

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 67**

Introduced by Friend, 10.

Read first time January 8, 2009

Committee: Education

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2715.07 and 77-2734.03, Revised Statutes Cumulative  
3 Supplement, 2008; to adopt the Elementary and Secondary  
4 Education Opportunity Act; to harmonize provisions; to  
5 provide an operative date; to provide severability; and  
6 to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 10 of this act shall be  
2 known and may be cited as the Elementary and Secondary Education  
3 Opportunity Act.

4           Sec. 2. The Legislature hereby finds that enabling the  
5 greatest number of parents and legal guardians to choose among  
6 the widest array of quality educational opportunities for children  
7 will improve the quality of education available to all children.  
8 The Legislature further finds that privately operated elementary  
9 and secondary schools in Nebraska satisfy the state's requirements  
10 for legal operation and provide quality educational opportunities  
11 for children. The Legislature further finds that, for parents  
12 and legal guardians who are paying taxes in support of public  
13 elementary and secondary schools, choosing privately operated  
14 schools for their children, if not fully financially precluded,  
15 can be a financial burden, for they are typically paying twice  
16 for education, both tuition and taxes. The Legislature further  
17 finds that parents and legal guardians of limited means are less  
18 able to choose among the widest array of quality educational  
19 opportunities for their children. Therefor, it is in the best  
20 interest of the state and its citizens to encourage individuals  
21 and businesses to support organizations that financially assist  
22 parents and legal guardians to enroll their children in privately  
23 operated elementary and secondary schools. In order to accomplish  
24 this worthy public purpose, the Legislature hereby provides for  
25 limited-use credits for voluntary contributions to certified school

1 tuition organizations.

2           Sec. 3. For purposes of the Elementary and Secondary  
3 Education Opportunity Act:

4           (1) Eligible student means a resident of Nebraska who is  
5 a member of a household whose gross income for the most recently  
6 concluded calendar year does not exceed three times the federal  
7 poverty guidelines and who is enrolled as a full-time student in a  
8 qualified school;

9           (2) Qualified school means any privately operated  
10 elementary or secondary school located in this state that is  
11 operated not for profit, does not discriminate on the basis of  
12 race, color, or national origin, and fulfills the school term  
13 requirements prescribed in section 79-211;

14           (3) Scholarship means a financial grant in aid to assist  
15 an eligible student in paying the cost of attending a qualified  
16 school and includes any tuition grants;

17           (4) School tuition organization means an organization in  
18 this state that (a) is exempt from federal taxation under section  
19 501(c)(3) of the Internal Revenue Code, as amended, (b) allocates  
20 at least ninety percent of its annual revenue for scholarships, and  
21 (c) provides scholarships for eligible students without limiting  
22 availability to eligible students of only one qualified school; and

23           (5) Tuition means any amount charged by a qualified  
24 school for enrollment in its instructional program.

25           Sec. 4. A school tuition organization may apply to the

1 Tax Commissioner to have one or more scholarship programs certified  
 2 for tax-credit status under the Elementary and Secondary Education  
 3 Opportunity Act. The application shall describe the scholarship  
 4 program and set forth evidence that the organization is a school  
 5 tuition organization. An applicant school tuition organization  
 6 under this section shall obtain certification of the scholarship  
 7 program for tax-credit status prior to distributing scholarship  
 8 funds to eligible students.

9           Sec. 5. (1) An individual taxpayer who makes one or more  
 10 cash contributions to any school tuition organization shall be  
 11 eligible for a credit against the income tax due under the Nebraska  
 12 Revenue Act of 1967. The amount of the credit shall be the total  
 13 amount of such contributions made during the tax year but shall not  
 14 exceed a maximum of:

15           (a) Two thousand five hundred dollars in any tax year for  
 16 a single individual or a head of household; or

17           (b) Five thousand dollars in any tax year for a married  
 18 couple.

19           (2) A married couple who file separate returns for a tax  
 20 year in which they could have filed a joint return may each claim  
 21 only one-half of the tax credit that would otherwise have been  
 22 allowed for a joint return.

23           (3) The tax credit allowed under this section shall not  
 24 exceed the taxpayer's income tax liability for the tax year, but  
 25 any amount that would otherwise have qualified for the credit but

1 for this limitation may be carried over and applied against the  
 2 taxpayer's income tax liability for the next five years immediately  
 3 following the tax year in which the credit is first allowed. The  
 4 tax credit cannot be carried back.

