

LEGISLATIVE BILL 558

Approved by the Governor April 10, 2014

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

FOR AN ACT relating to revenue and taxation; to amend sections 25-21,149 and 77-1735, Reissue Revised Statutes of Nebraska; to change provisions relating to certain declaratory judgments and illegal taxes paid; and to repeal the original sections.

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

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

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

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

77-1735 (1) Except as provided in subsection (2) of this section, if a person makes a payment to any county or other political subdivision of any property tax or any payment in lieu of tax with respect to property and claims the tax or any part thereof is illegal or unconstitutional for any reason other than the valuation or equalization of the property, he or she may, at any time within thirty days after such payment, make a written claim for refund of the payment from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is not refunded within ninety days thereafter, the claimant may sue the county board for the amount so claimed. Upon the trial, if it is determined that such tax or any part thereof was illegal or unconstitutional, judgment shall be rendered therefor and such judgment shall be collected in the manner prescribed in section 77-1736.06. If the tax so claimed to be illegal or unconstitutional was not collected for all political subdivisions in a consolidated tax district and if a suit is brought to recover the tax paid or a part thereof, the plaintiff in such action shall join as defendants in a single suit as many of the political subdivisions as he or she seeks recovery from by stating in the petition a claim against each such political subdivision as a separate cause of action. For purposes of this section, illegal shall mean a tax levied for an unauthorized purpose or as a result of fraudulent conduct on the part of the taxing officials. A person shall not be entitled to a refund pursuant to this section of any property tax paid or any payment in lieu of tax unless the person has filed a claim with the county treasurer or prevailed in an action against the county. If a county refuses to make a refund, a person shall not be entitled to a refund unless he or she prevails in an action against the county on such claim even if another person has successfully challenged a similar tax or payment.

(2) For property valued by the state, for purposes of a claim for refund pursuant to this section, the Tax Commissioner shall perform the functions of the county treasurer and county board. Upon approval of the claim by the Tax Commissioner or a court of competent jurisdiction, the Tax Commissioner shall certify the amount of the refund to the county treasurer to whom this tax was paid or distributed. The refund shall be made in the manner prescribed in section 77-1736.06.

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