives; application; fee; approval; written agreement.
- 77-5406. Transactions and activities not eligible for incentives.
- 77-5407. Credits authorized.
- 77-5408. Credits; how used.
- 77-5409. Recapture or disallowance of credits; procedure.
- 77-5410. Incentives; transferable; when; effect.
- 77-5411. Application; time of filing.
- 77-5412. Report; contents.
- 77-5413. Application; filing deadline.
- 77-5414. Rules and regulations.

77-5401 Act, how cited.

Sections 77-5401 to 77-5414 shall be known and may be cited as the Rural Economic Opportunities Act.

Source: Laws 2000, LB 936, § 1.

77-5402 Legislative findings and declaration.

The Legislature finds and declares that:

(1) Population and economic growth in Nebraska has for many years been greater in counties with relatively large populations and economies than in most of Nebraska's less populated counties; and

(2) It is the policy of the state to make revisions in Nebraska's tax structure to encourage employment and business investment that will significantly and positively impact the economies of the state's small-sized and mid-sized counties.

Source: Laws 2000, LB 936, § 2.

77-5403 Terms, defined.

For purposes of the Rural Economic Opportunities Act:

(1) Any term defined in the Nebraska Revenue Act of 1967 and used in the Rural Economic Opportunities Act has the same meaning as in the Nebraska Revenue Act of 1967;

(2) Average annual total employment means the average total employment reported for the county of employment for the most recent calendar year reported as of July 1 by the Department of Labor;

(3) Base year means the year immediately before the year in which the application was submitted;

(4) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;

(5) Compensation means the wages and other payments subject to withholding for federal income tax purposes;

(6) County average annual wage means the most recent average annual wage paid by all employers in a county or in the state, whichever is lower, for the most recent calendar year reported as of July 1 by the Department of Labor. County average annual wage for a project located in more than one county means the county average annual wages for each county in which the project is located, multiplied by the total of the average annual total employment for each county in which the project is located, summing the products for all counties in which the project is located, then dividing the result by the average annual total employment for all counties in which the project is located;

(7) Entitlement period means the year during which the required increases in employment, wages, and investment were met or exceeded and the next six years;

(8) Equivalent employees means the number computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(9) Investment, for qualified property owned by the taxpayer, means the original cost of the property. Investment, for qualified property rented by the taxpayer, means the average net annual rent multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is

earlier. The rental of land included in and incidental to the leasing of a building is included in the computation;

(10) Labor force means the total annual average county labor force for the most recent calendar year reported as of July 1 by the Department of Labor;

(11) Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in the Motor Vehicle Registration Act and subject to registration for operation on the highways;

(12) Number of new employees means the number of equivalent employees at the project during the year minus the number of equivalent employees during the base year;

(13)(a) Qualified business means any business engaged in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business also means any business engaged in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision only includes services provided by any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in subdivisions (13)(a)(i) through (iv) of this section;

(b) Qualified business does not include (i) any business activity in which eighty percent or more of the total sales are (A) sales to the ultimate consumer of food prepared for immediate consumption or (B) sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or which is not used by the purchaser in any of the activities listed in subdivisions (13)(a)(i) through (v) of this section or (ii) a livestock operation. For purposes of this subdivision, livestock operation means the feeding or holding of beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock in buildings, lots, or pens;

(14) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(15) Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code, or the components of such property, that will be located and used at the project. Qualified property does not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Rural Economic Opportunities Act to another person;

(16) Qualifying wage means the greater of one hundred twenty-five percent of the county average annual wage in the county or counties in which the project is located or one hundred percent of the regional average annual wage in the region or regions in which the project is located;

(17) Region means the following regions:

(a) Panhandle region, composed of the counties of Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux;

(b) Mid-plains region, composed of the counties of Arthur, Chase, Cherry, Dawson, Dundy, Frontier, Furnas, Gosper, Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson, Perkins, Red Willow, and Thomas;

(c) Central region, composed of the counties of Adams, Blaine, Buffalo, Clay, Custer, Franklin, Garfield, Greeley, Hall, Hamilton, Harlan, Howard, Kearney, Loup, Merrick, Nance, Nuckolls, Phelps, Sherman, Valley, Webster, and Wheeler;

(d) Northeast region, composed of the counties of Antelope, Boone, Boyd, Brown, Burt, Cedar, Colfax, Cuming, Dakota, Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Pierce, Platte, Rock, Stanton, Thurston, and Wayne;

(e) Southeast region, composed of the counties of Butler, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk, Richardson, Saline, Saunders, Seward, Thayer, and York;

(f) Omaha region, composed of the counties of Douglas, Sarpy, Cass, and Washington; and

(g) Lincoln region, composed of the county of Lancaster;

(18) Regional average annual wage, for a project located in one region, means the most recent average annual wage paid by all employers in the region for the most recent calendar year calculated by multiplying the average annual wage for each county in the region for the most recent calendar year reported as of July 1 by the Department of Labor by the corresponding average annual total employment in each county, summing the products for all counties in the region, and then dividing the result by the average annual total employment of all counties in the region. Regional average annual wage, for a project located in more than one region, means the regional average annual wage for each region in which the project is located, multiplied by the total of the average annual total employment for each region in which the project is located, the product then divided by the sum of the average annual total employment for the regions;

(19) Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under section 267(b) or (c) or 707(b) of the Internal Revenue Code;

(20) Taxpayer means any person subject to the sales and use taxes and an income tax imposed by the Nebraska Revenue Act of 1967; any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such tax; and any other partnership, limited liability company, subchapter S corporation, subchapter T

cooperative, or joint venture when the partners, shareholders, or members are subject to such tax; and

(21) Year means the taxable year of the taxpayer.

Source: Laws 2000, LB 936, § 3; Laws 2005, LB 274, § 281.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-5404 Employee of qualified employee leasing company; how treated.

An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Rural Economic Opportunities Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 2000, LB 936, § 4.

77-5405 Incentives; application; fee; approval; written agreement.

(1) In order to use the incentives in the Rural Economic Opportunities Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment, wages, and investment for a qualified business in Nebraska;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and define a project;

(c) If more than one location within the state is involved, sufficient documentation to show that the employment, wages, and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision; and

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Nebraska Incentives Fund.

The application and all supporting information shall be confidential except for the name, location, and qualification level of approved projects and the information required to be reported by section 77-5412.

(3) The Tax Commissioner shall approve the application only if it satisfactorily meets the following conditions:

(a) Defines a project in one or more qualified business activities in the state;

(b) Shows that the project will result in (i) the hiring of a number of new employees equal to at least one-half of one percent of the labor force in the county or counties in which the project will be located, (ii) the paying of annual wages to the number of new employees that will average at least the qualifying wage, and (iii)(A) for a county or counties with a labor force greater than three thousand, the investment in qualified property of at least one hundred thousand dollars times one-half of one percent of the labor force in the county or counties in which the project will be located rounded to the nearest whole number or

(B) for a county or counties with a labor force of three thousand or less, the investment in qualified property of at least fifty thousand dollars times one-half of one percent of the labor force in the county or counties in which the project will be located rounded to the nearest whole number; and

(c) Contains plans for achieving the required levels of employment, wages, and investment for the project prior to the end of the second year after the year in which the application is submitted and maintaining the required levels of employment, wages, and investment for the entitlement period.

(4) After approval, the taxpayer and Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Rural Economic Opportunities Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment, wages, and investment required by the act for the project based on the date of the application;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) That the required levels of employment, wages, and investment shall be achieved and maintained throughout the entitlement period or any incentives used will be subject to recapture.

(5) The incentives contained in section 77-5407 shall be in lieu of the tax credits allowed by sections 77-27,188 and 77-4105 for any project. Any employment, wages, or investment which is eligible for credits under the act shall be subtracted from the increases computed for determining the benefits under sections 77-27,188 and 77-4105.

(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment, new wages, or new investment shall be included in more than one project for either the meeting of the employment, wages, or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, the taxpayer shall specify in which project the employment, wages, and investment belong.

Source: Laws 2000, LB 936, § 5; Laws 2008, LB914, § 20.

77-5406 Transactions and activities not eligible for incentives.

The following transactions or activities shall not create any credits or allow any benefits under the Rural Economic Opportunities Act:

(1) The acquisition of a business which is continued by the taxpayer and which was operated in this state during three hundred sixty-six days prior to the date of application or date of acquisition, whichever is later. All employees of the acquired business during such period shall be considered base-year employees, and the compensation paid during the base year or the year before

acquisition, whichever is later, shall be the base-year compensation. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another when the business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such period shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the property was first placed in service in this state after the date of application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required employment, wages, and investment levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer; and

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose other than the reduction of taxes and does not result in increased economic activity in the state.

