

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 295

Introduced by Smith, 14.

Read first time January 11, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 49-801.01, 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes
3 Cumulative Supplement, 2016; to adopt the Opportunity Scholarships
4 Act; to provide for tax credits; to harmonize provisions; to provide
5 an operative date; to provide for severability; and to repeal the
6 original sections.

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

1 Section 1. Sections 1 to 13 of this act shall be known and may be
2 cited as the Opportunity Scholarships Act.

3 Sec. 2. The Legislature finds that:

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

7 (2) Privately operated elementary and secondary schools in Nebraska
8 satisfy the state's requirements for legal operation and provide quality
9 educational opportunities for children;

10 (3) For parents and legal guardians who are paying taxes in support
11 of public elementary and secondary schools, choosing privately operated
12 schools for their children can be a financial burden because typically
13 these parents and legal guardians will be paying twice for education
14 through tuition and taxes;

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

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

20 (6) It is in the best interests of the State of Nebraska and its
21 citizens to encourage individuals and businesses to support organizations
22 that financially assist parents and legal guardians who want to enroll
23 their children in privately operated elementary and secondary schools,
24 and such encouragement can be accomplished through the use of tax
25 credits.

26 Sec. 3. For purposes of the Opportunity Scholarships Act:

27 (1) Department means the Department of Revenue;

28 (2) Education scholarship means a financial grant-in-aid to be used
29 to pay all or part of the tuition and fees for attending a qualified
30 school and includes any tuition grants;

31 (3) Eligible student means a resident of Nebraska who:

1 (a) Is a dependent member of a household that, for the most recently
2 concluded calendar year before the student receives an education
3 scholarship pursuant to the act, has a gross income which does not exceed
4 two times the income indicated in the income eligibility guidelines for
5 reduced price meals under the National School Lunch Program in 7 C.F.R.
6 part 210, as such part existed on January 1, 2017; and

7 (b)(i) Is receiving an education scholarship for the first time and
8 is (A) entering kindergarten or ninth grade in a qualified school or (B)
9 transferring from a public school to a qualified school and is entering
10 any of grades kindergarten through twelve;

11 (ii) Has previously received an education scholarship and is
12 continuing education at a qualified school until such student graduates
13 from high school or reaches twenty-one years of age, whichever comes
14 first; or

15 (iii) Is the sibling of a student who is receiving an education
16 scholarship and resides in the same household as such student;

17 (4) Qualified school means any nongovernmental, privately operated
18 elementary or secondary school located in this state that (a) is operated
19 not for profit, (b) does not discriminate on the basis of race, color, or
20 national origin, (c) complies with all health and life safety laws or
21 codes that apply to privately operated schools, and (d) fulfills the
22 applicable accreditation or approval requirements established by the
23 State Board of Education pursuant to section 79-318;

24 (5) Scholarship-granting organization means a charitable
25 organization in this state that is (a) exempt from federal income
26 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of
27 1986, as amended, and (b) certified pursuant to section 4 of this act to
28 provide tax-credit-supported education scholarships to eligible students
29 to assist them in attending qualified schools; and

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

1 Sec. 4. (1) An organization may apply to the department to become
2 certified as a scholarship-granting organization under the Opportunity
3 Scholarships Act. An organization shall obtain such certification prior
4 to providing any education scholarships to eligible students under the
5 act. The applicant shall provide the department with sufficient
6 information to show:

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

9 (b) That the applicant will offer one or more education scholarship
10 programs for eligible students;

11 (c) That the applicant will be able to comply with the requirements
12 of section 10 of this act; and

13 (d) That the applicant will provide education scholarships for
14 eligible students without limiting education scholarship availability to
15 only one qualified school.

16 (2) If the applicant meets the requirements of this section, the
17 department shall certify it as a scholarship-granting organization for
18 tax-credit purposes under the Opportunity Scholarships Act. Such
19 certification is subject to revocation by the department if the
20 scholarship-granting organization subsequently fails to fulfill the
21 requirements of this section or section 10 of this act.

22 Sec. 5. (1) An individual taxpayer who makes one or more cash
23 contributions to one or more scholarship-granting organizations during a
24 tax year shall be eligible for a credit against the income tax due under
25 the Nebraska Revenue Act of 1967. The amount of the credit shall be equal
26 to the total amount of such contributions made during the tax year.

27 (2) Taxpayers who are married but file separate returns for a tax
28 year in which they could have filed a joint return may each claim only
29 one-half of the tax credit that would otherwise have been allowed for a
30 joint return.

