

LEGISLATIVE BILL 259

Approved by the Governor May 27, 2015

Introduced by Gloor, 35.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 13-518, 77-693, 77-801, 77-1248, and 77-5209.02, Reissue Revised Statutes of Nebraska, and sections 77-202 and 77-1514, Revised Statutes Cumulative Supplement, 2014; to adopt the Personal Property Tax Relief Act; to provide duties for the Property Tax Administrator; to provide for and change provisions relating to tax exemptions; to change provisions relating to taxation of personal property; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide an operative date; and to repeal the original sections.

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

Section 1. Sections 1 to 3 of this act shall be known and may be cited as the Personal Property Tax Relief Act.

Sec. 2. (1) Every person who is required to list his or her taxable tangible personal property as defined in section 77-105, as required under section 77-1229, shall receive an exemption from taxation for the first ten thousand dollars of valuation of his or her tangible personal property in each tax district as defined in section 77-127 in which a personal property return is required to be filed. Failure to report tangible personal property on the personal property return required by section 77-1229 shall result in a forfeiture of the exemption for any tangible personal property not timely reported for that year.

(2) The Property Tax Administrator shall reduce the value of the tangible personal property owned by each railroad, car line company, public service entity, and air carrier by a compensating exemption factor to reflect the exemption allowed in subsection (1) of this section for all other personal property taxpayers. The compensating exemption factor is calculated by multiplying the value of the tangible personal property of the railroad, car line company, public service entity, or air carrier by a fraction, the numerator of which is the total amount of locally assessed tangible personal property that is actually subjected to property tax after the exemption allowed in subsection (1) of this section, and the denominator of which is the net book value of locally assessed tangible personal property prior to the exemptions allowed in subsection (1) of this section.

Sec. 3. (1) Reimbursement to taxing subdivisions for tax revenue that will be lost because of the personal property tax exemptions allowed in subsection (1) of section 2 of this act shall be as provided in this subsection. The county assessor and county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner, on forms prescribed by the Tax Commissioner, the total tax revenue that will be lost to all taxing subdivisions within his or her county from taxes levied and assessed in that year because of the personal property tax exemptions allowed in subsection (1) of section 2 of this act. The county assessor and county treasurer may amend the certification to show any change or correction in the total tax revenue that will be lost until May 30 of the next succeeding year. The Tax Commissioner shall, on or before January 1 next following the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the tax revenue lost shall be made to each county according to the certification and shall be distributed in two approximately equal installments on the last business day of February and the last business day of June. The State Treasurer shall, on the business day preceding the last business day of February and the last business day of June, notify the Director of Administrative Services of the amount of funds available in the General Fund to pay the reimbursement. The Director of Administrative Services shall, on the last business day of February and the last business day of June, draw warrants against funds appropriated. Out of the amount received, the county treasurer shall distribute to each of the taxing subdivisions within his or her county the full tax revenue lost by each subdivision, except that one percent of such amount shall be deposited in the county general fund.

(2) Reimbursement to taxing subdivisions for tax revenue that will be lost because of the compensating exemption factor in subsection (2) of section 2 of this act shall be as provided in this subsection. The Property Tax Administrator shall establish the average tax rate that will be used for purposes of reimbursing taxing subdivisions pursuant to this subsection. The average tax rate 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 Tax Commissioner shall certify, on or before January 30 of each year, to the Director of Administrative Services the total valuation that will be lost to all taxing subdivisions within each county because of the compensating exemption factor in subsection (2) of section 2 of this act. Such amount, multiplied by the average tax rate calculated pursuant to this subsection, shall be the tax revenue to be reimbursed to the taxing subdivisions by the state. Reimbursement of the tax

revenue lost for public service entities shall be made to each county according to the certification and shall be distributed among the taxing subdivisions within each county in the same proportion as all public service entity taxes levied by the taxing subdivisions. Reimbursement of the tax revenue lost for railroads shall be made to each county according to the certification and shall be distributed among the taxing subdivisions within each county in the same proportion as all railroad taxes levied by taxing subdivisions. Reimbursement of the tax revenue lost for car line companies shall be distributed in the same manner as the taxes collected pursuant to section 77-684. Reimbursement of the tax revenue lost for air carriers shall be distributed in the same manner as the taxes collected pursuant to section 77-1250.

(3) Each taxing subdivision shall, in preparing its annual or biennial budget, take into account the amounts to be received under this section.

Sec. 4. Section 13-518, Reissue Revised Statutes of Nebraska, is amended to read:

13-518 For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a wind energy generation facility has been commissioned are nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523 and reimbursement provided pursuant to section 3 of this act;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, state aid to counties paid pursuant to sections 39-2501 to 39-2520 and 60-3,184 to 60-3,190, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, (i) for fiscal years 2010-11, 2011-12, and 2012-13, state aid to community colleges paid pursuant to section 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter, state aid to community colleges paid pursuant to the Community College Aid Act;

(e) For educational service units, state aid appropriated under sections 79-1241.01 and 79-1241.03; and

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Sec. 5. Section 77-202, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-202 (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:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase

agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) 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 (B) 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 reinsured 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.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property. Depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

(11) For each person who owns property required to be reported to the county assessor under section 77-1201, there shall be allowed an exemption amount as provided in the Personal Property Tax Relief Act. For each person who owns property required to be valued by the state as provided in section 77-601, 77-682, 77-801, or 77-1248, there shall be allowed a compensating exemption factor as provided in the Personal Property Tax Relief Act.

Sec. 6. Section 77-693, Reissue Revised Statutes of Nebraska, is amended to read:

77-693 (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.

(4) After the adjustment made pursuant to subsections (1) and (2) of this section, the Property Tax Administrator shall multiply the value of the tangible personal property of each railroad and car line by the compensating exemption factor calculated in section 2 of this act.

Sec. 7. Section 77-801, Reissue Revised Statutes of Nebraska, is amended to read:

77-801 (1) 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.

(2) 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.

(3) 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.

(4) The Property Tax Administrator shall multiply the value of the tangible personal property of each public service entity by the compensating exemption factor calculated in section 2 of this act.

Sec. 8. Section 77-1248, Reissue Revised Statutes of Nebraska, is amended to read:

77-1248 (1) 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.

(2) The Property Tax Administrator shall multiply the valuation of each air carrier by the compensating exemption factor calculated in section 2 of this act.

Sec. 9. Section 77-1514, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-1514 (1) The county assessor shall prepare an abstract of the property assessment rolls of locally assessed real property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the abstract with the Property Tax Administrator on or before March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the real property abstract shall be filed on or before March 25. The abstract shall show the taxable value of real 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 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. Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall request an extension of the final filing due date by March 22.

(2) The county assessor shall prepare an abstract of the property assessment rolls of locally assessed personal property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall electronically file the abstract with the Property Tax Administrator on or before July 20.

Sec. 10. Section 77-5209.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-5209.02 (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 in addition to, and applied after, any amount exempted under subsection (1) of section 2 of this act. 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 pursuant to this section 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 except as allowed in subsection (1) of section 2 of this act.

Sec. 11. The Revisor of Statutes shall assign sections 1 to 3 of this act to Chapter 77, article 12.

Sec. 12. This act becomes operative on January 1, 2016.

Sec. 13. Original sections 13-518, 77-693, 77-801, 77-1248, and 77-5209.02, Reissue Revised Statutes of Nebraska, and sections 77-202 and 77-1514, Revised Statutes Cumulative Supplement, 2014, are repealed.