

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 259

Introduced by Gloor, 35.

Read first time January 14, 2015

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 13-518, Reissue Revised Statutes of Nebraska, and sections 77-202
- 3 and 77-5007, Revised Statutes Cumulative Supplement, 2014; to adopt
- 4 the Personal Property Tax Relief Act; to harmonize provisions; to
- 5 provide an operative date; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Personal Property Tax Relief Act.

3 Sec. 2. For purposes of the Personal Property Tax Relief Act:

4 (1) Depreciable tangible personal property has the same meaning as
5 in section 77-119; and

6 (2) Taxpayer means any person owning depreciable tangible personal
7 property which is subject to personal property taxes in Nebraska.

8 Sec. 3. (1) Depreciable tangible personal property shall be
9 assessed for taxation in the manner provided by law, except that each
10 taxpayer owning depreciable tangible personal property shall receive an
11 exemption from taxation for the first twenty-five thousand dollars of
12 valuation of such property.

13 (2) On or before February 1 of each year, the Tax Commissioner shall
14 prescribe forms to be used by all taxpayers to claim the personal
15 property exemption provided in this section. Such forms shall contain
16 provisions for the showing of all information which the Tax Commissioner
17 may deem necessary to enable county officials and the Tax Commissioner to
18 determine whether each claim for exemption should be allowed. It shall be
19 the duty of the county assessor of each county in this state to furnish
20 such forms, upon request, to each taxpayer desiring to make application
21 for such exemption. The forms so prescribed shall be used uniformly
22 throughout the state, and no application for exemption shall be allowed
23 unless the taxpayer uses the prescribed form in making an application.
24 The application and information contained on any attachments to the
25 application shall be confidential and available to tax officials only.

26 (3) Any taxpayer seeking a personal property exemption under this
27 section shall annually file a copy of the forms required pursuant to this
28 section with the county assessor in each county in which the person is
29 requesting exemption. The copy shall be filed on or before May 1. Failure
30 to timely file the required forms shall cause the forfeiture of the
31 exemption for the tax year.

1 Sec. 4. The county assessor shall examine each application for
2 personal property exemption filed with him or her under section 3 of this
3 act and shall determine whether or not such application should be
4 approved or rejected. If the application is approved, the county assessor
5 shall mark the same approved and sign the application. In case he or she
6 finds that the exemption should not be allowed by reason of not being in
7 conformity to law, the county assessor shall mark the application
8 rejected and state thereon the reason for such rejection and sign the
9 application. In any case in which the county assessor rejects an
10 application for exemption, he or she shall notify the applicant of such
11 action by mailing written notice to the applicant at the address shown in
12 the application, which notice shall be mailed not later than July 31 of
13 each year. The notice shall be on forms prescribed by the Tax
14 Commissioner. In any case in which the county assessor rejects an
15 application for exemption, such applicant may obtain a hearing before the
16 county board of equalization by filing a written complaint with the
17 county clerk within thirty days from receipt of the notice from the
18 county assessor showing such rejection. Such complaint shall specify his
19 or her grievances and the pertinent facts in relation thereto, in
20 ordinary and concise language and without repetition, and in such manner
21 as to enable a person of common understanding to know what is intended.
22 The board may take evidence pertinent to such complaint, and for that
23 purpose may compel the attendance of witnesses and the production of
24 books, records, and papers by subpoena. The board shall issue its
25 decision on the complaint within thirty days after the filing of the
26 complaint. Notice of the board's decision shall be mailed by the county
27 clerk to the applicant within seven days after the decision. The taxpayer
28 shall have the right to appeal from the board's decision with reference
29 to the application for personal property exemption to the Tax
30 Equalization and Review Commission in accordance with section 77-5013
31 within thirty days after the decision.

