

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 970**

Final Reading

Introduced by Cornett, 45; McCoy, 39; Brasch, 16; Janssen, 15;  
Lambert, 2; Larson, 40; Price, 3; Schilz, 47; Pirsch,  
4; at the request of the Governor.

Read first time January 12, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701, 77-2701.01, 77-2715.01, 77-2715.02, 77-2727, and  
3 77-2734.02, Reissue Revised Statutes of Nebraska, section  
4 77-2734.01, Revised Statutes Cumulative Supplement, 2010,  
5 and section 77-2717, Revised Statutes Supplement, 2011;  
6 to change income tax rates and calculation; to harmonize  
7 provisions; and to repeal the original sections.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2701, Reissue Revised Statutes of  
2 Nebraska, 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 section 5 of this act shall be known and may be cited  
5 as the Nebraska Revenue Act of 1967.

6           Sec. 2. Section 77-2701.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           77-2701.01 Pursuant to section 77-2715.01, for all  
9 taxable years beginning or deemed to begin on or after January 1,  
10 1990, and before January 1, 1991, under the Internal Revenue Code of  
11 1986, as amended, the rate of the income tax levied pursuant to  
12 section 77-2715 shall be three and forty-three-hundredths percent.  
13 Pursuant to section 77-2715.01, for all taxable years beginning or  
14 deemed to begin on or after January 1, 1991, and before January 1,  
15 2013, under the Internal Revenue Code of 1986, as amended, the rate  
16 of the income tax levied pursuant to section 77-2715 shall be three  
17 and seventy-hundredths percent. Pursuant to section 77-2715.01, for  
18 all taxable years beginning or deemed to begin on or after January 1,  
19 2013, under the Internal Revenue Code of 1986, as amended, the rates  
20 of the income tax levied pursuant to section 77-2715 shall be as  
21 provided in section 5 of this act.

22           Sec. 3. Section 77-2715.01, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           77-2715.01 (1)(a) Commencing in 1987 the Legislature  
25 shall set the ~~rate~~-rates for the income tax imposed by section

1 77-2715 and the rate of the sales tax imposed by subsection (1) of  
2 section 77-2703. ~~The~~ For taxable years beginning or deemed to begin  
3 before January 1, 2013, the rate of the income tax set by the  
4 Legislature shall be considered the primary rate for establishing the  
5 tax rate schedules used to compute the tax.

6 (b) The Legislature shall set the rates of the sales tax  
7 and income tax so that the estimated funds available plus estimated  
8 receipts from the sales, use, income, and franchise taxes will be not  
9 less than three percent nor more than seven percent in excess of the  
10 appropriations and express obligations for the biennium for which the  
11 appropriations are made. The purpose of this subdivision is to insure  
12 that there shall be maintained in the state treasury an adequate  
13 General Fund balance, considering cash flow, to meet the  
14 appropriations and express obligations of the state.

15 (c) For purposes of this section, express obligation  
16 shall mean an obligation which has fiscal impact identifiable by a  
17 sum certain or by an established percentage or other determinative  
18 factor or factors.

19 (2) The Speaker of the Legislature and the chairpersons  
20 of the Legislature's Executive Board, Revenue Committee, and  
21 Appropriations Committee shall meet with the Tax Commissioner within  
22 ten days after July 15 and November 15 of each year and shall  
23 determine whether the rates for sales tax and income tax should be  
24 changed. In making such determination they shall recalculate the  
25 requirements pursuant to the formula set forth in subsection (1) of

1 this section, taking into consideration the appropriations and  
2 express obligations for any session, all miscellaneous claims,  
3 deficiency bills, and all emergency appropriations.

4 In the event it is determined by a majority vote that the  
5 rates must be changed as a result of a regular or special session or  
6 as a result of a change in the Internal Revenue Code of 1986 and  
7 amendments thereto, other provisions of the laws of the United States  
8 relating to federal income taxes, and the rules and regulations  
9 issued under such laws, they shall petition the Governor to call a  
10 special session of the Legislature to make whatever rate changes may  
11 be necessary.

