

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 623

Introduced by Williams, 36.

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2715.07, 77-5203, 77-5209, 77-5209.01, 77-5211, 77-5212, and
- 3 77-5213, Reissue Revised Statutes of Nebraska; to change provisions
- 4 relating to tax credits under the Beginning Farmer Tax Credit Act;
- 5 to harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2715.07, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 77-2715.07 (1) There shall be allowed to qualified resident
4 individuals as a nonrefundable credit against the income tax imposed by
5 the Nebraska Revenue Act of 1967:

6 (a) A credit equal to the federal credit allowed under section 22 of
7 the Internal Revenue Code; and

8 (b) A credit for taxes paid to another state as provided in section
9 77-2730.

10 (2) There shall be allowed to qualified resident individuals against
11 the income tax imposed by the Nebraska Revenue Act of 1967:

12 (a) For returns filed reporting federal adjusted gross incomes of
13 greater than twenty-nine thousand dollars, a nonrefundable credit equal
14 to twenty-five percent of the federal credit allowed under section 21 of
15 the Internal Revenue Code of 1986, as amended, except that for taxable
16 years beginning or deemed to begin on or after January 1, 2015, such
17 nonrefundable credit shall be allowed only if the individual would have
18 received the federal credit allowed under section 21 of the code after
19 adding back in any carryforward of a net operating loss that was deducted
20 pursuant to such section in determining eligibility for the federal
21 credit;

22 (b) For returns filed reporting federal adjusted gross income of
23 twenty-nine thousand dollars or less, a refundable credit equal to a
24 percentage of the federal credit allowable under section 21 of the
25 Internal Revenue Code of 1986, as amended, whether or not the federal
26 credit was limited by the federal tax liability. The percentage of the
27 federal credit shall be one hundred percent for incomes not greater than
28 twenty-two thousand dollars, and the percentage shall be reduced by ten
29 percent for each one thousand dollars, or fraction thereof, by which the
30 reported federal adjusted gross income exceeds twenty-two thousand
31 dollars, except that for taxable years beginning or deemed to begin on or

1 after January 1, 2015, such refundable credit shall be allowed only if
2 the individual would have received the federal credit allowed under
3 section 21 of the code after adding back in any carryforward of a net
4 operating loss that was deducted pursuant to such section in determining
5 eligibility for the federal credit;

6 (c) A refundable credit as provided in section 77-5209.01 for
7 individuals who qualify for an income tax credit as a qualified beginning
8 farmer or livestock producer under the Beginning Farmer Tax Credit Act
9 for all taxable years beginning or deemed to begin on or after January 1,
10 2006, under the Internal Revenue Code of 1986, as amended;

11 (d) A refundable credit for individuals who qualify for an income
12 tax credit under the Angel Investment Tax Credit Act, the Nebraska
13 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research
14 and Development Act, or the Volunteer Emergency Responders Incentive Act;
15 and

16 (e) A refundable credit equal to ten percent of the federal credit
17 allowed under section 32 of the Internal Revenue Code of 1986, as
18 amended, except that for taxable years beginning or deemed to begin on or
19 after January 1, 2015, such refundable credit shall be allowed only if
20 the individual would have received the federal credit allowed under
21 section 32 of the code after adding back in any carryforward of a net
22 operating loss that was deducted pursuant to such section in determining
23 eligibility for the federal credit.

24 (3) There shall be allowed to all individuals as a nonrefundable
25 credit against the income tax imposed by the Nebraska Revenue Act of
26 1967:

27 (a) A credit for personal exemptions allowed under section
28 77-2716.01;

29 (b) A credit for contributions to certified community betterment
30 programs as provided in the Community Development Assistance Act. Each
31 partner, each shareholder of an electing subchapter S corporation, each

1 beneficiary of an estate or trust, or each member of a limited liability
2 company shall report his or her share of the credit in the same manner
3 and proportion as he or she reports the partnership, subchapter S
4 corporation, estate, trust, or limited liability company income;

5 (c) A credit for investment in a biodiesel facility as provided in
6 section 77-27,236;

7 (d) A credit as provided in the New Markets Job Growth Investment
8 Act;

9 (e) A credit as provided in the Nebraska Job Creation and Mainstreet
10 Revitalization Act;

11 (f) A credit to employers as provided in section 77-27,238; and

12 (g) A credit as provided in the Affordable Housing Tax Credit Act.

