

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 433
FINAL READING

Introduced by Landis, 46; Suttle, 10

Read first time January 9, 2001

Committee: Revenue

A BILL

1 FOR AN ACT relating to child care; to amend sections 77-908 and
2 77-3806, Reissue Revised Statutes of Nebraska, and
3 sections 77-2701, 77-2715.07, 77-2717, and 77-2734.03,
4 Revised Statutes Supplement, 2000; to provide a tax
5 credit for business child care expenditures; to harmonize
6 provisions; to provide an operative date; and to repeal
7 the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-908, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-908. Every insurance company organized under the
4 stock, mutual, assessment, or reciprocal plan, except fraternal
5 benefit societies, which is transacting business in this state
6 shall, on or before March 1 of each year, pay a tax to the director
7 of one percent of the gross amount of direct writing premiums
8 received by it during the preceding calendar year for business done
9 in this state, except that (1) for group sickness and accident
10 insurance the rate of such tax shall be five-tenths of one percent
11 and (2) for property and casualty insurance, excluding individual
12 sickness and accident insurance, the rate of such tax shall be one
13 percent. The taxable premiums shall include premiums paid on the
14 lives of persons residing in this state and premiums paid for risks
15 located in this state whether the insurance was written in this
16 state or not, including that portion of a group premium paid which
17 represents the premium for insurance on Nebraska residents or risks
18 located in Nebraska included within the group when the number of
19 lives in the group exceeds five hundred. The tax shall also apply
20 to premiums received by domestic companies for insurance written on
21 individuals residing outside this state or risks located outside
22 this state if no comparable tax is paid by the direct writing
23 domestic company to any other appropriate taxing authority.
24 Companies whose scheme of operation contemplates the return of a
25 portion of premiums to policyholders, without such policyholders
26 being claimants under the terms of their policies, may deduct such
27 return premiums or dividends from their gross premiums for the
28 purpose of tax calculations. Any such insurance company shall

1 receive a credit on the tax imposed as provided in the Community
2 Development Assistance Act and section 3 of this act.

3 Sec. 2. Section 77-2701, Revised Statutes Supplement,
4 2000, is amended to read:

5 77-2701. Sections 77-2701 to 77-27,135.01 and section 3
6 of this act shall be known and may be cited as the Nebraska Revenue
7 Act of 1967.

8 Sec. 3. (1) For purposes of this section:

9 (a) Accredited means accredited by the National
10 Association for Family Child Care, the National Association for the
11 Education of Young Children, the National School-Age Care Alliance,
12 or a comparable accreditation process approved by the State
13 Department of Education;

14 (b) Business firm means any business entity, including a
15 corporation, a fiduciary, a sole proprietorship, a partnership, a
16 limited liability company, or a corporation subject to the state
17 income tax imposed by section 77-2715 or 77-2734.02, an insurance
18 company paying premium or related retaliatory taxes in this state
19 pursuant to section 44-150 or 77-908, or a financial institution
20 paying the tax imposed pursuant to sections 77-3801 to 77-3807;

21 (c) Costs incurred by the business firm in providing
22 child care services for children of employees means the amounts
23 expended by the business firm during the year for improvements to
24 the premises for purposes of making the premises suitable in whole
25 or in part for use as a child care facility, including furnishing
26 the facility with fencing, landscaping, sidewalks, furniture,
27 fixtures, equipment, supplies, and other improvements and materials
28 reasonably required to operate a child care facility and the direct

1 operating costs of staffing, operating, and maintaining a child
2 care facility. The costs include the payroll taxes and employee
3 benefit costs of staffing the child care facility and sales and use
4 taxes on purchases included in the costs of providing child care,
5 but not an allocation of the business firm's general,
6 administrative, and other operating expenses. The costs do not
7 include the acquisition of land or the construction of new
8 buildings. The costs include payments to third parties to
9 reimburse the third parties for amounts expended by them and which
10 would have been costs incurred by the business firm in providing
11 child care services if incurred directly by the business firm or to
12 subsidize the cost of providing child care for the children of
13 employees in such third parties' facilities; and

14 (d) Providing child care services means expending funds
15 to improve, furnish, license, accredit, qualify for accreditation,
16 staff, operate, or subsidize a child care facility licensed by the
17 Department of Health and Human Services Regulation and Licensure
18 which provides child care services to children of employees of the
19 business firm or contracting with a child care facility licensed by
20 the department to provide child care services to children of such
21 employees.

22 (2) Any business firm which provides child care services
23 shall be allowed a credit against the individual income tax,
24 corporate income tax, premium or related retaliatory tax, or
25 franchise tax equal to thirty percent of the costs incurred by the
26 business firm in providing child care services for children of
27 employees for each taxable year, up to fifty percent of such
28 business firm's total tax liability. In the case of a sole

