

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 405

Introduced by Cornett, 45; Campbell, 25; Carlson, 38; Coash, 27; Cook, 13; Friend, 10; Fulton, 29; Gay, 14; Giese, 17; Gloor, 35; Haar, 21; Hadley, 37; Karpisek, 32; Mello, 5; Nordquist, 7; Pankonin, 2; Rogert, 16; Wallman, 30; Wightman, 36.

Read first time January 16, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701, 77-27,228, 77-27,229, 77-27,230, 77-27,231,  
3 77-27,232, 77-27,233, and 77-27,234, Revised Statutes  
4 Cumulative Supplement, 2008; to change provisions  
5 relating to income tax credits for planned gifts; to  
6 harmonize provisions; to provide an operative date; and  
7 to repeal the original sections.

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

1           Section 1. Section 77-2701, Revised Statutes Cumulative  
2 Supplement, 2008, 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, 2008, 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) of the code, as defined in section 59-1802;

1           (g) Deferred charitable gift annuities ~~undertaken~~  
2 ~~pursuant to section 1011(b) of the code;~~ as defined in section  
3 59-1802;

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

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

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

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

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

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

25           (c) A contribution using a technique described in

1 subdivision (1) (f) or (1) (g) of this section is not a planned gift  
 2 unless the annuity agreement provides that the interest of the  
 3 annuitant or annuitants in the gift annuity cannot be assigned to  
 4 the qualified endowment sooner than the earlier of:

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

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

7 (d) A contribution using a technique described in  
 8 subdivision (1) (f) or (1) (g) of this section is not a planned gift  
 9 unless the annuity is made by way of a qualified charitable gift  
 10 annuity contribution as defined in section ~~59-1802-~~ 170 of the  
 11 code.

12 Sec. 3. Section 77-27,229, Revised Statutes Cumulative  
 13 Supplement, 2008, is amended to read:

14 77-27,229 (1) For purposes of sections 77-27,228 to  
 15 77-27,234 and sections 5 and 9 of this act, endowment fund means an  
 16 institutional fund, or part thereof, as defined in section 58-611.

17 (2) For purposes of sections 77-27,228 to 77-27,234  
 18 and sections 5 and 9 of this act, qualified endowment means  
 19 a permanent, irrevocable an endowment fund that is used for  
 20 Nebraska charitable purposes and held by a Nebraska incorporated or  
 21 established organization that:

22 ~~(1)(a)~~ (a)(i) Is a tax-exempt organization under section  
 23 501(c) (3) of the Internal Revenue Code of 1986, as amended; or

24 ~~(b)~~ (ii) Is a bank or trust company that is holding the  
 25 fund on behalf of a tax-exempt organization under section 501(c) (3)

1 of the code; and

2 ~~(2) (b) Holds the fund as a permanent endowment fund, to~~  
3 be maintained in perpetuity.

4 Sec. 4. Section 77-27,230, Revised Statutes Cumulative  
5 Supplement, 2008, is amended to read:

6 77-27,230 ~~(1)~~ A resident individual shall be allowed a  
7 credit against the income tax due under the Nebraska Revenue Act  
8 of 1967 in an amount equal to ~~fifteen~~ fifty percent of the present  
9 value of the aggregate amount of the charitable gift portion of  
10 a planned gift made by the individual during the tax year to any  
11 qualified endowment. The maximum credit per individual per tax year  
12 is ~~five~~ ten thousand dollars or the amount of tentative credit  
13 approved for the tax year under section 9 of this act, whichever  
14 is less. The credit allowed under this section shall not exceed  
15 the taxpayer's income tax liability, but any amount approved may be  
16 carried forward for up to five years after the tax year in which  
17 the planned gift was made. ~~(2) The credit cannot be carried back, or~~  
18 ~~forward, and the credit shall be applied to the tax year in which~~  
19 ~~the planned gift is made.~~

20 Sec. 5. A resident individual shall be allowed a credit  
21 against the income tax due under the Nebraska Revenue Act of 1967  
22 in an amount equal to twenty-five percent of any contribution  
23 made by the individual, other than a planned gift, to a qualified  
24 endowment. The maximum credit that may be claimed by an individual  
25 for contributions made per tax year under this section is ten

1 thousand dollars or the amount of tentative credit approved for the  
 2 tax year under section 9 of this act, whichever is less. The credit  
 3 allowed under this section shall not exceed the taxpayer's income  
 4 tax liability, but any amount approved may be carried forward for  
 5 up to five years after the tax year in which the contribution was  
 6 made. The credit cannot be carried back.

