

LEGISLATIVE BILL 219

Approved by the Governor March 15, 1977

Introduced by S. Marsh, 29

AN ACT to amend section 77-2715, Revised Statutes Supplement, 1976, relating to income tax; to allow a food sales tax credit by the guardian of a ward claimed as an exemption by a nonresident taxpayer; and to repeal the original section.

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

Section 1. That section 77-2715, Revised Statutes Supplement, 1976, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each taxable year on the entire income of every resident individual of this state and on the income of every nonresident individual of this state which is derived from sources within this state. The tax shall be a flat percentage of, for each resident individual, the taxpayer's adjusted federal income tax liability for the taxable year, and for each nonresident individual, the taxpayer's adjusted federal income tax liability for the taxable year which is attributable to income derived from sources within this state.

The taxpayer's adjusted federal income tax liability shall be the amount of federal income tax, as determined under Subtitle A, Chapter I, subchapter A, Parts I, V, and VI of the Internal Revenue Code, for which the taxpayer would have been liable if such taxpayer had paid federal income tax based on federal taxable income as adjusted by the modifications provided in section 77-2716 without any allowance for credits against such tax permitted under the Internal Revenue Code.

The adjusted federal income tax liability of each nonresident individual taxpayer which is attributable to income derived from sources within this state shall be determined by multiplying his adjusted federal income tax liability by a fraction, the numerator of which is his taxable income derived from sources within this state as determined by section 77-2733, and the denominator of which is his total federal taxable income, after first subtracting from each the amounts provided in subsection (1) of section 77-2716; Provided, that if the above determination attributes more or less federal income tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for,

or the Tax Commissioner may require, the employment of any other method to attribute an amount of federal income tax which is reasonable and equitable in the circumstances.

(2) (a) A resident of this state shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state; and

(b) A nonresident shall mean an individual who is not a resident of this state.

(3) (a) There shall also be allowed to resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135, a food sales tax credit equal to sixteen dollars multiplied by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. In the event a dependent is claimed as an exemption on a federal return by a nonresident taxpayer who files no return in this state, such dependent resides in this state, and the support claimed by such nonresident taxpayer is substantially spent in this state, the taxpayer in this state who has legal custody of such dependent may claim such food sales tax credit for each such dependent. A refund shall be allowed to the extent that the food sales tax credit exceeds the income tax payable by the resident individual for the taxable year but no refund shall be made in any amount less than two dollars.

(b) No individual who may be claimed as a personal exemption on another individual's return shall be entitled to a food sales tax credit or refund for himself. If a food sales tax credit or refund is claimed on more than one return for the same individual, the Tax Commissioner is authorized to determine the individual entitled to claim the credit or refund provided herein.

(c) Any individual, other than a person who for more than six months of the taxable year is a resident patient or inmate of a public institution or an organization exempt from tax as a charitable institution, who maintains a permanent place of abode within this state, spending in the aggregate more than six months of the taxable year within this state, shall be conclusively presumed to have paid or paid with respect to such personal exemptions retail sales and use taxes imposed by this state equal to the maximum food sales tax credit allowable.

(d) The credits or refunds for sales taxes allowed by this subsection shall be claimed on income tax returns or in the case of an individual not having tax liability in this state on such forms or claims for refunds as the Tax Commissioner shall prescribe.

(4) Credits to minors, including any child whose parent or guardian is a recipient of aid to dependent children, shall be claimed by the parent or guardian.

Sec. 2. That original section 77-2715, Revised Statutes Supplement, 1976, is repealed.