12 Sec. 4. Section 77-2715.02, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 77-2715.02 ~~(1) Whenever the primary rate is changed by~~  
15 ~~the Legislature under section 77-2715.01, the Tax Commissioner shall~~  
16 ~~update the rate schedules required in subsection (2) of this section~~  
17 ~~to reflect the new primary rate and shall publish such updated~~  
18 ~~schedules.~~

19 ~~(2)~~ (1) The following rate schedules are hereby  
20 established for the Nebraska individual income tax and shall be in  
21 the following form:

22 (a) For taxable years beginning or deemed to begin before  
23 January 1, 2007, income amounts for columns A and E shall be:

24 (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;

25 (ii) \$0, \$4,000, \$31,000, and \$50,000, for married filing

1 joint returns;

2 (iii) \$0, \$3,800, \$25,000, and \$35,000, for head-of-  
3 household returns;

4 (iv) \$0, \$2,000, \$15,500, and \$25,000, for married filing  
5 separate returns; and

6 (v) \$0, \$500, \$4,700, and \$15,150, for estates and  
7 trusts;

8 (b) For taxable years beginning or deemed to begin on or  
9 after January 1, 2007, and before January 1, 2013, income amounts for  
10 columns A and E shall be:

11 (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;

12 (ii) \$0, \$4,800, \$35,000, and \$54,000, for married filing  
13 joint returns;

14 (iii) \$0, \$4,500, \$28,000, and \$40,000, for head-of-  
15 household returns;

16 (iv) \$0, \$2,400, \$17,500, and \$27,000, for married filing  
17 separate returns; and

18 (v) \$0, \$500, \$4,700, and \$15,150, for estates and  
19 trusts;

20 (c) The amount in column C shall be the total amount of  
21 the tax imposed on income less than the amount in column A;

22 (d) The amount in column D shall be the rate on the  
23 income in excess of the amount in column E;

24 (e) For taxable years beginning or deemed to begin before  
25 January 1, 2003, under the Internal Revenue Code of 1986, as amended,

1 the primary rate set by the Legislature shall be multiplied by the  
2 following factors to compute the tax rates for column D. The factors  
3 for the brackets, from lowest to highest bracket, shall be .6784, .  
4 9432, 1.3541, and 1.8054;

5 (f) For taxable years beginning or deemed to begin on or  
6 after January 1, 2003, and before January 1, 2013, under the Internal  
7 Revenue Code of 1986, as amended, the primary rate set by the  
8 Legislature shall be multiplied by the following factors to compute  
9 the tax rates for column D. The factors for the brackets, from lowest  
10 to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;

11 (g) The amounts for column C shall be rounded to the  
12 nearest dollar, and the amounts in column D shall be rounded to  
13 hundredths of one percent; and

14 (h) One rate schedule shall be established for each  
15 federal filing status.

16 ~~(3)~~(2) The tax rate schedules shall use the format set  
17 forth in this subsection.

18	A	B	C	D	E
19	Taxable income	but not	pay	plus	of the
20	over	over			amount over

21 ~~(4)~~(3) For taxable years beginning or deemed to  
22 begin before January 1, 2013, the tax rate applied to other federal  
23 taxes included in the computation of the Nebraska individual income  
24 tax shall be eight times the primary rate.