5 (4) The tax credit shall not be allowed if the taxpayer  
 6 designates all or any part of the contribution to a school  
 7 tuition organization for the direct benefit of any eligible student  
 8 specifically identified by the taxpayer.

9 (5) The tax credit allowed under this section is subject  
 10 to section 9 of this act.

11 Sec. 6. (1) Any partnership, any limited liability  
 12 company, and any corporation having an election in effect under  
 13 Chapter 1, subchapter S of the Internal Revenue Code, as amended,  
 14 which is carrying on any trade or business for which deductions  
 15 would be allowed under section 162 of the Internal Revenue Code,  
 16 as amended, or carrying on any rental activity, shall be eligible  
 17 for the tax credit allowed under section 5 of this act for one or  
 18 more contributions to any school tuition organization. The credit  
 19 shall be attributed to each partner, member, or shareholder in the  
 20 same proportion used to report the partnership's, limited liability  
 21 company's, or corporation's income or loss for income tax purposes.  
 22 The maximum credit per partner, member, or shareholder per year is  
 23 five thousand dollars.

24 (2) The credit allowed under this section shall not  
 25 exceed the taxpayer's income tax liability for the tax year, but

1 any amount that would otherwise have qualified for the credit but  
2 for this limitation may be carried over and applied against the  
3 taxpayer's income tax liability for the next five years immediately  
4 following the tax year in which the credit is first allowed. The  
5 tax credit cannot be carried back.

6 (3) The tax credit shall not be allowed if the taxpayer  
7 designates all or any part of the contribution to a school  
8 tuition organization for the direct benefit of any eligible student  
9 specifically identified by the taxpayer.

10 (4) The tax credit allowed under this section shall be  
11 subject to section 9 of this act.

12 Sec. 7. (1) An estate or trust shall be eligible for the  
13 tax credit provided under section 5 of this act. Any credit not  
14 used by the estate or trust may be attributed to each beneficiary  
15 of the estate or trust in the same proportion used to report  
16 the beneficiary's income from the estate or trust for income tax  
17 purposes. The maximum credit per beneficiary in any tax year shall  
18 be five thousand dollars.

19 (2) The credit allowed under this section shall not  
20 exceed the taxpayer's income tax liability for the tax year, but  
21 any amount that would otherwise have qualified for the credit  
22 but for this limitation may be carried over and applied against  
23 the beneficiary's income tax liability for the next five years  
24 immediately following the tax year in which the credit is first  
25 allowed. The tax credit cannot be carried back.

1           (3) The tax credit shall not be allowed if the taxpayer  
2 designates all or any part of the contribution to a school  
3 tuition organization for the direct benefit of any eligible student  
4 specifically identified by the taxpayer.

5           (4) The tax credit allowed under this section shall be  
6 subject to section 9 of this act.

7           Sec. 8. (1) A corporate taxpayer as defined in section  
8 77-2734.04 which makes one or more cash contributions to any school  
9 tuition organization shall be eligible for a credit against the  
10 income tax due under the Nebraska Revenue Act of 1967. The amount  
11 of the credit shall be the total amount of such contributions made  
12 by the corporate taxpayer during the tax year, but shall not exceed  
13 a maximum of ten thousand dollars per tax year.

14           (2) The tax credit shall not exceed the corporate  
15 taxpayer's income tax liability for the tax year, but any amount  
16 that would otherwise have qualified for the credit but for this  
17 limitation may be carried over and applied against the corporate  
18 taxpayer's income tax liability for the next five years immediately  
19 following the tax year in which the credit is first allowed. The  
20 tax credit cannot be carried back.

21           (3) The tax credit shall not be allowed if the corporate  
22 taxpayer designates all or any part of the contribution to a school  
23 tuition organization for the direct benefit of any eligible student  
24 specifically identified by the taxpayer.

25           (4) The tax credit allowed under this section shall be

1 subject to section 9 of this act.

2           Sec. 9. (1) Prior to making a contribution to a  
3 school tuition organization, an individual taxpayer, a corporate  
4 taxpayer, or other entity identified in section 6 or 7 of  
5 this act shall notify the school tuition organization of its  
6 intent to make a contribution and the amount thereof. The school  
7 tuition organization shall request from the Department of Revenue  
8 preapproval for a tax credit allowed under the Elementary and  
9 Secondary Education Opportunity Act. The department shall consider  
10 the request pursuant to subsection (3) of this section and, within  
11 thirty days after receiving the request, shall notify the school  
12 tuition organization of its determination. If the department has  
13 preapproved the request for a tax credit, the school tuition  
14 organization shall promptly notify the contributor of the amount  
15 approved.