31 (3) The tax credit allowed under this section shall be a

1 nonrefundable credit. Any amount of the credit that is unused may be
2 carried forward and applied against the taxpayer's income tax liability
3 for the next five years immediately following the tax year in which the
4 credit is first allowed. The tax credit cannot be carried back.

5 (4) The taxpayer may not designate all or any part of the
6 contribution to a scholarship-granting organization for the benefit of
7 any eligible student specifically identified by the taxpayer. The
8 taxpayer may not claim an income tax deduction with respect to any
9 contribution to a scholarship-granting organization if the taxpayer is
10 claiming a credit for such contribution under the Opportunity
11 Scholarships Act.

12 (5) The tax credit allowed under this section is subject to section
13 9 of this act.

14 Sec. 6. (1) Any partnership, limited liability company, or
15 corporation having an election in effect under subchapter S of the
16 Internal Revenue Code of 1986, as amended, that (a) is carrying on any
17 trade or business for which deductions would be allowed under section 162
18 of the Internal Revenue Code of 1986, as amended, or is carrying on any
19 rental activity and (b) makes one or more cash contributions to one or
20 more scholarship-granting organizations during a tax year shall be
21 eligible for a credit against the income tax due under the Nebraska
22 Revenue Act of 1967. The amount of the credit shall be equal to the total
23 amount of such contributions made during the tax year. The credit shall
24 be attributed to each partner, member, or shareholder in the same
25 proportion used to report the partnership's, limited liability company's,
26 or subchapter S corporation's income or loss for income tax purposes.

27 (2) The tax credit allowed under this section shall be a
28 nonrefundable credit. Any amount of the tax credit that is unused may be
29 carried forward and applied against the taxpayer's income tax liability
30 for the next five years immediately following the tax year in which the
31 credit is first allowed. The tax credit cannot be carried back.

1 (3) The taxpayer may not designate all or any part of the
2 contribution to a scholarship-granting organization for the benefit of
3 any eligible student specifically identified by the taxpayer. The
4 taxpayer may not claim an income tax deduction with respect to any
5 contribution to a scholarship-granting organization if the taxpayer is
6 claiming a credit for such contribution under the Opportunity
7 Scholarships Act.

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

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

19 (2) The tax credit allowed under this section shall be a
20 nonrefundable credit. Any amount of the tax credit that is unused may be
21 carried forward and applied against the taxpayer's income tax liability
22 for the next five years immediately following the tax year in which the
23 credit is first allowed. The tax credit cannot be carried back.

24 (3) The taxpayer may not designate all or any part of the
25 contribution to a scholarship-granting organization for the benefit of
26 any eligible student specifically identified by the taxpayer. The
27 taxpayer may not claim an income tax deduction with respect to any
28 contribution to a scholarship-granting organization if the taxpayer is
29 claiming a credit for such contribution under the Opportunity
30 Scholarships Act.

31 (4) The tax credit allowed under this section is subject to section

1 9 of this act.

2 Sec. 8. (1) A corporate taxpayer as defined in section 77-2734.04
3 which makes one or more cash contributions to one or more scholarship-
4 granting organizations during a tax year shall be eligible for a credit
5 against the income tax due under the Nebraska Revenue Act of 1967. The
6 amount of the credit shall be equal to the total amount of such
7 contributions made during the tax year.

8 (2) The tax credit allowed under this section shall be a
9 nonrefundable credit. Any amount of the tax credit that is unused may be
10 carried forward and applied against the taxpayer's income tax liability
11 for the next five years immediately following the tax year in which the
12 credit is first allowed. The tax credit cannot be carried back.

13 (3) The taxpayer may not designate all or any part of the
14 contribution to a scholarship-granting organization for the benefit of
15 any eligible student specifically identified by the taxpayer. The
16 taxpayer may not claim an income tax deduction with respect to any
17 contribution to a scholarship-granting organization if the taxpayer is
18 claiming a credit for such contribution under the Opportunity
19 Scholarships Act.

20 (4) The tax credit allowed under this section is subject to section
21 9 of this act.