Source: Laws 2000, LB 936, § 6.

77-5407 Credits authorized.

Any taxpayer who qualifies for the incentives by adding the number of employees, wages, and investment required in section 77-5405 shall be entitled to:

(1) A credit equal to five percent of the amount by which the total compensation paid during the year exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees. For the computation of such credit, average compensation means the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(2) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (1) and (2) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment, wages, and investment. The credits prescribed in subdivision (2) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment, wages, and investment are met.

Source: Laws 2000, LB 936, § 7.

77-5408 Credits; how used.

(1) The credits prescribed in section 77-5407 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by the Nebraska Revenue Act of 1967.

(2) The credits may be used as allowed in subsection (1) of this section and shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(3) The credits may be carried over until fully used, except that credits may not be carried over more than three years after the end of the entitlement period.

Source: Laws 2000, LB 936, § 8.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5409 Recapture or disallowance of credits; procedure.

(1) If the taxpayer fails either to meet the required levels of employment, wages, or investment for the applicable project by the end of the second year after the end of the year the application was submitted for such project or to use such project in a qualified business at employment, wages, and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Rural Economic Opportunities Act shall be recaptured or disallowed.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a taxpayer who failed to meet the required levels within the required time period, any reduction in the corporate income tax arising from the use of credits prescribed in section 77-5407 shall be deemed an underpayment of the income tax and shall be immediately due and payable; and

(b) In the case of a taxpayer who failed to maintain the project at the required levels of employment, wages, and investment for the entire entitlement period, any reduction in tax allowed because of the use of a credit allowed under section 77-5407 shall be partially recaptured from the taxpayer and any carryovers of credits shall be partially disallowed. One-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment, wages, or investment.

(3) Any reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(4) Notwithstanding any other limitations contained in the laws of this state, collections of any taxes deemed to be underpayments by this section shall be allowed for a period of ten years after the signing of the agreement or three years after the end of the entitlement period, whichever is later.

(5) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the act unless the recapture was in error.

(6) The recapture required by this section shall not occur if the failure to maintain the required levels of employment, wages, or investment was caused by an act of God or national emergency.

Source: Laws 2000, LB 936, § 9.

77-5410 Incentives; transferable; when; effect.

(1) The incentives allowed under the Rural Economic Opportunities Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a subchapter T cooperative, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-5409; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer by the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 2000, LB 936, § 10.

77-5411 Application; time of filing.

Any complete application filed on or after July 13, 2000, shall be considered a valid application on the date submitted for the purposes of the Rural Economic Opportunities Act.

Source: Laws 2000, LB 936, § 11.

77-5412 Report; contents.

(1) The Tax Commissioner shall submit an annual report to the Legislature no later than June 30 of each year.

(2) The report shall state by industry group (a) the credits earned, (b) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (c) the number of jobs created, (d) the total number

of employees employed by taxpayers at qualifying projects on the last day of the calendar quarter prior to the application date and the total number of employees employed by the taxpayers for the projects on subsequent reporting dates, (e) the expansion of capital investment, (f) the estimated wage levels of jobs created subsequent to the application date, (g) the total number of qualified applicants, (h) the projected future state revenue gains and losses, and (i) the credits outstanding.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2000, LB 936, § 12.

77-5413 Application; filing deadline.

There shall be no project applications filed on or after July 1, 2004, except that all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

Source: Laws 2000, LB 936, § 13.

77-5414 Rules and regulations.

The Tax Commissioner may adopt and promulgate all rules and regulations necessary to carry out the Rural Economic Opportunities Act.

Source: Laws 2000, LB 936, § 14.

ARTICLE 55

INVEST NEBRASKA ACT

Section

- 77-5501. Act, how cited.
- 77-5502. Policy.
- 77-5503. Definitions, where found.
- 77-5504. Additional definitions.
- 77-5505. Agreement, defined.
- 77-5506. Base year, defined.
- 77-5507. Base-year employee, defined.
- 77-5508. Board, defined.
- 77-5509. Company, defined.
- 77-5510. Company training program, defined.
- 77-5511. Company workplace safety program, defined.
- 77-5512. Compensation, defined.
- 77-5513. Educational institution training program, defined.
- 77-5514. Employee, defined.
- 77-5515. Employee benefit program, defined.
- 77-5516. Entitlement period, defined.
- 77-5517. Equivalent employees, defined.
- 77-5518. Genetic information, defined.
- 77-5519. Genetic test, defined.
- 77-5520. Investment, defined.
- 77-5521. Nebraska average annual wage, defined.
- 77-5522. Number of new employees, defined.
- 77-5523. Project, defined.
- 77-5524. Project year, defined.
- 77-5525. Qualified business, defined.
- 77-5526. Qualified employee leasing company, defined.
- 77-5527. Qualified property, defined.
- 77-5528. Related persons, defined.
- 77-5529. Start date, defined.

Section

- 77-5530. Year, defined.
- 77-5531. Wage benefit credit; calculation; use.
- 77-5532. Refund; interest disallowed.
- 77-5533. Alternate investment tax credit; use.
- 77-5534. Application; contents; fee; confidentiality.
- 77-5535. Board; quorum; meetings; procedures.
- 77-5536. Application; approval; procedure.
- 77-5537. Employment practices prohibited.
- 77-5538. Tax credit; recapture or disallowance; interest and penalties.
- 77-5539. Transfer of project.
- 77-5540. Transactions and activities excluded.
- 77-5541. Rules and regulations.
- 77-5542. Report; contents.
- 77-5543. Filing of applications; limitation.
- 77-5544. Audit; costs; confidentiality; violation; penalty.

77-5501 Act, how cited.

Sections 77-5501 to 77-5544 shall be known and may be cited as the Invest Nebraska Act.

Source: Laws 2001, LB 620, § 1.

77-5502 Policy.

It is the policy of this state to enact appropriate legislation to encourage new businesses to relocate to and existing businesses to expand in Nebraska and to provide appropriate inducements to encourage new and existing businesses to do so. The goals of the policy, to be achieved in a manner that is both fiscally sound and effective, are (1) to aid in the economic and population growth of the state and (2) to assist in the creation of better jobs for the residents of the state.

Source: Laws 2001, LB 620, § 2.

77-5503 Definitions, where found.

For purposes of the Invest Nebraska Act, the definitions found in sections 77-5504 to 77-5530 shall be used.

Source: Laws 2001, LB 620, § 3.

77-5504 Additional definitions.

Any term defined in the Nebraska Revenue Act of 1967 and used in the Invest Nebraska Act has the same meaning in the Invest Nebraska Act unless the context requires a different meaning.

Source: Laws 2001, LB 620, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5505 Agreement, defined.

Agreement means the agreement between the company and the state.

Source: Laws 2001, LB 620, § 5.

77-5506 Base year, defined.

Base year means the year immediately preceding the year in which the start date occurs.

Source: Laws 2001, LB 620, § 6.

77-5507 Base-year employee, defined.

Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the project.

Source: Laws 2001, LB 620, § 7.

77-5508 Board, defined.

Board means the Invest Nebraska Board, which shall consist of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council.

Source: Laws 2001, LB 620, § 8.

77-5509 Company, defined.

Company means (1) any person subject to sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, (2) any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes, (3) any cooperative exempt from such taxes under section 521 of the Internal Revenue Code of 1986, as amended, and (4) any limited cooperative association.

Source: Laws 2001, LB 620, § 9; Laws 2007, LB368, § 138.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5510 Company training program, defined.

Company training program means any program developed or operated by or for the benefit of the company which screens, trains, or educates recruits, potential employees, or actual employees of the company, or any combination thereof, in order to enable the recruits or employees to perform employment activities at the project and includes recruitment, screening, customized training, job-specific training, on-the-job training, and generalized training programs.

Source: Laws 2001, LB 620, § 10.

77-5511 Company workplace safety program, defined.

Company workplace safety program means any program used by the company to further the workplace safety of employees employed at the project.

Source: Laws 2001, LB 620, § 11.

77-5512 Compensation, defined.

Compensation means the wages and other payments subject to withholding for federal income tax purposes.

Source: Laws 2001, LB 620, § 12.

77-5513 Educational institution training program, defined.

Educational institution training program means any training program established by or conducted by any public or private educational institution that provides training or education for recruits, potential employees, or actual employees of the company, or any combination thereof, with regard to employment or potential employment at the project.

Source: Laws 2001, LB 620, § 13.

