

LEGISLATIVE BILL 630

Approved by the Governor May 26, 1999

Introduced by Wehrbein, 2; Dierks, 40; Jones, 43; Schellpeper, 18

AN ACT relating to revenue and taxation; to amend section 77-2715.07, Revised Statutes Supplement, 1998; to provide a tax credit as prescribed; to adopt the Beginning Farmer Tax Credit Act; to harmonize provisions; and to repeal the original section.

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

Section 1. Section 77-2715.07, Revised Statutes Supplement, 1998, 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; and

(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; and

(c) A refundable credit for individuals who qualify for an income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(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; and

(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.

(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; and

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act.

Sec. 2. Sections 2 to 15 of this act shall be known and may be cited as the Beginning Farmer Tax Credit Act.

Sec. 3. (1) The Legislature hereby finds and declares that:

(a) Current farm economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of agricultural jobs, and difficulty in attracting and retaining farm operations; and

(b) Major revisions in Nebraska's tax structure are necessary to accomplish economic revitalization of rural Nebraska and to be competitive with other states involved in economic revitalization and development of agriculture.

(2) It is the policy of this state to make revisions in Nebraska's tax structure in order to encourage persons to seek careers in the farming industry, retain existing and established farm operations, promote the

creation and retention of new farm jobs in Nebraska, and attract and retain investment capital in rural Nebraska.

Sec. 4. 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;

(2) Board means the Beginning Farmer Board created by section 5 of this act;

(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 an individual who is a resident individual as defined in section 77-2714.01, who has derived at least fifty percent or more of his or her gross annual income for income tax purposes from farming or livestock production, who has a net worth of at least one hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value, who 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 who has such other qualifications as determined by the board; and

(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 10 of this act and such other qualifications as determined by the board.

Sec. 5. 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;

(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 12 to 14 of this act;

(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 Legislature and Governor by December 1.

Sec. 6. The board shall consist of the following members:

(1) The Director of Agriculture or his or her designee;

(2) The Tax Commissioner or his or her designee;

(3) One individual representing lenders of agricultural credit;

(4) One individual of the academic community with extensive knowledge and insight in the analysis of agricultural economic issues; and

(5) Three individuals, one from each congressional district, who are currently engaged in farming or livestock production and are representative of a variety of farming or livestock production interests based on size of farm, type of farm operation, net worth of farm operation, and geographic location.

All members of the board shall be resident individuals as defined in section 77-2714.01. Members of the board listed in subdivisions (3) through (5) of this section shall be appointed by the Governor with the approval of a majority of the Legislature. All appointments shall be for terms of four years.

Vacancies in the appointed membership of the board shall be filled for the unexpired term by appointment by the Governor. Members of the board shall serve the full term and until a successor has been appointed by the Governor and approved by the Legislature. Any member is eligible for reappointment. Any member may be removed from the board by the Governor or by an affirmative vote by any four members of the board for incompetence, neglect of duty, or malfeasance.

Sec. 7. Once every two years, the members of the board shall elect a chairperson and a vice-chairperson. A member of the board may be reelected to the position of chairperson or vice-chairperson upon the discretion of the board. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Sec. 8. Four of the members of the board shall constitute a quorum for the transaction of official business. The affirmative vote of at least four members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall constitute an impairment of a quorum to exercise any and all rights and perform all duties of the board.

Sec. 9. The board shall meet quarterly during the year and 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 12 to 14 of this act. Any action taken by the board regarding approval and certification of program eligibility, granting of tax credits, or termination of share-rental agreements shall require the affirmative vote of at least four members of the board.

Sec. 10. 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 one 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; (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 for approval on any applicable agricultural assets purchased or rented from an owner of agricultural assets; (8) is not a relative as defined in section

36-702 of the owner of agricultural assets in which the beginning farmer or livestock producer is seeking to enter into a share-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 share-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. 11. The board shall, following the close of each fiscal year, submit an annual report of the activities and actions of the board for the preceding fiscal year to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature. Each member of the Legislature shall receive a copy of such report by request to the chairperson of the board. Each report shall include the following information:

(1) A complete operating and financial statement for the board for the prior fiscal year;

(2) The number of qualified beginning farmers and livestock producers receiving assistance from the board;

(3) The number of owners of agricultural assets claiming tax credits and the monetary amount of credits granted by the board; and

(4) Any other relevant information which the board deems necessary to report.

Sec. 12. Beginning January 1, 2001, an owner of agricultural assets shall be allowed a credit to be applied against the state income tax liability of such individual for agricultural assets rented on a share-rental agreement basis, including cash rent of agricultural assets or cash equivalent of a share-crop rental, to qualified beginning farmers or livestock producers. Such asset shall be rented at prevailing community rates as determined by the board. 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 share-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. 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-crop rental, 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 share-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 share-rental agreement with a different qualified beginning farmer or livestock producer.

Sec. 13. In evaluating a share-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 share-rental agreement with a qualified beginning farmer or livestock producer or (2) is proposing a share-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. 14. The tax credit approved and certified by the board under section 12 of this act for an owner of agricultural assets shall be equal to five percent of the gross rental income on any share-rental agreement that is approved and certified by the board under the Beginning Farmer Tax Credit Act,

including the renting of agricultural assets by an owner of such assets to a qualified beginning farmer or livestock producer. The board shall review each existing three-year share-rental agreement between a beginning farmer or livestock producer and an owner of agricultural assets on a quarterly basis and shall either certify or terminate program eligibility for beginning farmers or livestock producers or tax credits granted to owners of agricultural assets on an annual basis.

Sec. 15. The board shall conduct a study in order to ascertain the fiscal impact of future tax credits granted by the board to owners of agricultural assets. Such study shall attempt to reasonably estimate the number of qualified beginning farmers or livestock producers that would be eligible to enter into a board approved and certified three-year share-rental agreement with an owner of agricultural assets and other such relevant facts and information for review by the board. The findings of such study by the board shall be submitted to the Governor, the Clerk of the Legislature, and the Legislative Fiscal Analyst by January 3, 2000. In order to carry out the study and the provisions of the Beginning Farmer Tax Credit Act, the Department of Agriculture shall provide any and all of the necessary support and assistance to the board.

Sec. 16. Original section 77-2715.07, Revised Statutes Supplement, 1998, is repealed.