

LEGISLATIVE BILL 1027

Approved by the Governor April 21, 2008

Introduced by Erdman, 47; Burling, 33; Dubas, 34; Fulton, 29; Hudkins, 21; Karpisek, 32; Louden, 49; McDonald, 41.

FOR AN ACT relating to agriculture; to amend section 77-5204, Reissue Revised Statutes of Nebraska, and sections 77-202, 77-5201, 77-5203, 77-5208, 77-5209, 77-5211, and 77-5215, Revised Statutes Cumulative Supplement, 2006; to exempt certain agricultural and horticultural machinery and equipment from property taxation; to redefine a term; to provide exemption procedures; to change provisions of the Beginning Farmer Tax Credit Act; to provide for applicability; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 77-202, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision, public purpose means use of the property (i) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (ii) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

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

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

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

(e) Household goods and personal effects not owned or used for

financial gain or profit to either the owner or user.

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

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

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

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 4 of this act 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.

Sec. 2. Section 77-5201, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5201 Sections 77-5201 to 77-5215 and section 4 of this act shall be known and may be cited as the Beginning Farmer Tax Credit Act.

Sec. 3. Section 77-5203, Revised Statutes Cumulative Supplement, 2006, 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) 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 ~~(i) is a resident individual as defined in section 77-2714.01, (ii) in the case of an individual, has derived at least fifty percent of his or her gross annual income for income tax purposes from farming or livestock production, or in the case of a trustee, the trust has derived at least fifty percent of its income for income tax purposes from farming or livestock production, (iii) has provided the majority of the day-to-day physical labor and management of a farm over a period of time deemed sufficient to qualify for the granting of tax credits under the act by the board, and (iv) has other such~~ meets any qualifications as 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; ~~(i) which has at least one general partner that is a resident individual as defined in section 77-2714.01, (ii) which derives~~

at least fifty percent of its income from farming or livestock production, and (iii) in which one or more partners have provided the majority of the day-to-day physical labor and management of a farm over a period of time deemed sufficient to qualify for the granting of tax credits by the board; or

(d) A corporation or syndicate qualified to own agricultural land under Article XII, section 8, of the Constitution of Nebraska;

(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.

Sec. 4. (1) Agricultural and horticultural machinery and equipment of a qualified beginning farmer or livestock producer utilized in the beginning farmer's or livestock producer's operation may be exempt from tangible personal property tax to the extent provided in this section.

(2) A qualified beginning farmer or livestock producer seeking an exemption of taxable agricultural and horticultural machinery and equipment from tangible personal property tax under this section shall apply for an exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is to begin. Application shall be on forms prescribed by the Tax Commissioner. For the initial year of application, an applicant shall provide the original documentation of certification provided by the board pursuant to section 77-5208 with the application. Failure to provide the required documentation shall result in a denial of the exemption for the following year but shall be considered as an application for the year thereafter.

(3) The county assessor shall approve or deny the application for exemption. On or before February 1, the county assessor shall issue notice of approval or denial to the applicant. If the application is approved, the county assessor shall exempt no more than one hundred thousand dollars of taxable value of agricultural or horticultural machinery and equipment for each year. If the application is denied by the county assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial to the county board of equalization.

(4) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the applicant within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision. Any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the agricultural and horticultural machinery and equipment will receive the exemption for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section.

(5) A properly granted exemption for taxable agricultural and horticultural machinery and equipment under this section shall continue for a period of three years if each year a Nebraska personal property tax return and supporting schedules and depreciation worksheet, showing a list and value of all taxable tangible personal property, are provided and filed by the beginning farmer or livestock producer with the county assessor when due. The value of taxable agricultural and horticultural machinery and equipment exempted in any year shall not exceed one hundred thousand dollars. The exemption allowed under this section shall continue irrespective of whether the person claiming the exemption no longer meets the qualification of a beginning farmer or livestock producer pursuant to section 77-5209 during the exemption period unless the beginning farmer or livestock producer discontinues farming or livestock production.

(6) Any person whose agricultural and horticultural machinery and equipment has been exempted from tangible personal property tax pursuant to this section shall be permanently disqualified from any further exemption of

agricultural and horticultural machinery and equipment from tangible personal property tax as a qualified beginning farmer or livestock producer.

Sec. 5. Section 77-5204, Reissue Revised Statutes of Nebraska, is amended to read:

77-5204 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 4 of this act;

(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.

Sec. 6. Section 77-5208, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5208 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, and 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 4 of this act. 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.

Sec. 7. Section 77-5209, Revised Statutes Cumulative Supplement,

2006, is amended to read:

77-5209 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: (1) 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; (2) provides the majority of the day-to-day physical labor and management of ~~the farm,~~ his or her farming or livestock production operations; (3) 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; (4) 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; (5) demonstrates to the board a need for assistance; (6) participates in a financial management program approved by the board; (7) 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 (8) ~~is not 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 in which the beginning farmer or livestock producer is seeking to enter into a rental agreement,~~ and (9) has such other qualifications as specified by the board. 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. 8. Section 77-5211, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5211 (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 syndicate, 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.

Sec. 9. Section 77-5215, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5215 (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 this legislative bill 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.

Sec. 10. Original section 77-5204, Reissue Revised Statutes of Nebraska, and sections 77-202, 77-5201, 77-5203, 77-5208, 77-5209, 77-5211, and 77-5215, Revised Statutes Cumulative Supplement, 2006, are repealed.