77-5514 Employee, defined.

Employee means a person employed at the project. An employee of a qualified employee leasing company shall be deemed to be an employee of the client-lessee if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 2001, LB 620, § 14.

77-5515 Employee benefit program, defined.

Employee benefit program means health and dental benefits, dependent care, life insurance, disability insurance, or relocation costs provided to or for the benefit of employees, which programs are qualified under the Internal Revenue Code of 1986, as amended.

Source: Laws 2001, LB 620, § 15.

77-5516 Entitlement period, defined.

(1) Entitlement period is ten years, meaning the year during which the required increases in employment and investment were met or exceeded or that meets the conditions in subsection (2) of this section and the next one hundred eight months.

(2) Solely for the purpose of determining the first year of the entitlement period, if before the end of a year a company has reached the required level of new investment and has created the number of new jobs at the project equal to at least the applicable required level of new employment, but has not yet reached the required number of new employees because such employees have not been employed at the project yet for a full year, then the company may elect on its tax return for such year to be considered to have met the required levels of employment and investment during such year.

Source: Laws 2001, LB 620, § 16.

77-5517 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year.

Source: Laws 2001, LB 620, § 17.

77-5518 Genetic information, defined.

Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test.

Source: Laws 2001, LB 620, § 18.

77-5519 Genetic test, defined.

Genetic test means the analysis of human DNA, RNA, and chromosomes and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis, including a chemical analysis, of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

Source: Laws 2001, LB 620, § 19.

77-5520 Investment, defined.

Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building may be included by the company in the computation.

Source: Laws 2001, LB 620, § 20.

77-5521 Nebraska average annual wage, defined.

Nebraska average annual wage means the most recent average annual wage paid by all employers in this state for the most recent calendar year as reported by the Department of Labor on or before the July 1 immediately prior to the beginning of the particular year the company applied for benefits for which such determination applies.

Source: Laws 2001, LB 620, § 21.

77-5522 Number of new employees, defined.

Number of new employees means the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year.

Source: Laws 2001, LB 620, § 22.

77-5523 Project, defined.

Project means a project described in the Invest Nebraska Act and approved by the board.

Source: Laws 2001, LB 620, § 23.

77-5524 Project year, defined.

Project year means any year or portion of a year during the entitlement period of the project.

Source: Laws 2001, LB 620, § 24.

77-5525 Qualified business, defined.

Qualified business means any business engaged in the activities listed in subdivisions (1) through (5) of this section or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

- (1) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;
- (2) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, shall only include financial services provided by a financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;
- (3) The assembly, fabrication, manufacture, or processing of tangible personal property;
- (4) The administrative management of any activities, including headquarter facilities, relating to such activity; or
- (5) Any combination of the activities listed in this section.

Source: Laws 2001, LB 620, § 25.

77-5526 Qualified employee leasing company, defined.

Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees.

Source: Laws 2001, LB 620, § 26.

77-5527 Qualified property, defined.

Qualified property means any tangible property of the type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property that will be located and used at the project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the qualified company to another person.

Source: Laws 2001, LB 620, § 27.

77-5528 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under section 267(b) and (c) of the Internal Revenue Code of 1986, as amended, or section 707(b) of the code.

Source: Laws 2001, LB 620, § 28.

77-5529 Start date, defined.

Start date means the first date after the date of the application on which a qualified investment, that is either all or a part of a building in the project, is placed in service by the owner. For purposes of this definition, placed in service has the same meaning as that used for the Internal Revenue Code of 1986, as amended.

Source: Laws 2001, LB 620, § 29.

77-5530 Year, defined.

Year means the taxable year of the company.

Source: Laws 2001, LB 620, § 30.

77-5531 Wage benefit credit; calculation; use.

(1) The policy of the state in adopting the Invest Nebraska Act is to encourage new businesses to relocate to and existing businesses to expand in Nebraska and to provide appropriate inducements to encourage new and existing businesses to do so. Depending on the nature of the company and its employees, the state recognizes the inducements contained in the act may be more appropriate and administratively more convenient and efficient for the state, the company, and the employees, if the wage benefit credit is charged against the company's income tax or the company's withholding tax rather than individually computed and used against each employee's income tax. Therefore, if the company uses the wage benefit credit for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company as otherwise provided for in the act and if the board has approved the project application, then after entering into an agreement with the state, the company shall be allowed a wage benefit credit to be determined, used, and calculated as provided in this section.

(2) In order to help relieve the burden to government and to help promote the general welfare of citizens, the wage benefit credit used by the company shall be paid or applied by the company for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company. Such use of the wage benefit credit is declared as a matter of policy to be for a public purpose. Nothing in this section shall be construed to limit the right of an employee or employees subject to a collective bargaining agreement to negotiate relative to such programs.

(3) The wage benefit credit shall be an amount equal to the percentage specified in subsection (4) of this section multiplied by the amount of the total compensation paid during each project year to employees of the company while employed at the project, other than base-year employees, who have been paid

compensation for such year by the company of at least the minimum amount required for such project under section 77-5536.

(4) The percentage used to determine the wage benefit credit shall be:

If the average compensation for the project year is over	But not over	Then the credit percentage shall be
\$0	\$20,000	0%
\$20,000	\$30,000	3%
\$30,000	\$40,000	4%
\$40,000		5%

For purposes of determining the credit percentage for each respective project year, average compensation means the total compensation paid during the project year to all employees employed at the project regardless of their level of compensation divided by the total number of equivalent employees employed at the project during the project year regardless of their level of compensation.

(5) The wage benefit credit shall be allowed for each project year.

(6) The wage benefit credit shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credit may be used to reduce the company's Nebraska income tax liability.

(7) The company shall also be entitled to use all or such part as determined by the company of the wage benefit credits previously established under this section to reduce the company's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 for succeeding years to the extent such liability is attributable to employees who are employed at the project covered by the agreement other than base-year employees. To the extent of the credit so claimed, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. In order to help achieve the public purposes of the Invest Nebraska Act, the use by the company of the wage benefit credits to reduce such income tax withholding tax liability shall not change the amount that otherwise would be reported by the company to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

(8) The use of the wage benefit credit total as a credit against income tax withholding tax liability for the project per year shall not exceed five percent of the total compensation paid by the company in the year to all employees, other than base-year employees, for services rendered in connection with the project. If such use of the wage benefit credit exceeds such amount, the excess shall be returned to the Department of Revenue in the manner provided in section 77-2756.

(9) The credits shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit can be applied under this section. The credit may be carried over until fully utilized, except that the credit may not be carried over more than eight years after the end of the entitlement period. If a credit is subsequently recaptured under section 77-5538, the credit shall be treated as if it had never been allowed.

(10) The wage benefit credit shall not be transferable, except that any credit to be taken against the income tax liability of the company and allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, a joint venture, or an estate or trust may be distributed to the partners, members, shareholders, patrons, owners, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

Source: Laws 2001, LB 620, § 31.

77-5532 Refund; interest disallowed.

Interest shall not be allowable on any refunds paid because of benefits earned under the Invest Nebraska Act.

Source: Laws 2001, LB 620, § 32.

77-5533 Alternate investment tax credit; use.

(1) A company which has signed an agreement under section 77-5536 may receive, in lieu of any wage benefit credit otherwise allowed by the Invest Nebraska Act, the incentive provided in this section if the agreement is for a project which will result in the investment in qualified property of at least two hundred million dollars and the hiring of at least five hundred new employees. Such two hundred million dollar investment and hiring of at least five hundred new employees shall be considered the required levels of investment and employment for this section and for the recapture of the incentives of this section only.

(2) When the company has met the required levels of employment and investment contained in this section, the company shall be entitled to either the wage benefit credit provided in section 77-5531 or an investment tax credit equal to fifteen percent of the investment made in qualified property at the project. The company shall be required to state which option it will seek benefits under in the application for benefits under the act.

(3) The investment tax credit prescribed in this section shall be allowable for investments made during each year of the entitlement period that the company is at or above the required levels of employment and investment. The credit shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(4) The investment tax credit prescribed in this section shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used to reduce the company's Nebraska income tax liability. The credits shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section. The credit may be carried over until fully utilized, except that the credit may not be carried over more than eight years after the end of the entitlement period. If a credit is subsequently recaptured under section 77-5538, the credit shall be treated as if it had never been allowed.

(5) The investment tax credit shall not be transferable, except that any credit to be taken against the income tax liability of the company and allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, a joint venture, or an estate or trust may be distributed to the partners,

members, shareholders, patrons, owners, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

Source: Laws 2001, LB 620, § 33.