25 ~~(5) The Tax Commissioner shall prepare, from the rate~~

1 ~~schedules, tax tables which can be used by a majority of the~~  
 2 ~~taxpayers to determine their Nebraska tax liability. The design of~~  
 3 ~~the tax tables shall be determined by the Tax Commissioner. The size~~  
 4 ~~of the tax table brackets may change as the level of income changes.~~  
 5 ~~The difference in tax between two tax table brackets shall not exceed~~  
 6 ~~fifteen dollars. The Tax Commissioner may build the personal~~  
 7 ~~exemption credit and standard deduction amounts into the tax tables.~~

8 ~~(6) The Tax Commissioner may require by rule and~~  
 9 ~~regulation that all taxpayers shall use the tax tables if their~~  
 10 ~~income is less than the maximum income included in the tax tables.~~

11 Sec. 5. (1) For taxable years beginning or deemed to  
 12 begin on or after January 1, 2013, and before January 1, 2014, the  
 13 following brackets and rates are hereby established for the Nebraska  
 14 individual income tax:

15 Individual Income Tax Brackets and Rates

16 <u>Bracket</u>	<u>Single</u>	<u>Married,</u>	<u>Head of</u>	<u>Married,</u>	<u>Estates</u>	<u>Tax</u>
17 <u>Number</u>	<u>Individuals</u>	<u>Filing</u>	<u>Household</u>	<u>Filing</u>	<u>and</u>	<u>Rate</u>
18		<u>Jointly</u>		<u>Separate</u>	<u>Trusts</u>	
19 <u>1</u>	<u>\$0-2,399</u>	<u>\$0-4,799</u>	<u>\$0-4,499</u>	<u>\$0-2,399</u>	<u>\$0-499</u>	<u>2.46%</u>
20 <u>2</u>	<u>\$2,400-</u>	<u>\$4,800-</u>	<u>\$4,500-</u>	<u>\$2,400-</u>	<u>\$500-</u>	
21	<u>17,499</u>	<u>34,999</u>	<u>27,999</u>	<u>17,499</u>	<u>4,699</u>	<u>3.51%</u>
22 <u>3</u>	<u>\$17,500-</u>	<u>\$35,000-</u>	<u>\$28,000-</u>	<u>\$17,500-</u>	<u>\$4,700-</u>	
23	<u>26,999</u>	<u>53,999</u>	<u>39,999</u>	<u>26,999</u>	<u>15,149</u>	<u>5.01%</u>
24 <u>4</u>	<u>\$27,000</u>	<u>\$54,000</u>	<u>\$40,000</u>	<u>\$27,000</u>	<u>\$15,150</u>	

1                   and Over      and Over      and Over      and Over      and Over      6.84%

2                   (2) For taxable years beginning or deemed to begin on or  
 3 after January 1, 2014, the following brackets and rates are hereby  
 4 established for the Nebraska individual income tax:

5                   Individual Income Tax Brackets and Rates

6	<u>Bracket</u>	<u>Single</u>	<u>Married,</u>	<u>Head of</u>	<u>Married,</u>	<u>Estates</u>	<u>Tax</u>
7	<u>Number</u>	<u>Individuals</u>	<u>Filing</u>	<u>Household</u>	<u>Filing</u>	<u>and</u>	<u>Rate</u>
8			<u>Jointly</u>		<u>Separate</u>	<u>Trusts</u>	
9	<u>1</u>	<u>\$0-2,999</u>	<u>\$0-5,999</u>	<u>\$0-5,599</u>	<u>\$0-2,999</u>	<u>\$0-499</u>	<u>2.46%</u>
10	<u>2</u>	<u>\$3,000-</u>	<u>\$6,000-</u>	<u>\$5,600-</u>	<u>\$3,000-</u>	<u>\$500-</u>	
11		<u>17,999</u>	<u>35,999</u>	<u>28,799</u>	<u>17,999</u>	<u>4,699</u>	<u>3.51%</u>
12	<u>3</u>	<u>\$18,000-</u>	<u>\$36,000-</u>	<u>\$28,800-</u>	<u>\$18,000-</u>	<u>\$4,700-</u>	
13		<u>28,999</u>	<u>57,999</u>	<u>42,999</u>	<u>28,999</u>	<u>15,149</u>	<u>5.01%</u>
14	<u>4</u>	<u>\$29,000</u>	<u>\$58,000</u>	<u>\$43,000</u>	<u>\$29,000</u>	<u>\$15,150</u>	
15		<u>and Over</u>	<u>and Over</u>	<u>and Over</u>	<u>and Over</u>	<u>and Over</u>	<u>6.84%</u>

16                   (3) Whenever the tax brackets or tax rates are changed by  
 17 the Legislature, the Tax Commissioner shall update the tax rate  
 18 schedules to reflect the new tax brackets or tax rates and shall  
 19 publish such updated schedules.