13 (4) There shall be allowed as a credit against the income tax
14 imposed by the Nebraska Revenue Act of 1967:

15 (a) A credit to all resident estates and trusts for taxes paid to
16 another state as provided in section 77-2730;

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

20 (c) A refundable credit for individuals who qualify for an income
21 tax credit as an owner of agricultural assets under the Beginning Farmer
22 Tax Credit Act for all taxable years beginning or deemed to begin on or
23 after January 1, 2009, under the Internal Revenue Code of 1986, as
24 amended. The credit allowed for each partner, shareholder, member, or
25 beneficiary of a partnership, corporation, limited liability company, or
26 estate or trust qualifying for an income tax credit as an owner of
27 agricultural assets under the Beginning Farmer Tax Credit Act shall be
28 equal to the partner's, shareholder's, member's, or beneficiary's portion
29 of the amount of tax credit distributed pursuant to subsection ~~(3)~~ (4) of
30 section 77-5211.

31 (5)(a) For all taxable years beginning on or after January 1, 2007,

1 and before January 1, 2009, under the Internal Revenue Code of 1986, as
2 amended, there shall be allowed to each partner, shareholder, member, or
3 beneficiary of a partnership, subchapter S corporation, limited liability
4 company, or estate or trust a nonrefundable credit against the income tax
5 imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the
6 partner's, shareholder's, member's, or beneficiary's portion of the
7 amount of franchise tax paid to the state under sections 77-3801 to
8 77-3807 by a financial institution.

9 (b) For all taxable years beginning on or after January 1, 2009,
10 under the Internal Revenue Code of 1986, as amended, there shall be
11 allowed to each partner, shareholder, member, or beneficiary of a
12 partnership, subchapter S corporation, limited liability company, or
13 estate or trust a nonrefundable credit against the income tax imposed by
14 the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's,
15 member's, or beneficiary's portion of the amount of franchise tax paid to
16 the state under sections 77-3801 to 77-3807 by a financial institution.

17 (c) Each partner, shareholder, member, or beneficiary shall report
18 his or her share of the credit in the same manner and proportion as he or
19 she reports the partnership, subchapter S corporation, limited liability
20 company, or estate or trust income. If any partner, shareholder, member,
21 or beneficiary cannot fully utilize the credit for that year, the credit
22 may not be carried forward or back.

23 (6) There shall be allowed to all individuals nonrefundable credits
24 against the income tax imposed by the Nebraska Revenue Act of 1967 as
25 provided in section 77-3604 and refundable credits against the income tax
26 imposed by the Nebraska Revenue Act of 1967 as provided in section
27 77-3605.

28 Sec. 2. Section 77-5203, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 77-5203 For purposes of the Beginning Farmer Tax Credit Act:

31 (1) Agricultural assets means agricultural land, livestock, farming,

1 or livestock production facilities or buildings and machinery used for
2 farming or livestock production located in Nebraska;

3 (2) Board means the Beginning Farmer Board created by section
4 77-5204;

5 (3) Cash rent agreement means a rental agreement in which the
6 principal consideration given to the owner of agricultural assets is a
7 predetermined amount of money. A flex or variable rent agreement is an
8 alternative form of a cash rent agreement in which a predetermined base
9 rent is adjusted for actual crop yield, crop price, or both according to
10 a predetermined formula;

11 (4) ~~(3)~~ Farm means any tract of land over ten acres in area used for
12 or devoted to the commercial production of farm products;

13 (5) ~~(4)~~ Farm product means those plants and animals useful to man
14 and includes, but is not limited to, forages and sod crops, grains and
15 feed crops, dairy and dairy products, poultry and poultry products,
16 livestock, including breeding and grazing livestock, fruits, and
17 vegetables;