77-5534 Application; contents; fee; confidentiality.

(1) In order for the company to be eligible for the wage benefit credit or the investment tax credit, as applicable, the company shall file an application for an agreement with the board.

(2) The application shall contain:

(a) The exact name of the company and any related companies which will be included in the project;

(b) A statement describing, in detail, the nature of the company's business, including the products sold and respective markets;

(c) A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements and the expected start date for the project;

(d) A request that the company be considered for approval under the Invest Nebraska Act;

(e) If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

(f) A copy of the company's authorization for the project;

(g) A copy of the company's most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number;

(h) The expected number of base-year employees, the expected number of new employees, the expected timing of the hiring of the new employees, the anticipated timing and amounts of new investment in buildings and equipment, and the average salaries expected by category for the new employees to be employed at the project;

(i) A copy of the written policy of the company which prohibits the company from requiring as a condition of employment or promotion at the project that an employee or an individual applying for employment at the project submit to a genetic test or provide genetic information outside of the scope of normal blood testing; and

(j) A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue. The fee shall be remitted to the Nebraska Incentives Fund.

(3) Any representations made by the company, or the company's representatives, during the meeting before the board shall become a part of the application. The application and all supporting information and information received during a closed session of the board shall be confidential except for the name of the company, the location of the project, the amounts of increased employment and investment, and whether the application has been approved. The confidential information contained in an application shall be discussed only in a closed session of the board, unless the company waives its right to confidentiality in writing. The members of the board will respect the confidentiality of the information received and will not disclose any confidential information regard-

ing the company to any person other than the representatives of the company, the Tax Commissioner, or other employees of the Department of Revenue, except as specifically provided in the Invest Nebraska Act. Any applications, or parts of applications, provided to the members of the board shall be numbered copies and shall be delivered to the offices of the board members in a double envelope. All applications, or parts of applications, shall be returned to the department at the conclusion of the meeting.

Source: Laws 2001, LB 620, § 34; Laws 2008, LB914, § 21.

77-5535 Board; quorum; meetings; procedures.

(1) Any two members of the board shall constitute a quorum for the transaction of the business of the board. The Governor shall be the chairperson of the board. The address of the board is the Department of Revenue.

(2)(a) The Tax Commissioner is designated as the secretary of the board with the following responsibilities: The scheduling of a meeting when an application is to be considered; the publishing of the notices of the meeting according to the Invest Nebraska Act; the keeping of the minutes of the meetings and other records of the board; the notification of the applicant of the decision of the board; the receiving and entering into the record any written testimony concerning an application; and the consenting on behalf of the board to an extension of time within which the board is to make a decision.

(b) The Tax Commissioner shall give at least ten days' notice of meetings by publication in at least six newspapers across the state. The Tax Commissioner shall also give notice of meetings by publication in a newspaper that is local to the project area. A copy of the notice shall be posted in the State Capitol and a state office building in Lincoln. A copy of the notice shall be sent to the company. A news release shall be distributed by the Tax Commissioner.

(c) The Tax Commissioner shall notify the company in writing as to whether the board has approved or not approved the application. The board shall decide and such notice shall be mailed within sixty days after receipt of the application, unless such time is extended by mutual written consent of the Tax Commissioner and the company.

(3) The meeting of the board shall be recorded by a court reporter. The closed portion of the meeting shall be also recorded, and the record of that portion shall be sealed. The only persons who may attend the closed session of the board are the members of the board, the representatives of the company, other persons invited at the request of the company, the Tax Commissioner, other employees of the Department of Revenue, and the court reporter. Other persons, as necessary, may be invited by the board for the purpose of providing specific, confidential information. However, they may only attend the portion of the meeting necessary to provide the information requested by the board.

Source: Laws 2001, LB 620, § 35.

77-5536 Application; approval; procedure.

(1) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Invest Nebraska Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount, and types of investment in qualified property to be made at the project; and

(d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(2) The weight given to each factor shall be determined by each board member individually for each application. The decision of the board shall be made in open meeting and is not confidential.

(3) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the purposes contained in section 77-5502 in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least ten million dollars and the hiring of a number of new employees of at least twenty-five. The investment and new employees for such project shall count towards attaining and maintaining such thresholds only if the qualified property is located in, and the employee's principal place of employment for the company is located in, one or more Nebraska counties having a population of less than one hundred thousand individuals as of the end of the base year. For this purpose, the population shall be conclusively determined by the Department of Revenue, (b) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred, (c) the investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty, or (d) the investment in qualified property of at least two hundred million dollars and the hiring of a number of new employees of at least five hundred.

(4) The new investment and employment shall occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(5)(a) An individual employed by the company, other than a base-year employee, shall be considered an employee for purposes of attaining and maintaining the required number of new employees and shall be considered an employee whose compensation is included in the calculation of the wage benefit credit only if the compensation paid by the company to such employee for the year is (i) for companies qualifying under the ten million dollar investment and twenty-five new employee threshold under subdivision (3)(a) of this section, at least one hundred percent of the Nebraska average annual wage, (ii) for companies qualifying under the fifty million dollar investment and five hundred new employee threshold under subdivision (3)(b) of this section or the one hundred million dollar investment and two hundred fifty new employee threshold under subdivision (3)(c) of this section, at least one hundred ten percent of the Nebraska average annual wage; and (iii) for the companies applying under the two hundred million dollar investment and five hundred new employee threshold of subdivision (3)(d) of this section, at least one hundred twenty percent of the Nebraska average annual wage.

(b) For the purposes of subdivision (a) of this subsection, compensation paid by the company to such employee for the year shall be the amount paid for the entire year for regular hours worked, not including overtime, bonuses, or any other irregular payments. If the employee works for less than a year, the compensation paid will be annualized solely for the purpose of comparison with the Nebraska average annual wage.

(6) If the project application is approved by the board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner. In the agreement the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit or the investment tax credit, as applicable, as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be deemed a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment and investment have been attained and maintained. The agreement shall contain provisions to require verification that the required levels have been attained before any credits are used. The agreement shall contain such other conditions or requirements, if any, for the company as established by the department to carry out the purposes of the act.

(7) Any investment or employment which is eligible for benefits under the Quality Jobs Act shall not be included in a project under the Invest Nebraska Act. A project under the Invest Nebraska Act may involve the same location as another project under the Invest Nebraska Act or under the Quality Jobs Act, except that no new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of tax incentives. When projects overlap and the project application does not otherwise clearly specify, the company shall specify in which project the employment and investment belongs.

(8) For applications for projects that are not receiving benefits under the Ethanol Development Act or applications filed before April 16, 2004, any employment or investment which is eligible for benefits under the Invest Nebraska Act may also be included in, and create incentives for, a project under the Employment and Investment Growth Act, the Nebraska Advantage Rural Development Act, and the Rural Economic Opportunities Act, to the extent otherwise allowable under such respective acts. For applications filed on or after April 16, 2004, a taxpayer that is receiving benefits under the Ethanol Development Act may not receive benefits under the Invest Nebraska Act for the project that generates the incentive under the Ethanol Development Act.

(9) In order to provide the degree of certainty necessary to enable a project to proceed, and notwithstanding any provision of Nebraska statute or common law to the contrary, to the extent any such right of appeal or challenge otherwise exists, no appeal or challenge of the board's decision by any person shall be filed after the expiration of thirty days after the board's decision.

Source: Laws 2001, LB 620, § 36; Laws 2004, LB 479, § 10; Laws 2005, LB 312, § 58.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Ethanol Development Act, see section 66-1330.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Quality Jobs Act, see section 77-4901.

Rural Economic Opportunities Act, see section 77-5401.

77-5537 Employment practices prohibited.

A company entering into an agreement under the Invest Nebraska Act is prohibited from requiring as a condition of employment or promotion at the project that an employee or an individual applying for employment at the project submit to a genetic test or provide genetic information outside the scope of normal blood testing.

Source: Laws 2001, LB 620, § 37.

77-5538 Tax credit; recapture or disallowance; interest and penalties.

(1) If the company fails to utilize a project in a qualified business at or above the required levels of employment and investment required in the Invest Nebraska Act for the entire entitlement period, a portion of the wage benefit credit or investment tax credit shall be recaptured directly by the state from the company or shall be disallowed. In no event shall any wage benefit credit be required to be paid back directly or indirectly by the employees, but instead shall be paid by the company.

