

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 558

Introduced by Kintner, 2; Bloomfield, 17; Howard, 9; Murante, 49;
Scheer, 19; Watermeier, 1.

Read first time January 23, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 25-21,149 and 77-1735, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to certain
4 declaratory judgments and illegal taxes paid; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-21,149, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-21,149 Courts of record within their respective
4 jurisdictions shall have power to declare rights, status, and other
5 legal relations whether or not further relief is or could be claimed.
6 No action or proceeding shall be open to objection on the ground that
7 a declaratory judgment or decree is prayed for. The declaration may
8 be either affirmative or negative in form and effect, and such
9 declarations shall have the force and effect of a final judgment or
10 decree. Any action or proceeding seeking a declaratory judgment that
11 any tax, penalty, or part thereof is unconstitutional shall be
12 ~~brought in the tax year in which the~~ within twelve months after such
13 tax or penalty was levied or assessed.

14 Sec. 2. Section 77-1735, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 77-1735 (1) Except as provided in subsection (2) of this
17 section, if a person makes a payment to any county or other political
18 subdivision of any property tax or any payment in lieu of tax with
19 respect to property and claims the tax or any part thereof is illegal
20 or unconstitutional for any reason other than the valuation or
21 equalization of the property, he or she may, at any time within
22 thirty days after such payment, make a written claim for refund of
23 the payment from the county treasurer to whom paid. The county
24 treasurer shall immediately forward the claim to the county board. If
25 the payment is not refunded within ninety days thereafter, the

1 claimant may sue the county board for the amount so claimed. Upon the
2 trial, if it is determined that such tax or any part thereof was
3 illegal or unconstitutional, judgment shall be rendered therefor and
4 such judgment shall be collected in the manner prescribed in section
5 77-1736.06. If the tax so claimed to be illegal or unconstitutional
6 was not collected for all political subdivisions in a consolidated
7 tax district and if a suit is brought to recover the tax paid or a
8 part thereof, the plaintiff in such action shall join as defendants
9 in a single suit as many of the political subdivisions as he or she
10 seeks recovery from by stating in the petition a claim against each
11 such political subdivision as a separate cause of action. For
12 purposes of this section, illegal shall mean a tax levied for an
13 unauthorized purpose or as a result of fraudulent conduct on the part
14 of the taxing officials. A person shall not be entitled to a refund
15 pursuant to this section of any property tax paid or any payment in
16 lieu of tax unless the person has filed a claim with the county
17 treasurer or prevailed in an action against the county. If a county
18 refuses to make a refund, a person shall not be entitled to a refund
19 unless he or she prevails in an action against the county on such
20 claim even if another person has successfully challenged a similar
21 tax or payment.

22 (2) For property valued by the state, for purposes of a
23 claim for refund pursuant to this section, the Tax Commissioner shall
24 perform the functions of the county treasurer and county board. Upon
25 approval of the claim by the Tax Commissioner or a court of competent

1 jurisdiction, the Tax Commissioner shall certify the amount of the
2 refund to the county treasurer to whom this tax was paid or
3 distributed. The refund shall be made in the manner prescribed in
4 section 77-1736.06.

5 Sec. 3. Original sections 25-21,149 and 77-1735, Reissue
6 Revised Statutes of Nebraska, are repealed.