7           Sec. 6. Section 77-27,231, Revised Statutes Cumulative  
 8 Supplement, 2008, is amended to read:

9           77-27,231 A contribution to a qualified endowment by  
 10 a small business corporation, partnership, or limited liability  
 11 company which is carrying on any trade or business for which  
 12 deductions would be allowed under section 162 of the Internal  
 13 Revenue Code or carrying on any rental activity qualifies for  
 14 the credit provided in section 77-27,230 or section 5 of this  
 15 act. Except as provided in this section, the - The credit shall  
 16 be attributed to shareholders, partners, or members in the same  
 17 proportion used to report the corporation's, partnership's, or  
 18 limited liability company's income or loss for income tax purposes.  
 19 The maximum credit per shareholder, partner, or member per tax year  
 20 is ~~five~~ ten thousand dollars or the amount of tentative credit  
 21 approved for the tax year under section 9 of this act, whichever  
 22 is less. The credit allowed under this section may not exceed the  
 23 taxpayer's income tax liability, but any amount approved may be  
 24 carried forward for up to five years after the tax year in which  
 25 the contribution was made. The credit cannot be carried back. ~~ex~~

1 ~~forward, and the credit shall be applied to the tax year in which~~  
2 ~~the contribution is made.~~

3           Sec. 7. Section 77-27,232, Revised Statutes Cumulative  
4 Supplement, 2008, is amended to read:

5           77-27,232 A corporation which is not taxed as a  
6 subchapter S corporation under the Internal Revenue Code of 1986,  
7 as amended, shall be allowed a credit against the income tax due  
8 under the Nebraska Revenue Act of 1967 in an amount equal to ~~ten~~  
9 twenty-five percent of any contribution made by the corporation to  
10 a qualified endowment. The maximum credit that may be claimed by a  
11 corporation for contributions made per tax year under this section  
12 is ~~five~~ ten thousand dollars or the amount of tentative credit  
13 approved for the tax year under section 9 of this act, whichever  
14 is less. The credit allowed under this section shall not exceed  
15 the taxpayer's income tax liability, but any amount approved may be  
16 carried forward for up to five years after the tax year in which  
17 the contribution was made. The credit cannot be carried back. ~~or~~  
18 ~~forward, and the credit shall be applied to the tax year in which~~  
19 ~~the contribution is made.~~

20           Sec. 8. Section 77-27,233, Revised Statutes Cumulative  
21 Supplement, 2008, is amended to read:

22           77-27,233 A contribution to a qualified endowment by a  
23 resident estate or trust qualifies for the credit provided in  
24 section 77-27,230 if the contribution is a planned gift or in  
25 section 77-27,232 if the contribution is an outright gift to a

1 qualified endowment. Any credit not used by the estate or trust  
2 may be attributed to each beneficiary of the estate or trust in  
3 the same proportion used to report the beneficiary's income from  
4 the estate or trust for Nebraska income tax purposes. The maximum  
5 credit per beneficiary is ~~five~~ ten thousand dollars or the amount  
6 of tentative credit approved for the tax year under section 9  
7 of this act, whichever is less. The credit allowed under this  
8 section shall not exceed the estate's, trust's, or beneficiary's  
9 tax liability, but any amount approved may be carried forward for  
10 up to five years after the tax year in which the contribution was  
11 made. ~~7~~ and the credit can only be claimed in the tax year in which  
12 the contribution is made. The credit cannot be carried back, ~~or~~  
13 forward.

14           Sec. 9. (1) A taxpayer shall file an application for  
15 the tax credits authorized by sections 77-27,228 to 77-27,234 and  
16 sections 5 and 9 of this act with the Department of Revenue. No  
17 credits shall be allowed under any of such sections unless an  
18 application is filed and approved.

19           (2) If the department determines that the application  
20 meets the requirements of such sections, the department shall  
21 approve the application and authorize tentative tax credits to the  
22 applicant within the limit set forth in this section and certify  
23 the amount of tentative tax credits reserved for the applicant.

24           (3) Applications for tax credits shall be considered in  
25 the order in which they are received. Applications may be filed at



1 any time on or after the beginning of the tax year for which the  
2 tentative tax credit is to be claimed.

3 (4) The department may approve applications for up to  
4 three million five hundred thousand dollars of tentative tax  
5 credits for each calendar year. Credits for a tax year other  
6 than a calendar year shall be applied against the limit for the  
7 calendar year during which the tax year ends. After applications  
8 totaling three million five hundred thousand dollars of tentative  
9 tax credits have been approved for a calendar year, no further  
10 applications shall be approved for that calendar year. Credits  
11 shall be prorated among the approved applications filed on the day  
12 the limit is exceeded.

13 (5) The department may adopt and promulgate rules and  
14 regulations to carry out such sections.

15 Sec. 10. Section 77-27,234, Revised Statutes Cumulative  
16 Supplement, 2008, is amended to read:

17 77-27,234 Sections 77-27,228 to 77-27,233 and sections 5  
18 and 9 of this act terminate for taxable years beginning or deemed  
19 to begin on or after January 1, ~~2010,~~ 2016, under the Internal  
20 Revenue Code of 1986, as amended, except that any credits earned  
21 prior to such date may be carried forward as provided in such  
22 sections.

23 Sec. 11. This act becomes operative for all taxable years  
24 beginning or deemed to begin on or after January 1, 2009, under the  
25 Internal Revenue Code of 1986, as amended.

1                   Sec. 12. Original sections 77-2701, 77-27,228, 77-27,229,  
2 77-27,230, 77-27,231, 77-27,232, 77-27,233, and 77-27,234, Revised  
3 Statutes Cumulative Supplement, 2008, are repealed.