(2) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period the recapture or disallowance shall be as follows: (a) No wage benefit credits or investment tax credits shall be allowed to the company for the actual year or years in which the required levels of employment or investment were not maintained; (b) for wage benefit credits or investment tax credits used, one-tenth of the credits shall be recaptured from the company for each year the required levels of employment or investment were not maintained; and (c) as to wage benefits credits or investment tax credits remaining at the end of the entitlement period, one-tenth of the credits shall be disallowed to the company for each year the required levels of employment or investment were not maintained in previous years.

(3)(a) Any amounts required to be recaptured shall be deemed to be an underpayment of tax, shall be immediately due and payable, and shall constitute a lien on the assets of the company. When wage benefit credits or investment tax credits were received in more than one year, the credits received in the most recent year shall be recovered first and then the credits received in earlier years up to the extent of the required recapture.

(b) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, interest accrues from the due date for the return on which the credits being recaptured were used.

(c) Penalties for underpayment of withholding or income tax, as appropriate, do not accrue unless repayment is not made within ninety days after the requirement for recapture or disallowance becomes known or should have become known to the company.

(4) The recapture or disallowance required by this section may be waived by the board if the board finds the failure to attain or maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

(5) When recapture occurs with regard to any partnership, limited liability company, subchapter S corporation, joint venture, cooperative, or estate or trust, the partnership, limited liability company, subchapter S corporation, joint venture, cooperative, or estate or trust shall be liable for payment of the required recapture.

Source: Laws 2001, LB 620, § 38.

77-5539 Transfer of project.

A project covered by an agreement may be transferred in its entirety by sale or lease to another person or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended. The acquiring persons shall be entitled to the same benefits as the original company and shall be subject to the same obligations, including recapture and disallowance of benefits received either before or after the transfer, as the original company would have been if the project was not transferred.

Source: Laws 2001, LB 620, § 39.

77-5540 Transactions and activities excluded.

The following transactions or activities shall not create an investment, result in an increase in the number of new employees, or create any wage benefit credits or investment tax credits under the Invest Nebraska Act except as specifically allowed by this section:

(1) The acquisition of a business located in this state which is continued by the company and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All of the employees of the acquired business during such period shall be considered base-year employees. Any investment in the acquisition of such business shall be deemed to have been made before the date of application;

(2) The moving of a business from one location in this state to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days who become employed at the project shall be deemed base-year employees;

(3) The purchase or lease of any property which was previously owned by the company or a related person. The first purchase by either the company or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of the meeting of any required levels of investment under the agreement;

(5) Any purchase or lease of property from a related person, except that the company will be allowed benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the company; and

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in this state.

Source: Laws 2001, LB 620, § 40.

77-5541 Rules and regulations.

The Department of Revenue, in consultation with the Governor and the Department of Economic Development, may, but is not required to, adopt and promulgate all rules and regulations determined by the Tax Commissioner in his or her discretion to be necessary or appropriate to carry out the purposes of the Invest Nebraska Act.

Source: Laws 2001, LB 620, § 41.

77-5542 Report; contents.

(1) The Department of Revenue shall submit an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits and investment tax credits allowed under the Invest Nebraska Act, (b) the number of direct jobs created at the projects, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the projects.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2001, LB 620, § 42; Laws 2007, LB223, § 28.

77-5543 Filing of applications; limitation.

(1) Except as provided in subsection (2) of this section, there shall be no project applications filed on or after June 1, 2005, without further authorization of the Legislature, except that all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) There shall be no project applications for projects described in subdivision (3)(d) of section 77-5536 filed on or after October 1, 2002, without further authorization of the Legislature, except that all such project applications and all such project agreements pending, approved, or entered into before such date shall continue in full force and effect.

Source: Laws 2001, LB 620, § 43.

77-5544 Audit; costs; confidentiality; violation; penalty.

(1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period and there are sufficient companies qualified for benefits

so as not to reveal confidential information that allows identification of any company, there shall be an audit to determine compliance with the Invest Nebraska Act. The Tax Commissioner shall contract with a qualified independent accounting firm to conduct the audit. The cost of the audit shall be paid from funds appropriated to the Department of Revenue by the Legislature. Such cost shall include, in addition to the fees and costs of such independent firm, the incremental costs to the department to comply with this section, as determined by the department. If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department. A qualified independent firm shall be a firm that meets all of the following requirements: (a) The firm must be an accounting firm employing or comprised of at least ten certified public accountants who are licensed under the Public Accountancy Act to practice accounting and auditing in Nebraska; (b) the firm, at the time of the beginning of such audit, and for the period of at least twenty-four months before such audit commences, has not performed any services for any of the companies that at such time have filed applications under the Invest Nebraska Act, and the firm must agree not to engage in and to withdraw from representing any companies that file applications after such audit commences and before the audit report is issued; (c) the firm must have executed such audit contract as required by the Tax Commissioner; and (d) the firm, and all such accountants and personnel of such firm who will be involved in the audit, must have executed such confidentiality and nondisclosure agreements as required by the Tax Commissioner. In hiring such firm, the Tax Commissioner shall comply with all Nebraska laws pertaining to the selection and hiring of outside private sector services.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created, by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

(3) After the audit is conducted, and on or before January 1, 2005, and each January 1 every five years thereafter, the auditor shall issue a report to the Legislature and Governor detailing the results of the audit. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of the company. The

report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not reveal any confidential information that allows identification of the company. For purposes of this section, confidential information includes all information that is (a) referred to as confidential in section 77-5534, (b) restricted from disclosure or treated as confidential under any federal or state law, or (c) provided by the company to the department in connection with the company's project under the act. The report shall detail all assumptions, methods, or models that were used in performing the analysis and shall report information by industry group or expenditure category so that further analysis can be performed. The firm shall have access to all records of the department with regard to the credits granted under the act and the companies receiving such credits. Such records shall remain confidential in the hands of the firm conducting the audit and shall not be revealed to any person that is not employed by the department or the firm conducting the audit. No officer or employee of the firm conducting the audit shall disclose any information to any other person if such information is protected by federal or state confidentiality laws. Notwithstanding any other provision of this section to the contrary, neither the independent accounting firm nor any of its personnel shall be provided by the department with any confidential information except to the extent and under conditions when the department is permitted without penalty to do so under applicable federal or state laws.

(4) All information provided by the department to the independent accounting firm shall be examined only on the premises of the department and shall be stored in a secure place. The firm shall make no copies of such information. Any qualified independent accounting firm, or any personnel of the firm, which violates this section shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution.

(5) Nothing in this section shall be construed to require the company to provide, or require the department to obtain from the company, any information beyond that required as part of the application or beyond that required by the department to confirm the company is entitled to the benefits of the act or to obtain the information required in subsection (2) of this section. The independent accounting firm shall not request any information from the company or its personnel. The independent accounting firm shall be permitted and expected to obtain additional outside public information available from sources outside of the company and the department in order to comply with the requirements for the report if copies of all such data, information, and sources are made available to the public or included with the report.

(6) Information obtained in connection with the audit from either the department or the company is confidential and is not discoverable or admissible in evidence in any civil action, and no department or company personnel shall be compelled to testify in regard thereto. Such information may be discovered and be admissible, and testimony compelled in regard thereto, by the department or by the company in an action relating to the determination of whether the company is entitled to the benefits of the act.

Source: Laws 2001, LB 620, § 44; Laws 2006, LB 1003, § 11.

Cross References

Public Accountancy Act, see section 1-105.

ARTICLE 56

TAX AMNESTY PROGRAM

Section

77-5601. Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

77-5601 Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

(1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from instate taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Any money in the funds available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Source: Laws 2004, LB 1017, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Revenue Act of 1967, see section 77-2701.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 57

NEBRASKA ADVANTAGE ACT

Section	
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77-5701 Act, how cited.

Sections 77-5701 to 77-5735 shall be known and may be cited as the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 23; Laws 2008, LB895, § 6; Laws 2009, LB403, § 10.

77-5702 Legislative findings.

The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska, retain existing businesses and aid in their

expansion, promote the creation and retention of new jobs in Nebraska, and attract and retain investment capital in the State of Nebraska.

Source: Laws 2005, LB 312, § 24.

77-5703 Definitions, where found.

For purposes of the Nebraska Advantage Act, the definitions found in sections 77-5704 to 77-5721 shall be used.

Source: Laws 2005, LB 312, § 25; Laws 2008, LB895, § 7.

77-5704 Applicability of other definitions.

Any term shall have the same meaning as used in Chapter 77, article 27.

Source: Laws 2005, LB 312, § 26.

77-5705 Base year, defined.

Base year means the year immediately preceding the year of application.

Source: Laws 2005, LB 312, § 27.

