Credit will be issued on
next year's tax statement

By Russ Pankonin
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Taxpayers in the three Republican Basin natural resources districts (NRDs) will see a credit on their taxes next year for the collection of a special NRD tax levy later ruled unconstitutional.

During his weekly tele-conference Tuesday, Sen. Mark Christensen of Imperial said offering a property tax credit next year represents the most logical and easiest way to get the unconstitutional tax back to the taxpayer.

Christensen said it appears state officials agree on the solution and no special legislation will be required to approve the credit. The money from the special levy, which is being held by the NRDs, will be used to offset next year's tax request by the NRDs.

As a result, taxpayers will see a matching reduction in the property taxes they pay to support the operations of the NRDs.

LB 701, which was adopted two years ago to address compact compliance issues, allowed NRDs in the basin to collect an additional levy of up to 10 cents.

In addition, it allowed the NRDs to assess an occupation tax on irrigated acres of up to $10 per acre.

The Upper Republican NRD requested a 9.5-cent levy and an occupation tax of $6.96 per irrigated acre for 2007.

Those taxes were collected in 2008 for the 2007 tax year.

The amount of property tax levy being held by the URNRD totals $1,136,468. That amount will be used to offset the URNRD's tax request next year.

Tax levy ruled unconstitutional

A McCook-based group, Friends of the River (FOTR), challenged the constitutionality of the property tax.

A Lancaster District County judge ruled last year the tax was unconstitutional because it only applied to the Republican Basin NRDs, making it a closed class.

Both sides appealed the ruling to the Nebraska Supreme Court.

The NRDs and Department of Natural Resources contended the law was not closed class legislation.

FOTR appealed on the basis that the tax was a local tax being collected for state purposes (compact compliance).

In February, 2009, the Supreme Court agreed with FOTR that the property tax was a local tax being collected for a state purpose or responsibility. However, they did not address the closed class issue.

After that decision FOTR filed suit again—this time challenging the constitutionality of the occupation tax.

That suit remains in Lancaster County District Court.

Bill aimed at occupation tax

Christensen said Tuesday he's still attempting to get legislation passed that would create an open class for the occupation tax on irrigated acres.

He wants to use his bill, LB 651, as an amendment to LB 681, to get the open class legislation before the senators.

LB 651 was Christensen's bill to create a revolving loan fund from the money repaid by NRDs to the state. Last year, the state loaned the NRDs about $9 million to pay for surface water

purchased in 2007.

LB 651 is stuck in committee but could still be brought to the floor by the Natural Resources Committee with an amendment to allow at least 11 of the 23 NRDs in the state to collect the occupation tax.

This would avoid the closed class determination that made the property tax unconstitutional. He also believes the occupation tax could stand the test that it is not a local tax collected for a state purpose.

If LB 651 is advanced to the floor, it would be amended into LB 681, the governor's bill originally introduced to refund the unconstitutional property taxes collected under LB 701.

LB 681 would no longer be necessary with the tax credit being used to get the unconstitutional property taxes back to taxpayers.

Christensen prioritized LB 681 so by amending LB 651 into it, the newly amended bill would still maintain priority status.

He said the governor, the speaker and several committee chairs were meeting Tuesday afternoon to further discuss the prospects of moving LB 651 out of committee and hearing an amended LB 681.