

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 308

Final Reading

Introduced by Schumacher, 22; Krist, 10; Watermeier, 1; Kintner, 2.
Read first time January 17, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 77-2715 and 77-2734.07, Reissue Revised Statutes of
 3 Nebraska, and section 77-2717, Revised Statutes
 4 Cumulative Supplement, 2012; to change income tax
 5 calculations relating to the federal alternative minimum
 6 tax; to change provisions relating to deductions for net
 7 operating losses and capital losses; and to repeal the
 8 original sections.

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

1 Section 1. Section 77-2715, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-2715 (1) A tax is hereby imposed for each taxable year
4 on the entire income of every resident individual and on the income
5 of every nonresident individual and partial-year resident individual
6 which is derived from sources within this state, except that any
7 individual who has additions to adjusted gross income pursuant to
8 section 77-2716 of less than five thousand dollars shall not have an
9 individual income tax liability after nonrefundable credits under the
10 Nebraska Revenue Act of 1967 that exceeds his or her individual
11 income tax liability before credits under the Internal Revenue Code
12 of 1986.

13 (2)(a) The ~~For taxable years beginning or deemed to begin~~
14 before January 1, 2014, the tax for each resident individual shall be
15 a percentage of such individual's federal adjusted gross income as
16 modified in sections 77-2716 and 77-2716.01, plus a percentage of the
17 federal alternative minimum tax and the federal tax on premature or
18 lump-sum distributions from qualified retirement plans. The
19 additional taxes shall be recomputed by ~~(a)-(i)~~ (i) substituting Nebraska
20 taxable income for federal taxable income, ~~(b)-(ii)~~ (ii) calculating what
21 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 ~~(c)-(iii)~~ (iii) applying Nebraska rates to the result. The federal
25 credit for prior year minimum tax, after the recomputations required

1 by the act, shall be allowed as a reduction in the income tax due.

2 (b) For taxable years beginning or deemed to begin on or
3 after January 1, 2014, the tax for each resident individual shall be
4 a percentage of such individual's federal adjusted gross income as
5 modified in sections 77-2716 and 77-2716.01, plus a percentage of the
6 federal tax on premature or lump-sum distributions from qualified
7 retirement plans. The additional taxes shall be recomputed by
8 substituting Nebraska taxable income for federal taxable income and
9 applying Nebraska rates to the result.

10 (3) The tax for each nonresident individual and partial-
11 year resident individual shall be the portion of the tax imposed on
12 resident individuals which is attributable to the income derived from
13 sources within this state. The tax which is attributable to income
14 derived from sources within this state shall be determined by
15 subtracting from the liability to this state for a resident
16 individual with the same total income the credit for personal
17 exemptions and multiplying the result by a fraction, the numerator of
18 which is the nonresident individual's or partial-year resident
19 individual's Nebraska adjusted gross income as determined by section
20 77-2733 or 77-2733.01 and the denominator of which is his or her
21 total federal adjusted gross income, after first adjusting each by
22 the amounts provided in section 77-2716. If this determination
23 attributes more or less tax than is reasonably attributable to income
24 derived from sources within this state, the taxpayer may petition for
25 or the Tax Commissioner may require the employment of any other

1 method to attribute an amount of tax which is reasonable and
2 equitable in the circumstances.

3 (4) The tax for each estate and trust, other than trusts
4 taxed as corporations under the Internal Revenue Code of 1986, shall
5 be as determined under section 77-2717.

6 (5) A refund shall be allowed to the extent that the
7 income tax paid by the individual, estate, or trust for the taxable
8 year exceeds the income tax payable, except that no refund shall be
9 made in any amount less than two dollars.

