

NEBRASKA ADMINISTRATIVE CODE

TITLE 91, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

BEGINNING FARMER BOARD

BEGINNING FARMER TAX CREDIT ACT REGULATIONS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 91 - BEGINNING FARMER BOARD

Chapter 1 - BEGINNING FARMER TAX CREDIT ACT REGULATIONS

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001 Statement of Purpose. The purpose of these regulations is to aid in the administration of the Beginning Farmer Tax Credit Act, Neb. Rev. Stat. §§ 77-5201 to 77-5215.

002 Administration. These regulations will be administered by the Beginning Farmer Board. For administrative and budgetary purposes only, the Board will be housed within the Department of Agriculture's Beginning Farmer Program and located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94947, Lincoln, Nebraska 68509-4947. The telephone number is (402) 471-6890.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Beginning Farmer Tax Credit Act will apply to such terms when found in these regulations.

003.01 ACT means the Beginning Farmer Tax Credit Act, Neb. Rev. Stat. §§77-5201 to 77-5215.

003.02 QUALIFIED BEGINNING FARMER OR LIVESTOCK PRODUCER means an individual (individuals) who is (are) a resident individual (individuals) as defined in subsection 003.04, 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 in Section 004.

003.02A Eligible individuals may be members of a partnership, trust, corporation, limited liability company, or other business entity as long as all members of the partnership, trust, corporation, limited liability company, or other business entity individually meet the eligibility guidelines.

003.03 RELATIVE means an individual related by consanguinity (blood) within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

003.03A The term RELATIVE shall apply to third degree relatives which include great grandparents, aunts and uncles, nieces and nephews, and great grandchildren.

003.03B The term RELATIVE shall not apply to fourth degree relatives which include great, great grandparents, great aunts and uncles, first cousins, grand nieces and nephews and great, great grand children.

003.04 RESIDENT OF THE STATE OF NEBRASKA means an individual (individuals) who is (are) domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state as established in §77-2714.01(7).

003.05 TOTAL FAMILY means the beginning farmer or livestock producer and his or her spouse and dependents.

003.06 VIABLY SIZED FARM means a farm or livestock production facility that has the potential to provide an adequate source of income to support the beginning farmer or livestock producer.

003.07 CASH RENT AGREEMENT means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined amount of money for the crop year. (This includes agreements that provide a base payment plus a variance in payment for abundant crops or high prices.)

003.08 SHARE-RENT AGREEMENT means a rental agreement in which the principal consideration given to the owner of the agricultural assets is a predetermined portion of the production of farm products from the rented agricultural assets and shall provide for sharing of production expenses or production risk of loss, or both, between the agricultural asset owner and the qualified beginning farmer or livestock producer.

003.09 OWNER OF AGRICULTURAL ASSETS means an individual (individuals) or a Trustee, a partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located

within the State of Nebraska used for commercial production of farm products as defined in section 005.

003.10 THE SUCCESSION PLAN shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. For purposes of this regulation, succession plans may include, but are not limited to, wills, purchase contracts, buy-sell agreements, and trusts, whereby, the majority ownership or majority control of the asset transfers to the beginning farmer.

004 Beginning Farmer or Livestock Producer Qualifications. A majority vote of the Board shall certify that the qualified beginning farmer or livestock producer has met the following criteria:

004.01 Demonstrates a need for assistance by having a total family net worth at the time of application of not more than two hundred thousand dollars, based on fair market value as set forth in a net worth statement:

004.01A The beginning farmer's or livestock producer's total family assets, valued at their fair market value, less the beginning farmer's or livestock producer's total family indebtedness, will constitute as the net worth;

004.01B The current net worth statement must be signed and dated (within twelve months of the application date) by the beginning farmer and a lawyer, banker, loan officer, financial counselor, or an accountant, who gives his or her title and states in writing that the information provided on the statement appears to be accurate;

004.01C The Board has the authority to request an updated net worth statement.