22 Sec. 9. (1) Prior to making a contribution to a scholarship-
23 granting organization, any taxpayer desiring to claim a tax credit under
24 the Opportunity Scholarships Act shall notify the scholarship-granting
25 organization of the taxpayer's intent to make a contribution and the
26 amount to be claimed as a tax credit. Upon receiving each such
27 notification, the scholarship-granting organization shall notify the
28 department of the intended tax credit amount. If the department
29 determines that the intended tax credit amount in the notification would
30 exceed the limit specified in subsection (3) of this section, the
31 department shall notify the scholarship-granting organization of its

1 determination within thirty days after receipt of the notification. The
2 scholarship-granting organization shall then promptly notify the taxpayer
3 of the department's determination that the intended tax credit amount in
4 the notification is not available. If an amount less than the amount
5 indicated in the notification is available for a tax credit, the
6 department shall notify the scholarship-granting organization of the
7 available amount and the scholarship-granting organization shall promptly
8 notify the taxpayer of the available amount.

9 (2) In order to be allowed a tax credit as provided by the act, the
10 taxpayer shall make its contribution between thirty-one and sixty days
11 after notifying the scholarship-granting organization of the taxpayer's
12 intent to make a contribution. If the scholarship-granting organization
13 does not receive the contribution within the required time period, it
14 shall notify the department of such fact and the department shall no
15 longer include such amount when calculating whether the limit prescribed
16 in subsection (3) of this section has been exceeded. If the scholarship-
17 granting organization receives the contribution within the required time
18 period, it shall provide the taxpayer with a receipt for the
19 contribution. The receipt shall show the name and address of the
20 scholarship-granting organization, the date the scholarship-granting
21 organization was certified by the department in accordance with section 4
22 of this act, the name, address, and, if available, tax identification
23 number of the taxpayer making the contribution, the amount of the
24 contribution, and the date the contribution was received.

25 (3) The department shall consider notifications regarding intended
26 tax credit amounts in the order in which they are received to ascertain
27 whether the intended tax credit amounts are within the annual limit
28 provided in this subsection. The annual limit on the total amount of tax
29 credits for calendar year 2018 shall be ten million dollars. The annual
30 limit on the total amount of tax credits for calendar year 2019 and each
31 calendar year thereafter shall be calculated by taking the annual limit

1 from the prior calendar year and then multiplying such amount by:

2 (a) One hundred twenty-five percent if the intended tax credit
3 amounts in the prior calendar year exceeded ninety percent of the annual
4 limit applicable to that calendar year; or

5 (b) One hundred percent if the intended tax credit amounts in the
6 prior calendar year did not exceed ninety percent of the annual limit
7 applicable to that calendar year.

8 (4) The State Department of Education and the Department of Revenue
9 shall publish on their respective web sites information identifying the
10 annual limit when it is increased pursuant to subsection (3) of this
11 section.

12 (5) Once credits have reached the designated annual limit for any
13 calendar year, no additional credits shall be allowed for such calendar
14 year. Credits shall be prorated among the notifications received on the
15 day the annual limit is exceeded.

16 Sec. 10. (1) In order for a scholarship-granting organization to
17 remain certified under the Opportunity Scholarships Act, the scholarship-
18 granting organization shall allocate its revenue as follows:

19 (a) If the annual limit on tax credits under section 9 of this act
20 is less than twenty million dollars, the scholarship-granting
21 organization shall allocate at least ninety percent of its revenue for
22 education scholarships and no more than ten percent of its revenue shall
23 be used or reserved for administrative costs; or

24 (b) If the annual limit on tax credits under section 9 of this act
25 is twenty million dollars or more, the scholarship-granting organization
26 shall allocate at least ninety-five percent of its revenue for education
27 scholarships and no more than five percent of its revenue shall be used
28 or reserved for administrative costs.

29 (2) For purposes of this section, revenue is allocated when it is
30 expended or otherwise irrevocably encumbered for expenditure. The
31 percentage of funds allocated for education scholarships shall be

1 measured as a monthly average over the most recent twenty-four-month
2 period or, for a scholarship-granting organization that has been
3 certified for less than twenty-four months, over the period of time that
4 the scholarship-granting organization has been certified.

5 Sec. 11. (1) Each scholarship-granting organization shall annually
6 submit to the department no later than December 1 of each year an audited
7 financial information report for its most recent fiscal year certified by
8 an independent public accountant.

9 (2) Each scholarship-granting organization shall include with the
10 report submitted under subsection (1) of this section a summary
11 description of (a) its policies and procedures for awarding education
12 scholarships, (b) the number of eligible students receiving education
13 scholarships in the most recent fiscal year, (c) the total amount of
14 contributions received for education scholarships in the most recent
15 fiscal year, and (d) the total amount of education scholarships awarded
16 in the most recent fiscal year.

17 (3) The department shall electronically forward such reports and
18 summary descriptions to the Governor and the Legislature no later than
19 December 31 of each year.

