

LEGISLATIVE BILL 762

Approved by the Governor May 26, 1989

Introduced by Revenue Committee, Hall, 7, Chairperson;
Landis, 46; Hefner, 19; Hartnett, 45;
Labedz, 5; Peterson, 21; Rogers, 41;
Haberman, 44

AN ACT relating to revenue and taxation; to amend sections 77-1735, 77-1736.04, and 77-3509, Reissue Revised Statutes of Nebraska, 1943, and sections 77-1510, 77-1734.01, 77-1775, 77-1777, and 77-2701, Revised Statutes Supplement, 1988; to change provisions relating to the refund and credit of property taxes; to provide procedures; to define a term; to change provisions relating to homestead exemptions for veterans; to authorize the disclosure of certain information; to harmonize provisions; to eliminate refund procedures, applicability provisions, and a definition; and to repeal the original sections, and also sections 77-1736, 77-1736.05, 77-1736.08, and 77-1736.09, Reissue Revised Statutes of Nebraska, 1943, and sections 77-1736.11 and 77-1776, Revised Statutes Supplement, 1988.

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

Section 1. That section 77-1510, Revised Statutes Supplement, 1988, be amended to read as follows:

77-1510. Appeals may be taken from any action of the county board of equalization to the district court in the following manner:

(1) The appeal shall be filed within forty-five days after adjournment of the board which shall be deemed to be May 31 of the year in which the action is taken;

(2) The appeal shall be deemed to be filed for purposes of granting jurisdiction with the filing of the petition in district court; and

(3) A bond of no less than fifty dollars and no more than two hundred dollars, as determined by the district court, shall be filed with the petition in the form of a cash deposit or signature bond, property bond, or other bond approved by the county clerk.

After an appeal has been initiated, the board shall have no power or authority to compromise, settle, or otherwise change the action it has taken with respect to such assessment, and exclusive jurisdiction thereof shall be vested in the district court. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby, which may be collected, shall be distributed as though no appeal were pending. If by final order of a court it is thereafter determined that such tax or a part thereof should be refunded, the county treasurer is authorized to make the refund upon receiving a certified copy of such final order; the refund to be made from funds in his or her possession or accruing to the various taxing districts to the extent which they profited from the original overpayment the value of the property should be reduced. any tax collected on the value in excess of the actual value found by the court shall be refunded in the manner provided in section 77-1736.04, and the taxpayer shall not have been required to pay the tax under protest or pay the tax and initiate a refund claim.

The county may cross appeal, without giving bond, for the reason that the actual value of the owner's property is too low and should be increased in value as of the assessment date from which the appeal was taken.

In the event that the taxpayer as a part of his or her appeal challenges the values as determined by the agricultural land valuation manual as issued by the Tax Commissioner, the taxpayer shall at the time of filing his or her petition give notice to the Tax Commissioner of any such challenge and serve a copy of the petition upon the Tax Commissioner by certified mail within three days of the filing of the petition, and thereafter the Tax Commissioner shall be considered a party defendant in the appeal. Notwithstanding the denominating of the Tax Commissioner as a party defendant, the Tax Commissioner shall not be required to further plead in the cause but shall have the privilege of participating in the action without the necessity of intervention. The burden of proof shall be on the taxpayer to show the defect of the values as established in the agricultural land valuation manual. The court in its final order may, if the taxpayer has sustained his or her burden of proof, alter the valuation as established in the agricultural land valuation manual, in which case the court shall as a part of its findings set out specifically the defect found and the factual

basis supporting such finding.

Any party may appeal the final order of the district court entered pursuant to this section to the Supreme Court in the manner provided for appeals in equity cases, and the Supreme Court shall thereafter review the case de novo on the record.

Sec. 2. That section 77-1734.01, Revised Statutes Supplement, 1988, be amended to read as follows:

77-1734.01. (1) In case of payment made of any taxes upon real or personal property or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, of which the taxpayer had no notice, on the part of taxing officials of the state, a county, or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid may refund or credit that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding. Before the refund or credit may be made, the county treasurer shall receive upon verification from by the county assessor or other taxing official that such error or mistake was made, and the claim for refund or credit shall be submitted to the county board. The county board shall pass upon the claim as any other claim made against the county. The refund shall be made in the manner prescribed in subsection (2) of section 77-1736.04. The has been made and upon approval by the county board. The tax refunded shall be charged against any undistributed money on hand in such treasurer's office belonging to the political subdivisions which received the benefit from the first payment. If the treasurer has insufficient undistributed money on hand to satisfy the claim, the claim shall be paid from funds collected during the next tax year. A claim for a refund or credit pursuant to under this section shall be made in writing to the county treasurer to whom the tax was paid within two years after payment of such tax from the date the tax was due.

(2) The county treasurer may refund or credit to the taxpayer that tax or portion of tax which such taxpayer has paid as a result of misunderstanding or honest mistake. Such taxpayer may make written claim for a refund of or credit for such tax within two years after payment has been made and shall submit such claim to the county treasurer of the county in which the tax was mistakenly paid.