18 (6) ~~(5)~~ Farming or livestock production means the active use,
19 management, and operation of real and personal property for the
20 production of a farm product;

21 (7) ~~(6)~~ Financial management program means a program for beginning
22 farmers or livestock producers which includes, but is not limited to,
23 assistance in the creation and proper use of record-keeping systems,
24 periodic private consultations with licensed financial management
25 personnel, year-end monthly cash flow analysis, and detailed enterprise
26 analysis;

27 (8) ~~(7)~~ Owner of agricultural assets means:

28 (a) An individual or a trustee having an ownership interest in an
29 agricultural asset located within the State of Nebraska who meets any
30 qualifications determined by the board;

31 (b) A spouse, child, or sibling who acquires an ownership interest

1 in agricultural assets as a joint tenant, heir, or devisee of an
2 individual or trustee who would qualify as an owner of agricultural
3 assets under subdivision (8)(a) ~~(7)(a)~~ of this section; or

4 (c) A partnership, corporation, limited liability company, or other
5 business entity having an ownership interest in an agricultural asset
6 located within the State of Nebraska which meets any additional
7 qualifications determined by the board;

8 (9) ~~(8)~~ Qualified beginning farmer or livestock producer means an
9 individual who is a resident individual as defined in section 77-2714.01,
10 who has entered farming or livestock production or is seeking entry into
11 farming or livestock production, who intends to farm or raise crops or
12 livestock on land located within the state borders of Nebraska, and who
13 meets the eligibility guidelines established in section 77-5209 and such
14 other qualifications as determined by the board; and

15 (10) ~~(9)~~ Share-rent agreement means a rental agreement in which the
16 principal consideration given to the owner of agricultural assets is a
17 predetermined portion of the production of farm products from the rented
18 agricultural assets.

19 Sec. 3. Section 77-5209, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 77-5209 ~~(1)~~ The board shall determine who is qualified as a
22 beginning farmer or livestock producer based on the qualifications found
23 in this section. A qualified beginning farmer or livestock producer shall
24 be an individual who: (1) ~~(a)~~ Has a net worth of not more than two
25 hundred thousand dollars, including any holdings by a spouse or
26 dependent, based on fair market value; (2) ~~(b)~~ provides the majority of
27 the day-to-day physical labor and management of his or her farming or
28 livestock production operations; (3) ~~(c)~~ has, by the judgment of the
29 board, adequate farming or livestock production experience or
30 demonstrates knowledge in the type of farming or livestock production for
31 which he or she seeks assistance from the board; (4) ~~(d)~~ demonstrates to

1 the board a profit potential by submitting board-approved projected
2 earnings statements and agrees that farming or livestock production is
3 intended to become his or her principal source of income; ~~(5) (e)~~
4 demonstrates to the board a need for assistance; ~~(6) (f)~~ participates in
5 a financial management program approved by the board; ~~(7) (g)~~ submits a
6 nutrient management plan and a soil conservation plan to the board on any
7 applicable agricultural assets purchased or rented from an owner of
8 agricultural assets; and ~~(8) (h)~~ has such other qualifications as
9 specified by the board. The qualified beginning farmer or livestock
10 producer net worth thresholds in subdivision ~~(1) (a)~~ of this subsection
11 shall be adjusted annually beginning October 1, 2009, and each October 1
12 thereafter, by taking the average Producer Price Index for all
13 commodities, published by the United States Department of Labor, Bureau
14 of Labor Statistics, for the most recent twelve available periods divided
15 by the Producer Price Index for 2008 and multiplying the result by the
16 qualified beginning farmer's or livestock producer's net worth threshold.
17 If the resulting amount is not a multiple of twenty-five thousand
18 dollars, the amount shall be rounded to the next lowest twenty-five
19 thousand dollars.