20 Sec. 12. The Opportunity Scholarships Act shall not be construed as
21 granting any expanded or additional authority to the State of Nebraska to
22 control or influence the governance or policies of any qualified school
23 due to the fact that the qualified school admits and enrolls students who
24 receive education scholarships or as requiring any such qualified school
25 to admit or, once admitted, to continue the enrollment of any student
26 receiving an education scholarship.

27 Sec. 13. The department may adopt and promulgate rules and
28 regulations to carry out the Opportunity Scholarships Act.

29 Sec. 14. Section 49-801.01, Revised Statutes Cumulative Supplement,
30 2016, is amended to read:

31 49-801.01 Except as provided by Article VIII, section 1B, of the

1 Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109,
2 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902,
3 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515,
4 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802,
5 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306 and sections 3, 4, and 6
6 of this act, any reference to the Internal Revenue Code refers to the
7 Internal Revenue Code of 1986 as it exists on February 27, 2015.

8 Sec. 15. Section 77-2715.07, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 77-2715.07 (1) There shall be allowed to qualified resident
11 individuals as a nonrefundable credit against the income tax imposed by
12 the Nebraska Revenue Act of 1967:

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

15 (b) A credit for taxes paid to another state as provided in section
16 77-2730.

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

19 (a) For returns filed reporting federal adjusted gross incomes of
20 greater than twenty-nine thousand dollars, a nonrefundable credit equal
21 to twenty-five percent of the federal credit allowed under section 21 of
22 the Internal Revenue Code of 1986, as amended, except that for taxable
23 years beginning or deemed to begin on or after January 1, 2015, such
24 nonrefundable credit shall be allowed only if the individual would have
25 received the federal credit allowed under section 21 of the code after
26 adding back in any carryforward of a net operating loss that was deducted
27 pursuant to such section in determining eligibility for the federal
28 credit;

29 (b) For returns filed reporting federal adjusted gross income of
30 twenty-nine thousand dollars or less, a refundable credit equal to a
31 percentage of the federal credit allowable under section 21 of the

1 Internal Revenue Code of 1986, as amended, whether or not the federal
2 credit was limited by the federal tax liability. The percentage of the
3 federal credit shall be one hundred percent for incomes not greater than
4 twenty-two thousand dollars, and the percentage shall be reduced by ten
5 percent for each one thousand dollars, or fraction thereof, by which the
6 reported federal adjusted gross income exceeds twenty-two thousand
7 dollars, except that for taxable years beginning or deemed to begin on or
8 after January 1, 2015, such refundable credit shall be allowed only if
9 the individual would have received the federal credit allowed under
10 section 21 of the code after adding back in any carryforward of a net
11 operating loss that was deducted pursuant to such section in determining
12 eligibility for the federal credit;

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

18 (d) A refundable credit for individuals who qualify for an income
19 tax credit under the Angel Investment Tax Credit Act, the Nebraska
20 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research
21 and Development Act, or the Volunteer Emergency Responders Incentive Act;
22 and

23 (e) A refundable credit equal to ten percent of the federal credit
24 allowed under section 32 of the Internal Revenue Code of 1986, as
25 amended, except that for taxable years beginning or deemed to begin on or
26 after January 1, 2015, such refundable credit shall be allowed only if
27 the individual would have received the federal credit allowed under
28 section 32 of the code after adding back in any carryforward of a net
29 operating loss that was deducted pursuant to such section in determining
30 eligibility for the federal credit.

31 (3) There shall be allowed to all individuals as a nonrefundable

1 credit against the income tax imposed by the Nebraska Revenue Act of
2 1967:

3 (a) A credit for personal exemptions allowed under section
4 77-2716.01;

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

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

14 (d) A credit as provided in the New Markets Job Growth Investment
15 Act;

16 (e) A credit as provided in the Nebraska Job Creation and Mainstreet
17 Revitalization Act;

18 (f) A credit to employers as provided in section 77-27,238;~~and~~

19 (g) A credit as provided in the Affordable Housing Tax Credit Act;
20 and -

21 (h) A credit as provided in the Opportunity Scholarships Act.

