

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 50

Introduced by Krist, 10.

Read first time January 06, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 49-801.01, 77-2715.07, and 77-2734.03, Reissue Revised
3 Statutes of Nebraska; to adopt the Elementary and
4 Secondary Educational Opportunity Act; to harmonize
5 provisions; to provide an operative date; to provide
6 severability; and to repeal the original sections.

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

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Elementary and Secondary Educational
3 Opportunity Act.

4 Sec. 2. The Legislature hereby finds that:

5 (1) Enabling the greatest number of parents and legal
6 guardians to choose among the widest array of quality educational
7 opportunities for children will improve the quality of education
8 available to all children;

9 (2) Privately operated elementary and secondary schools
10 in Nebraska satisfy state requirements for legal operation and
11 provide quality educational opportunities for children;

12 (3) For parents and legal guardians who are paying taxes
13 in support of public elementary and secondary schools, choosing
14 privately operated schools for their children, if not fully
15 financially precluded, can be a financial burden, for such parents
16 and legal guardians are typically paying twice for education, both
17 tuition and taxes;

18 (4) Parents and legal guardians of limited means are less
19 able to choose among quality educational opportunities for their
20 children;

21 (5) Making it possible for more parents and legal
22 guardians to be able to choose privately operated schools reduces
23 publicly funded educational costs and benefits Nebraska taxpayers;
24 and

25 (6) It is in the best interest of the State of Nebraska

1 and its citizens to encourage individuals and businesses to support
2 organizations that financially assist parents and legal guardians to
3 enroll their children in privately operated elementary and secondary
4 schools, and such encouragement can be accomplished through limited-
5 use tax credits.

6 Sec. 3. For purposes of the Elementary and Secondary
7 Educational Opportunity Act:

8 (1) Eligible student means (a) a resident of Nebraska who
9 is a member of a household whose gross income for the most recently
10 concluded calendar year does not exceed three times the income
11 standard used to qualify for a free or reduced price lunch under the
12 National School Lunch Program established under 42 U.S.C. 1751 et
13 seq. and who is enrolled as a full-time student in any of grades
14 kindergarten through eight in a qualified school or (b) a resident of
15 Nebraska who is a member of a household whose gross income for the
16 most recently concluded calendar year does not exceed four times the
17 income standard used to qualify for a free or reduced price lunch
18 under the National School Lunch Program established under 42 U.S.C.
19 1751 et seq. and who is enrolled as a full-time student in any of
20 grades nine through twelve in a qualified school.

21 (2) Qualified school means any privately operated
22 elementary or secondary school located in this state that is operated
23 not for profit, does not discriminate on the basis of race, color, or
24 national origin, and fulfills the accreditation or approval
25 requirements established by the State Board of Education pursuant to

1 section 79-318;

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

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

7 Sec. 4. (1) An applicant may apply to the Tax
8 Commissioner to become certified as a scholarship-granting
9 organization under the Elementary and Secondary Educational
10 Opportunity Act. An applicant shall obtain certification as a
11 scholarship-granting organization prior to providing any scholarships
12 to eligible students. The applicant shall provide sufficient
13 information to show:

14 (a) That the applicant is exempt from federal income
15 taxation under section 501(c)(3) of the Internal Revenue Code of
16 1986, as amended;

17 (b) That the applicant will offer one or more scholarship
18 programs that provide:

19 (i) First-time scholarships to eligible students who (A)
20 are entering kindergarten in a qualified school, (B) are entering the
21 ninth grade in a qualified school, or (C) are transferring from a
22 public school to a qualified school and are entering any of grades
23 kindergarten through twelve; and

24 (ii) Ongoing scholarships to eligible students who have
25 received a first-time scholarship until such student graduates high

1 school or reaches twenty-one years of age, whichever comes first. A
2 student shall continue to be eligible for ongoing scholarships
3 regardless of household income;

4 (c) That the applicant will allocate at least ninety-five
5 percent of its annual revenue for scholarships; and

6 (d) That the applicant will provide scholarships for
7 eligible students without limiting scholarship availability to
8 eligible students of only one qualified school.

9 (2) If the applicant meets the requirements of this
10 section, the Tax Commissioner shall certify such applicant as a
11 scholarship-granting organization. Upon certification, contributions
12 to a scholarship-granting organization are eligible for the tax
13 credits provided in sections 5 to 8 of this act.

14 Sec. 5. (1) An individual taxpayer who makes one or more
15 cash contributions to any scholarship-granting organization shall be
16 eligible for a credit against the income tax due under the Nebraska
17 Revenue Act of 1967. The amount of the credit shall be sixty-five
18 percent of the total of such contributions made during the tax year.

19 (2) Taxpayers who are married but file separate returns
20 for a tax year in which they could have filed a joint return may each
21 claim 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 a taxpayer's income tax liability for the tax year, but any
25 amount that would otherwise have qualified for the credit but for

1 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 tax
4 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 scholarship-
7 granting organization for the direct benefit of any eligible student
8 specifically identified by the taxpayer.