004.01D The qualified beginning farmer or livestock producer net worth thresholds of \$200,000 shall be adjusted annually beginning October 1, 2009, and each October 1 thereafter, by taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent 12 available periods, divided by the Producer Price Index for 2008, and multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of \$25,000, the amount shall be rounded to the next lowest \$25,000.

004.02 Prior to the date of application, has operated a farm or produced livestock for less than ten years out of the past fifteen years;

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004.03 Is a resident of Nebraska as defined in Neb. Rev. Stat. §77-2714.01, who intends to rent or lease agricultural assets eligible for the Beginning Farmer Tax Credit located within the state borders of Nebraska;

004.04 Provides the majority of the day-to-day physical labor and management of the farm or livestock production;

004.05 Demonstrates, by the judgment of the Board, an adequate farming or livestock production experience, including, but not limited to one or more of the following:

004.05A Experience in the day-to-day operation of a farm or ranch; or

004.05B Receiving an educational certificate or degree from a two or four year agriculture based program; or

004.05C Having been employed by a farm or livestock business; or

004.05D Possessing other agricultural experience as explained on the application.

004.06 Demonstrates, by judgment of the Board, knowledge in the type of farming or livestock production for which he or she seeks assistance including, but not limited to work experience or education.

004.07 Demonstrates a profit potential shown by:

004.07A A current net worth statement as provided in subsection 004.01; and

004.07B A cash flow analysis with a positive outcome which includes all farm and off farm income and expenses including any rented ground, facilities, livestock or other assets under the tax credit act and family living expenses as referred to in §§77-5209(4).

004.07B(1) The cash flow analysis will be signed and dated (within twelve months of the application date) by the beginning farmer and a lawyer, banker, loan officer, or an accountant, who gives his or her title and states in writing that the information appears to be accurate; and

004.07B(2) The Board has the authority to request an updated cash flow analysis.

004.08 Participates in a financial management program approved by the Board as defined in section 010;

004.08A The beginning farmer or livestock producer will provide proof of completion of the financial management program;

004.08B The Board may grant a waiver if:

004.08B(1) The applicant shows he or she has recent equivalent education; or

004.08B(2) A financial management program is not available within seventy five miles of the applicant's residence.

004.08B(3) A financial management program is not available before participation in the Act and the applicant has registered or plans to attend the next financial management program of their choice. If the planned class is not completed within one year of the application date, the Board will reconsider the eligibility of the beginning farmer or livestock producer at the next scheduled Board meeting.

004.09 Submits, if available, a copy of the nutrient management plan and the soil conservation plan prepared for the Farm Service Agency or the Department of Environmental Quality. If neither of the plans above are available, a self written narrative that describes the applicant's nutrient management plan and soil conservation plan may be submitted.

004.10 The beginning farmer will not be a relative, as defined in subsection 003.03, of the owner of agricultural assets or the owner's partner, member, shareholder, or trustee in which the beginning farmer or livestock producer is seeking to enter into a rental agreement unless the assets included in the rental agreement are included in a written succession plan that meets the qualifications in Section 004.10A through subsection 004.10B.

004.10A. Such succession plan as certified by an attorney at law or in the form of a written contract or other instrument as defined in Sec. 003.10 legally binding the parties to a process and time table for the transfer of:

004.10A(1) the farm or ranch physical labor to the beginning farmer;

004.10A(2) the farm or ranch management and decision making to the beginning farmer; and

004.10A(3) the farm or ranch assets listed in the rental agreement to the beginning farmer.

004.10B The succession plan will be considered to provide a reasonable manner and probability of a successful transfer if:

004.10B(1) The succession plan documents transfer of labor, management, and ownership.

004.10B(2) The existence of the succession plan that meets the Beginning Farmer Tax Credit guidelines in 004.10 and defined in 003.10, is documented on a form provided by the Board that shall be signed by the Beginning Farmer, Asset Owner and an Attorney at Law, with notarized signatures by a public Notary; and

004.10B(3) The owner and the beginning farmer have attended and completed training sessions on succession and transfer plans that contain lessons on family communication skills, business meeting skills, and business entities.

