

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1135**

Introduced by Haar, 21; Mello, 5.

Read first time January 19, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701 and 77-2734.03, Reissue Revised Statutes of  
3 Nebraska, and sections 77-2715.07 and 77-2717, Revised  
4 Statutes Supplement, 2011; to provide an income tax  
5 credit relating to purchases of energy star certified  
6 materials and equipment; to harmonize provisions; and to  
7 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 2 of this act shall be known and may be cited  
5 as the Nebraska Revenue Act of 1967.

6           Sec. 2. (1) For taxable years beginning or deemed to  
7 begin on or after January 1, 2012, under the Internal Revenue Code of  
8 1986, as amended, a taxpayer may receive a credit against the income  
9 tax imposed by the Nebraska Revenue Act of 1967 in an amount equal to  
10 five percent of the purchase price of energy star certified windows,  
11 central air conditioners, furnaces, heat pumps, or water heaters  
12 purchased during the tax year, except that the amount of the credit  
13 received by a taxpayer under this section in any one tax year is  
14 limited to two hundred fifty dollars.

15           (2) To claim the credit authorized under this section, a  
16 taxpayer shall apply to the Department of Revenue and shall specify  
17 the total amount of the credit requested. The taxpayer shall provide  
18 documentation as required by the department to verify that the  
19 taxpayer qualifies for the credit. If the application is approved,  
20 the department shall calculate the amount of the credit and issue a  
21 certificate to the taxpayer evidencing the credit.

22           (3) Applications for credits shall be considered in the  
23 order in which they are received. The department may approve  
24 applications up to a maximum amount of credits of two million five  
25 hundred thousand dollars for each calendar year. After applications

1 totaling such limit have been approved for a calendar year, no  
2 further applications shall be considered.

3 (4) Any credits allowed under this section are  
4 nonrefundable and nontransferable and may not be carried forward or  
5 back.

6 (5) The department may accept applications for credits  
7 under this section through December 31, 2014. No new applications  
8 shall be filed under this section after such date. All applications  
9 pending or approved on or before such date shall continue in full  
10 force and effect.

11 (6) For purposes of this section, energy star certified  
12 means approved as to energy usage by the United States Environmental  
13 Protection Agency and the United States Department of Energy. Such  
14 approval may be signified by the display of the energy star label.

15 Sec. 3. Section 77-2715.07, Revised Statutes Supplement,  
16 2011, is amended to read:

17 77-2715.07 (1) There shall be allowed to qualified  
18 resident individuals as a nonrefundable credit against the income tax  
19 imposed by the Nebraska Revenue Act of 1967:

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

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

24 (2) There shall be allowed to qualified resident  
25 individuals against the income tax imposed by the Nebraska Revenue

1 Act of 1967:

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

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

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

22 (d) A refundable credit for individuals who qualify for  
23 an income tax credit under the Angel Investment Tax Credit Act, the  
24 Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska  
25 Advantage Research and Development Act; and

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

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

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

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

17           (c) A credit for investment in a biodiesel facility as  
18 provided in section 77-27,236; and -

19           (d) A credit for purchases of energy star certified  
20 materials and equipment as provided in section 2 of this act.

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

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

25           (b) A credit to all estates and trusts for contributions

1 to certified community betterment programs as provided in the  
2 Community Development Assistance Act; and

3 (c) A refundable credit for individuals who qualify for  
4 an income tax credit as an owner of agricultural assets under the  
5 Beginning Farmer Tax Credit Act for all taxable years beginning or  
6 deemed to begin on or after January 1, 2009, under the Internal  
7 Revenue Code of 1986, as amended. The credit allowed for each  
8 partner, shareholder, member, or beneficiary of a partnership,  
9 corporation, limited liability company, or estate or trust qualifying  
10 for an income tax credit as an owner of agricultural assets under the  
11 Beginning Farmer Tax Credit Act shall be equal to the partner's,  
12 shareholder's, member's, or beneficiary's portion of the amount of  
13 tax credit distributed pursuant to subsection (4) of section 77-5211.

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

24 (b) For all taxable years beginning on or after January  
25 1, 2009, under the Internal Revenue Code of 1986, as amended, there

1 shall be allowed to each partner, shareholder, member, or beneficiary  
2 of a partnership, subchapter S corporation, limited liability  
3 company, or estate or trust a nonrefundable credit against the income  
4 tax imposed by the Nebraska Revenue Act of 1967 equal to the  
5 partner's, shareholder's, member's, or beneficiary's portion of the  
6 amount of franchise tax paid to the state under sections 77-3801 to  
7 77-3807 by a financial institution.

8 (c) Each partner, shareholder, member, or beneficiary  
9 shall report his or her share of the credit in the same manner and  
10 proportion as he or she reports the partnership, subchapter S  
11 corporation, limited liability company, or estate or trust income. If  
12 any partner, shareholder, member, or beneficiary cannot fully utilize  
13 the credit for that year, the credit may not be carried forward or  
14 back.