9 (5) The tax credit allowed under this section shall be
10 subject 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 subchapter S of the Internal Revenue Code of 1986, as amended, which
14 is carrying on any trade or business for which deductions would be
15 allowed under section 162 of the Internal Revenue Code of 1986, as
16 amended, or carrying on any rental activity, which makes one or more
17 cash contributions to any scholarship-granting organization shall be
18 eligible for a credit against the income tax due under the Nebraska
19 Revenue Act of 1967. The amount of the credit shall be sixty-five
20 percent of the total of such contributions made during the tax year.
21 The credit shall be attributed to each partner, member, or
22 shareholder in the same proportion used to report the partnership's,
23 limited liability company's, or corporation's income or loss for
24 income tax purposes.

25 (2) The tax credit allowed under this section shall not

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

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

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

13 Sec. 7. (1) An estate or trust which makes one or more
14 cash contributions to any scholarship-granting organization shall be
15 eligible for a credit against the income tax due under the Nebraska
16 Revenue Act of 1967. The amount of the credit shall be sixty-five
17 percent of the total of such contributions made during the tax year.
18 Any credit not used by the estate or trust may be attributed to each
19 beneficiary of the estate or trust in the same proportion used to
20 report the beneficiary's income from the estate or trust for income
21 tax purposes.

22 (2) The tax credit allowed under this section shall not
23 exceed the taxpayer's income tax liability for the tax year, but any
24 amount that would otherwise have qualified for the credit but for
25 this limitation may be carried over and applied against the

1 taxpayer's income tax liability for the next five years immediately
2 following the tax year in which the credit is first allowed. The tax
3 credit cannot be carried back.

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

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

10 Sec. 8. (1) A corporate taxpayer as defined in section
11 77-2734.04 which makes one or more cash contributions to any
12 scholarship-granting organization shall be eligible for a credit
13 against the income tax due under the Nebraska Revenue Act of 1967.
14 The amount of the credit shall be sixty-five percent of the total of
15 such contributions made during the tax year.

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

23 (3) The tax credit shall not be allowed if the corporate
24 taxpayer designates all or any part of the contribution to a
25 scholarship-granting organization for the direct benefit of any

1 eligible student specifically identified by the taxpayer.

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

4 Sec. 9. (1) Prior to making a contribution to a
5 scholarship-granting organization, the taxpayer shall notify the
6 scholarship-granting organization of the taxpayer's intent to make a
7 contribution and the amount thereof. Upon receiving each such
8 notification of intent to make a contribution, the scholarship-
9 granting organization shall request preapproval from the Department
10 of Revenue for a tax credit under the Elementary and Secondary
11 Educational Opportunity Act. The department shall consider the
12 request pursuant to subsection (3) of this section and, within thirty
13 days after receiving the request, shall notify the scholarship-
14 granting organization of its determination. If the department
15 preapproves the request for a tax credit, the scholarship-granting
16 organization shall promptly notify the taxpayer of the amount
17 approved.

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

1 (3) The department shall (a) consider requests for tax
2 credits in the order in which they are received and (b) preapprove
3 tax credits as provided in this section. The aggregate amount of
4 preapproved credits shall not exceed ten million dollars for calendar
5 year 2011, twelve million dollars for calendar year 2012, fourteen
6 million dollars for calendar year 2013, sixteen million dollars for
7 calendar year 2014, eighteen million dollars for calendar year 2015,
8 and twenty million dollars for calendar year 2016. Beginning January
9 1, 2017, and each January 1 thereafter, the department shall adjust
10 the annual limit, which shall be equal to the then-current amount
11 adjusted by the cumulative percentage change in the Consumer Price
12 Index for All Urban Consumers published by the Federal Bureau of
13 Labor Statistics for the one-year period ending on the previous
14 September 30. Such amount shall be rounded to the nearest one-
15 thousand-dollar amount. Once preapproved credits have reached the
16 designated limit for any calendar year, no additional credits shall
17 be preapproved for such calendar year. Credits shall be prorated
18 among the requests received on the day the aggregate maximum is
19 exceeded.

20 Sec. 10. A scholarship-granting organization shall use at
21 least ninety-five percent of contributions received under the
22 Elementary and Secondary Educational Opportunity Act for scholarships
23 to eligible students, and no more than five percent of such
24 contributions shall be used or reserved for administrative costs of
25 the scholarship-granting organization.

1 Sec. 11. The Elementary and Secondary Educational
2 Opportunity Act shall not be construed as granting any expanded or
3 additional authority to the State of Nebraska to control or influence
4 the governance or policies of any qualified school due to the fact
5 that the qualified school accepts students who receive scholarships
6 or as requiring any such qualified school to admit or, once admitted,
7 to continue the enrollment of any student receiving a scholarship.

8 Sec. 12. The Tax Commissioner may adopt and promulgate
9 rules and regulations to carry out the Elementary and Secondary
10 Educational Opportunity Act.