20                   (4) The Tax Commissioner shall prepare, from the rate  
 21 schedules, tax tables which can be used by a majority of the  
 22 taxpayers to determine their Nebraska tax liability. The design of  
 23 the tax tables shall be determined by the Tax Commissioner. The size



1 of the tax table brackets may change as the level of income changes.  
2 The difference in tax between two tax table brackets shall not exceed  
3 fifteen dollars. The Tax Commissioner may build the personal  
4 exemption credit and standard deduction amounts into the tax tables.

5 (5) For taxable years beginning or deemed to begin on or  
6 after January 1, 2013, the tax rate applied to other federal taxes  
7 included in the computation of the Nebraska individual income tax  
8 shall be 29.6 percent.

9 (6) The Tax Commissioner may require by rule and  
10 regulation that all taxpayers shall use the tax tables if their  
11 income is less than the maximum income included in the tax tables.

12 Sec. 6. Section 77-2717, Revised Statutes Supplement,  
13 2011, is amended to read:

14 77-2717 (1)(a) The tax imposed on all resident estates  
15 and trusts shall be a percentage of the federal taxable income of  
16 such estates and trusts as modified in section 77-2716, plus a  
17 percentage of the federal alternative minimum tax and the federal tax  
18 on premature or lump-sum distributions from qualified retirement  
19 plans. The additional taxes shall be recomputed by (i) substituting  
20 Nebraska taxable income for federal taxable income, (ii) calculating  
21 what the federal alternative minimum tax would be on Nebraska taxable  
22 income and adjusting such calculations for any items which are  
23 reflected differently in the determination of federal taxable income,  
24 and (iii) applying Nebraska rates to the result. The federal credit  
25 for prior year minimum tax, after the recomputations required by the

1 Nebraska Revenue Act of 1967, and the credits provided in the  
2 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
3 Advantage Research and Development Act shall be allowed as a  
4 reduction in the income tax due. A refundable income tax credit shall  
5 be allowed for all resident estates and trusts under the Angel  
6 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
7 Credit Act, and the Nebraska Advantage Research and Development Act.

8 (b) The tax imposed on all nonresident estates and trusts  
9 shall be the portion of the tax imposed on resident estates and  
10 trusts which is attributable to the income derived from sources  
11 within this state. The tax which is attributable to income derived  
12 from sources within this state shall be determined by multiplying the  
13 liability to this state for a resident estate or trust with the same  
14 total income by a fraction, the numerator of which is the nonresident  
15 estate's or trust's Nebraska income as determined by sections 77-2724  
16 and 77-2725 and the denominator of which is its total federal income  
17 after first adjusting each by the amounts provided in section  
18 77-2716. The federal credit for prior year minimum tax, after the  
19 recomputations required by the Nebraska Revenue Act of 1967, reduced  
20 by the percentage of the total income which is attributable to income  
21 from sources outside this state, and the credits provided in the  
22 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
23 Advantage Research and Development Act shall be allowed as a  
24 reduction in the income tax due. A refundable income tax credit shall  
25 be allowed for all nonresident estates and trusts under the Angel

1 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
2 Credit Act, and the Nebraska Advantage Research and Development Act.

