

LEGISLATIVE BILL 835

Approved by the Governor April 12, 1984

Introduced by Revenue Committee, Carsten, 2,
Chairperson; Sieck, 24; V. Johnson, 8;
Lundy, 36; Pappas, 42; Hefner, 19;
Hannibal, 4; Landis, 46

AN ACT relating to revenue and taxation; to amend sections 77-202.01, 77-412, 77-427, 77-1318, 77-1320.04, 77-1320.05, 77-1503.01, 77-1504, 77-1506, 77-1506.02, 77-1719.01, and 77-1735, Reissue Revised Statutes of Nebraska, 1943, section 23-927.01, Revised Statutes Supplement, 1982, and section 77-802, Revised Statutes Supplement, 1983; to change a deadline for property valuations; to change provisions relating to property tax exemptions; to change provisions relating to certain tax penalties; to change certain notice requirements; to authorize an award; to change provisions relating to assessment, apportionment, and equalization of certain taxes; to prohibit the county board of equalization from certain actions; to eliminate certain filing requirements; to eliminate a penalty; to change refund procedures as prescribed; and to repeal the original sections, and also sections 77-1233.01 and 77-1318.02, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 23-927.01, Revised Statutes Supplement, 1982, be amended to read as follows:
23-927.01. On or before August 15 20 of each year, the county assessor shall certify to each governing body or board empowered to levy or certify a tax levy the current valuation of all property subject to the applicable levy. Current valuation shall mean that valuation established by the county assessor and equalized by the county board of equalization and the State Board of Equalization and Assessment.

Sec. 2. That section 77-202.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-202.01. Any person, corporation, or organization seeking the tax exempt status exemptions provided in subdivisions (1)(b) and (1)(c) of section 77-202 for any real property shall apply for exemption to the county assessor by January 1 of the year following

adoption of sections 77-202.01 to 77-202.07, on forms prescribed by the Tax Commissioner. Any person, corporation, or organization seeking the tax exempt status exemptions provided in subdivisions (1)(b) and (1)(c) of section 77-202 for any tangible personal property except motor vehicles shall apply for exemption to the county assessor by January 1, 1970. The county assessor shall examine the application and recommend either taxable or exempt status for the real property or tangible personal property except motor vehicles to the county board of equalization by February 1 following.

Sec. 3. Application for the exemption provided in subsection (2) of section 77-202.24 shall be made to the county assessor not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. The county assessor shall approve or disapprove such application and notify the taxpayer of his or her decision within twenty days of the filing of the application. The taxpayer may appeal the decision of the county assessor to the county board of equalization within twenty days after notice of the decision is mailed by the county assessor.

Application for the exemption provided in subsection (1) of section 77-202.24 shall be made to the county assessor on or before April 1 of every year. The county assessor shall approve or disapprove such application and shall notify the taxpayer of his or her decision within twenty days of the filing of the application. The taxpayer may appeal the decision of the county assessor to the county board of equalization within twenty days after notice of the decision is mailed by the county assessor.

The taxpayer may appeal any decision of the county board of equalization under this section to the district court pursuant to section 77-202.04.

Sec. 4. That section 77-412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:
77-412. The county assessor shall have the power to change the reported valuation of any item of property in the return of any taxpayer to conform such valuation to what the assessor deems to be its actual value. The taxpayer may appeal the action of the county assessor in the same manner as provided in this section for the appeal of assessment and valuation in the case of omitted property or where the taxpayer failed to file a return. Notice that a change has been made shall be given to the taxpayer in the same manner provided in this section for notice and hearing for property omitted or for a return which has not been filed.