11 Sec. 13. Section 49-801.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 49-801.01 Except as provided by Article VIII, section 1B,
14 of the Constitution of Nebraska and in sections 77-2701.01, 77-2714
15 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515,
16 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802,
17 77-5803, 77-5806, and 77-5903 and sections 4 and 6 of this act, any
18 reference to the Internal Revenue Code refers to the Internal Revenue
19 Code of 1986 as it exists on April 6, 2010.

20 Sec. 14. Section 77-2715.07, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-2715.07 (1) There shall be allowed to qualified
23 resident individuals as a nonrefundable credit against the income tax
24 imposed by the Nebraska Revenue Act of 1967:

25 (a) A credit equal to the federal credit allowed under

1 section 22 of the Internal Revenue Code; and

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

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

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

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

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

1 amended;

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

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

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

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

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

22 (c) A credit for contributions to scholarship-granting
23 organizations as provided in the Elementary and Secondary Educational
24 Opportunity Act. Each partner, each shareholder of an electing
25 subchapter S corporation, each beneficiary of an estate or trust, or

1 each member of a limited liability company shall report his or her
2 share of the credit in the same manner and proportion as he or she
3 reports the partnership, subchapter S corporation, estate, trust, or
4 limited liability company income; and

5 ~~(e)~~(d) A credit for investment in a biodiesel facility
6 as provided in section 77-27,236.

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

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

11 (b) A credit to all estates and trusts for contributions
12 to certified community betterment programs as provided in the
13 Community Development Assistance Act; ~~and~~

14 (c) A nonrefundable credit to all estates and trusts for
15 contributions to scholarship-granting organizations as provided in
16 the Elementary and Secondary Educational Opportunity Act; and

17 ~~(e)~~(d) A refundable credit for individuals who qualify
18 for an income tax credit as an owner of agricultural assets under the
19 Beginning Farmer Tax Credit Act for all taxable years beginning or
20 deemed to begin on or after January 1, 2009, under the Internal
21 Revenue Code of 1986, as amended. The credit allowed for each
22 partner, shareholder, member, or beneficiary of a partnership,
23 corporation, limited liability company, or estate or trust qualifying
24 for an income tax credit as an owner of agricultural assets under the
25 Beginning Farmer Tax Credit Act shall be equal to the partner's,

1 shareholder's, member's, or beneficiary's portion of the amount of
2 tax credit distributed pursuant to subsection (4) of section 77-5211.

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

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

22 (c) Each partner, shareholder, member, or beneficiary
23 shall report his or her share of the credit in the same manner and
24 proportion as he or she reports the partnership, subchapter S
25 corporation, limited liability company, or estate or trust income. If

1 any partner, shareholder, member, or beneficiary cannot fully utilize
2 the credit for that year, the credit may not be carried forward or
3 back.

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

6 77-2734.03 (1)(a) For taxable years commencing prior to
7 January 1, 1997, any (i) insurer paying a tax on premiums and
8 assessments pursuant to section 77-908 or 81-523, (ii) electric
9 cooperative organized under the Joint Public Power Authority Act, or
10 (iii) credit union shall be credited, in the computation of the tax
11 due under the Nebraska Revenue Act of 1967, with the amount paid
12 during the taxable year as taxes on such premiums and assessments and
13 taxes in lieu of intangible tax.

14 (b) For taxable years commencing on or after January 1,
15 1997, any insurer paying a tax on premiums and assessments pursuant
16 to section 77-908 or 81-523, any electric cooperative organized under
17 the Joint Public Power Authority Act, or any credit union shall be
18 credited, in the computation of the tax due under the Nebraska
19 Revenue Act of 1967, with the amount paid during the taxable year as
20 (i) taxes on such premiums and assessments included as Nebraska
21 premiums and assessments under section 77-2734.05 and (ii) taxes in
22 lieu of intangible tax.

23 (c) For taxable years commencing or deemed to commence
24 prior to, on, or after January 1, 1998, any insurer paying a tax on
25 premiums and assessments pursuant to section 77-908 or 81-523 shall

1 be credited, in the computation of the tax due under the Nebraska
2 Revenue Act of 1967, with the amount paid during the taxable year as
3 assessments allowed as an offset against premium and related
4 retaliatory tax liability pursuant to section 44-4233.

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

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

12 (4) The changes made to this section by Laws 2004, LB
13 983, apply to motor fuels purchased during any tax year ending or
14 deemed to end on or after January 1, 2005, under the Internal Revenue
15 Code of 1986, as amended.

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

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

23 (7) There shall be allowed to corporate taxpayers a
24 nonrefundable income tax credit for contributions to scholarship-
25 granting organizations as provided in the Elementary and Secondary

1 Educational Opportunity Act.

2 Sec. 16. This act becomes operative for all taxable years
3 beginning or deemed to begin on or after January 1, 2011, under the
4 Internal Revenue Code of 1986, as amended.

5 Sec. 17. If any section in this act or any part of any
6 section is declared invalid or unconstitutional, the declaration
7 shall not affect the validity or constitutionality of the remaining
8 portions.

9 Sec. 18. Original sections 49-801.01, 77-2715.07, and
10 77-2734.03, Reissue Revised Statutes of Nebraska, are repealed.