77-5706 Base-year employee, defined.

Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project.

Source: Laws 2005, LB 312, § 28.

77-5707 Compensation, defined.

Compensation means the wages and other payments subject to withholding for federal income tax purposes.

Source: Laws 2005, LB 312, § 29.

77-5707.01 County average weekly wage, defined.

County average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in the county as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2008, LB895, § 8.

77-5708 Entitlement period, defined.

Entitlement period, for a tier 1 or tier 3 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application or the sixth year after the year the required increases were met or exceeded, whichever is sooner. Entitlement period, for a tier 2, tier 4, or tier 5 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded. Entitlement period, for a tier 6 project, means the year during which the required increases in employment and investment were met or exceeded and

each year thereafter until the end of the ninth year after the year the required increases were met or exceeded.

Source: Laws 2005, LB 312, § 30; Laws 2008, LB895, § 9.

77-5709 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year.

Source: Laws 2005, LB 312, § 31.

77-5710 Investment, defined.

Investment means the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

Source: Laws 2005, LB 312, § 32.

77-5711 Motor vehicle, defined.

Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in the Motor Vehicle Registration Act and subject to registration for operation on the highways.

Source: Laws 2005, LB 312, § 33.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-5712 Nebraska average weekly wage, defined.

Nebraska average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2005, LB 312, § 34; Laws 2008, LB895, § 10.

77-5713 Nebraska employee, defined.

Nebraska employee means an individual who is either a resident or partial-year resident of Nebraska.

Source: Laws 2005, LB 312, § 35.

77-5714 Number of new employees, defined.

(1) Number of new employees, for a tier 1, tier 2, tier 3, or tier 4 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid wages at a rate equal to at least sixty percent of the Nebraska average weekly wage for the year of application.

(2) Number of new employees, for a tier 6 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid at a rate equal to or greater than the tier 6 weekly required compensation for the year of application.

(3) Teleworkers working for wages or salaries in Nebraska from their residences for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

(4) Employees who work at a military installation in Nebraska for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

Source: Laws 2005, LB 312, § 36; Laws 2008, LB895, § 11; Laws 2009, LB164, § 3.

77-5715 Qualified business, defined.

(1) For a tier 2, tier 3, tier 4, or tier 5 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, data center, call center, or telemarketing;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(f) The sale of tangible personal property if the taxpayer derives at least seventy-five percent or more of the sales or revenue attributable to such activities relating to the project from sales to consumers who are not related persons and are located outside the state;

(g) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government;

(h) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet; or

(i) Any combination of the activities listed in this subsection.

(2) For a tier 1 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The assembly, fabrication, manufacture, or processing of tangible personal property;

(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government; or

(d) Any combination of activities listed in this subsection.

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.

(4) Except for business activity described in subdivision (1)(f) of this section, qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of (a) food prepared for immediate consumption or (b) tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Source: Laws 2005, LB 312, § 37; Laws 2007, LB223, § 29; Laws 2008, LB895, § 12; Laws 2009, LB164, § 4.

77-5716 Qualified employee leasing company, defined.

Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee.

Source: Laws 2005, LB 312, § 38.

77-5717 Qualified property, defined.

Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project. Qualified property does not include (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (2) property that is rented by the taxpayer qualifying under the Nebraska Advantage Act to another person. Qualified property of the taxpayer located at the residence of a teleworker working in Nebraska from his or her residence on tasks interdependent with the work performed at the project shall be deemed located and used at the project.

Source: Laws 2005, LB 312, § 39.

77-5718 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 40.

77-5719 Taxpayer, defined.

Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the code hold an ownership interest of ten percent or more.

Source: Laws 2005, LB 312, § 41; Laws 2006, LB 1003, § 12; Laws 2007, LB368, § 139.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5719.01 Tier 6 weekly required compensation, defined.

Tier 6 weekly required compensation means two hundred percent of the county average weekly wage for the county in which the project is located or one hundred fifty percent of the state average weekly wage, whichever is higher. If the project is located in more than one county, the higher county average weekly wage shall be used to determine the tier 6 weekly required compensation.

Source: Laws 2008, LB895, § 13.

77-5719.02 Wages, defined.

Wages means compensation.

Source: Laws 2008, LB895, § 14.

77-5720 Year, defined.

Year means the taxable year of the taxpayer.

Source: Laws 2005, LB 312, § 42.

77-5721 Year of application, defined.

Year of application means the year that a completed application is filed under the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 43.

77-5722 Qualified employee leasing company; employees; duty.

An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Nebraska Advantage Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 2005, LB 312, § 44.

77-5722.01 Employees; verification of status required; exclusion.

(1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the Nebraska Advantage Act prior to October 1, 2009.

Source: Laws 2009, LB403, § 11.

77-5723 Incentives; application; contents; fee; approval; agreements; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(6) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new

investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(7) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Source: Laws 2005, LB 312, § 45; Laws 2006, LB 1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22; Laws 2009, LB164, § 5.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Invest Nebraska Act, see section 77-5501.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Quality Jobs Act, see section 77-4901.

77-5724 Incentives; credits or benefits; limitation.

The following transactions or activities shall not create any credits or allow any benefits under the Nebraska Advantage Act except as specifically allowed by this section:

(1) The acquisition of a business after the date of application which is continued by the taxpayer as a part of the project and which was operated in this state during the three hundred sixty-six days prior to the date of acquisition. All employees of the entities added to the taxpayer by the acquisition during the three hundred sixty-six days prior to the date of acquisition shall be considered employees during the base year. Any investment prior to the date of acquisition made by the entities added to the taxpayer by the acquisition or any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in the state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(7) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 2005, LB 312, § 46.

Cross References

Ethanol Development Act, see section 66-1330.

77-5725 Tiers; requirements; incentives; enumerated.

(1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2015, without further authorization of the Legislature. All complete project applications filed on or before December 31, 2015, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2015. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, investment in qualified property of at least three million dollars and the hiring of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2015, without further authorization of the Legislature. All complete project applications filed on or before December 31, 2015, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2015. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees;

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in

section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, 2016. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new

employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year, divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.

(5) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(6) The credits prescribed in subsections (3), (4), and (5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(7) The credit prescribed in subsection (5) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(8)(a) A taxpayer who has met the required levels of employment and investment for a tier 4 or tier 6 project shall receive the incentive provided in this subsection. A taxpayer who has a project for an Internet web portal and who has met the required level of investment for a tier 5 project shall receive the incentive provided in this subsection for property in subdivision (8)(b)(ii) of this section. Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(b) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and

(v) For a tier 6 project, any other personal property located at the project.

(c) Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (8)(b)(i) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section, through the ninth December 31 after the first year any property included in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section qualifies for the exemption. In order to receive the property tax exemptions allowed by subdivision (8)(b) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor. In determining the eligibility of items of personal property for exemption, the Tax Commissioner is limited to the question of whether the property claimed as exempt by the taxpayer falls within the classes of property described in subdivision (8)(b) of this section. The determination of whether a taxpayer is eligible to obtain exemption for personal property based on meeting the required levels of investment and employment is the responsibility of the Tax Commissioner.

(9)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection.

(b) For tier 1, tier 2, tier 4, and tier 5, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the

Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006.

(c) For tier 6, beginning October 1, 2008, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2008 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2008.

(d) If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars.

(e) The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB 312, § 47; Laws 2006, LB 1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22; Laws 2009, LB164, § 6.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5726 Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.

(1)(a) The credits prescribed in section 77-5725 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (3) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year. The taxpayer may use the credit provided in subsection (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

For a tier 1, tier 2, tier 3, or tier 4 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees employed at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year.

For a tier 6 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year.

If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(d) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than one year past the end of the entitlement period for a tier 6 project.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Any refund claim for sales and use taxes on materials incorporated into real estate as a part of the project shall be filed by and the refund paid to the owner of the improvement to real estate. A refund claim for such materials purchased by a purchasing agent shall include a copy of the purchasing agent appointment, the contract price, and a certification by the contractor or repairperson of the percentage of the materials incorporated into the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be

refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB 312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23; Laws 2009, LB164, § 7.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5727 Recapture or disallowance of incentives.

(1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6) Any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be

allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB 312, § 49; Laws 2006, LB 1003, § 15; Laws 2008, LB895, § 18; Laws 2009, LB164, § 8.

77-5728 Incentives; transfer; when; effect.

(1) The incentives allowed under the Nebraska Advantage Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-5727. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, estate, or trust shall be liable for any repayment required by section 77-5727; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the

estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 2005, LB 312, § 50; Laws 2006, LB 1003, § 16; Laws 2007, LB368, § 140.

