

LEGISLATIVE BILL 560

Approved by the Governor May 17, 2019

Introduced by Geist, 25.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2715.07, 77-5203, 77-5209, 77-5209.01, 77-5211, and 77-5212, Reissue Revised Statutes of Nebraska; to change provisions relating to tax credits under the Beginning Farmer Tax Credit Act; to define a term; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-2715.07, Reissue Revised Statutes of Nebraska, is amended to read:

77-2715.07 (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 ~~(6)~~ (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.

Sec. 2. Section 77-5203, Reissue Revised Statutes of Nebraska, is amended to read:

77-5203 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) Cash rent agreement means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined amount of money. A flex or variable rent agreement is an alternative form of a cash rent agreement in which a predetermined base rent is adjusted for actual crop yield, crop price, or both according to a predetermined formula;

~~(4) (3) Farm means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;~~

~~(5) (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;~~

~~(6) (5) Farming or livestock production means the active use, management, and operation of real and personal property for the production of a farm product;~~

~~(7) (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;~~

~~(8) (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 ~~(8)(a)~~ (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;~~

~~(9) (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

(10) (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.

Sec. 3. Section 77-5209, Reissue Revised Statutes of Nebraska, is amended to read:

77-5209 (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 be eligible to file subsequent applications for different assets.

~~(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.~~

Sec. 4. Section 77-5209.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-5209.01 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 refundable credit to be applied against the income tax imposed by the Nebraska Revenue Act of 1967 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.

Sec. 5. Section 77-5211, Reissue Revised Statutes of Nebraska, is amended to read:

77-5211 (1) Except as otherwise disallowed under subsection (7) (5) of this section, an owner of agricultural assets shall be allowed a refundable credit to be applied against the income tax imposed by the Nebraska Revenue Act of 1967 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) An owner of agricultural assets who has participated in a board approved and certified three-year rental agreement with a beginning farmer or livestock producer shall be eligible to file subsequent applications for different assets.

(3) Except as allowed pursuant to subsection (5) of this section, tax credits for an agricultural asset may be issued for a maximum of three years.

(4) (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.

(5) ~~(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 for such assets under the Beginning Farmer Tax Credit Act when ~~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 the agricultural assets, it may approve the owner for credits arising from a subsequent qualifying rental agreement on the same asset with a different qualified beginning farmer or livestock producer.

(6) ~~(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.

(7) ~~(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.

Sec. 6. Section 77-5212, Reissue Revised Statutes of Nebraska, is amended to read:

77-5212 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 if the agricultural assets have previously been approved in a qualifying rental agreement ~~(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.

Sec. 7. Original sections 77-2715.07, 77-5203, 77-5209, 77-5209.01, 77-5211, and 77-5212, Reissue Revised Statutes of Nebraska, are repealed.