

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB893

Hearing Date: Thursday January 28, 2010
Committee On: Revenue
Introducer: Christensen
One Liner: Provide refund procedures for unconstitutional taxes and assessments

Roll Call Vote - Final Committee Action:
Indefinitely postponed

Vote Results:

Aye:	7	Senators Adams, White, Utter, Louden, Hadley, Dierks, Cornett
Nay:		
Absent:	1	Senator Pirsch
Present Not Voting:		

Proponents:

Senator Mark Christensen
Joel E. Burke
Rita Erickson
Jasper Fanning
Pete McClymont

Representing:

Introducer
NARD, LRNRD, MRNRD, URNRD
Treasurer, Hayes County
Upper Republican NRD
Nebraska Cattlemen

Opponents:

Representing:

Neutral:

Larry Dix
Lynn Rex

Representing:

Nebraska Association of County Officials
League of Nebraska Municipalities

Summary of purpose and/or changes:

LB 893 is substantially similar to - but not exactly the same as - LB 681 (2009), which was indefinitely postponed by the Revenue Committee on May 13, 2009. One purpose of LB 893 is to provide a refund mechanism for the tax declared unconstitutional by the Nebraska Supreme Court in *Garey v. Nebraska Department of Natural Resources*, 277 Neb. 149 (Feb. 6, 2009).

Garey held that Laws 2007, LB 701, section (1)(d) violates the prohibition against levying a property tax for state purposes under Article VIII, section 1A, of the Nebraska Constitution and that section (1)(d) of LB 701 is, therefore, unconstitutional. Garey also held that section 11(1)(d) of LB 701 is unconstitutional. Section 11(1)(d) of LB 701 granted property taxing authority only to those Natural Resources Districts (NRDs) with a jurisdiction that included "a river subject to an interstate compact among three or more states [i.e., the Republican River Compact] and that also included one or more irrigation districts within the compact river basin." [277 Neb. at 159].

The Nebraska Supreme Court reasoned that when state and local purposes are intermingled in a statute, the crucial issue is whether the controlling and dominant purposes are state purposes or local purposes. Additionally, LB 701 did not mention that the property taxes raised could be used for operation of the NRDs that were authorized to levy the tax, which suggested that the tax revenue could be channeled elsewhere, "arguably to meet the State's obligation to comply with the Compact" and that, therefore, "the controlling and predominant purpose behind the property tax provision in

Section 11(1)(d) of L.B. 701 is for the purpose of maintaining compliance with the Compact, which we conclude is a state purpose." [277 Neb. at 159-160].

Section 1: LB 893 would create a statutory mechanism allowing a refund of a real or personal property tax, occupation tax, assessment, or penalty (or any part thereof) that has been declared unconstitutional by final judgment or order of a court of competent jurisdiction entered on or after January 1, 2009, in an action that is not pending on appeal, and the judgment or order was not made in time to prevent collection or payment of the tax, assessment, or penalty.

If revenue from the unconstitutional tax, assessment, or penalty that was collected has not been expended, the refund would be due for the year the tax, assessment, or penalty was declared unconstitutional and for prior years, beginning with the year the action challenging the constitutionality of the tax, assessment, or penalty was commenced.

The refund could be made - but does not necessarily have to be made - to the person paying the tax, assessment, or penalty without requiring the taxpayer to file a claim for refund.

If the unconstitutional tax, assessment, or penalty applied throughout the state or beyond the geographic boundaries of the court that declared the tax, assessment, or penalty unconstitutional, the final judgment or order would have to be entered by the Nebraska Supreme Court.

The remedy would be supplementary to the refund mechanism to recover illegal taxes provided under Neb. Rev. Stat. Sec. 77-1735, which sets forth a procedure for a taxpayer to file a claim for refund for having paid an illegal property tax or illegal payment in lieu of property tax, "for any reason other than the valuation or equalization of the property. . . ."

A refund could be made - but does not necessarily have to be made - in the manner prescribed in Neb. Rev. Stat. Sec. 77-1736.06, which sets forth a property tax refund procedure, or the refund could be applied to satisfy "any tax levied or assessed in the county" (emphasis added).

Section 2: LB 893 would enact the emergency clause.

Abbie Cornett, Chairperson