77-5729 Refunds; interest not allowable.

Interest shall not be allowable on any refunds paid because of benefits earned under the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 51.

77-5730 Application; valid; when.

Any complete application shall be considered a valid application on the date submitted for the purposes of the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 52.

77-5731 Reports.

(1) The Tax Commissioner shall submit an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the total number of employees employed in the state on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state on subsequent reporting dates, (i) the expansion of capital investment, (j) the estimated wage levels of jobs created under the act subsequent to the application date, (k) the total number of qualified applicants, (l) the projected future state revenue gains and losses, (m) the sales tax refunds owed, (n) the credits outstanding under the act, (o) the value of personal property exempted by class in each county under the act, (p) the value of property for which payments equal to property taxes paid were allowed in each county, and (q) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the Department of Revenue in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date

the agreement is executed for all agreements executed by December 31 of the prior year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the department, but not necessarily received, during the previous two calendar years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the total number of employees of these taxpayers employed in the state on the last day of the calendar quarter prior to the application date, the new jobs at the project for which credits have been granted, and the total number of employees employed in the state by these taxpayers on subsequent reporting dates; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 53; Laws 2008, LB895, § 19.

77-5732 Repealed. Laws 2008, LB 914, § 29.

77-5733 Rules and regulations.

The Tax Commissioner may adopt and promulgate all rules and regulations necessary to carry out the purposes of the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 55.

77-5734 Department of Revenue; estimate of sales tax refunds; duties.

The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales and use tax refunds to be paid under the Nebraska Advantage Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (5)(e) of section 77-5723. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic

Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Source: Laws 2005, LB 312, § 56.

77-5735 Changes to sections; when effective; applicability.

The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB 895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Source: Laws 2008, LB895, § 20.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

Section

- 77-5801. Act, how cited.
- 77-5802. Business firm, defined.
- 77-5803. Research tax credit; amount.
- 77-5804. Research tax credit; use; interest.
- 77-5805. Building materials; sales or use tax; presumption.
- 77-5806. Applicability of act.
- 77-5807. Report.
- 77-5808. Employees; verification of status required.

77-5801 Act, how cited.

Sections 77-5801 to 77-5808 shall be known and may be cited as the Nebraska Advantage Research and Development Act.

Source: Laws 2005, LB 312, § 59; Laws 2009, LB403, § 12.

77-5802 Business firm, defined.

For purposes of the Nebraska Advantage Research and Development Act, business firm means any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a joint venture, a limited liability company, or another private entity, that is subject to sales tax under section 77-2703. Business firm does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 60.

77-5803 Research tax credit; amount.

(1)(a) Except as provided in subdivision (1)(b) of this section, any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal fifteen percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be

allowed for the first tax year it is claimed and for the four tax years immediately following.

(b) Any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, on the campus of a college or university in this state or at a facility owned by a college or university in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal thirty-five percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the four tax years immediately following.

(2) For any business firm doing business both within and without this state, the amount of the federal credit may be determined either by dividing the amount expended in research and experimental activities in this state in any tax year by the total amount expended in research and experimental activities or by apportioning the amount of the credit on the federal income tax return to the state based on the average of the property factor as determined in section 77-2734.12 and the payroll factor as determined in section 77-2734.13.

Source: Laws 2005, LB 312, § 61; Laws 2007, LB223, § 31; Laws 2008, LB915, § 7; Laws 2009, LB555, § 1.

77-5804 Research tax credit; use; interest.

(1) The credit allowed under section 77-5803 may be used to obtain a refund of state sales and use taxes paid, may be used against the income tax liability of the taxpayer, or may be used as a refundable credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the state sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the tax year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of state sales and use taxes paid before the end of the tax year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying expenditures.

(4) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary may be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

(5) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Research and Development Act.

Source: Laws 2005, LB 312, § 62; Laws 2009, LB164, § 9.

77-5805 Building materials; sales or use tax; presumption.

For purposes of subsections (2) and (3) of section 77-5804, the taxpayer shall be deemed to have paid indirectly any state sales or use taxes paid by a contractor on building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the state sales and use taxes paid on the building materials, or the taxpayer, with

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the permission of the Tax Commissioner and a certification from the contractor that state sales and use taxes were paid on all building materials, may presume that forty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

Source: Laws 2005, LB 312, § 63.

77-5806 Applicability of act.

The Nebraska Advantage Research and Development Act shall be operative for all tax years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended. No business firm shall be allowed to first claim the credit for any tax year beginning or deemed to begin after December 31, 2015, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 64; Laws 2009, LB164, § 10.

77-5807 Report.

Beginning July 15, 2007, and each July 15 thereafter the Tax Commissioner shall prepare a report stating the total amount of credits claimed on income tax returns or as refunds of sales and use tax during the previous calendar year. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 65.

77-5808 Employees; verification of status required.

The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Research and Development Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska. This section does not apply to any credit claimed in a tax year beginning or deemed to begin before January 1, 2009, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2009, LB403, § 13.

ARTICLE 59

NEBRASKA ADVANTAGE MICROENTERPRISE TAX CREDIT ACT

Section

- 77-5901. Act, how cited.
- 77-5902. Act; administration; purpose.
- 77-5903. Terms, defined.
- 77-5904. Tax credit; application; contents; advisory committee.
- 77-5905. Applications; approval; limit.
- 77-5906. Tax credit; amount; claim; expiration; interest.
- 77-5907. Report.
- 77-5908. Employees; verification of status required; exclusion.

77-5901 Act, how cited.

Sections 77-5901 to 77-5908 shall be known and may be cited as the Nebraska Advantage Microenterprise Tax Credit Act.

Source: Laws 2005, LB 312, § 66; Laws 2009, LB403, § 14.

77-5902 Act; administration; purpose.

The Nebraska Advantage Microenterprise Tax Credit Act shall be administered by the Department of Revenue. The purpose of the act is to provide tax credits to applicants for creating or expanding microbusinesses that contribute to the revitalization of economically distressed areas through the creation of new or improved income, self-employment, or other new jobs in the area.

Source: Laws 2005, LB 312, § 67.

77-5903 Terms, defined.

For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Distressed area means a municipality, county, unincorporated area within a county, or census tract in Nebraska that has (a) an unemployment rate which exceeds the statewide average unemployment rate, (b) a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;

(3) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(4) Microbusiness means any business employing five or fewer equivalent employees at the time of application. Microbusiness does not include a farm or livestock operation unless (a) the person actively engaged in the operation of the microbusiness has a net worth of not more than three hundred fifty thousand dollars, including any holdings by a spouse or dependent, based on fair market value, or (b) the investment or employment is in the processing or marketing of agricultural products, aquaculture, agricultural tourism, or the production of fruits, herbs, tree products, vegetables, tree nuts, dried fruits, organic crops, or nursery crops;

(5) New employment means the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Nebraska residents exceeds the total compensation paid plus the employer cost for health insurance for employees to or for employees who are Nebraska residents in the tax year prior to application. New employment does not include compensation to any employee that is in excess of one hundred fifty percent of the Nebraska average weekly wage. Nebraska average weekly wage means the most recent average weekly wage paid by all employers as reported by October 1 by the Department of Labor;

(6) New investment means the increase during the tax year over the year prior to the application in the applicant's (a) purchases of buildings and depreciable personal property located in Nebraska, (b) expenditures on repairs and maintenance on property located in Nebraska, neither subdivision (a) or (b) of this subdivision to include vehicles required to be registered for operation on the roads and highways of this state, and (c) expenditures on advertising, legal, and professional services. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;

(7) Related persons means (a) any corporation, partnership, limited liability company, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, or any person who is considered to be a related person under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended, and (b) any individual who is a spouse, parent if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(8) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

The changes made to this section by Laws 2008, LB 177, shall be operative for all applications for benefits received on or after July 18, 2008.

Source: Laws 2005, LB 312, § 68; Laws 2006, LB 1003, § 17; Laws 2007, LB368, § 141; Laws 2008, LB177, § 1; Laws 2009, LB531, § 1.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5904 Tax credit; application; contents; advisory committee.

(1) The Department of Revenue shall accept applications for tax credits from taxpayers who are actively engaged in the operation of a microbusiness in a distressed area or who will establish a microbusiness that they will actively operate in a distressed area within the current or subsequent tax year. Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(2) The department may convene an advisory committee of individuals with expertise in small business development, lending, and community development to evaluate applications and advise the department in authorizing tentative tax credits.