16           (2) In order to be allowed a tax credit as provided  
17 by the act, the individual taxpayer, corporate taxpayer, or  
18 other entity shall make its contribution within thirty days after  
19 receiving notice of the preapproved amount. If the school tuition  
20 organization does not receive the contribution within the required  
21 thirty days, it shall notify the department of such fact and the  
22 department shall no longer include the preapproved contribution  
23 when calculating the limit prescribed in subsection (3) of this  
24 section.

25           (3) The department shall (a) consider requests for tax



1 credits in the order in which they are received and (b) preapprove  
 2 tax credits as provided in this section but shall not allow tax  
 3 credits that exceed an aggregate maximum of three million dollars  
 4 for any calendar year. After requests totaling three million  
 5 dollars of tentative tax credits have been approved for a calendar  
 6 year, no additional tax credits shall be allowed for such calendar  
 7 year. The total tentative tax credits that may be approved under  
 8 the act for a taxpayer per tax year is five thousand dollars  
 9 for a married couple filing jointly, two thousand five hundred  
 10 dollars for an individual, and ten thousand dollars for a corporate  
 11 taxpayer. The total tax credits that shall be allowed under the act  
 12 for all taxpayers shall be three million dollars.

13           Sec. 10. The Tax Commissioner may adopt and promulgate  
 14 rules and regulations to carry out the Elementary and Secondary  
 15 Education Opportunity Act.

16           Sec. 11. Section 77-2715.07, Revised Statutes Cumulative  
 17 Supplement, 2008, is amended to read:

18           77-2715.07 (1) There shall be allowed to qualified  
 19 resident individuals as a nonrefundable credit against the income  
 20 tax imposed by the Nebraska Revenue Act of 1967:

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

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

25           (2) There shall be allowed to qualified resident

1 individuals against the income tax imposed by the Nebraska Revenue  
2 Act of 1967:

3 (a) For returns filed reporting federal adjusted  
4 gross incomes of greater than twenty-nine thousand dollars, a  
5 nonrefundable credit equal to twenty-five percent of the federal  
6 credit allowed under section 21 of the Internal Revenue Code of  
7 1986, as amended;

8 (b) For returns filed reporting federal adjusted gross  
9 income of twenty-nine thousand dollars or less, a refundable credit  
10 equal to a percentage of the federal credit allowable under section  
11 21 of the Internal Revenue Code of 1986, as amended, whether or  
12 not the federal credit was limited by the federal tax liability.  
13 The percentage of the federal credit shall be one hundred percent  
14 for incomes not greater than twenty-two thousand dollars, and  
15 the percentage shall be reduced by ten percent for each one  
16 thousand dollars, or fraction thereof, by which the reported  
17 federal adjusted gross income exceeds twenty-two thousand dollars;

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

1 years beginning or deemed to begin on or after January 1, 2006,  
2 under the Internal Revenue Code of 1986, as amended;

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

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

10 (3) There shall be allowed to all individuals as a  
11 nonrefundable credit against the income tax imposed by the Nebraska  
12 Revenue Act of 1967:

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

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

23 (c) A credit for investment in a biodiesel facility as  
24 provided in section 77-27,236.

25 (4) There shall be allowed as a credit against the income

1 tax imposed by the Nebraska Revenue Act of 1967:

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

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

7 (5)(a) For all taxable years beginning on or after  
8 January 1, 2007, and before January 1, 2009, under the Internal  
9 Revenue Code of 1986, as amended, there shall be allowed to each  
10 partner, shareholder, member, or beneficiary of a partnership,  
11 subchapter S corporation, limited liability company, or estate or  
12 trust a nonrefundable credit against the income tax imposed by  
13 the Nebraska Revenue Act of 1967 equal to fifty percent of the  
14 partner's, shareholder's, member's, or beneficiary's portion of the  
15 amount of franchise tax paid to the state under sections 77-3801 to  
16 77-3807 by a financial institution.

17 (b) For all taxable years beginning on or after January  
18 1, 2009, under the Internal Revenue Code of 1986, as amended,  
19 there shall be allowed to each partner, shareholder, member, or  
20 beneficiary of a partnership, subchapter S corporation, limited  
21 liability company, or estate or trust a nonrefundable credit  
22 against the income tax imposed by the Nebraska Revenue Act of 1967  
23 equal to the partner's, shareholder's, member's, or beneficiary's  
24 portion of the amount of franchise tax paid to the state under  
25 sections 77-3801 to 77-3807 by a financial institution.