10 Sec. 2. Section 77-2717, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 77-2717 (1)(a)(i) For taxable years beginning or deemed
13 to begin before January 1, 2014, the ~~The~~-tax imposed on all resident
14 estates and trusts shall be a percentage of the federal taxable
15 income of such estates and trusts as modified in section 77-2716,
16 plus a percentage of the federal alternative minimum tax and the
17 federal tax on premature or lump-sum distributions from qualified
18 retirement plans. The additional taxes shall be recomputed by ~~(i)-(A)~~
19 substituting Nebraska taxable income for federal taxable income, ~~(ii)~~
20 (B) calculating what the federal alternative minimum tax would be on
21 Nebraska taxable income and adjusting such calculations for any items
22 which are reflected differently in the determination of federal
23 taxable income, and ~~(iii)-(C)~~ applying Nebraska rates to the result.
24 The federal credit for prior year minimum tax, after the
25 recomputations required by the Nebraska Revenue Act of 1967, and the

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

10 (ii) For taxable years beginning or deemed to begin on or
11 after January 1, 2014, the tax imposed on all resident estates and
12 trusts shall be a percentage of the federal taxable income of such
13 estates and trusts as modified in section 77-2716, plus a percentage
14 of the federal tax on premature or lump-sum distributions from
15 qualified retirement plans. The additional taxes shall be recomputed
16 by substituting Nebraska taxable income for federal taxable income
17 and applying Nebraska rates to the result. The credits provided in
18 the Nebraska Advantage Microenterprise Tax Credit Act and the
19 Nebraska Advantage Research and Development Act shall be allowed as a
20 reduction in the income tax due. A refundable income tax credit shall
21 be allowed for all resident estates and trusts under the Angel
22 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax
23 Credit Act, and the Nebraska Advantage Research and Development Act.
24 A nonrefundable income tax credit shall be allowed for all resident
25 estates and trusts as provided in the New Markets Job Growth

1 Investment Act.

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

25 (2) In all instances wherein a fiduciary income tax

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

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

23 (4) If any beneficiary of such estate or trust is a
24 nonresident during any part of the estate's or trust's taxable year,
25 he or she shall file a Nebraska income tax return which shall include

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

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

1 2013, the amount of remittance, in such instance, shall be the
2 highest individual income tax rate determined under section
3 77-2715.03 multiplied by the nonresident beneficiary's share of the
4 estate or trust income which was derived from or attributable to
5 sources within this state. The amount remitted shall be allowed as a
6 credit against the Nebraska income tax liability of the beneficiary.

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

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

25 (8) For purposes of this section, any beneficiary of an

1 estate or trust that is a grantor trust of a nonresident shall be
2 disregarded and this section shall apply as though the nonresident
3 grantor was the beneficiary.

4 Sec. 3. Section 77-2734.07, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 77-2734.07 (1) There shall be added to federal taxable
7 income the amount of any federal deduction because of a carryforward
8 of a net operating loss or any capital loss.

9 (2) There shall be allowed a deduction for a carryforward
10 of a net operating loss or capital loss that is connected with
11 operations in Nebraska. For a net operating loss or capital loss
12 incurred in taxable years beginning or deemed to begin on or after
13 January 1, 1987, and before January 1, 2014, the deduction shall be
14 allowed only for each of the five taxable years succeeding the year
15 of the loss. For a net operating loss incurred in taxable years
16 beginning or deemed to begin on or after January 1, 2014, the
17 deduction shall be allowed only for each of the twenty taxable years
18 succeeding the year of the loss. For a capital loss incurred in
19 taxable years beginning or deemed to begin on or after January 1,
20 2014, the deduction shall be allowed only for each of the five
21 taxable years succeeding the year of the loss.

22 (3) Except as otherwise provided in this section, there
23 shall be allowed a carryback of a net operating loss or a capital
24 loss that is connected with operations in Nebraska. For a net
25 operating loss or capital loss incurred in taxable years beginning or

1 deemed to begin on or after January 1, 1987, no such carryback shall
2 be allowed.

3 (4) The amounts in subsections (2) and (3) of this
4 section shall be computed pursuant to rules and regulations adopted
5 and promulgated by the Tax Commissioner. Such regulations shall be in
6 accord with the laws of the United States regarding carryforwards and
7 carrybacks.

8 Sec. 4. Original sections 77-2715 and 77-2734.07, Reissue
9 Revised Statutes of Nebraska, and section 77-2717, Revised Statutes
10 Cumulative Supplement, 2012, are repealed.