(3) The application shall be on a form developed by the department and shall contain:

- (a) A description of the microbusiness;
- (b) The projected income and expenditures;
- (c) The market to be served by the microbusiness and the way the expansion addresses the market;
- (d) The amount of projected investment or employment increase that would generate the credit;

- (e) The projected improvement in income or creation of new self-employment or other jobs in the distressed area;
- (f) The nature of the applicant's engagement in the operation of the microbusiness; and
- (g) Other documents, plans, and specifications as required by the department.

Source: Laws 2005, LB 312, § 69; Laws 2007, LB223, § 32.

77-5905 Applications; approval; limit.

(1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the majority of the assets of the microbusiness are located in a distressed area or will be upon its establishment, (c) the applicant will make new investment or employment in the microbusiness, and (d) the new investment or employment will create new income or jobs in the distressed area, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2015. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, or the Nebraska Advantage Rural Development Act.

Source: Laws 2005, LB 312, § 70; Laws 2009, LB164, § 11.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Nebraska Advantage Act, see section 77-5701.

Nebraska Advantage Rural Development Act, see section 77-27,187.

77-5906 Tax credit; amount; claim; expiration; interest.

Taxpayers shall be entitled to refundable tax credits equal to twenty percent of the taxpayer's new investment or employment in the microbusiness during the tax year not to exceed the amount of tentative tax credits approved by the department under section 77-5905. The taxpayer shall claim the tax credit by filing a form developed by the Tax Commissioner and attaching the tentative tax credit certification granted by the department. Tentative tax credits expire after the end of the tax year following the year the tentative tax credit was certified. The total lifetime tax credits claimed by any one taxpayer and any related person under the Nebraska Advantage Microenterprise Tax Credit Act shall be limited to ten thousand dollars. Interest shall not be allowed on any taxes refunded under the act.

Source: Laws 2005, LB 312, § 71; Laws 2009, LB164, § 12.

77-5907 Report.

The Tax Commissioner shall prepare a report identifying the following aggregate amounts for the previous calendar year: (1) The amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted; (2) the actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous calendar year; (3) the tax credits used; and (4) the tentative tax credits that expired. The report shall be issued on or before July 15, 2007, and each July 15 thereafter. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 72.

77-5908 Employees; verification of status required; exclusion.

(1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Microenterprise Tax Credit Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the Tax Commissioner shall exclude the hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

(3) This section does not apply to any application filed under the act prior to October 1, 2009.

Source: Laws 2009, LB403, § 15.

ARTICLE 60**TAX POLICY REFORM COMMISSION**

Section

- 77-6001. Repealed. Laws 2009, LB 154, § 27.
- 77-6002. Repealed. Laws 2009, LB 154, § 27.
- 77-6003. Repealed. Laws 2009, LB 154, § 27.
- 77-6004. Repealed. Laws 2009, LB 154, § 27.
- 77-6005. Repealed. Laws 2009, LB 154, § 27.
- 77-6006. Repealed. Laws 2009, LB 154, § 27.
- 77-6007. Repealed. Laws 2009, LB 154, § 27.

77-6001 Repealed. Laws 2009, LB 154, § 27.

77-6002 Repealed. Laws 2009, LB 154, § 27.

77-6003 Repealed. Laws 2009, LB 154, § 27.

77-6004 Repealed. Laws 2009, LB 154, § 27.

77-6005 Repealed. Laws 2009, LB 154, § 27.

77-6006 Repealed. Laws 2009, LB 154, § 27.

77-6007 Repealed. Laws 2009, LB 154, § 27.**ARTICLE 61****LONG-TERM CARE SAVINGS PLAN ACT**

Section

77-6101. Act, how cited.

77-6102. Terms, defined.

77-6103. Nebraska long-term care savings plan; created; State Treasurer; powers and duties; participation agreement.

77-6104. Nebraska long-term care savings plan trust; created; State Treasurer; state investment officer; duties.

77-6105. Qualified individual; withdrawals authorized.

77-6101 Act, how cited.

Sections 77-6101 to 77-6105 shall be known and may be cited as the Long-Term Care Savings Plan Act.

Source: Laws 2006, LB 965, § 1.

77-6102 Terms, defined.

For purposes of the Long-Term Care Savings Plan Act:

(1) Long-term care expense means the cost of long-term care in a long-term care facility and the cost of care provided in a person's home when the person receiving the care is unable to perform multiple basic life functions independently;

(2) Long-term care insurance premiums means premiums paid for a long-term care insurance policy issued pursuant to the Long-Term Care Insurance Act that offers coverage to the individual, the individual's spouse, or another person for whom the taxpayer has an insurable interest;

(3) Participant means an individual who has entered into a participation agreement or established an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of section 77-6103; and

(4) Qualified individual means (a) a person who incurred long-term care expenses during the taxable year or (b) a person who turned fifty years of age or older during the taxable year who made payments for long-term care insurance premiums during the taxable year.

Source: Laws 2006, LB 965, § 2; Laws 2007, LB304, § 1.

77-6103 Nebraska long-term care savings plan; created; State Treasurer; powers and duties; participation agreement.

(1) The Nebraska long-term care savings plan is created. The State Treasurer shall select the administrator of the plan. If the State Treasurer receives no acceptable responses to a request for proposals for an administrator for the plan by November 1, 2006, the State Treasurer may enter into agreements with state-chartered or federally chartered banks, savings banks, building and loan associations, savings and loan associations, or credit unions, or a subsidiary of any such entity, to receive contributions in the form of account deposits. The State Treasurer may adopt and promulgate rules and regulations to carry out its duties under this subsection.

(2) If an administrator is selected, participants shall enter into participation agreements with the State Treasurer, and if an administrator is not selected, participants may make contributions to an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of this section. A lifetime maximum of one hundred sixty-five thousand dollars may be contributed by a participant. This dollar limitation shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended.

(3) Each participation agreement shall provide that the agreement may be canceled or transferred to a spouse upon the terms and conditions set by the State Treasurer. If the participation agreement is canceled or the Nebraska long-term care savings plan is terminated, a participant may receive the principal amount of all contributions made by the participant or on behalf of the participant plus the actual investment earnings on the contributions, less any losses incurred on the contributions. A participant shall not receive more than the fair market value of his or her account under the participation agreement on the applicable liquidation date.

(4) A participant retains ownership of all contributions up to the date of utilization.

(5) State income tax treatment of contributions and investment earnings shall be as provided in section 77-2716.

Source: Laws 2006, LB 965, § 3.

77-6104 Nebraska long-term care savings plan trust; created; State Treasurer; state investment officer; duties.

If an administrator for the Nebraska long-term care savings plan is selected pursuant to section 77-6103, the Nebraska long-term care savings plan trust shall be created. The State Treasurer shall be the trustee of the trust and as such responsible for the administration, operation, and maintenance of the plan and shall have all powers necessary to carry out and effectuate the purposes, objectives, and provisions of the Long-Term Care Savings Plan Act pertaining to the administration, operation, and maintenance of the trust, except that the state investment officer shall have fiduciary responsibility to make all decisions regarding the investment of the money in the trust, including the selection of all investment options and the approval of all fees and other costs charged to trust assets except costs for administration, operation, and maintenance of the trust, pursuant to the directions, guidelines, and policies established by the Nebraska Investment Council. The State Treasurer may adopt and promulgate rules and regulations to provide for the efficient administration, operation, and maintenance of the trust. The State Treasurer shall not adopt and promulgate rules and regulations that in any way interfere with the fiduciary responsibility of the state investment officer to make all decisions regarding the investment of money in the trust. The Nebraska Investment Council may adopt and promulgate rules and regulations to provide for the prudent investment of the assets of the trust. The council or its designee also has the authority to select and enter into agreements with individuals and entities to provide investment advice and management of the assets held by the trust, establish investment guidelines, objectives, and performance standards with respect to the assets held by the

trust, and approve any fees, commissions, and expenses which directly or indirectly affect the return on assets.

Source: Laws 2006, LB 965, § 4.

77-6105 Qualified individual; withdrawals authorized.

A qualified individual as defined in subdivision (4)(a) of section 77-6102 may make withdrawals as a participant in the Nebraska long-term care savings plan to pay or reimburse long-term care expenses. A qualified individual as defined in subdivision (4)(b) of section 77-6102 may make withdrawals to pay or reimburse long-term care insurance premiums. Any participant who is not a qualified individual or who makes a withdrawal for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant shall be subject to a ten-percent penalty on the amount withdrawn. The State Treasurer shall collect the penalty.

Source: Laws 2006, LB 965, § 5; Laws 2007, LB304, § 2.