004.11 A qualified beginning farmer or livestock producer who has participated in a Board approved and certified three-year rental agreement with an owner of agricultural assets shall not be eligible to file a subsequent application on that same asset with the Board. He or she 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.

004.12 The Board agrees not to discriminate against any applicant on the basis of race, color, religion, national origin, sex or disability.

005 Qualifications for the Owner of Agricultural Assets. Qualifications for the owner of agricultural assets for the Beginning Farmer Tax Credit Program are as follows:

005.01 An individual or a Trustee who has an ownership interest in an agricultural asset located within the State of Nebraska.

005.02 A trust, partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska.

005.03 The Board agrees not to discriminate against any applicant on the basis of race, color, religion, national origin, sex or disability.

006 Application Process for the Beginning Farmer or Livestock Producer and the Owner of Agricultural Assets.

006.01 The beginning farmer and the owner of agricultural assets must complete a Nebraska Department of Agriculture Beginning Farmer Application Packet to

show written proof of the above eligibility criteria to apply for a tax credit and a certificate of eligibility for a personal property tax exemption.

006.01A A Beginning Farmer Application Packet and process shall consist of:

006.01A(1) A Beginning Farmer application form signed and dated prior to the end of the participating eligible agricultural asset owner's tax year;

006.01A(2) A projected (dated within twelve months of the application date) cash flow analysis as stated in part 004.07;

006.01A(3) A nutrient management plan and a soil conservation plan as stated in subsection 004.09;

006.01A(4) A current net worth statement (dated within twelve months of application) as described in subsection 004.01;

006.01A(5) A copy of the three year rental agreement signed by the beginning farmer and the owner of agricultural assets which states in writing the method of rent payment.

006.01A(5)(a) For cash rent, a statement of the cash rents to be paid each year for three years; or

006.01A(5)(b) For share rent agreements, a joint agreement which records the method of determining a fair and reasonable cash equivalent of the dollar amounts of the owner's predetermined portion of the share rent agreement as stated in part 008.01C(2) to be paid each year for three years;

006.01B The Owner of Agricultural Assets Packet and process shall consist of:

006.01B(1) An Owner of Agricultural Assets application form dated prior to the end of his or her tax year;

006.01B(2) A copy of the three year rental agreement signed by the beginning farmer and the owner of agricultural assets which states in writing the legal description of rented land and the method of rent payment;

006.01B(2)(a) For cash rent, a statement of the cash rents to be paid each year for three years; or

006.01B(2)(b) share rent agreements, a joint agreement which records the method of determining a fair and reasonable cash equivalent of the dollar amounts of the owner's predetermined portion of the share rent agreement as stated in part 008.01C(2) to be paid each year for three years.

006.01B(3) A copy of the succession plan form as outlined in Section 004.10, if the owner and beginning farmer are related, as stated in section 003.03.

006.02 Prospective participants may apply to the Board on forms available at the Nebraska Department of Agriculture, P.O. Box 94947, 301 Centennial Mall South, 4<sup>th</sup> Floor, Lincoln, NE 68509-4947, on copies of the forms, or on forms found on the Department of Agriculture's home web page ([www.agr.ne.gov](http://www.agr.ne.gov)) in the subsection titled Beginning Farmer Program; and

006.03 The completed application forms as listed in subsection 006.01 may be submitted to the Beginning Farmer Program, Department of Agriculture, P.O. Box 94947, Lincoln, NE 68509-4947. Electronic submissions will be accepted if an original follows.

#### 007 Application Process.

007.01 The staff of the Beginning Farmer Program will:

007.01A Review completed application packets as described in subsection 006.01;

007.01B Send a letter to the applicants to confirm that the application was complete or request additional information from the applicants to clarify or prove eligibility criteria.

007.01C Submit the application packets to the Board for review at the next Board meeting;

007.02 The Board may request additional information from the applicants and delay making a determination of eligibility until the added information is reviewed at the next Board meeting;

007.03 The Board will determine the eligibility of the beginning farmer to:

007.03A Participate in the Tax Credit Program, and

007.03B Receive a Certificate of Eligibility to present to their County Assessor for acceptance into the Personal Property Tax Exemption Program.

