

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 983

Introduced by Cornett, 45.

Read first time January 15, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-27,228, 77-27,229, 77-27,230, 77-27,231, 77-27,232,
3 77-27,233, and 77-27,234, Revised Statutes Cumulative
4 Supplement, 2006, and section 77-2701, Revised Statutes
5 Supplement, 2007; to change provisions relating to income
6 tax credits for planned gifts; to harmonize provisions;
7 to provide an operative date; and to repeal the original
8 sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement,
2 2007, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to
4 77-27,236 and sections 5 and 9 of this act shall be known and may
5 be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-27,228, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-27,228 (1) For purposes of sections 77-27,228 to
9 77-27,234 and sections 5 and 9 of this act, subject to subsection
10 (2) of this section, planned gift means an irrevocable contribution
11 to a qualified endowment when the contribution uses any of the
12 following techniques authorized under the Internal Revenue Code of
13 1986, as amended:

14 (a) Charitable remainder unitrusts, as defined by section
15 664(d)(2) of the code;

16 (b) Charitable remainder annuity trusts, as defined by
17 section 664(d)(1) of the code;

18 (c) Pooled income ~~fund trusts~~, funds, as defined by
19 section 642(c)(5) of the code;

20 (d) Charitable lead unitrusts qualifying under section
21 170(f)(2)(B) of the code;

22 (e) Charitable lead annuity trusts qualifying under
23 section 170(f)(2)(B) of the code;

24 (f) Charitable gift annuities undertaken pursuant to
25 section ~~1011(b)~~ 501(m)(5) of the code;

1 (g) Deferred charitable gift annuities undertaken
2 pursuant to section ~~1011(b)~~ 501(m)(5) of the code;

3 (h) Charitable life estate agreements qualifying under
4 section 170(f)(3)(B) of the code; or

5 (i) Paid-up life insurance policies qualifying as a
6 deduction under section 170 of the code.

7 (2)(a) A contribution using a technique described in
8 subdivision (1)(a) or (1)(b) of this section is not a planned gift
9 unless the trust agreement provides that the trust cannot terminate
10 and the beneficiaries' interest in the trust cannot be assigned or
11 contributed to the qualified endowment sooner than the earlier of:

12 (i) The date of death of the beneficiaries; or

13 (ii) Five years after the date of the contribution.

14 (b) A contribution using the technique described in
15 subdivision (1)(g) of this section is not a planned gift unless
16 the payment of the annuity is required to begin within the life
17 expectancy of the annuitant or of the joint life expectancies
18 of the annuitants, if more than one annuitant, as determined
19 using the actuarial tables adopted by the Department of Revenue
20 in effect on the date of the contribution. The department may
21 adopt and promulgate rules and regulations adopting life expectancy
22 tables that are derived from the actuarial tables contained in the
23 publications of the Internal Revenue Service.

24 (c) A contribution using a technique described in
25 subdivision (1)(f) or (1)(g) of this section is not a planned gift

1 unless the annuity agreement provides that the interest of the
2 annuitant or annuitants in the gift annuity cannot be assigned to
3 the qualified endowment sooner than the earlier of:

4 (i) The date of death of the annuitant or annuitants; or

5 (ii) Five years after the date of the contribution.

6 (d) A contribution using a technique described in
7 subdivision (1)(f) or (1)(g) of this section is not a planned
8 gift unless the annuity is a qualified charitable gift annuity as
9 defined in section 59-1802.

10 Sec. 3. Section 77-27,229, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 77-27,229 For purposes of sections 77-27,228 to 77-27,234
13 and sections 5 and 9 of this act, qualified endowment means
14 a permanent, irrevocable endowment fund, as defined in section
15 58-611, that is used for Nebraska charitable purposes and held by a
16 Nebraska incorporated or established organization that:

17 (1)(a) Is a tax-exempt organization under section
18 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

19 (b) Is a bank or trust company that is holding the fund
20 on behalf of a tax-exempt organization under section 501(c)(3) of
21 the code; and

22 (2) Holds the fund as a permanent endowment fund.

23 Sec. 4. Section 77-27,230, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 77-27,230 ~~(1)~~ A resident individual shall be allowed a

1 credit against the income tax due under the Nebraska Revenue Act
 2 of 1967 in an amount equal to ~~fifteen~~ fifty percent of the present
 3 value of the aggregate amount of the charitable gift portion of
 4 a planned gift made by the individual during the tax year to any
 5 qualified endowment. The maximum credit per individual per tax
 6 year is ~~five~~ ten thousand dollars. The credit allowed under this
 7 section shall not exceed the taxpayer's income tax liability, but
 8 any amount of credit not allowed because of this limitation may be
 9 carried forward for up to five years after the tax year in which
 10 the planned gift was made. ~~(2) The credit cannot be carried back, or~~
 11 ~~forward, and the credit shall be applied to the tax year in which~~
 12 ~~the planned gift is made.~~

13 Sec. 5. A resident individual shall be allowed a credit
 14 against the income tax due under the Nebraska Revenue Act of 1967
 15 in an amount equal to twenty-five percent of any contribution
 16 made by the individual, other than a planned gift, to a qualified
 17 endowment. The maximum credit that may be claimed by an individual
 18 for contributions made per tax year under this section is five
 19 thousand dollars. The credit allowed under this section shall
 20 not exceed the taxpayer's income tax liability, but any amount
 21 of credit not allowed because of this limitation may be carried
 22 forward for up to five years after the tax year in which the
 23 contribution was made. The credit cannot be carried back.