3 (2) In all instances wherein a fiduciary income tax  
4 return is required under the provisions of the Internal Revenue Code,  
5 a Nebraska fiduciary return shall be filed, except that a fiduciary  
6 return shall not be required to be filed regarding a simple trust if  
7 all of the trust's beneficiaries are residents of the State of  
8 Nebraska, all of the trust's income is derived from sources in this  
9 state, and the trust has no federal tax liability. The fiduciary  
10 shall be responsible for making the return for the estate or trust  
11 for which he or she acts, whether the income be taxable to the estate  
12 or trust or to the beneficiaries thereof. The fiduciary shall include  
13 in the return a statement of each beneficiary's distributive share of  
14 net income when such income is taxable to such beneficiaries.

15 (3) The beneficiaries of such estate or trust who are  
16 residents of this state shall include in their income their  
17 proportionate share of such estate's or trust's federal income and  
18 shall reduce their Nebraska tax liability by their proportionate  
19 share of the credits as provided in the Angel Investment Tax Credit  
20 Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the  
21 Nebraska Advantage Research and Development Act. There shall be  
22 allowed to a beneficiary a refundable income tax credit under the  
23 Beginning Farmer Tax Credit Act for all taxable years beginning or  
24 deemed to begin on or after January 1, 2001, under the Internal  
25 Revenue Code of 1986, as amended.

1           (4) If any beneficiary of such estate or trust is a  
2 nonresident during any part of the estate's or trust's taxable year,  
3 he or she shall file a Nebraska income tax return which shall include  
4 (a) in Nebraska adjusted gross income that portion of the estate's or  
5 trust's Nebraska income, as determined under sections 77-2724 and  
6 77-2725, allocable to his or her interest in the estate or trust and  
7 (b) a reduction of the Nebraska tax liability by his or her  
8 proportionate share of the credits as provided in the Angel  
9 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
10 Credit Act, and the Nebraska Advantage Research and Development Act  
11 and shall execute and forward to the fiduciary, on or before the  
12 original due date of the Nebraska fiduciary return, an agreement  
13 which states that he or she will file a Nebraska income tax return  
14 and pay income tax on all income derived from or connected with  
15 sources in this state, and such agreement shall be attached to the  
16 Nebraska fiduciary return for such taxable year.

17           (5) In the absence of the nonresident beneficiary's  
18 executed agreement being attached to the Nebraska fiduciary return,  
19 the estate or trust shall remit a portion of such beneficiary's  
20 income which was derived from or attributable to Nebraska sources  
21 with its Nebraska return for the taxable year. ~~The~~ For taxable years  
22 beginning or deemed to begin before January 1, 2013, the amount of  
23 remittance, in such instance, shall be the highest individual income  
24 tax rate determined under section 77-2715.02 multiplied by the  
25 nonresident beneficiary's share of the estate or trust income which

1 was derived from or attributable to sources within this state. For  
2 taxable years beginning or deemed to begin on or after January 1,  
3 2013, the amount of remittance, in such instance, shall be the  
4 highest individual income tax rate determined under section 5 of this  
5 act multiplied by the nonresident beneficiary's share of the estate  
6 or trust income which was derived from or attributable to sources  
7 within this state. The amount remitted shall be allowed as a credit  
8 against the Nebraska income tax liability of the beneficiary.

9 (6) The Tax Commissioner may allow a nonresident  
10 beneficiary to not file a Nebraska income tax return if the  
11 nonresident beneficiary's only source of Nebraska income was his or  
12 her share of the estate's or trust's income which was derived from or  
13 attributable to sources within this state, the nonresident did not  
14 file an agreement to file a Nebraska income tax return, and the  
15 estate or trust has remitted the amount required by subsection (5) of  
16 this section on behalf of such nonresident beneficiary. The amount  
17 remitted shall be retained in satisfaction of the Nebraska income tax  
18 liability of the nonresident beneficiary.

19 (7) For purposes of this section, unless the context  
20 otherwise requires, simple trust shall mean any trust instrument  
21 which (a) requires that all income shall be distributed currently to  
22 the beneficiaries, (b) does not allow amounts to be paid, permanently  
23 set aside, or used in the tax year for charitable purposes, and (c)  
24 does not distribute amounts allocated in the corpus of the trust. Any  
25 trust which does not qualify as a simple trust shall be deemed a

1 complex trust.

