

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 428**

Introduced by Cornett, 45; Dubas, 34.

Read first time January 14, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2715.07, 77-2717, and 77-2734.03, Reissue Revised  
3 Statutes of Nebraska; to adopt the Agricultural Tax  
4 Credit Act; to harmonize provisions; to provide an  
5 operative date; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 5 of this act shall be known and  
2 may be cited as the Agricultural Tax Credit Act.

3           Sec. 2. For purposes of the Agricultural Tax Credit Act:

4           (1) Actively engaged means personally involved on a  
5 continuous basis in the daily management of agricultural operations;

6           (2) Agricultural land and horticultural land means a  
7 parcel of land which is primarily used for agricultural or  
8 horticultural purposes as defined in section 77-1359, including  
9 wasteland lying in or adjacent to and in common ownership or  
10 management with other agricultural land and horticultural land;

11           (3) Agricultural operations means (a) the cultivation of  
12 land for the production of agricultural crops, fruit, or other  
13 horticultural products or (b) the ownership, keeping, or feeding of  
14 animals for the production of livestock or livestock products;

15           (4) Department means the Department of Revenue; and

16           (5) Taxpayer means any person subject to the income tax  
17 imposed by the Nebraska Revenue Act of 1967, any corporation,  
18 partnership, limited liability company, cooperative, including a  
19 cooperative exempt under section 521 of the Internal Revenue Code of  
20 1986, as amended, limited cooperative association, or joint venture  
21 that is or would otherwise be a member of the same unitary group, if  
22 incorporated, which is, or whose partners, members, or owners  
23 representing an ownership interest of at least ninety percent of such  
24 entity are, subject to such tax, and any other partnership, limited  
25 liability company, subchapter S corporation, cooperative, including a

1 cooperative exempt under section 521 of the Internal Revenue Code of  
2 1986, as amended, limited cooperative association, or joint venture  
3 when the partners, shareholders, or members representing an ownership  
4 interest of at least ninety percent of such entity are subject to  
5 such tax.

6           Sec. 3. A taxpayer may apply to the department for an  
7 income tax credit under the Agricultural Tax Credit Act on a form  
8 developed by the department which shall include:

9           (1) A description of the agricultural operations and the  
10 taxpayer's engagement in such operations;

11           (2) The taxpayer's federal adjusted gross income from  
12 agricultural operations and all other sources;

13           (3) The amount of property taxes paid by the taxpayer on  
14 agricultural land and horticultural land located in this state during  
15 the year for which a tax credit is sought; and

16           (4) Other documentation as required by the department.

17           Sec. 4. (1) If the department determines that the  
18 taxpayer (a) owns and has paid property taxes on agricultural land  
19 and horticultural land in this state, (b) is actively engaged in  
20 agricultural operations or, for a taxpayer that is not an individual,  
21 is owned by at least one individual who is actively engaged in  
22 agricultural operations, (c) has federal adjusted gross income that  
23 includes fifty thousand dollars or more from agricultural operations  
24 in the year for which the taxpayer seeks a credit, and (d) has  
25 federal adjusted gross income that includes no more than fifty

1 thousand dollars from sources other than agricultural operations in  
2 the year for which the taxpayer seeks a credit, the department shall  
3 approve the application, shall authorize income tax credits to the  
4 taxpayer as determined pursuant to subsection (2) of this section,  
5 and shall certify the amount of such income tax credits to the  
6 taxpayer. Applications for income tax credits shall be considered in  
7 the order in which they are received.

8 (2) Taxpayers who meet the requirements of subsection (1)  
9 of this section shall be entitled to an income tax credit equal to  
10 the amount by which the property taxes paid in this state on  
11 agricultural land and horticultural land owned by the taxpayer exceed  
12 ten percent of the taxpayer's federal adjusted gross income from  
13 agricultural operations. The income tax credit shall be limited to  
14 one thousand dollars in any taxable year. The income tax credit shall  
15 be refundable.

16 (3) The taxpayer shall claim the income tax credit by  
17 filing a form developed by the Tax Commissioner and attaching the tax  
18 credit certification granted by the department.

19 Sec. 5. The department may adopt and promulgate rules and  
20 regulations to carry out the Agricultural Tax Credit Act.