007.03B(1) The Qualified Beginning Farmer's Certificate of Eligibility is current in year 1, year 2, or year 3 of their three year lease in the Beginning Farmer Tax Credit Act to begin the Beginning Farmer Tax Exemption for three years.

007.03C Eligibility of the beginning farmer will be based upon:

007.03C(1) The definition of the beginning farmer or livestock producer in subsection 003.02; and

007.03C(2) The eligibility criteria in section 004; and

007.03C(3) The Completion of the application packet and process as stated in part 006.01A

007.03D Eligibility of the owner of agriculture assets will be based upon:

007.03D(1) The definition of an owner of agricultural assets in section 77-5203 of the Beginning Farmer Tax Credit Act; and

007.03C(2) The eligibility criteria in section 005 of the Regulations; and

007.03C(3) The completion of the application packet and process as stated in part 006.01B.

007.03D If the beginning farmer or livestock producer or the owner of agricultural assets application is denied, the Board will send a notice to the applicants by certified mail, which will include the reason for denial and describe the steps for appealing the decision.

007.03D(1) The applicants may request a reconsideration mediation with the Board at their next scheduled meeting; or

007.03D(2) The applicants may request an appeal following the mediation or choose to forgo the mediation step and go directly to appeal in accordance with the Administrative Procedure Act.

008 Tax Credit Certification

008.01 Beginning January 1, 2001, a qualified owner of agricultural assets shall be allowed a refundable tax credit, under the Internal Revenue Code of 1986, as amended, to be applied against the state income tax liability of such owner for agricultural assets leased or rented to a qualified beginning farmer or livestock producer. The credit allowed shall be for assets located in Nebraska;

008.01A The amount of annual tax credit for the owner of agricultural assets will be based on the rent received by the owner;

008.01B Such assets shall be rented or leased at prevailing community rates as agreed to by the beginning farmer or livestock producer and the owner of the agricultural assets;

008.01C The tax credit will be equal to

008.01C(1) Ten percent of the annual gross cash rent income paid by the beginning farmer or livestock producer to the owner of said assets; or

008.01C(2) Fifteen percent of the approved cash equivalent of the annual share rent agreement as stated in a signed joint agreement which records the method of determining a fair and reasonable cash equivalent of the dollar amounts of the owner's portion of the share rental agreement as stated in divisions 006.01A(5)(b) and 006.01B(2)(b) to be paid each year for three years;

008.01D If the Board does not approve the dollar amount as the cash equivalent of the share rental agreement, the beginning farmer and the owner of the agricultural assets may submit a new plan for approval or begin the appeal process in part 007.03D;

008.02 A qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement shall be allowed a one-time credit to be applied against the state income tax liability of such individual for the cost of participation in the financial management program required for eligibility under section 77-5209 of the Act. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five hundred dollars.

008.03 The tax credit eligibility is reviewed and certified annually by the Board.

008.03A Tax credit certificates will be distributed by the Board to the owners.

008.03A(1) One certificate will be kept in the Beginning Farmer Program files; and

008.03A(2) Two certificates will be mailed to the owner of agricultural assets; one of which should be attached to his or her Nebraska income tax return and the other kept for their personal records.

008.03B The tax credit shall be granted by the Department of Revenue when the agricultural asset owner files their annual Nebraska income tax return;

008.03C A tax credit may be granted each year for a period of up to three years;

008.03C(1) Each agricultural asset will not be rented or leased by the beginning farmer or livestock producer as part of the Beginning Farmer Tax Credit Act more than three years, except as allowed in section 009;

008.03C(2) An owner of agricultural assets may receive a tax credit on more than one lease with different parties or with the same party during the same three-year period;

008.03C(3) An agricultural asset may receive tax credits from one to three years while being owned by one owner except as allowed in subsection 009.02; and

008.03C(4) A qualified beginning farmer or livestock producer may be eligible to rent or lease more than one agricultural asset from one or more qualified owners of agricultural assets.