Sec. 3. That section 77-1735, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

77-1735. If (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 tax upon real or personal property or any payment in lieu of tax with respect to property and who claims a the tax or any part thereof to be invalid is illegal 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 thirty days after such payment, make a written claim for refund of the payment demand the same in writing from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is same shall not be refunded within ninety days thereafter, he or she may sue such county treasurer the claimant may sue the county board for the amount so demanded claimed. Upon the trial, if it shall be is determined that such tax or any part thereof was illegal, for any reason invalid; judgment shall be rendered therefor with interest and such judgment shall be collected as in other cases in the manner prescribed in subsection (2) of section 77-1736.04. If the tax so claimed to be invalid illegal was not collected for all political subdivisions in a consolidated tax district and 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 shall join as defendants in a single suit as many of the public corporations or 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.

(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 subsection (2) of section 77-1736.04.

Sec. 4. That section 77-1736.04, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1736.04. (1) If, by judgment or final order of any court of competent jurisdiction in this state, in an action not pending on appeal or error, it has been or shall be adjudged and determined that any real or personal property or real estate tax, assessment, or penalty or any part thereof was unconstitutional for any reason other than the valuation of the property illegal and such judgment or order has not been made ~~or shall not be made~~ in time to prevent the collection or payment of such tax, assessment, or penalty, then such tax, assessment, or penalty, whether expended or not, which has been collected pursuant to such illegal unconstitutional tax, assessment, or penalty for the year such tax, assessment, or penalty is determined to be illegal unconstitutional shall, without the necessity of filing a claim therefor, be repaid and refunded in the county where originally paid to the person paying such tax, assessment, or penalty. ~~Where~~ When the tax, assessment, or penalty so declared illegal unconstitutional is applicable either throughout the state or in taxing districts a political subdivision beyond the geographic jurisdiction of the court making such declaration of illegality unconstitutional, then, for the purpose of this section, a judgment or final order shall mean a judgment or final order of the Supreme Court. If the tax, assessment, or penalty has not been distributed by the ~~collecting officer~~ county treasurer, the refund shall be made as soon as practicable, otherwise the refund shall be made within two years after the final judgment is entered declaring such tax, assessment, or penalty as illegal unconstitutional.

(2) The county assessor shall determine all such refunds due and certify them to the county board. The county board shall certify the refund to the ~~collecting officer~~, county treasurer who shall pay the same from funds in his or her possession belonging to the taxing districts any political subdivision to the extent that any political subdivision such taxing districts profited from the overpayment of taxes by the claimant; ~~PROVIDED~~, taxpayer, except that if the ~~collecting officer~~ county treasurer does not have sufficient funds in his or her possession belonging to such taxing districts, the political subdivision or if the governing body of such taxing district or districts shall certify to him the political subdivision certifies to the county treasurer that the payment of such refunds

at that time would seriously interfere with their its governmental functions, then the collecting officer county treasurer shall register the refund as a claim as against such political subdivision taxing district or districts and issue the person entitled to the refund a receipt for such the registration of the refund, which receipt may be applied upon the payment of any tax falling due after the second next succeeding annual levy is made on behalf of such taxing district political subdivision, at which time such registration certificate shall be charged against funds accruing to such taxing district or districts political subdivision. It shall be the responsibility of the governing body of each taxing district political subdivision to determine the amount of the liability of such district political subdivision for refunds and to make provision in its budget therefor. Multiple tax statements issued to a taxpayer may be combined into one claim.

(3) For the purposes of this section, the words taxing district political subdivision shall include the State of Nebraska or any political subdivision thereof, and, as to the State of Nebraska, the words governing body shall mean the Governor if the tax, assessment, or penalty was assessed against property valued by the state, county board and county assessor shall mean the Tax Commissioner. The procedure for refund provided for in this section shall be in addition to refund procedures otherwise authorized by law.

(4) The collecting officer county treasurer shall mail such the refunds or receipts for registered claims by first-class mail to the last-known address of such taxpayer entitled to such the refund or registered claim. If such refunds or registered claims are a refund or registered claim is not claimed by June 1 of the year following the year of mailing, then such refunds or receipts the refund or receipt shall be canceled and the resultant amount credited to the various funds originally charged. Any tax, assessment, or penalty which has been declared illegal and final judgment entered after January 1, 1969, and as to which no refund has been made prior to September 2, 1973, because of the failure to file claim therefor shall be refunded within one year after September 2, 1973, without the necessity of filing a claim therefor.

(5) The county treasurer shall not be responsible for seeking out taxpayers entitled to such refunds if the amount of the refund is two dollars or less. Taxpayers A taxpayer requesting such refunds or

registered claims a refund or registered claim either by mail or in person in any amount shall be paid by the county treasurer. Multiple tax statements issued to an individual taxpayer may be combined in one claim-

Sec. 5. That section 77-1775, Revised Statutes Supplement, 1988, be amended to read as follows:

77-1775. (1) In case of payment of any taxes upon property valued by the state made as a result of a clerical error or honest mistake or misunderstanding, except as to valuation, on the part of the taxing officials of the state or the taxpayer, the taxpayer shall make a written claim for a credit or refund of the tax paid within two years from the date the tax was due. The claim shall set forth the amount of the overpayment and the reasons therefor. When any demand to refund property taxes paid is made upon the Tax Commissioner, the Tax Commissioner shall immediately transmit a copy of such demand along with the Tax Commissioner's recommendation to the State Board of Equalization and Assessment which shall approve the refund if the board finds the tax or a part of such tax to be invalid for any reason. Upon approval of the refund, the Tax Commissioner shall cause a refund to be paid from the fund to which the tax was originally deposited. If there are insufficient funds available at such time, the taxpayer shall be allowed a credit against the subsequent year's taxes. If the taxpayer does not have a tax liability in such subsequent year or if the liability does not exceed the amount of the refund, then a refund of the balance shall be paid as soon as sufficient funds have been deposited into the fund.