24 Sec. 6. Section 77-27,231, Revised Statutes Cumulative
 25 Supplement, 2006, is amended to read:

1 77-27,231 A contribution to a qualified endowment by
 2 a ~~small business corporation, partnership, or limited liability~~
 3 ~~company~~ any entity taxed as a subchapter S corporation or
 4 partnership under the Internal Revenue Code of 1986, as amended,
 5 which is carrying on any trade or business for which deductions
 6 would be allowed under section 162 of the Internal Revenue Code
 7 or carrying on any rental activity qualifies for the credit
 8 provided in section 77-27,230 or section 5 of this act. The Except
 9 as provided in this section, the credit shall be attributed to
 10 shareholders, or partners, or members in the same proportion used
 11 to report the corporation's, or partnership's, or limited liability
 12 ~~company's~~ income or loss for income tax purposes. The maximum
 13 credit per shareholder, or partner, or member per tax year is five
 14 ten thousand dollars. The credit allowed under this section may
 15 not exceed the taxpayer's income tax liability, but any amount
 16 of credit not allowed because of this limitation may be carried
 17 forward for up to five years after the tax year in which the
 18 contribution was made. The credit cannot be carried back, ~~or~~
 19 ~~forward,~~ and the credit shall be applied to the tax year in which
 20 the contribution is made.

21 Sec. 7. Section 77-27,232, Revised Statutes Cumulative
 22 Supplement, 2006, is amended to read:

23 77-27,232 A corporation which is not taxed as a
 24 subchapter S corporation under the Internal Revenue Code of 1986,
 25 as amended, shall be allowed a credit against the income tax due

1 under the Nebraska Revenue Act of 1967 in an amount equal to ~~ten~~
2 fifty percent of any contribution made by the corporation to a
3 qualified endowment. The maximum credit that may be claimed by a
4 corporation for contributions made per tax year under this section
5 is ~~five~~ ten thousand dollars. The credit allowed under this section
6 shall not exceed the taxpayer's income tax liability, but any
7 amount of credit not allowed because of this limitation may be
8 carried forward for up to five years after the tax year in which
9 the contribution was made. The credit cannot be carried back, ~~or~~
10 forward, and the credit shall be applied to the tax year in which
11 the contribution is made.

12 Sec. 8. Section 77-27,233, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 77-27,233 A contribution to a qualified endowment by a
15 resident estate or trust qualifies for the credit provided in
16 section 77-27,230 if the contribution is a planned gift or in
17 section 77-27,232 if the contribution is an outright gift to a
18 qualified endowment. Any credit not used by the estate or trust
19 may be attributed to each beneficiary of the estate or trust in
20 the same proportion used to report the beneficiary's income from
21 the estate or trust for Nebraska income tax purposes. The maximum
22 credit per beneficiary is ~~five~~ ten thousand dollars, but any amount
23 of credit not allowed because of this limitation may be carried
24 forward for up to five years after the tax year in which the
25 contribution was made. ~~and the credit can only be claimed in the~~

1 ~~tax year in which the contribution is made.~~ The credit cannot be
2 carried back, ~~or forward.~~

3 Sec. 9. A taxpayer may file an application for the tax
4 credits authorized by sections 77-27,228 to 77-27,234 and sections
5 5 and 9 of this act with the Department of Revenue. If the
6 department determines that tax credits are available under the
7 requirements of this section, the department shall reserve the
8 tax credits for the applicant within the limit set forth in this
9 section and certify the amount of tentative tax credits reserved
10 for the applicant. Applications for tax credits shall be considered
11 in the order in which they are received. The department may approve
12 applications for up to five million dollars of tentative tax
13 credits for each calendar year. After applications totaling five
14 million dollars of tentative tax credits have been approved for a
15 calendar year, no further applications shall be approved for that
16 calendar year and no further tax credits shall be allowed under
17 such sections for that calendar year. The department may adopt
18 and promulgate rules and regulations to carry out such sections.
19 The total tentative tax credits that may be approved under such
20 sections for a taxpayer per tax year is twenty thousand dollars for
21 a married filing jointly return or ten thousand dollars for all
22 other returns. The total tax credits that shall be allowed under
23 such sections for all taxpayers shall be five million dollars.
24 Tentative tax credits shall have priority over other tax credits if
25 the five-million-dollar limit is exceeded in any calendar year.

1 Sec. 10. Section 77-27,234, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-27,234 Sections 77-27,228 to 77-27,233 and sections 5
4 and 9 of this act terminate for taxable years beginning or deemed
5 to begin on or after January 1, 2010, 2016, under the Internal
6 Revenue Code of 1986, as amended, except that any credits earned
7 prior to such date may be carried forward as provided in such
8 sections.

9 Sec. 11. This act becomes operative for all taxable years
10 beginning or deemed to begin on or after January 1, 2008, under the
11 Internal Revenue Code of 1986, as amended.

12 Sec. 12. Original sections 77-27,228, 77-27,229,
13 77-27,230, 77-27,231, 77-27,232, 77-27,233, and 77-27,234, Revised
14 Statutes Cumulative Supplement, 2006, and section 77-2701, Revised
15 Statutes Supplement, 2007, are repealed.