2 (8) For purposes of this section, any beneficiary of an  
3 estate or trust that is a grantor trust of a nonresident shall be  
4 disregarded and this section shall apply as though the nonresident  
5 grantor was the beneficiary.

6 Sec. 7. Section 77-2727, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-2727 (1) A partnership as such shall not be subject to  
9 the income tax imposed by the Nebraska Revenue Act of 1967. Persons  
10 or their authorized representatives carrying on business as partners  
11 shall be liable for the income tax imposed by the Nebraska Revenue  
12 Act of 1967 only in their separate or individual capacities.

13 (2) The partners of such partnership who are residents of  
14 this state or corporations shall include in their incomes their  
15 proportionate share of such partnership's income.

16 (3) If any partner of such partnership is a nonresident  
17 individual during any part of the partnership's reporting year, he or  
18 she shall file a Nebraska income tax return which shall include in  
19 Nebraska adjusted gross income that portion of the partnership's  
20 Nebraska income, as determined under the provisions of sections  
21 77-2728 and 77-2729, allocable to his or her interest in the  
22 partnership and shall execute and forward to the partnership, on or  
23 before the original due date of the Nebraska partnership return, an  
24 agreement which states that he or she will file a Nebraska income tax  
25 return and pay income tax on all income derived from or attributable

1 to sources in this state, and such agreement shall be attached to the  
2 partnership's Nebraska return for such reporting year.

3 (4)(a) Except as provided in subdivision (c) of this  
4 subsection, in the absence of the nonresident individual partner's  
5 executed agreement being attached to the Nebraska partnership return,  
6 the partnership shall remit a portion of such partner's income which  
7 was derived from or attributable to Nebraska sources with its  
8 Nebraska return for the reporting year. ~~The~~ For tax years beginning  
9 or deemed to begin before January 1, 2013, the amount of remittance,  
10 in such instance, shall be the highest individual income tax rate  
11 determined under section 77-2715.02 multiplied by the nonresident  
12 individual partner's share of the partnership income which was  
13 derived from or attributable to sources within this state. For tax  
14 years beginning or deemed to begin on or after January 1, 2013, the  
15 amount of remittance, in such instance, shall be the highest  
16 individual income tax rate determined under section 5 of this act  
17 multiplied by the nonresident individual partner's share of the  
18 partnership income which was derived from or attributable to sources  
19 within this state.

20 (b) Any amount remitted on behalf of any partner shall be  
21 allowed as a credit against the Nebraska income tax liability of the  
22 partner.

23 (c) Subdivision (a) of this subsection does not apply to  
24 a publicly traded partnership as defined by section 7704(b) of the  
25 Internal Revenue Code of 1986, as amended, that is treated as a

1 partnership for the purposes of the code and that has agreed to file  
2 an annual information return with the Department of Revenue reporting  
3 the name, address, taxpayer identification number, and other  
4 information requested by the department of each unit holder with an  
5 income in the state in excess of five hundred dollars.

6 (5) The Tax Commissioner may allow a nonresident  
7 individual partner to not file a Nebraska income tax return if the  
8 nonresident individual partner's only source of Nebraska income was  
9 his or her share of the partnership's income which was derived from  
10 or attributable to sources within this state, the nonresident did not  
11 file an agreement to file a Nebraska income tax return, and the  
12 partnership has remitted the amount required by subsection (4) of  
13 this section on behalf of such nonresident individual partner. The  
14 amount remitted shall be retained in satisfaction of the Nebraska  
15 income tax liability of the nonresident individual partner.

16 (6) For purposes of this section, any partner that is a  
17 grantor trust of a nonresident shall be disregarded and this section  
18 shall apply as though the nonresident grantor was the partner.