(2) The Tax Commissioner may approve or disapprove the claim in whole or part without a hearing. The Tax Commissioner shall grant a hearing prior to taking any action on a claim for refund or credit if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim by the Tax Commissioner. The State Board of Equalization and Assessment shall make its determination within one hundred twenty days of filing the claim for a refund. Such claim for a refund shall be considered a contested case pursuant to the Administrative Procedure Act.

(3) If the refund claim is denied in whole or part, the taxpayer may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act. If at the trial it is determined that such tax or any part of such tax was invalid, judgment shall be rendered in the amount of the refund claim with

interest and such judgment shall be collected as in other cases.

(3) 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 or credit to the county treasurer to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Tax Commissioner shall certify the value resulting from the final decision to the official who received the original valuation which was changed by the final order. The refund shall be made in the manner prescribed in subsection (2) of section 77-1736.04.

Sec. 6. (1) When property is valued or equalized by the Tax Commissioner or the State Board of Equalization and Assessment and an appeal is taken from such valuation or equalization and the final result of such appeal establishes a lower value than that on which taxes have been paid, the amount of taxes paid or the value in excess of that finally determined value shall be refunded to the taxpayers who have paid such tax.

(2) The Tax Commissioner upon receiving a certified copy of such final order shall certify the amount of the refund to the county treasurer of the county or counties to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Tax Commissioner shall certify the value resulting from the final decision to the official who received the original valuation which was changed by the final order. The refund shall be made in the manner prescribed in subsection (2) of section 77-1736.04. Nothing in this section shall be construed to mean that any taxpayer shall have had to pay any tax under protest or paid tax and claimed a refund.

Sec. 7. That section 77-1777, Revised Statutes Supplement, 1988, be amended to read as follows:

77-1777. Sections 77-1778 to 77-1782 shall apply to any tax, except property taxes, collected by the Tax Commissioner to the extent that specific refund provisions have not been previously enacted. If there is any conflict between any previously enacted refund statutes and the provisions of sections 77-1778 to 77-1782, the previously enacted statutes shall control.

Sec. 8. Notwithstanding any other provision of the Nebraska Revenue Act of 1967, the Tax Commissioner or any employee of the Department of Revenue may disclose the election of another person made

pursuant to subdivision (3) of section 77-2702.

Sec. 9. That section 77-2701, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135 and section 8 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967. After January 1, 1984, any reference to sections 77-2701 to 77-27,135 or the Nebraska Revenue Act of 1967 shall be construed to include sections 77-2734.01 to 77-2734.15.

Sec. 10. That section 77-3509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3509. (1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation a percentage of the first thirty-five thousand dollars of the actual value of any homestead of the following:

(a) Any of any veteran, as defined in section 80-401.01, drawing compensation from the Veterans' Administration of the United States Department of Veterans Affairs because of one hundred percent disability and not eligible for total exemption under sections 77-3526 to 77-3528, or the unremarried widow or widower of any such veteran;

(b) The unremarried widow or widower of any veteran, including those not listed in section 80-401.01, who died because of a service-connected disability;

(c) The or the unremarried widow or widower of a serviceman or servicewoman who died while on active duty during the dates described in section 80-401.01; or

(d) The unremarried widow or widower of a serviceman or servicewoman, including those not listed in section 80-401.01, whose death while on active duty was service-connected.

The exemption shall be based on the income of a claimant pursuant to subsection (2) of this section. Application for exemption under this section shall include certification of the status set forth in this section from the Veterans' Administration United States Department of Veterans Affairs.

(2) For a claimant as described in subsection (1) of this section, the percentage of the exemption for which the claimant is eligible shall be the percentage in Column B which corresponds with the claimant's income in Column A in the table found in this subsection.

Column A

Column B

Household Income In Dollars	Percentage Of Relief
0 through 15,000	100
15,001 through 16,000	80
16,001 through 17,000	60
17,001 through 18,000	40
18,001 through 19,000	20

Sec. 11. That original sections 77-1735, 77-1736.04, and 77-3509, Reissue Revised Statutes of Nebraska, 1943, and sections 77-1510, 77-1734.01, 77-1775, 77-1777, and 77-2701, Revised Statutes Supplement, 1988, and also sections 77-1736, 77-1736.05, 77-1736.08, and 77-1736.09, Reissue Revised Statutes of Nebraska, 1943, and sections 77-1736.11 and 77-1776, Revised Statutes Supplement, 1988, are repealed.