

BEGINNING FARMER TAX CREDIT ACT AND RELATED STATUTES

- Administration:** The Beginning Farmer Board is created in the Beginning Farmer Tax Credit Act. For administrative and budgetary purposes only the Board is housed within the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402)471-2341.
- Revisions:** These statutes were revised during the 2016 session of the Nebraska Legislature. Sections 77-2715.07, 77-2717, 77-2734.03, and 77-202 are included for informational purposes. The income tax credit in the first three sections is referenced in the Beginning Farmer Tax Credit Act and the personal property tax exemption in the Act is referenced in the last section, 77-202.
- Rules:** The Nebraska Department of Agriculture has no authority to promulgate regulations under this Act. The Beginning Farmer Board, however, has promulgated a regulation under this Act, known as Title 91, Chapter 1 - Beginning Farmer Tax Credit Act Regulations.

INDEX

<u>Section</u>	<u>Subject</u>
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; support and assistance.
77-5215.....	Changes; when operative.
77-2715.07.....	Income tax credits.
77-2717.....	Income tax; estates; trusts; rate; fiduciaryreturn; contents; filing; state income tax; contents; credits.
77-2734.03.....	Income tax; tax credits.
77-202.....	Property taxable; exemptions enumerated.

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. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically.

Source: Laws 1999, LB 630, § 5; Laws 2000, LB 1223, § 4; Laws 2008, LB1027, § 5; Laws 2012, LB782, § 140.

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; deadline.

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. No new applications for any such programs, tax credits, or exemptions shall be approved or certified by the board after December 31, 2022. 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; Laws 2015, LB538, § 12; Laws 2016, LB1022, § 8.

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 in addition to, and applied after, any amount exempted under subsection (1) of section 77-1238. 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 77-1238.

Source: Laws 2008, LB1027, § 4; Laws 2015, LB259, § 10.

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. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic 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; Laws 2012, LB782, § 141.

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; support and assistance.

In order to carry out 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; Laws 2012, LB782, § 142.

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.

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, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such nonrefundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;
- (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, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;
- (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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Volunteer Emergency Responders Incentive 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, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 32 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit.
- (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;
- (c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

- (d) A credit as provided in the New Markets Job Growth Investment Act;
 - (e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act;
 - (f) A credit to employers as provided in section 77-27,238; and
 - (g) A credit as provided in the Affordable Housing Tax Credit Act.
- (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.
- (6) There shall be allowed to all individuals nonrefundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3604 and refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3605.

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;
- Laws 2011, LB389, § 12;
- Laws 2012, LB1128, § 22;
- Laws 2014, LB191, § 17;
- Laws 2015, LB591, § 12;
- Laws 2016, LB774, § 7;
- Laws 2016, LB884, § 19;
- Laws 2016, LB886, § 6;
- Laws 2016, LB889, § 10.

Cross References

- **Affordable Housing Tax Credit Act**, see section 77-2501.
- **Angel Investment Tax Credit Act**, see section 77-6301.
- **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.
- **Nebraska Job Creation and Mainstreet Revitalization Act**, see section 77-2901.
- **Nebraska Revenue Act of 1967**, see section 77-2701.
- **New Markets Job Growth Investment Act**, see section 77-1101.
- **Volunteer Emergency Responders Incentive Act**, see section 77-3101.

77-2717. Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.

(1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, 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 (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 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, 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 tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result. 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238.

(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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238.

(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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238. 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238 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. For taxable years beginning or deemed to begin before January 1, 2013, 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. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 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;
- Laws 2011, LB389, § 13;
- Laws 2012, LB970, § 6;
- Laws 2012, LB1128, § 23;
- Laws 2013, LB308, § 2;
- Laws 2014, LB191, § 18;
- Laws 2016, LB774, § 8;
- Laws 2016, LB884, § 20;
- Laws 2016, LB889, § 11.

Cross References

- **Affordable Housing Tax Credit Act**, see section 77-2501.
- **Angel Investment Tax Credit Act**, see section 77-6301.
- **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.
- **Nebraska Job Creation and Mainstreet Revitalization Act**, see section 77-2901.

- **New Markets Job Growth Investment Act**, see section 77-1101.
- **School Readiness Tax Credit Act**, see section 77-3601.

Annotations

- 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).

77-2734.03. 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.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth

Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and section 77-27,238.

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;
- Laws 2012, LB1128, § 24;
- Laws 2014, LB191, § 19;
- Laws 2016, LB774, § 9;
- Laws 2016, LB884, § 21;
- Laws 2016, LB889, § 12.

Cross References

- **Affordable Housing Tax Credit Act**, see section 77-2501.
- **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.
- **Nebraska Job Creation and Mainstreet Revitalization Act**, see section 77-2901.
- **New Markets Job Growth Investment Act**, see section 77-1101.
- **School Readiness Tax Credit Act**, see section 77-3601.

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:

(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 includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109; 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, trailers, and semitrailers 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. Any depreciable tangible personal property used directly in the generation of electricity using solar, biomass, or landfill gas as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property if such depreciable tangible personal property was installed on or after January 1, 2016, and has a nameplate capacity of one hundred kilowatts or more. Depreciable tangible personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, solar panels, 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.

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;
- Laws 2010, LB1048, § 11;
- Laws 2011, LB360, § 2;
- Laws 2012, LB902, § 1;
- Laws 2012, LB1080, § 1;
- Laws 2015, LB259, § 5;
- Laws 2015, LB414, § 2;
- Laws 2015, LB424, § 3;
- Laws 2016, LB775, § 3.

Cross References

- **Nebraska Advantage Act**, see section 77-5701.
- **Personal Property Tax Relief Act**, see section 77-1237.

Annotations

- **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**
- The operation of a motel and campground by an organization that also operated a museum was reasonably necessary to accomplish the educational mission of the museum, and thus, the motel and campground were exempt from property taxation. *Harold Warp Pioneer Village Found. v. Ewald*, 287 Neb. 19, 844 N.W.2d 245 (2013).
- The lease of property from one exempt organization to another exempt organization does not create a taxable use, so long as the property is used exclusively for exempt purposes. *Fort Calhoun Baptist Ch. v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 759 N.W.2d 475 (2009).
- 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 intention to use property in the future for an exempt purpose is not a use of the property for exempt purposes under this section. *St. Monica's v. Lancaster Cty. Bd. of Equal.*, 275 Neb. 999, 751 N.W.2d 604 (2008).
- 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).