21 Sec. 6. Section 77-2715.07, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 77-2715.07 (1) There shall be allowed to qualified  
24 resident individuals as a nonrefundable credit against the income tax  
25 imposed by the Nebraska Revenue Act of 1967:

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

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

5           (2) There shall be allowed to qualified resident  
6 individuals against the income tax imposed by the Nebraska Revenue  
7 Act of 1967:

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

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

22           (c) A refundable credit as provided in section 77-5209.01  
23 for individuals who qualify for an income tax credit as a qualified  
24 beginning farmer or livestock producer under the Beginning Farmer Tax  
25 Credit Act for all taxable years beginning or deemed to begin on or

1 after January 1, 2006, under the Internal Revenue Code of 1986, as  
2 amended;

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

7 (e) A refundable credit equal to ten percent of the  
8 federal credit allowed under section 32 of the Internal Revenue Code  
9 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, or  
19 each member of a limited liability company shall report his or her  
20 share of the credit in the same manner and proportion as he or she  
21 reports the partnership, subchapter S corporation, estate, trust, or  
22 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;

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; and

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

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

1 franchise tax paid to the state under sections 77-3801 to 77-3807 by  
2 a financial institution.

3 (b) For all taxable years beginning on or after January  
4 1, 2009, under the Internal Revenue Code of 1986, as amended, there  
5 shall be allowed to each partner, shareholder, member, or beneficiary  
6 of a partnership, subchapter S corporation, limited liability  
7 company, or estate or trust a nonrefundable credit against the income  
8 tax imposed by the Nebraska Revenue Act of 1967 equal to the  
9 partner's, shareholder's, member's, or beneficiary's portion of the  
10 amount of franchise tax paid to the state under sections 77-3801 to  
11 77-3807 by a financial institution.

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

19 (6) There shall be allowed to individuals as a refundable  
20 credit against the income tax imposed by the Nebraska Revenue Act of  
21 1967 a credit as provided in the Agricultural Tax Credit Act.

22 Sec. 7. Section 77-2717, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 77-2717 (1)(a) The tax imposed on all resident estates  
25 and trusts shall be a percentage of the federal taxable income of



1 such estates and trusts as modified in section 77-2716, plus a  
2 percentage of the federal alternative minimum tax and the federal tax  
3 on premature or lump-sum distributions from qualified retirement  
4 plans. The additional taxes shall be recomputed by (i) substituting  
5 Nebraska taxable income for federal taxable income, (ii) calculating  
6 what the federal alternative minimum tax would be on Nebraska taxable  
7 income and adjusting such calculations for any items which are  
8 reflected differently in the determination of federal taxable income,  
9 and (iii) applying Nebraska rates to the result. The federal credit  
10 for prior year minimum tax, after the recomputations required by the  
11 Nebraska Revenue Act of 1967, and the credits provided in the  
12 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
13 Advantage Research and Development Act shall be allowed as a  
14 reduction in the income tax due. A refundable income tax credit shall  
15 be allowed for all resident estates and trusts under the Nebraska  
16 Advantage Microenterprise Tax Credit Act and the Nebraska Advantage  
17 Research and Development Act. A refundable income tax credit shall be  
18 allowed for all resident estates and trusts under the Agricultural  
19 Tax Credit Act.

20 (b) The tax imposed on all nonresident estates and trusts  
21 shall be the portion of the tax imposed on resident estates and  
22 trusts which is attributable to the income derived from sources  
23 within this state. The tax which is attributable to income derived  
24 from sources within this state shall be determined by multiplying the  
25 liability to this state for a resident estate or trust with the same

1 total income by a fraction, the numerator of which is the nonresident  
2 estate's or trust's Nebraska income as determined by sections 77-2724  
3 and 77-2725 and the denominator of which is its total federal income  
4 after first adjusting each by the amounts provided in section  
5 77-2716. The federal credit for prior year minimum tax, after the  
6 recomputations required by the Nebraska Revenue Act of 1967, reduced  
7 by the percentage of the total income which is attributable to income  
8 from sources outside this state, and the credits provided in the  
9 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
10 Advantage Research and Development Act shall be allowed as a  
11 reduction in the income tax due. A refundable income tax credit shall  
12 be allowed for all nonresident estates and trusts under the Nebraska  
13 Advantage Microenterprise Tax Credit Act and the Nebraska Advantage  
14 Research and Development Act. A refundable income tax credit shall be  
15 allowed for all nonresident estates and trusts under the Agricultural  
16 Tax Credit Act.

17 (2) In all instances wherein a fiduciary income tax  
18 return is required under the provisions of the Internal Revenue Code,  
19 a Nebraska fiduciary return shall be filed, except that a fiduciary  
20 return shall not be required to be filed regarding a simple trust if  
21 all of the trust's beneficiaries are residents of the State of  
22 Nebraska, all of the trust's income is derived from sources in this  
23 state, and the trust has no federal tax liability. The fiduciary  
24 shall be responsible for making the return for the estate or trust  
25 for which he or she acts, whether the income be taxable to the estate

1 or trust or to the beneficiaries thereof. The fiduciary shall include  
2 in the return a statement of each beneficiary's distributive share of  
3 net income when such income is taxable to such beneficiaries.