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

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

26 (b) A credit to all estates and trusts for contributions to
27 certified community betterment programs as provided in the Community
28 Development Assistance Act; and

29 (c) A refundable credit for individuals who qualify for an income
30 tax credit as an owner of agricultural assets under the Beginning Farmer
31 Tax Credit Act for all taxable years beginning or deemed to begin on or

1 after January 1, 2009, under the Internal Revenue Code of 1986, as
2 amended. The credit allowed for each partner, shareholder, member, or
3 beneficiary of a partnership, corporation, limited liability company, or
4 estate or trust qualifying for an income tax credit as an owner of
5 agricultural assets under the Beginning Farmer Tax Credit Act shall be
6 equal to the partner's, shareholder's, member's, or beneficiary's portion
7 of the amount of tax credit distributed pursuant to subsection (4) of
8 section 77-5211.

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

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

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

1 (6) There shall be allowed to all individuals nonrefundable credits
2 against the income tax imposed by the Nebraska Revenue Act of 1967 as
3 provided in section 77-3604 and refundable credits against the income tax
4 imposed by the Nebraska Revenue Act of 1967 as provided in section
5 77-3605.

6 Sec. 16. Section 77-2717, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 77-2717 (1)(a)(i) For taxable years beginning or deemed to begin
9 before January 1, 2014, the tax imposed on all resident estates and
10 trusts shall be a percentage of the federal taxable income of such
11 estates and trusts as modified in section 77-2716, plus a percentage of
12 the federal alternative minimum tax and the federal tax on premature or
13 lump-sum distributions from qualified retirement plans. The additional
14 taxes shall be recomputed by (A) substituting Nebraska taxable income for
15 federal taxable income, (B) calculating what the federal alternative
16 minimum tax would be on Nebraska taxable income and adjusting such
17 calculations for any items which are reflected differently in the
18 determination of federal taxable income, and (C) applying Nebraska rates
19 to the result. The federal credit for prior year minimum tax, after the
20 recomputations required by the Nebraska Revenue Act of 1967, and the
21 credits provided in the Nebraska Advantage Microenterprise Tax Credit Act
22 and the Nebraska Advantage Research and Development Act shall be allowed
23 as a reduction in the income tax due. A refundable income tax credit
24 shall be allowed for all resident estates and trusts under the Angel
25 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax
26 Credit Act, and the Nebraska Advantage Research and Development Act. A
27 nonrefundable income tax credit shall be allowed for all resident estates
28 and trusts as provided in the New Markets Job Growth Investment Act.

29 (ii) For taxable years beginning or deemed to begin on or after
30 January 1, 2014, the tax imposed on all resident estates and trusts shall
31 be a percentage of the federal taxable income of such estates and trusts

1 as modified in section 77-2716, plus a percentage of the federal tax on
2 premature or lump-sum distributions from qualified retirement plans. The
3 additional taxes shall be recomputed by substituting Nebraska taxable
4 income for federal taxable income and applying Nebraska rates to the
5 result. The credits provided in the Nebraska Advantage Microenterprise
6 Tax Credit Act and the Nebraska Advantage Research and Development Act
7 shall be allowed as a reduction in the income tax due. A refundable
8 income tax credit shall be allowed for all resident estates and trusts
9 under the Angel Investment Tax Credit Act, the Nebraska Advantage
10 Microenterprise Tax Credit Act, and the Nebraska Advantage Research and
11 Development Act. A nonrefundable income tax credit shall be allowed for
12 all resident estates and trusts as provided in the Nebraska Job Creation
13 and Mainstreet Revitalization Act, the New Markets Job Growth Investment
14 Act, the School Readiness Tax Credit Act, the Affordable Housing Tax
15 Credit Act, the Opportunity Scholarships Act, and section 77-27,238.

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

1 allowed for all nonresident estates and trusts under the Angel Investment
2 Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act,
3 and the Nebraska Advantage Research and Development Act. A nonrefundable
4 income tax credit shall be allowed for all nonresident estates and trusts
5 as provided in the Nebraska Job Creation and Mainstreet Revitalization
6 Act, the New Markets Job Growth Investment Act, the School Readiness Tax
7 Credit Act, the Affordable Housing Tax Credit Act, the Opportunity
8 Scholarships Act, and section 77-27,238.

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

21 (3) The beneficiaries of such estate or trust who are residents of
22 this state shall include in their income their proportionate share of
23 such estate's or trust's federal income and shall reduce their Nebraska
24 tax liability by their proportionate share of the credits as provided in
25 the Angel Investment Tax Credit Act, the Nebraska Advantage
26 Microenterprise Tax Credit Act, the Nebraska Advantage Research and
27 Development Act, the Nebraska Job Creation and Mainstreet Revitalization
28 Act, the New Markets Job Growth Investment Act, the School Readiness Tax
29 Credit Act, the Affordable Housing Tax Credit Act, the Opportunity
30 Scholarships Act, and section 77-27,238. There shall be allowed to a
31 beneficiary a refundable income tax credit under the Beginning Farmer Tax

1 Credit Act for all taxable years beginning or deemed to begin on or after
2 January 1, 2001, under the Internal Revenue Code of 1986, as amended.