20 (2) A qualified beginning farmer or livestock producer who has
21 participated in a board approved and certified three-year rental
22 agreement with an owner of agricultural assets shall be eligible to file
23 subsequent applications for different assets.

24 (3) Except as allowed pursuant to subsection (3) of section 77-5211,
25 tax credits for an agricultural asset may be issued for a maximum of
26 three years.

27 ~~(2) A qualified beginning farmer or livestock producer who has~~
28 ~~participated in a board approved and certified three-year rental~~
29 ~~agreement with an owner of agricultural assets shall not be eligible to~~
30 ~~file a subsequent application with the board but may refer to the board~~
31 ~~for additional support and participate in programs, including educational~~

1 ~~and financial programs and seminars, established or recommended by the~~
2 ~~board that are applicable to the continued success of such farmer or~~
3 ~~livestock producer.~~

4 Sec. 4. Section 77-5209.01, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-5209.01 A qualified beginning farmer or livestock producer in the
7 first, second, or third year of a qualifying three-year rental agreement
8 shall be allowed a one-time refundable credit ~~to be applied~~ against the
9 income tax imposed by the Nebraska Revenue Act of 1967 ~~state income tax~~
10 ~~liability of such individual~~ for the cost of participation in the
11 financial management program required for eligibility under section
12 77-5209. The amount of the credit shall be the actual cost of
13 participation in an approved program incurred during the tax year for
14 which the credit is claimed, up to a maximum of five hundred dollars.

15 Sec. 5. Section 77-5211, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-5211 (1) Except as otherwise disallowed under subsection ~~(4)~~ ~~(5)~~
18 of this section, an owner of agricultural assets shall be allowed a
19 refundable credit ~~to be applied~~ against the income tax imposed by the
20 Nebraska Revenue Act of 1967 ~~state income tax liability of such owner~~ for
21 agricultural assets rented on a rental agreement basis, including cash
22 rent of agricultural assets or cash equivalent of a share-rent rental, to
23 qualified beginning farmers or livestock producers. Such asset shall be
24 rented at prevailing community rates as determined by the board.

25 ~~(2) An owner of agricultural assets who has participated in a board~~
26 ~~approved and certified three-year rental agreement with a beginning~~
27 ~~farmer or livestock producer shall be eligible to file subsequent~~
28 ~~applications for different assets.~~

29 ~~(3) Except as allowed pursuant to subsection (3) of section 77-5211,~~
30 ~~tax credits for an agricultural asset may be issued for a maximum of~~
31 ~~three years.~~

1 (4) ~~(2)~~ The credit allowed shall be for renting agricultural assets
2 used for farming or livestock production. Such credit shall be granted by
3 the Department of Revenue only after approval and certification by the
4 board and a written three-year rental agreement for such assets is
5 entered into between an owner of agricultural assets and a qualified
6 beginning farmer or livestock producer. An owner of agricultural assets
7 or qualified beginning farmer or livestock producer may terminate such
8 agreement for reasonable cause upon approval by the board. If an
9 agreement is terminated without fault on the part of the owner of
10 agricultural assets as determined by the board, the tax credit shall not
11 be retroactively disallowed. If an agreement is terminated with fault on
12 the part of the owner of agricultural assets as determined by the board,
13 any prior tax credits claimed by such owner shall be disallowed and
14 recaptured and shall be immediately due and payable to the State of
15 Nebraska.

16 (5) ~~(3)~~ A credit may be granted to an owner of agricultural assets
17 for renting agricultural assets, including cash rent of agricultural
18 assets or cash equivalent of a share-rent agreement, to any qualified
19 beginning farmer or livestock producer for a period of three years. An
20 owner of agricultural assets shall ~~not~~ be eligible for further credits
21 for such assets under the Beginning Farmer Tax Credit Act when ~~unless~~ the
22 rental agreement is terminated prior to the end of the three-year period
23 through no fault of the owner of agricultural assets. If the board finds
24 that such a termination was not the fault of the owner of the
25 agricultural assets, it may approve the owner for credits arising from a
26 subsequent qualifying rental agreement on the same asset with a different
27 qualified beginning farmer or livestock producer.