In every case where the county assessor shall discover that a taxpayer has failed, neglected, or refused to make out and deliver to the county assessor or any of his or her assistants, the statement of all personal property

which he or she is required to list for taxation under section 77-1229 or as required by any other law, and in every case where the county assessor from any source, including but not limited to examining and checking the returns of personal property, the investigation, examination, and inspection of property of the taxpayer, and from the examination of the taxpayer under oath as to his or her books, records, and papers, shall find that any personal property was omitted or not returned for taxation during the current taxing period and the three previous taxing periods or any taxing period included therein, the county assessor shall proceed to list and value such property for taxation. Such property shall be taxed at the same rate as imposed upon the property in the governmental subdivision of the State of Nebraska in which the property should have been returned for taxation. To such tax shall be added a penalty of fifty per cent of the tax due. The county assessor shall send a notice by first-class mail to the last-known address of the taxpayer, advising the taxpayer of the action of the county assessor, ~~of the rate of tax to be applied and of the rate of penalties, and that interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, will be assessed thereon upon both tax and penalties from the date of delinquency of the tax until paid.~~ The form of such notice shall be as prescribed by the Tax Commissioner. The notice shall advise the taxpayer of his or her right to appeal the action of the county assessor to the county board of equalization, and shall advise the taxpayer that if the taxpayer does not appeal the action of the county assessor to the county board of equalization the taxpayer shall not be deemed to have waived his or her right to appeal the imposition of the penalties and interest on such penalties pursuant to the provisions of section 77-1320.05. The action of the county assessor shall become final unless the taxpayer files a notice of intention to appeal the action of the county assessor with the county board of equalization within ten thirty days of the date the notice is mailed by the county assessor. Upon the filing of a notice of intent to appeal the action of the county assessor, the county board of equalization shall set a date for hearing and give the taxpayer ten days' notice of such hearing by first-class mail. The county board of equalization shall make its determination as to whether the property is taxable and properly valued within ten thirty days after the date of the hearing. The county clerk and shall immediately notify the county assessor and the taxpayer of the board's its action. The county assessor shall notify the taxpayer of the action of the county board of equalization, that taxes, interest, and penalties will be levied accordingly, and that the action of the county board of equalization may be appealed to the district court, and that application for

waiver of all or part of the penalty may be made pursuant to section 77-1320-05. The form of the notice shall be as prescribed by the Tax Commissioner. Taxes and penalties assessed for the current year, if not delinquent, shall be certified to the county treasurer and collected as if the property had been properly reported for taxation, except that separate tax statements may be sent out. Taxes and penalties assessed for the current year, if delinquent, and taxes and penalties assessed for prior years shall be certified to the county treasurer and the taxes, and penalties, and interest on penalties shall be due and collectible immediately upon certification. Collection procedures shall be started immediately, regardless of provisions of other statutes to the contrary. Appeal de novo may be taken from the decision of the county board of equalization to the district court of the county in which the assessment is made upon receipt of notice of the action of the county board of equalization in the manner provided for by sections 77-1510 and 77-1511.

Sec. 5. That section 77-427, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-427. Any assessor, or deputy assessor, or full-time employee of the county assessor's office or the Department of Revenue who has completed the necessary courses of study and training and has been designated by the International Association of Assessing Officers as a Certified Assessment Evaluator shall receive from the state, out of funds appropriated and provided to the Division of Property Assessment in the Tax Commissioner's office, an award of not less than five hundred dollars per annum or ten per cent of his or her normal annual salary otherwise provided by law, but not to exceed one thousand dollars per annum under rules established by the Tax Commissioner.

Sec. 6. That section 77-802, Revised Statutes Supplement, 1983, be amended to read as follows:

77-802. The sworn statement required by section 77-801, together with any other information available, shall be used by the State Board of Equalization and Assessment in determining the franchise value of a public service company organized for profit for each of the local assessing districts. For those affected public service entities operating in more than one county within the state, the State Board of Equalization and Assessment shall apportion the franchise value to the several counties in proportion to the ratio of the value of real and tangible property of that public service entity having a situs in that county to the value of all real and tangible property of that public service entity having a situs in the state. The Tax Commissioner shall certify to the county assessors the value so determined, and the same shall be listed and assessed on the same basis as tangible property in each governmental subdivision.