3 (4) If any beneficiary of such estate or trust is a nonresident
4 during any part of the estate's or trust's taxable year, he or she shall
5 file a Nebraska income tax return which shall include (a) in Nebraska
6 adjusted gross income that portion of the estate's or trust's Nebraska
7 income, as determined under sections 77-2724 and 77-2725, allocable to
8 his or her interest in the estate or trust and (b) a reduction of the
9 Nebraska tax liability by his or her proportionate share of the credits
10 as provided in the Angel Investment Tax Credit Act, the Nebraska
11 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research
12 and Development Act, the Nebraska Job Creation and Mainstreet
13 Revitalization Act, the New Markets Job Growth Investment Act, the School
14 Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the
15 Opportunity Scholarships Act, and section 77-27,238 and shall execute and
16 forward to the fiduciary, on or before the original due date of the
17 Nebraska fiduciary return, an agreement which states that he or she will
18 file a Nebraska income tax return and pay income tax on all income
19 derived from or connected with sources in this state, and such agreement
20 shall be attached to the Nebraska fiduciary return for such taxable year.

21 (5) In the absence of the nonresident beneficiary's executed
22 agreement being attached to the Nebraska fiduciary return, the estate or
23 trust shall remit a portion of such beneficiary's income which was
24 derived from or attributable to Nebraska sources with its Nebraska return
25 for the taxable year. For taxable years beginning or deemed to begin
26 before January 1, 2013, the amount of remittance, in such instance, shall
27 be the highest individual income tax rate determined under section
28 77-2715.02 multiplied by the nonresident beneficiary's share of the
29 estate or trust income which was derived from or attributable to sources
30 within this state. For taxable years beginning or deemed to begin on or
31 after January 1, 2013, the amount of remittance, in such instance, shall

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

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

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

22 (8) For purposes of this section, any beneficiary of an estate or
23 trust that is a grantor trust of a nonresident shall be disregarded and
24 this section shall apply as though the nonresident grantor was the
25 beneficiary.

26 Sec. 17. Section 77-2734.03, Revised Statutes Cumulative Supplement,
27 2016, is amended to read:

28 77-2734.03 (1)(a) For taxable years commencing prior to January 1,
29 1997, any (i) insurer paying a tax on premiums and assessments pursuant
30 to section 77-908 or 81-523, (ii) electric cooperative organized under
31 the Joint Public Power Authority Act, or (iii) credit union shall be

1 credited, in the computation of the tax due under the Nebraska Revenue
2 Act of 1967, with the amount paid during the taxable year as taxes on
3 such premiums and assessments and taxes in lieu of intangible tax.

4 (b) For taxable years commencing on or after January 1, 1997, any
5 insurer paying a tax on premiums and assessments pursuant to section
6 77-908 or 81-523, any electric cooperative organized under the Joint
7 Public Power Authority Act, or any credit union shall be credited, in the
8 computation of the tax due under the Nebraska Revenue Act of 1967, with
9 the amount paid during the taxable year as (i) taxes on such premiums and
10 assessments included as Nebraska premiums and assessments under section
11 77-2734.05 and (ii) taxes in lieu of intangible tax.

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

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

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

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

30 (5) There shall be allowed to corporate taxpayers refundable income
31 tax credits under the Nebraska Advantage Microenterprise Tax Credit Act

1 and the Nebraska Advantage Research and Development Act.

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

5 (7) There shall be allowed to corporate taxpayers a nonrefundable
6 income tax credit as provided in the Nebraska Job Creation and Mainstreet
7 Revitalization Act, the New Markets Job Growth Investment Act, the School
8 Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the
9 Opportunity Scholarships Act, and section 77-27,238.

10 Sec. 18. This act becomes operative for all taxable years beginning
11 or deemed to begin on or after January 1, 2018, under the Internal
12 Revenue Code of 1986, as amended.

13 Sec. 19. If any section in this act or any part of any section is
14 declared invalid or unconstitutional, the declaration shall not affect
15 the validity or constitutionality of the remaining portions.

16 Sec. 20. Original sections 49-801.01, 77-2715.07, 77-2717, and
17 77-2734.03, Revised Statutes Cumulative Supplement, 2016, are repealed.