LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 488

Introduced by Wallman, 30; Preister, 5

Read first time January 17, 2007

Committee: Revenue

A BILL

FOR AN ACT relating to revenue and taxation; to amend sections 77-2701 and 77-2715.07, Revised Statutes Cumulative Supplement, 2006; to allow an income tax credit for perpetual conservation easement donations as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska, Section 1. Section 77-2701, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, and 77-27,228 to 77-27,235 <u>and section 3 of this act</u> shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 2. Section 77-2715.07, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

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

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

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section

21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended; and a refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Nebraska Advantage Microenterprise Tax Credit Act or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to eight percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a

nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

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

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income.

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

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

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

(5) There shall be allowed to all business firms as a credit against the income tax imposed by the Nebraska Revenue Act of 1967 a credit as provided in section 77-27,222.

<u>(6) There shall be allowed as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 a credit as provided in section 3 of this act.</u>

Sec. 3. (1) There shall be allowed a credit with respect to the income tax imposed by the Nebraska Revenue Act of 1967 to a taxpayer who donates during the taxable year all or part of the value of a perpetual conservation easement upon real property the taxpayer owns to the state or to a charitable organization that is accredited to hold conservation easements by the Land Trust Alliance. In the absence of accreditation, a charitable organization must name in the easement a cooperating government agency that will automatically accept the easement should the charitable organization cease to exist. The credit shall only be allowed for a donation that is eligible to qualify as a qualified conservation contribution pursuant to section 170(h) of the Internal Revenue Code of 1986, as amended. The amount of the credit shall not include the value of any portion of an easement on real property located in another state.

(2) To qualify for the income tax credit:

(a) The taxpayer shall file an application with the Department of Natural Resources. The application shall include an appraisal by a certified general real estate appraiser who can demonstrate either experience or continuing education in the appraisal of conservation easements. The department shall review the application within a reasonable time and may approve the application if it is in one of the following areas and meets the minimal requirements set forth in subdivision (2)(c) of this section:

(i) Areas designated by the department and affected natural resources districts as quick response water shortage areas in over-appropriated basins and areas subject to interstate compacts, agreements, and decrees. Within this category, the department may require that applications provide other public benefits, including, but not limited to, ecotourism opportunities, public access for hunting, fishing, and ecotourism, and critical habitat preservation; and

(ii) Areas designated by the Game and Parks Commission as biologically unique landscapes in the Nebraska natural legacy plan. Within this category, approval of an application must be recommended by the commission, except in the Middle Niobrara biologically unique landscape, in which case the application must be recommended by the Niobrara Council. Within this category, the commission or council may require that applications provide other public benefits, including, but not limited to, ecotourism opportunities, public access for hunting, fishing, and ecotourism, and critical habitat preservation;

(b) The taxpayer shall file with the Department of Revenue, at the same time as the taxpayer files a return for the taxable year in which the income tax credit is claimed, a summary of the appraisal of the perpetual conservation easement filed with the Department of Natural Resources. If requested by the Department of Revenue, the taxpayer shall submit the appraisal rather than a summary;

(c) The perpetual conservation easement shall, at a minimum:

(i) Preclude any pumping of ground water except for domestic purposes, including stock well purposes, and for the restoration of wetlands. For easements in areas described in subdivision (2)(a)(i) of this section, the easement may permit pumping of water during any period when the Department of Natural Resources determines there is not a water quantity shortage;

(ii) For easements in areas described in subdivisions (2)(a)(ii) of this section, prohibit new commercial, industrial, and residential development and mining, logging, or other uses that result in the destruction of wildlife habitat, native plant communities, historic sites, or other conservation values. This subdivision shall not be construed to prohibit hunting, fishing, or ecotourism; and

(iii) Be in perpetuity;

(d) The perpetual conservation easement shall be filed with the office of the register of deeds of each county in which real property subject to the easement is located; and

(e) The holder of the perpetual conservation easement shall have a monitoring program to ensure that the terms of the easement are followed. If the holder is a charitable organization that has designated a governmental agency as a successor holder, annual monitoring reports shall be provided to that agency.

(3) The income tax credit shall be an amount equal to

fifty percent of the appraised value of the donated portion of the perpetual conservation easement, not to exceed two hundred fifty thousand dollars. In the case of a partnership, subchapter S corporation, or other similar pass-through entity that donates a perpetual conservation easement as an entity, the credit shall be allocated to the entity's partners, members, or shareholders in proportion to the partners', members', or shareholders' distributive shares of income from the entity.

(4) If the income tax credit exceeds the amount of income tax due on the income of the taxpayer for the taxable year, the amount of the income tax credit not used as an offset against income taxes in the taxable year may be carried forward and applied against the income tax due in each of the fifteen succeeding taxable years, but shall be first applied against the income tax due for the earliest of the taxable years possible. Any amount of the income tax credit that is not used after the fifteen-year period shall not be refundable. The income tax credit cannot be claimed to the extent that the taxpayer has included the contribution upon which the amount of the income tax credit was computed as a deduction on his or her state income tax return.

(5) A taxpayer may claim only one income tax credit under this section per taxable year, except that a transferee of an income tax credit under subsection (6) of this section may claim an unlimited number of income tax credits. A taxpayer who has carried the income tax credit forward shall not claim an additional income

tax credit under this section for any taxable year in which the taxpayer applies the amount carried forward against income tax due. A taxpayer who has transferred an income tax credit to a transferee shall not claim an additional income tax credit under this section for any taxable year in which the transferee uses the transferred income tax credit.

(6) A taxpayer may transfer all or a portion of an income tax credit to another taxpayer for value for the other taxpayer, as transferee, to apply as a credit against the income tax imposed by the Nebraska Revenue Act of 1967 subject to the following limitations:

(a) The taxpayer may only transfer such portion of the income tax credit as the taxpayer has not applied against the income taxes imposed by the act;

(b) The taxpayer may transfer a prorated portion of the income tax credit to more than one transferee;

(c) For any taxable year in which an income tax credit is transferred, both the taxpayer and the transferee shall file written statements with their income tax returns specifying the amount of the income tax credit that has been transferred. A transferee may not claim an income tax credit transferred unless the taxpayer's written statement verifies the amount of the income tax credit claimed by the transferee;

(d) To the extent that a transferee paid value for the value of an income tax credit to the transferee, the transferee shall be deemed to have used the income tax credit to pay, in whole or in part, the income tax obligation imposed on the transferee under the act, and to such extent the transferee's use of an income tax credit from a transferor under this section to pay taxes owed shall not be deemed a reduction in the amount of income tax imposed by the act on the transferee; and

(e) The transferee shall submit to the Department of Revenue a form approved by the department. The transferee shall also file a copy of the form with the governmental agency or charitable organization to whom the taxpayer donated the conservation easement.

(7) On or before January 1, 2008, and each January 1 thereafter, the Department of Revenue shall issue a report to the Legislature and Governor detailing the use of income tax credits under this section. A portion of the report shall show perpetual conservation easements and income tax credits by natural resources district, the number of acres protected, the conservation values that were preserved, and the public benefits that resulted from these easements. The Department of Natural Resources and Game and Parks Commission shall assist the Department of Revenue with this portion of the report. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of any taxpayer. The report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not

reveal any confidential information that allows identification of any taxpayer.

(8) No new applications shall be accepted for tax credits after December 31, 2012.

Sec. 4. This act becomes operative for all taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended.

Sec. 5. Original sections 77-2701 and 77-2715.07, Revised Statutes Cumulative Supplement, 2006, are repealed.