19 Sec. 8. Section 77-2734.01, Revised Statutes Cumulative  
20 Supplement, 2010, is amended to read:

21 77-2734.01 (1) Residents of Nebraska who are shareholders  
22 of a small business corporation having an election in effect under  
23 subchapter S of the Internal Revenue Code or who are members of a  
24 limited liability company organized pursuant to the Limited Liability  
25 Company Act or the Nebraska Uniform Limited Liability Company Act



1 shall include in their Nebraska taxable income, to the extent  
2 includable in federal gross income, their proportionate share of such  
3 corporation's or limited liability company's federal income adjusted  
4 pursuant to this section. Income or loss from such corporation or  
5 limited liability company conducting a business, trade, profession,  
6 or occupation shall be included in the Nebraska taxable income of a  
7 shareholder or member who is a resident of this state to the extent  
8 of such shareholder's or member's proportionate share of the net  
9 income or loss from the conduct of such business, trade, profession,  
10 or occupation within this state, determined under subsection (2) of  
11 this section. A resident of Nebraska shall include in Nebraska  
12 taxable income fair compensation for services rendered to such  
13 corporation or limited liability company. Compensation actually paid  
14 shall be presumed to be fair unless it is apparent to the Tax  
15 Commissioner that such compensation is materially different from fair  
16 value for the services rendered or has been manipulated for tax  
17 avoidance purposes.

18           (2) The income of any small business corporation having  
19 an election in effect under subchapter S of the Internal Revenue Code  
20 or limited liability company organized pursuant to the Limited  
21 Liability Company Act or the Nebraska Uniform Limited Liability  
22 Company Act that is derived from or connected with Nebraska sources  
23 shall be determined in the following manner:

24           (a) If the small business corporation is a member of a  
25 unitary group, the small business corporation shall be deemed to be

1 doing business within this state if any part of its income is derived  
2 from transactions with other members of the unitary group doing  
3 business within this state, and such corporation shall apportion its  
4 income by using the apportionment factor determined for the entire  
5 unitary group, including the small business corporation, under  
6 sections 77-2734.05 to 77-2734.15;

7 (b) If the small business corporation or limited  
8 liability company is not a member of a unitary group and is subject  
9 to tax in another state, it shall apportion its income under sections  
10 77-2734.05 to 77-2734.15; and

11 (c) If the small business corporation or limited  
12 liability company is not subject to tax in another state, all of its  
13 income is derived from or connected with Nebraska sources.

14 (3) Nonresidents of Nebraska who are shareholders of such  
15 corporations or members of such limited liability companies shall  
16 file a Nebraska income tax return and shall include in Nebraska  
17 adjusted gross income their proportionate share of the corporation's  
18 or limited liability company's Nebraska income as determined under  
19 subsection (2) of this section.

20 (4) The nonresident shareholder or member shall execute  
21 and forward to the corporation or limited liability company before  
22 the filing of the corporation's or limited liability company's return  
23 an agreement which states he or she will file a Nebraska income tax  
24 return and pay the tax on the income derived from or connected with  
25 sources in this state, and such agreement shall be attached to the

1 corporation's or limited liability company's Nebraska return for such  
2 taxable year.

3 (5) ~~In~~ For taxable years beginning or deemed to begin  
4 before January 1, 2013, in the absence of the nonresident  
5 shareholder's or member's executed agreement being attached to the  
6 Nebraska return, the corporation or limited liability company shall  
7 remit with the return an amount equal to the highest individual  
8 income tax rate determined under section 77-2715.02 multiplied by the  
9 nonresident shareholder's or member's share of the corporation's or  
10 limited liability company's income which was derived from or  
11 attributable to this state. For taxable years beginning or deemed to  
12 begin on or after January 1, 2013, in the absence of the nonresident  
13 shareholder's or member's executed agreement being attached to the  
14 Nebraska return, the corporation or limited liability company shall  
15 remit with the return an amount equal to the highest individual  
16 income tax rate determined under section 5 of this act multiplied by  
17 the nonresident shareholder's or member's share of the corporation's  
18 or limited liability company's income which was derived from or  
19 attributable to this state. The amount remitted shall be allowed as a  
20 credit against the Nebraska income tax liability of the shareholder  
21 or member.

