

AMENDMENTS TO LB 343

(Amendments to Final Reading copy)

Introduced by Preister, 5

1           1. Insert the following new sections:

2           Sec. 4. Section 77-2715.08, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           77-2715.08 For purposes of this section and section  
5 77-2715.09, unless the context otherwise requires:

6           (1) Capital stock ~~shall mean~~ means common or preferred  
7 stock, either voting or nonvoting. Capital stock ~~shall~~ does not  
8 include stock rights, stock warrants, stock options, or debt  
9 securities;

10          (2)(a) Corporation ~~shall mean~~ means any corporation  
11 which, at the time of the first sale or exchange for which  
12 the election is made, has been in existence and actively doing  
13 business in this state for at least three years.

14          (b) Corporation ~~shall also include~~ includes:

15          (i) Any corporation which is a member of a unitary group  
16 of corporations, as defined in section 77-2734.04, which includes a  
17 corporation defined in subdivision (2)(a) of this section; and

18          (ii) Any predecessor or successor corporation of a  
19 corporation defined in subdivision (2)(a) of this section.

20          (c) All corporations issuing capital stock for which an  
21 election under section 77-2715.09 is made shall, at the time of the  
22 first sale or exchange for which the election is made, have (i)

1 at least five shareholders and (ii) at least two shareholders or  
2 groups of shareholders who are not related to each other and each  
3 of which owns at least ten percent of the capital stock.

4 For purposes of this subdivision, two persons shall  
5 be considered to be related when, under section 318 of the  
6 Internal Revenue Code of 1986, one is a person who owns, directly  
7 or indirectly, capital stock that if directly owned would be  
8 attributed to the other person or is the brother, sister, aunt,  
9 uncle, cousin, niece, or nephew of the other person who owns  
10 capital stock either directly or indirectly; and

11 (3) Extraordinary dividend means any dividend exceeding  
12 twenty percent of the fair market value of the stock on which it is  
13 paid as of the date the dividend is declared; and

14 ~~(3)~~ (4) Predecessor or successor corporation shall mean  
15 means a corporation that was a party to a reorganization that was  
16 entirely or substantially tax free and that occurred during or  
17 after the employment of the individual making an election under  
18 section 77-2715.09.

19 Sec. 5. Section 77-2715.09, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 77-2715.09 ~~(1)-(a)~~ (1) Every resident individual may elect  
22 under this section to subtract from federal adjusted gross income,  
23 or, for trusts qualifying under subdivision (2)(c) of this section,  
24 from taxable income, the extraordinary dividends paid on and the  
25 capital gain from the sale or exchange of capital stock of a  
26 corporation acquired by the individual ~~(i)~~ (a) on account of  
27 employment by such corporation or ~~(ii)~~ (b) while employed by such

1 corporation.

2 ~~(b) The election may be made for all taxable years~~  
3 ~~beginning or deemed to begin on or after January 1, 1989, except~~  
4 ~~that such election may be made with respect to one-half of such~~  
5 ~~gain included in federal adjusted gross income for taxable years~~  
6 ~~beginning or deemed to begin on or after January 1, 1988.~~

7 (2) (a) Each individual shall be entitled to one election  
8 under subsection (1) of this section during his or her lifetime for  
9 the capital stock of one corporation.

10 (b) The election shall apply to subsequent extraordinary  
11 dividends paid and sales and exchanges in any taxable year if the  
12 dividend is received on, or the sale or exchange is of, capital  
13 stock in the same corporation and such capital stock was acquired  
14 as provided in subsection (1) of this section.

15 (c) After the individual makes an election, such election  
16 shall apply to extraordinary dividends paid on, and the sale or  
17 exchange of, capital stock of the corporation transferred by inter  
18 vivos gift from the individual to his or her spouse or issue or a  
19 trust for the benefit of the individual's spouse or issue if such  
20 capital stock was acquired as provided in subsection (1) of this  
21 section. This subdivision shall apply, in the case of the spouse,  
22 only if the spouse was married to such individual on the date of  
23 the extraordinary dividend or sale or exchange or the date of death  
24 of the individual.

25 (d) If the individual dies without making an election,  
26 the surviving spouse or, if there is no surviving spouse, the  
27 oldest surviving issue may make the election for capital stock that

1 would have qualified under subdivision (c) of this subsection.

2 (3) An election under subsection (1) of this section  
3 shall be made by including a written statement with the taxpayer's  
4 Nebraska income tax return or an amended return for the taxable  
5 year for which the election is made. The written statement shall  
6 identify the corporation that issued the stock and the grounds for  
7 the election under this section and shall state that the taxpayer  
8 elects to have this section apply.

9 2. On page 10, line 16, after "Original" insert "sections  
10 77-2715.08 and 77-2715.09, Reissue Revised Statutes of Nebraska,  
11 and".

12 3. On page 1, line 1, strike "biodiesel" and insert  
13 "revenue and taxation" and after "amend" insert "sections  
14 77-2715.08 and 77-2715.09, Reissue Revised Statutes of Nebraska,  
15 and"; and in line 4 after the first semicolon insert "to provide an  
16 adjustment to income for extraordinary dividends;".

17 4. Renumber the remaining sections accordingly.