1           (c) Each partner, shareholder, member, or beneficiary  
2 shall report his or her share of the credit in the same manner  
3 and proportion as he or she reports the partnership, subchapter S  
4 corporation, limited liability company, or estate or trust income.  
5 If any partner, shareholder, member, or beneficiary cannot fully  
6 utilize the credit for that year, the credit may not be carried  
7 forward or back.

8           (6) There shall be allowed to individuals as a  
9 nonrefundable credit against the income tax imposed by the Nebraska  
10 Revenue Act of 1967 a credit for contributions to certified school  
11 tuition organizations as provided in the Elementary and Secondary  
12 Education Opportunity Act. When the contribution is made by a  
13 partnership, a subchapter S corporation, an estate or trust, or a  
14 limited liability company, each partner, shareholder, beneficiary,  
15 or member shall report his or her share of the credit in the  
16 same manner and proportion as he or she reports the partnership,  
17 subchapter S corporation, estate, trust, or limited liability  
18 company income.

19           Sec. 12. Section 77-2734.03, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21           77-2734.03 (1) (a) For taxable years commencing prior to  
22 January 1, 1997, any (i) insurer paying a tax on premiums and  
23 assessments pursuant to section 77-908 or 81-523, (ii) electric  
24 cooperative organized under the Joint Public Power Authority Act,  
25 or (iii) credit union shall be credited, in the computation of

1 the tax due under the Nebraska Revenue Act of 1967, with the  
2 amount paid during the taxable year as taxes on such premiums and  
3 assessments and taxes in lieu of intangible tax.

4 (b) For taxable years commencing on or after January 1,  
5 1997, any insurer paying a tax on premiums and assessments pursuant  
6 to section 77-908 or 81-523, any electric cooperative organized  
7 under the Joint Public Power Authority Act, or any credit union  
8 shall be credited, in the computation of the tax due under the  
9 Nebraska Revenue Act of 1967, with the amount paid during the  
10 taxable year as (i) taxes on such premiums and assessments included  
11 as Nebraska premiums and assessments under section 77-2734.05 and  
12 (ii) taxes in lieu of intangible tax.

13 (c) For taxable years commencing or deemed to commence  
14 prior to, on, or after January 1, 1998, any insurer paying a tax on  
15 premiums and assessments pursuant to section 77-908 or 81-523 shall  
16 be credited, in the computation of the tax due under the Nebraska  
17 Revenue Act of 1967, with the amount paid during the taxable year  
18 as assessments allowed as an offset against premium and related  
19 retaliatory tax liability pursuant to section 44-4233.

20 (2) There shall be allowed to corporate taxpayers a  
21 tax credit for contributions to community betterment programs as  
22 provided in the Community Development Assistance Act.

23 (3) There shall be allowed to corporate taxpayers a  
24 refundable income tax credit under the Beginning Farmer Tax Credit  
25 Act for all taxable years beginning or deemed to begin on or

1 after January 1, 2001, under the Internal Revenue Code of 1986, as  
2 amended.

3 (4) The changes made to this section by Laws 2004, LB  
4 983, apply to motor fuels purchased during any tax year ending  
5 or deemed to end on or after January 1, 2005, under the Internal  
6 Revenue Code of 1986, as amended.

7 (5) There shall be allowed to corporate taxpayers  
8 refundable income tax credits under the Nebraska Advantage  
9 Microenterprise Tax Credit Act and the Nebraska Advantage Research  
10 and Development Act.

11 (6) There shall be allowed to corporate taxpayers a  
12 nonrefundable income tax credit for investment in a biodiesel  
13 facility as provided in section 77-27,236.

14 (7) There shall be allowed to corporate taxpayers a  
15 nonrefundable tax credit for contributions to certified school  
16 tuition organizations as provided in the Elementary and Secondary  
17 Education Opportunity Act.

18 Sec. 13. This act is operative for all taxable years  
19 beginning or deemed to begin on or after January 1, 2009, under the  
20 Internal Revenue Code of 1986, as amended.

21 Sec. 14. If any section in this act or any part of any  
22 section is declared invalid or unconstitutional, the declaration  
23 shall not affect the validity or constitutionality of the remaining  
24 portions.

25 Sec. 15. Original sections 77-2715.07 and 77-2734.03,

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1 Revised Statutes Cumulative Supplement, 2008, are repealed.