#### 009 Guidelines and Procedures Relating to Tax Credits.

009.01 At least semi-annually, the Board will review new or pending applications from beginning farmers and owners of agricultural assets for tax credit certification;

009.02 An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement according to the terms of said contractual agreement or for reasonable cause. The agricultural owner's tax credit shall be affected as follows:

009.02A The owner of the agricultural asset shall not be eligible for further credits on that particular asset unless the rental agreement is

terminated prior to the end of the three year period through no fault of the owner of agricultural asset;

009.02B If the Board finds that such a termination was not the fault of the owner of agricultural assets, they may approve the owner for credits arising from a subsequent qualifying rental agreement with a different qualified beginning farmer or livestock producer;

009.02C 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;

009.02D 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;

009.02E If an agreement is terminated without fault on the part of the beginning farmer as determined by the Board, the beginning farmer who is eligible may rent or lease additional agricultural assets from the same or other eligible owner's of agricultural assets as part of the tax credit program; or

009.02F Should an agricultural asset be sold during the 3 year term, the new owner and the rental agreement must qualify under the act in order for the tax credit to apply.

009.03 The eligible rental agreements as stated in subpart 006.01A(5) and the positive cash flow analysis as stated in part 004.07B, will be reviewed by the Board to determine by a majority vote that the farm or facility meets the definition of a viably sized farm as stated in subsection 003.06. The farm or livestock facility may vary according to the region of the state where it is located; the quality, type, and number of crops or livestock produced; off farm income and expense; and other factors related to the farming or livestock production;

009.04 Allowable tax credit shall be distributed in the same manner as income is distributed to the partners, members, shareholders, or beneficiaries of a partnership, a corporation, a syndicate, or an estate or trust; and

009.05 If a dispute arises, the beginning farmer or livestock producer or the owner of the agricultural assets may voluntarily request mediation to determine a solution that is acceptable to both.

010.00 Financial Management Program Certification and Guidelines. Board approved financial management programs to be completed by the beginning farmer or livestock producer shall include course work on the creation and proper use of record-keeping

systems, periodic private consultations with financial management personnel, monthly and year-end cash flow analysis, detailed enterprise analysis, etc. Proof of completion of the program or course, and qualifies the Beginning Farmer for the tax credit defined in 008.02.

011.00 Beginning Farmer Personal Property Tax Exemption Certification and Guidelines.

011.01 The Qualified Beginning Farmer as defined in Section 003.02 that is eligible for the Beginning Farmer Tax Exemption will apply for an Eligibility Certificate from the Beginning Farmer Tax Credit Program with such application submitted on or before November 1<sup>st</sup> of the year preceding the year for which the exemption is to begin. Originals must follow electronic submission of applications within 10 working days.

011.02 On or before December 31<sup>st</sup> of the year preceding the year for which the exemption is to begin, the beginning farmer attaches the original Eligibility Certificate to the application forms prescribed by the Tax Commissioner in the county assessor's office.

011.02A Failure to provide the required documentation to their county assessor shall result in a denial of the exemption for the following year but shall be considered as an application for the year thereafter.

011.02B The county assessor shall approve or deny the application for exemption and issue notice of approval or denial on or before February 1<sup>st</sup>.

011.03 If the application is approved, the county assessor shall exempt no more than one hundred thousand dollars of taxable value of agricultural or horticultural machinery and equipment for each year irrespective of whether the person claiming the exemption no longer meets the qualification of a beginning farmer pursuant to section 77-5209 unless the beginning farmer discontinues farming or livestock production.

011.04 If the application is denied by the county assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial to the county board of equalization.

011.05 Any person whose agricultural and horticultural machinery and equipment has been exempted from tangible personal property tax pursuant to this section shall be permanently disqualified from any further exemption from tangible personal property tax as a qualified beginning farmer or livestock producer.

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012.00 Annotation. Neb. Rev. Stat. §§77-5201 to 77-5215 (1999 Laws of Nebraska, LB 623 and 2000 Laws of Nebraska, LB1223 and LB 1027).

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