28 (6) ~~(4)~~ Any credit allowable to a partnership, a corporation, a
29 limited liability company, or an estate or trust may be distributed to
30 the partners, members, shareholders, or beneficiaries. Any credit
31 distributed shall be distributed in the same manner as income is

1 distributed.

2 (7) (5) The credit allowed under this section shall not be allowed
3 to an owner of agricultural assets for a rental agreement with a
4 beginning farmer or livestock producer who is a relative, as defined in
5 section 36-702, of the owner of agricultural assets or of a partner,
6 member, shareholder, or trustee of the owner of agricultural assets
7 unless the rental agreement is included in a written succession plan.
8 Such succession plan shall be in the form of a written contract or other
9 instrument legally binding the parties to a process and timetable for the
10 transfer of agricultural assets from the owner of agricultural assets to
11 the beginning farmer or livestock producer. The succession plan shall
12 provide for the transfer of assets to be completed within a period of no
13 longer than thirty years, except that when the asset to be transferred is
14 land owned by an individual, the period of transfer may be for a period
15 up to the date of death of the owner. The owner of agricultural assets
16 shall be allowed the credit provided for qualified rental agreements
17 under this section if the board certifies the plan as providing a
18 reasonable manner and probability of successful transfer.

19 Sec. 6. Section 77-5212, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 77-5212 In evaluating a rental agreement between an owner of
22 agricultural assets and a qualified beginning farmer or livestock
23 producer, the board shall not approve and certify credit for an owner of
24 agricultural assets who (1) has, with fault, terminated a prior board
25 approved and certified rental agreement with a qualified beginning farmer
26 or livestock producer or if the agricultural assets have previously been
27 approved in a qualifying rental agreement (2) ~~is proposing a rental~~
28 ~~agreement of agricultural assets which, if rented to a qualified~~
29 ~~beginning farmer or livestock producer, would cause the lessee to be~~
30 ~~responsible for managing or maintaining a farm which, based on the~~
31 ~~discretion of the board, is of greater scope and scale than necessary for~~

1 ~~a viably sized farm as established by the guidelines implemented by the~~
2 ~~board in order to adequately support a beginning farmer or livestock~~
3 ~~producer.~~ Any person aggrieved by a decision of the board may appeal the
4 decision, and the appeal shall be in accordance with the Administrative
5 Procedure Act.

6 Sec. 7. Section 77-5213, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 77-5213 (1) The tax credit approved and certified by the board under
9 section 77-5211 for an owner of agricultural assets in the first, second,
10 or third year of a qualifying rental agreement shall be equal to (a) ten
11 percent of the gross rental income stated in a rental agreement that is a
12 cash rent agreement or (b) fifteen percent of the cash equivalent of the
13 gross rental income in a rental agreement that is a share-rent agreement.
14 Tax credits shall only be approved and certified for rental agreements
15 that are approved and certified by the board under the Beginning Farmer
16 Tax Credit Act.

17 (2) To qualify for the greater rate of credit allowed under
18 subdivision (1)(b) of this section, a share-rent agreement shall provide
19 for sharing of production expenses or risk of loss, or both, between the
20 agricultural asset owner and the qualified beginning farmer or livestock
21 producer. The board may adopt and promulgate rules and regulations,
22 consistent with the policy objectives of the act, to further define the
23 standards that share-rent agreements shall meet for approval and
24 certification of the tax credit under the act.

25 (3) The board shall review each existing three-year rental agreement
26 between a beginning farmer or livestock producer and an owner of
27 agricultural assets on a semiannual basis and shall either certify or
28 terminate program eligibility for beginning farmers or livestock
29 producers or tax credits granted to owners of agricultural assets on an
30 annual basis.

31 Sec. 8. Original sections 77-2715.07, 77-5203, 77-5209, 77-5209.01,

1 77-5211, 77-5212, and 77-5213, Reissue Revised Statutes of Nebraska, are
2 repealed.