15 Sec. 4. Section 77-2717, Revised Statutes Supplement,  
16 2011, is amended to read:

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

1 reflected differently in the determination of federal taxable income,  
2 and (iii) applying Nebraska rates to the result. The federal credit  
3 for prior year minimum tax, after the recomputations required by the  
4 Nebraska Revenue Act of 1967, and the credits provided in the  
5 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
6 Advantage Research and Development Act shall be allowed as a  
7 reduction in the income tax due. A refundable income tax credit shall  
8 be allowed for all resident estates and trusts under the Angel  
9 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
10 Credit Act, and the Nebraska Advantage Research and Development Act.  
11 A nonrefundable income tax credit shall be allowed for all resident  
12 estates and trusts as provided in section 2 of this act.

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



1 from sources outside this state, 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 nonresident 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 A nonrefundable income tax credit shall be allowed for all  
9 nonresident estates and trusts as provided in section 2 of this act.

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

22 (3) The beneficiaries of such estate or trust who are  
23 residents of this state shall include in their income their  
24 proportionate share of such estate's or trust's federal income and  
25 shall reduce their Nebraska tax liability by their proportionate

1 share of the credits as provided in section 2 of this act and the  
2 Angel Investment Tax Credit Act, the Nebraska Advantage  
3 Microenterprise Tax Credit Act, and the Nebraska Advantage Research  
4 and Development Act. There shall be allowed to a beneficiary a  
5 refundable income tax credit under the Beginning Farmer Tax Credit  
6 Act for all taxable years beginning or deemed to begin on or after  
7 January 1, 2001, under the Internal Revenue Code of 1986, as amended.

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

24 (5) In the absence of the nonresident beneficiary's  
25 executed agreement being attached to the Nebraska fiduciary return,

1 the estate or trust shall remit a portion of such beneficiary's  
2 income which was derived from or attributable to Nebraska sources  
3 with its Nebraska return for the taxable year. The amount of  
4 remittance, in such instance, shall be the highest individual income  
5 tax rate determined under section 77-2715.02 multiplied by the  
6 nonresident beneficiary's share of the estate or trust income which  
7 was derived from or attributable to sources within this state. The  
8 amount remitted shall be allowed as a credit against the Nebraska  
9 income tax liability of the beneficiary.

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

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

1 trust which does not qualify as a simple trust shall be deemed a  
2 complex trust.

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

7 Sec. 5. Section 77-2734.03, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 77-2734.03 (1)(a) For taxable years commencing prior to  
10 January 1, 1997, any (i) insurer paying a tax on premiums and  
11 assessments pursuant to section 77-908 or 81-523, (ii) electric  
12 cooperative organized under the Joint Public Power Authority Act, or  
13 (iii) credit union shall be credited, in the computation of the tax  
14 due under the Nebraska Revenue Act of 1967, with the amount paid  
15 during the taxable year as taxes on such premiums and assessments and  
16 taxes in lieu of intangible tax.

17 (b) For taxable years commencing on or after January 1,  
18 1997, any insurer paying a tax on premiums and assessments pursuant  
19 to section 77-908 or 81-523, any electric cooperative organized under  
20 the Joint Public Power Authority Act, or any credit union shall be  
21 credited, in the computation of the tax due under the Nebraska  
22 Revenue Act of 1967, with the amount paid during the taxable year as  
23 (i) taxes on such premiums and assessments included as Nebraska  
24 premiums and assessments under section 77-2734.05 and (ii) taxes in  
25 lieu of intangible tax.

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

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

11           (3) There shall be allowed to corporate taxpayers a  
12 refundable income tax credit under the Beginning Farmer Tax Credit  
13 Act for all taxable years beginning or deemed to begin on or after  
14 January 1, 2001, under the Internal Revenue Code of 1986, as amended.

15           (4) The changes made to this section by Laws 2004, LB  
16 983, apply to motor fuels purchased during any tax year ending or  
17 deemed to end on or after January 1, 2005, under the Internal Revenue  
18 Code of 1986, as amended.

19           (5) There shall be allowed to corporate taxpayers  
20 refundable income tax credits under the Nebraska Advantage  
21 Microenterprise Tax Credit Act and the Nebraska Advantage Research  
22 and Development Act.

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

1                   (7) There shall be allowed to corporate taxpayers a  
2 nonrefundable income tax credit for purchases of energy star  
3 certified materials and equipment as provided in section 2 of this  
4 act.

5                   Sec. 6. Original sections 77-2701 and 77-2734.03, Reissue  
6 Revised Statutes of Nebraska, and sections 77-2715.07 and 77-2717,  
7 Revised Statutes Supplement, 2011, are repealed.