Sec. 7. That section 77-1318, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1318. All taxes charged under the provisions of section 77-1317 shall be exempt from any back interest or penalty, and shall be collected in the same manner as other taxes levied upon real estate, except for taxes charged on improvements to real property made after September 1, 1980. Interest at the rate provided in section 77-207, and the following penalties and interest on penalties for late reporting or failure to report such improvements pursuant to section 77-1318.01 shall be collected in the same manner as other taxes levied upon real property. The penalty for late reporting or failure to report improvements made to real property after September 1, 1980, shall be as follows: (1) A penalty of twelve per cent of the tax due on the improvements for each taxing period, for improvements voluntarily filed or reported after April 15 1 has passed, or for improvements not voluntarily filed or reported when the taxpayer proves the absence of notice or knowledge of the obligation to report such improvements, and (2) a penalty of twenty per cent of the tax due on improvements for each taxing period, for improvements not voluntarily reported for taxation purposes after April 15 1 has passed, when the taxpayer had notice or knowledge of the obligation to report such improvements. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be assessed upon such penalty from the date of delinquency of the tax until paid. No penalty excluding interest shall be charged in excess of one thousand dollars per year. For purposes of this section improvement shall mean any new structure or addition permanent fixtures added to an existing structure.

For purposes of subdivisions (1) and (2) of this section notice and knowledge shall mean notice or knowledge as defined in section 1-201, Uniform Commercial Code.

Any additional taxes, or penalties, or interest on penalties imposed pursuant to this section may be appealed in the same manner as appeals are made under section 77-1320.05.

Sec. 8. That section 77-1320.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1320.04. If a return is voluntarily filed or omitted property is voluntarily reported after the final date for returning such property has passed for the current taxing period and the three previous taxing periods or any taxing period included therein, the property shall be taxed at the same rate as imposed upon the property in the governmental subdivision of the State of Nebraska in which the property should have been returned for taxation. To

the tax shall be added a penalty of ten per cent of the amount of tax due on tangible personal property. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be assessed upon such penalty from the date of delinquency of the tax until paid. The county assessor, in his or her discretion and with the approval of the county board of equalization, may waive all or part of the penalty and the interest on the penalty. If the omission or failure to return or report property was caused by the fact that such property had not been required to be reported in previous years; or that such property was timely reported in the wrong taxing district, the entire penalty and the interest on the penalty shall be waived. Appeals may be taken under the same conditions and in the same manner as provided in section 77-1320.05. A return shall be deemed to be voluntarily filed or omitted property shall be deemed to have been voluntarily reported if the action is done without notice from any taxing official or if the taxpayer prior to such notice notified the county assessor in writing that such return would be filed late and the return was subsequently filed within thirty days. Returns voluntarily filed or omitted property voluntarily reported as provided in this section shall not be subjected to any other penalty. The provisions of this section shall not be so construed as to prohibit any taxing official from the proper discovery, assessment, taxation, and penalization of and for any property not listed or returned, regardless of when or in what manner the return was filed.

Sec. 9. That section 77-1320.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1320.05. When penalties have been assessed under the provisions of section 77-412, the county assessor, in his or her discretion, with the approval of the county board of equalization, may waive all or part of the penalty and any interest on such penalty, except that if the omission or failure to return or report property was because such property had not been required to be reported in previous years; or the property was timely reported in the wrong taxing district, the entire penalty and interest on such penalty shall be waived. if the county assessor refuses to act or rules against such written protest; appeal Appeal may be taken to the county board of equalization within twenty thirty days after receipt of notice of the county assessor's decision. The notice from the county assessor must be sent to the taxpayer's last-known address by first-class mail and must advise the taxpayer of his or her right to appeal the county assessor's decision to the county board of equalization a change of value, omission of property, or failure to file a schedule or receipt of the voluntarily filed late return by the county assessor. The county board of equalization

shall review the evidence presented to the county assessor and shall hold a hearing if the taxpayer requests such a hearing in writing. Notice of the decision of the board shall be sent by first-class mail to the taxpayer and the county assessor by the county board of equalization. Appeal de novo may be taken from the decision of the county board of equalization to the district court of the county in which the assessment is made, upon receipt of notice of the county board of equalization's decision, in the same manner as appeals are taken from the action of the county board of equalization under the provisions of sections 77-1510 and 77-1511.

Sec. 10. That section 77-1503.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1503.01. For purposes of sections 77-1503.01, 77-1506.02, and 77-1506.03, classes of property shall mean all lands and improvements, and all locally assessed personal property. Any personal property valued by the State Board of Equalization and Assessment or the Tax Commissioner and property the value of which has been certified to the State Board of Equalization and Assessment pursuant to section 77-1514 shall not be considered classes of property subject to equalization by the county board of equalization under the provisions of sections 77-1503.01, 77-1506.02, and 77-1506.03.