1 Sec. 5. On or before August 1 of each year, the county assessor
2 shall forward the approved applications for personal property exemptions
3 to the Tax Commissioner. The Tax Commissioner shall review the
4 application as necessary to determine whether the application should be
5 approved. The Tax Commissioner shall, on or before November 1, certify
6 his or her determinations to the county assessor. If the application is
7 approved, the county assessor shall make the proper deduction on the
8 assessment rolls. If the application is denied, the Tax Commissioner
9 shall notify the applicant of the denial by mailing written notice to the
10 applicant at the address shown on the application. In any case in which
11 the Tax Commissioner denies a claim for exemption, the applicant may
12 obtain a hearing before the Tax Commissioner by filing a written petition
13 with the Tax Commissioner within thirty days from the receipt of the
14 notice of denial. The petition shall state, in clear and concise
15 language, (1) the amount in controversy, (2) the issues involved, (3) the
16 name and address of the applicant, and (4) a demand for relief. The
17 hearing shall be conducted in accordance with the Administrative
18 Procedure Act. Notice of the Tax Commissioner's decision shall be mailed
19 to the applicant within seven days after the decision. The applicant may
20 appeal the Tax Commissioner's decision to the Tax Equalization and Review
21 Commission in accordance with section 77-5013 within thirty days after
22 the decision.

23 Sec. 6. (1) Any person who makes any false or fraudulent claim for
24 personal property exemption or any false statement or false
25 representation of a material fact in support of such claim or any person
26 who assists another in the preparation of any such false or fraudulent
27 claim shall be guilty of a Class II misdemeanor and shall be subject to a
28 forfeiture of any such exemption for a period of two years from the date
29 of conviction.

30 (2) In addition to the penalty provided in subsection (1) of this
31 section, if any person files a claim for exemption as provided in the

1 Personal Property Tax Relief Act which is excessive due to misstatements
2 by the taxpayer filing such claim, the claim may be disallowed in full
3 and, if the claim has been allowed, an amount equal to the amount of
4 taxes lawfully due but not paid by reason of such unlawful and improper
5 allowance of exemption shall be due and shall upon entry of the amount
6 thereof on the books of the county treasurer be a lien on such property
7 until paid and a penalty equal to the amount of taxes lawfully due but
8 claimed for exemption shall be assessed.

9 Sec. 7. The county treasurer shall, on or before November 30 of
10 each year, certify to the Tax Commissioner the total tax revenue that
11 will be lost to all taxing agencies within his or her county from taxes
12 levied and assessed in that year because of the personal property
13 exemptions allowed under the Personal Property Tax Relief Act. The Tax
14 Commissioner shall, on or before January 1 next following such
15 certification, notify the Director of Administrative Services of the
16 amount so certified to be reimbursed by the state. Reimbursement of the
17 funds lost shall be made to each county according to the certification
18 and shall be distributed in six as nearly as possible equal monthly
19 payments on the last business day of each month beginning in January. The
20 State Treasurer shall, on the business day preceding the last business
21 day of each month, notify the Director of Administrative Services of the
22 amount of funds available in the General Fund for payment purposes. The
23 Director of Administrative Services shall, on the last business day of
24 each month, draw warrants against funds appropriated. Out of the amount
25 so received the county treasurer shall distribute to each of the taxing
26 agencies within his or her county the full amount so lost by such agency,
27 except that one percent of such amount shall be deposited in the county
28 general fund. Each taxing agency shall, in preparing its annual or
29 biennial budget, take into account the amount to be received under this
30 section.

31 Sec. 8. The Tax Commissioner may adopt and promulgate rules and

1 regulations necessary to carry out the Personal Property Tax Relief Act.

2 Sec. 9. Section 13-518, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 13-518 For purposes of sections 13-518 to 13-522:

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

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

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

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

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

31 (6) Restricted funds means (a) property tax, excluding any amounts

1 refunded to taxpayers, (b) payments in lieu of property taxes, (c) local
2 option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers
3 of surpluses from any user fee, permit fee, or regulatory fee if the fee
4 surplus is transferred to fund a service or function not directly related
5 to the fee and the costs of the activity funded from the fee, (g) any
6 funds excluded from restricted funds for the prior year because they were
7 budgeted for capital improvements but which were not spent and are not
8 expected to be spent for capital improvements, (h) the tax provided in
9 sections 77-27,223 to 77-27,227 beginning in the second fiscal year in
10 which the county will receive a full year of receipts, and (i) any excess
11 tax collections returned to the county under section 77-1776. Funds
12 received pursuant to the nameplate capacity tax levied under section
13 77-6203 for the first five years after a wind energy generation facility
14 has been commissioned are nonrestricted funds; and

15 (7) State aid means:

16 (a) For all governmental units, state aid paid pursuant to sections
17 60-3,202 and 77-3523 and section 7 of this act;

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

21 (c) For counties, state aid to counties paid pursuant to sections
22 39-2501 to 39-2520 and 60-3,184 to 60-3,190, insurance premium tax paid
23 to counties, and reimbursements to counties from funds appropriated
24 pursuant to section 29-3933;

25 (d) For community colleges, (i) for fiscal years 2010-11, 2011-12,
26 and 2012-13, state aid to community colleges paid pursuant to section
27 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter,
28 state aid to community colleges paid pursuant to the Community College
29 Aid Act;

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

1 (f) For local public health departments as defined in section
2 71-1626, state aid as distributed under section 71-1628.08.