22 (6) The Tax Commissioner may allow a nonresident  
23 individual shareholder or member to not file a Nebraska income tax  
24 return if the nonresident individual shareholder's or member's only  
25 source of Nebraska income was his or her share of the small business

1 corporation's or limited liability company's income which was derived  
2 from or attributable to sources within this state, the nonresident  
3 did not file an agreement to file a Nebraska income tax return, and  
4 the small business corporation or limited liability company has  
5 remitted the amount required by subsection (5) of this section on  
6 behalf of such nonresident individual shareholder or member. The  
7 amount remitted shall be retained in satisfaction of the Nebraska  
8 income tax liability of the nonresident individual shareholder or  
9 member.

10 (7) A small business corporation or limited liability  
11 company return shall be filed only if one or more of the shareholders  
12 of the corporation or members of the limited liability company are  
13 not residents of the State of Nebraska or if such corporation or  
14 limited liability company has income derived from sources outside  
15 this state.

16 (8) For purposes of this section, any shareholder or  
17 member of the corporation or limited liability company that is a  
18 grantor trust of a nonresident shall be disregarded and this section  
19 shall apply as though the nonresident grantor was the shareholder or  
20 member.

21 Sec. 9. Section 77-2734.02, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 77-2734.02 (1) Except as provided in subsection (2) of  
24 this section, a tax is hereby imposed ~~for each taxable year~~ on the  
25 taxable income of every corporate taxpayer that is doing business in

1 this state:

2 (a) For taxable years beginning or deemed to begin before  
3 January 1, 2013, at a rate equal to one hundred fifty and eight-  
4 tenths percent of the primary rate imposed on individuals under  
5 section 77-2701.01 on the first one hundred thousand dollars of  
6 taxable income and at the rate of two hundred eleven percent of such  
7 rate on all taxable income in excess of one hundred thousand dollars.  
8 The resultant rates shall be rounded to the nearest one hundredth of  
9 one percent; and -

10 (b) For taxable years beginning or deemed to begin on or  
11 after January 1, 2013, at a rate equal to 5.58 percent on the first  
12 one hundred thousand dollars of taxable income and at the rate of  
13 7.81 percent on all taxable income in excess of one hundred thousand  
14 dollars.

15 For corporate taxpayers with a fiscal year that does not  
16 coincide with the calendar year, the individual rate used for this  
17 subsection shall be the rate in effect on the first day, or the day  
18 deemed to be the first day, of the taxable year.

19 (2) An insurance company shall be subject to taxation at  
20 the lesser of the rate described in subsection (1) of this section or  
21 the rate of tax imposed by the state or country in which the  
22 insurance company is domiciled if the insurance company can establish  
23 to the satisfaction of the Tax Commissioner that it is domiciled in a  
24 state or country other than Nebraska that imposes on Nebraska  
25 domiciled insurance companies a retaliatory tax against the tax

1 described in subsection (1) of this section.

2 (3) For a corporate taxpayer that is subject to tax in  
3 another state, its taxable income shall be the portion of the  
4 taxpayer's federal taxable income, as adjusted, that is determined to  
5 be connected with the taxpayer's operations in this state pursuant to  
6 sections 77-2734.05 to 77-2734.15.

7 (4) Each corporate taxpayer shall file only one income  
8 tax return for each taxable year.

9 Sec. 10. Original sections 77-2701, 77-2701.01,  
10 77-2715.01, 77-2715.02, 77-2727, and 77-2734.02, Reissue Revised  
11 Statutes of Nebraska, section 77-2734.01, Revised Statutes Cumulative  
12 Supplement, 2010, and section 77-2717, Revised Statutes Supplement,  
13 2011, are repealed.