4 (3) The beneficiaries of such estate or trust who are  
5 residents of this state shall include in their income their  
6 proportionate share of such estate's or trust's federal income and  
7 shall reduce their Nebraska tax liability by their proportionate  
8 share of the credits as provided in the Nebraska Advantage  
9 Microenterprise Tax Credit Act, ~~and~~ the Nebraska Advantage Research  
10 and Development Act, and the Agricultural Tax Credit Act. There shall  
11 be allowed to a beneficiary a refundable income tax credit under the  
12 Beginning Farmer Tax Credit Act for all taxable years beginning or  
13 deemed to begin on or after January 1, 2001, under the Internal  
14 Revenue Code of 1986, as amended.

15 (4) If any beneficiary of such estate or trust is a  
16 nonresident during any part of the estate's or trust's taxable year,  
17 he or she shall file a Nebraska income tax return which shall include  
18 (a) in Nebraska adjusted gross income that portion of the estate's or  
19 trust's Nebraska income, as determined under sections 77-2724 and  
20 77-2725, allocable to his or her interest in the estate or trust and  
21 (b) a reduction of the Nebraska tax liability by his or her  
22 proportionate share of the credits as provided in the Nebraska  
23 Advantage Microenterprise Tax Credit Act, ~~and~~ the Nebraska Advantage  
24 Research and Development Act, and the Agricultural Tax Credit Act and  
25 shall execute and forward to the fiduciary, on or before the original

1 due date of the Nebraska fiduciary return, an agreement which states  
2 that he or she will file a Nebraska income tax return and pay income  
3 tax on all income derived from or connected with sources in this  
4 state, and such agreement shall be attached to the Nebraska fiduciary  
5 return for such taxable year.

6 (5) In the absence of the nonresident beneficiary's  
7 executed agreement being attached to the Nebraska fiduciary return,  
8 the estate or trust shall remit a portion of such beneficiary's  
9 income which was derived from or attributable to Nebraska sources  
10 with its Nebraska return for the taxable year. The amount of  
11 remittance, in such instance, shall be the highest individual income  
12 tax rate determined under section 77-2715.02 multiplied by the  
13 nonresident beneficiary's share of the estate or trust income which  
14 was derived from or attributable to sources within this state. The  
15 amount remitted shall be allowed as a credit against the Nebraska  
16 income tax liability of the beneficiary.

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

1 liability of the nonresident beneficiary.

2 (7) For purposes of this section, unless the context  
3 otherwise requires, simple trust shall mean any trust instrument  
4 which (a) requires that all income shall be distributed currently to  
5 the beneficiaries, (b) does not allow amounts to be paid, permanently  
6 set aside, or used in the tax year for charitable purposes, and (c)  
7 does not distribute amounts allocated in the corpus of the trust. Any  
8 trust which does not qualify as a simple trust shall be deemed a  
9 complex trust.

10 (8) For purposes of this section, any beneficiary of an  
11 estate or trust that is a grantor trust of a nonresident shall be  
12 disregarded and this section shall apply as though the nonresident  
13 grantor was the beneficiary.

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

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

24 (b) For taxable years commencing on or after January 1,  
25 1997, any insurer paying a tax on premiums and assessments pursuant

1 to section 77-908 or 81-523, any electric cooperative organized under  
2 the Joint Public Power Authority Act, or any credit union shall be  
3 credited, in the computation of the tax due under the Nebraska  
4 Revenue Act of 1967, with the amount paid during the taxable year as  
5 (i) taxes on such premiums and assessments included as Nebraska  
6 premiums and assessments under section 77-2734.05 and (ii) taxes in  
7 lieu of intangible tax.

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

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

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

22 (4) The changes made to this section by Laws 2004, LB  
23 983, apply to motor fuels purchased during any tax year ending or  
24 deemed to end on or after January 1, 2005, under the Internal Revenue  
25 Code of 1986, as amended.

1                   (5) There shall be allowed to corporate taxpayers  
2 refundable income tax credits under the Nebraska Advantage  
3 Microenterprise Tax Credit Act and the Nebraska Advantage Research  
4 and Development Act.

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

8                   (7) There shall be allowed to corporate taxpayers a  
9 refundable income tax credit as provided in the Agricultural Tax  
10 Credit Act.

11                   Sec. 9. This act becomes operative for all taxable years  
12 beginning or deemed to begin on or after January 1, 2011, under the  
13 Internal Revenue Code of 1986, as amended.

14                   Sec. 10. Original sections 77-2715.07, 77-2717, and  
15 77-2734.03, Reissue Revised Statutes of Nebraska, are repealed.