3 Sec. 10. Section 77-202, Revised Statutes Cumulative Supplement,
4 2014, is amended to read:

5 77-202 (1) The following property shall be exempt from property
6 taxes:

7 (a) Property of the state and its governmental subdivisions to the
8 extent used or being developed for use by the state or governmental
9 subdivision for a public purpose. For purposes of this subdivision:

10 (i) Property of the state and its governmental subdivisions means

11 (A) property held in fee title by the state or a governmental subdivision

12 or (B) property beneficially owned by the state or a governmental

13 subdivision in that it is used for a public purpose and is being acquired

14 under a lease-purchase agreement, financing lease, or other instrument

15 which provides for transfer of legal title to the property to the state

16 or a governmental subdivision upon payment of all amounts due thereunder.

17 If the property to be beneficially owned by a governmental subdivision

18 has a total acquisition cost that exceeds the threshold amount or will be

19 used as the site of a public building with a total estimated construction

20 cost that exceeds the threshold amount, then such property shall qualify

21 for an exemption under this section only if the question of acquiring

22 such property or constructing such public building has been submitted at

23 a primary, general, or special election held within the governmental

24 subdivision and has been approved by the voters of the governmental

25 subdivision. For purposes of this subdivision, threshold amount means the

26 greater of fifty thousand dollars or six-tenths of one percent of the

27 total actual value of real and personal property of the governmental

28 subdivision that will beneficially own the property as of the end of the

29 governmental subdivision's prior fiscal year; and

30 (ii) Public purpose means use of the property (A) to provide public

31 services with or without cost to the recipient, including the general

1 operation of government, public education, public safety, transportation,
2 public works, civil and criminal justice, public health and welfare,
3 developments by a public housing authority, parks, culture, recreation,
4 community development, and cemetery purposes, or (B) to carry out the
5 duties and responsibilities conferred by law with or without
6 consideration. Public purpose does not include leasing of property to a
7 private party unless the lease of the property is at fair market value
8 for a public purpose. Leases of property by a public housing authority to
9 low-income individuals as a place of residence are for the authority's
10 public purpose;

11 (b) Unleased property of the state or its governmental subdivisions
12 which is not being used or developed for use for a public purpose but
13 upon which a payment in lieu of taxes is paid for public safety, rescue,
14 and emergency services and road or street construction or maintenance
15 services to all governmental units providing such services to the
16 property. Except as provided in Article VIII, section 11, of the
17 Constitution of Nebraska, the payment in lieu of taxes shall be based on
18 the proportionate share of the cost of providing public safety, rescue,
19 or emergency services and road or street construction or maintenance
20 services unless a general policy is adopted by the governing body of the
21 governmental subdivision providing such services which provides for a
22 different method of determining the amount of the payment in lieu of
23 taxes. The governing body may adopt a general policy by ordinance or
24 resolution for determining the amount of payment in lieu of taxes by
25 majority vote after a hearing on the ordinance or resolution. Such
26 ordinance or resolution shall nevertheless result in an equitable
27 contribution for the cost of providing such services to the exempt
28 property;

29 (c) Property owned by and used exclusively for agricultural and
30 horticultural societies;

31 (d) Property owned by educational, religious, charitable, or

1 cemetery organizations, or any organization for the exclusive benefit of
2 any such educational, religious, charitable, or cemetery organization,
3 and used exclusively for educational, religious, charitable, or cemetery
4 purposes, when such property is not (i) owned or used for financial gain
5 or profit to either the owner or user, (ii) used for the sale of
6 alcoholic liquors for more than twenty hours per week, or (iii) owned or
7 used by an organization which discriminates in membership or employment
8 based on race, color, or national origin. For purposes of this
9 subdivision, educational organization means (A) an institution operated
10 exclusively for the purpose of offering regular courses with systematic
11 instruction in academic, vocational, or technical subjects or assisting
12 students through services relating to the origination, processing, or
13 guarantying of federally reinsured student loans for higher education or
14 (B) a museum or historical society operated exclusively for the benefit
15 and education of the public. For purposes of this subdivision, charitable
16 organization means an organization operated exclusively for the purpose
17 of the mental, social, or physical benefit of the public or an indefinite
18 number of persons; and