Sec. 11. That section 77-1504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1504. The county board of equalization shall equalize the valuation of real property of the county by raising the valuation of such tracts and lots as are assessed too low, and lowering the valuation of such tracts and lots as are assessed too high. In cases of evident error of assessment or of apparent gross injustice in overvaluation or undervaluation of real property, it may consider and correct the same by raising, after due notice has been given to the interested party or parties, or by lowering the actual valuation of such real property. In cases where farm lands or real property consisting of city, town, or village blocks or lots have been assessed as entities and after the time of the assessment part or parts of such entities have been transferred by the owner or owners thereof to another party or to other parties by sale or otherwise, it may apportion the just and equitable proportion of the actual valuation of such entities to the various parcels of lands into which such entities have been divided by transfer of title, upon notice given to the parties of such transfer. No action shall be taken by the county board of equalization pursuant to this section before April 1 of each year nor after May 30.

Sec. 12. That section 77-1506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1506. The county board of equalization shall adjust assessments for the county by raising and lowering the assessment of any person as to any or all items of his or her assessment in such a manner as to secure the listing and the assessment of property at its actual value. In no case shall the assessment of any person be raised by the board until such person or his or her agent shall be previously notified, if such person or his agent can be found in the county. No action shall be taken by the county board of equalization pursuant to this section before April 1 of each year nor after May 30.

Sec. 13. That section 77-1506.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1506.02. Upon completion of equalization of assessments of individual parcels of lands and improvements and of assessments of personal property of individuals, pursuant to sections 77-1503 to 77-1507 and 77-1506.01, the county board of equalization shall have authority to raise or lower by percentage the valuation of all of a class or all of a subclass, as defined by the Tax Commissioner by rule and regulation, of property within the county; ~~Provided, if~~ public notice shall be given by publication in a newspaper of general circulation within the county stating the intention of the board. Such notice shall be given ten days before final action is taken by the board in regard to such matters. Nonresidents of the county in which such real estate is situated shall be notified by mail of increases in valuation if such nonresident owners shall have an address of record on file with the county assessor as of January 1, annually. No action shall be taken by the county board of equalization pursuant to this section after June 15 of each year.

Sec. 14. That section 77-1719.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1719.01. On or before July 1 of each year, the sheriff shall report to the county board, showing the total amount collected on current distress warrants, and the amount remaining uncollected. ~~A copy of such report shall be filed with the Tax Commissioner.~~

Sec. 15. That section 77-1735, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1735. If a person, who claims a tax, or any part thereof, to be invalid for any reason, other than the valuation of the property shall have paid the same to the treasurer, or other proper authority, in all respects as though the same was legal and valid, he or she may, at any time within two years thirty days after such payment, demand the same in writing from the county treasurer to whom paid. If the same shall not be refunded within ninety days thereafter, he or she may sue such county treasurer for the amount so demanded. Upon the trial, if it shall be

determined that such tax, or any part thereof, was for any reason invalid, judgment shall be rendered therefor with interest and such judgment shall be collected as in other cases. If ~~Provided~~, ~~that if~~ the tax, so claimed to be invalid, was collected for two or more public corporations or subdivisions of the state as a consolidated tax, by a single tax collecting officer, and if suit be brought to recover the tax paid, or a part thereof, the plaintiff in such action may join as defendants in a single suit as many of the public corporations or subdivisions as he or she seeks recovery from by stating in ~~his~~ the petition ~~his~~ a claim against each as a separate cause of action.

Sec. 16. That original sections 77-202.01, 77-412, 77-427, 77-1318, 77-1320.04, 77-1320.05, 77-1503.01, 77-1504, 77-1506, 77-1506.02, 77-1719.01, and 77-1735, Reissue Revised Statutes of Nebraska, 1943, section 23-927.01, Revised Statutes Supplement, 1982, and section 77-802, Revised Statutes Supplement, 1983, and also sections 77-1233.01 and 77-1318.02, Reissue Revised Statutes of Nebraska, 1943, are repealed.