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

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

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

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

29 (5) Business and agricultural inventory shall be exempt from the
30 personal property tax. For purposes of this subsection, business
31 inventory includes personal property owned for purposes of leasing or

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

9 (6) Any personal property exempt pursuant to subsection (2) of
10 section 77-4105 or section 77-5209.02 shall be exempt from the personal
11 property tax.

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

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

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

24 (10) Any tangible personal property that is acquired by a person
25 operating a data center located in this state, that is assembled,
26 engineered, processed, fabricated, manufactured into, attached to, or
27 incorporated into other tangible personal property, both in component
28 form or that of an assembled product, for the purpose of subsequent use
29 at a physical location outside this state by the person operating a data
30 center shall be exempt from the personal property tax. Such exemption
31 extends to keeping, retaining, or exercising any right or power over

1 tangible personal property in this state for the purpose of subsequently
2 transporting it outside this state for use thereafter outside this state.
3 For purposes of this subsection, data center means computers, supporting
4 equipment, and other organized assembly of hardware or software that are
5 designed to centralize the storage, management, or dissemination of data
6 and information, environmentally controlled structures or facilities or
7 interrelated structures or facilities that provide the infrastructure for
8 housing the equipment, such as raised flooring, electricity supply,
9 communication and data lines, Internet access, cooling, security, and
10 fire suppression, and any building housing the foregoing.

11 (11) The first twenty-five thousand dollars of valuation of
12 depreciable tangible personal property shall be exempt from the personal
13 property tax as provided in the Personal Property Tax Relief Act.

14 Sec. 11. Section 77-5007, Revised Statutes Cumulative Supplement,
15 2014, is amended to read:

16 77-5007 The commission has the power and duty to hear and determine
17 appeals of:

18 (1) Decisions of any county board of equalization equalizing the
19 value of individual tracts, lots, or parcels of real property so that all
20 real property is assessed uniformly and proportionately;

21 (2) Decisions of any county board of equalization granting or
22 denying tax-exempt status for real or personal property or an exemption
23 from motor vehicle taxes and fees;

24 (3) Decisions of the Tax Commissioner determining the taxable
25 property of a railroad company, car company, public service entity, or
26 air carrier within the state;

27 (4) Decisions of the Tax Commissioner determining adjusted valuation
28 pursuant to section 79-1016;

29 (5) Decisions of any county board of equalization on the valuation
30 of personal property or any penalties imposed under sections 77-1233.04
31 and 77-1233.06;

1 (6) Decisions of any county board of equalization on claims that a
2 levy is or is not for an unlawful or unnecessary purpose or in excess of
3 the requirements of the county;

4 (7) Decisions of any county board of equalization granting or
5 rejecting an application for a homestead exemption;

6 (8) Decisions of the Department of Motor Vehicles determining the
7 taxable value of motor vehicles pursuant to section 60-3,188;

8 (9) Decisions of the Tax Commissioner made under section 77-1330;

9 (10) Any other decision of any county board of equalization;

10 (11) Any other decision of the Tax Commissioner regarding property
11 valuation, exemption, or taxation;

12 (12) Decisions of the Tax Commissioner pursuant to section 77-3520
13 and section 5 of this act;

14 (13) Final decisions of a county board of equalization appealed by
15 the Tax Commissioner or Property Tax Administrator pursuant to section
16 77-701;

17 (14) The requirement under section 77-1314 that the income approach,
18 including the use of a discounted cash-flow analysis, be used by county
19 assessors; and

20 (15) Any other decision, determination, action, or order from which
21 an appeal to the commission is authorized.

22 The commission has the power and duty to hear and grant or deny
23 relief on petitions.

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

25 Sec. 13. Original section 13-518, Reissue Revised Statutes of
26 Nebraska, and sections 77-202 and 77-5007, Revised Statutes Cumulative
27 Supplement, 2014, are repealed.