1 proprietorship, partnership, or limited liability company which is
2 taxed as a pass-through entity or a corporation which has in effect
3 an election under subchapter S of the Internal Revenue Code, the
4 maximum allowable amount of credit shall be fifty percent of the
5 income tax liability determined as if such business firm had been a
6 corporation subject to the state income tax imposed by section
7 77-2734.02. Such pass-through entities shall allocate the
8 allowable credit among their proprietors, partners, members, or
9 shareholders in the same manner as taxable income is allocated. In
10 the case of a fiduciary, the maximum allowable amount of the credit
11 shall be fifty percent of the income tax liability of the fiduciary
12 computed without any deduction for distributions, and the allowable
13 credit shall be allocated among the fiduciary and its beneficiaries
14 in proportion to the taxable income included by each beneficiary in
15 his or her Nebraska income tax returns. In the case of a
16 corporation which is part of a unitary group as defined in section
17 77-2734.04 and which is included in the combined income tax return
18 of such group, the unitary group shall be the business firm which
19 is providing child care services. Entities which are disregarded
20 for federal income tax purposes shall be disregarded for purposes
21 of defining the business firm which is providing child care
22 services. The credit shall only be used to reduce the tax
23 liabilities of the business firm, or in the case of pass-through
24 entities, the beneficiaries, proprietors, partners, members, or
25 shareholders, for the year in which the costs were incurred. The
26 credit may not be carried forward to the next taxable year. The
27 credit may be taken by the business firm for not more than three
28 taxable years, except that if the child care facility is accredited

1 under section 43-2620 or becomes accredited under section 43-2620
2 during the three-taxable-year period, the credit may be taken for
3 an additional consecutive two taxable years after the end of the
4 third taxable year for which a credit was taken under this section.

5 (3) Costs incurred by the business firm in providing
6 child care services for children of employees shall be reduced by
7 payments received by the business firm from employees. If the
8 business firm provides child care services for the children of
9 employees and also for the children of non-employees, the direct
10 operating costs of staffing, operating, and maintaining the child
11 care facility, including the related payroll taxes, employee
12 benefits, and sales and use taxes, shall be multiplied by a
13 fraction, the numerator of which is the total child hours of care
14 provided to the children of employees and the denominator of which
15 is the total child hours of care provided in the child care
16 facility. Child hour means one hour of care provided for one
17 child. For purposes of calculating child hours, if the business
18 firm does not in the ordinary course of its business compile the
19 actual child hours of care, it may determine the number of child
20 hours based on a reasonable convention if such convention is used
21 consistently for each year that the credit is claimed or the
22 business firm obtains the advance consent of the Tax Commissioner
23 to change the convention. Costs shall be considered incurred in
24 the taxable year in which they are either accruable or are paid in
25 accordance with the business firm's overall income tax method of
26 accounting.

27 (4) A business firm operating a child care facility on
28 the operative date of this act shall only qualify for the two years

1 of tax credits allowed under subsection (2) of this section
2 relating to expenditures by the business firm for direct operating
3 costs if the child care facility is accredited after January 1,
4 2001.

5 (5) A business firm shall not be considered to be
6 providing child care services for purposes of this section unless
7 the child care services are provided to the employees of the firm
8 who qualify under classifications established by the business firm
9 which are found by the Tax Commissioner not to be discriminatory in
10 favor of highly compensated employees. For purposes of this
11 section, highly compensated employee means an employee who was a
12 five-percent owner of the business firm at any time during the year
13 or the preceding year or, for the preceding year, either (a) had
14 compensation from the employer in excess of eighty thousand dollars
15 or (b) was among the highest twenty percent of employees ranked by
16 compensation, whichever results in the smaller group. Whether an
17 employer's classifications are nondiscriminatory shall be
18 determined on the basis of employees' eligibility to place children
19 in the child care facility.

20 (6) No amount paid or incurred by an employer to provide
21 child care assistance to an employee shall qualify for the credit
22 if the amount was paid or incurred pursuant to a salary reduction
23 plan or is not paid for services performed within this state.

24 (7) This section shall only apply to business firms that
25 meet the requirements of this section on or before December 31,
26 2005.

27 (8) If two or more business firms share in the cost of
28 providing child care services for children of such business firms'

1 employees, each business firm shall be allowed a tax credit in
2 proportion to such business firm's share of the total costs.

3 (9) The Department of Revenue and the Department of
4 Insurance shall issue a joint report by December 1, 2002, and by
5 each December 1 thereafter for so long as the credit is effective,
6 that provides the following information:

7 (a) The number of business firms qualifying for the
8 credit under this section during taxable years ending on or before
9 the previous December 31;

10 (b) The number and location by county of child care
11 facilities qualifying for the credit under this section during the
12 taxable years ending on or before the previous December 31;

13 (c) The total child-years of child care provided, the
14 range of child-years of child care provided per qualifying
15 business, and the average and median child-years of care provided
16 per qualifying business, sorted in reasonable groupings by maximum
17 enrollment during the year that include a sufficient number of
18 qualifying businesses in each group to maintain the confidentiality
19 of the taxpayers qualifying for the credit;

20 (d) The percentage of costs paid by the employees in each
21 size grouping in subdivision (c) of this subsection;

22 (e) The percentage of such child-years of care provided
23 in accredited facilities in each size grouping in subdivision (c)
24 of this subsection; and

25 (f) The total credits claimed and the total credits
26 allowed in each size grouping in subdivision (c) of this
27 subsection.

28 (10) The Department of Revenue shall develop a form for

1 claiming the credit allowed by this section stating that any
2 business firm seeking a credit under this section must supply the
3 information listed in subsection (9) of this section as a condition
4 for receiving the credit.

5 (11) The Tax Commissioner and Director of Insurance may
6 adopt and promulgate rules and regulations as necessary to carry
7 out this section.

8 Sec. 4. Section 77-2715.07, Revised Statutes Supplement,
9 2000, is amended to read:

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

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

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

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

20 (a) For returns filed reporting federal adjusted gross
21 incomes of greater than twenty-nine thousand dollars, a
22 nonrefundable credit equal to twenty-five percent of the federal
23 credit allowed under section 21 of the Internal Revenue Code of
24 1986, as amended;

25 (b) For returns filed reporting federal adjusted gross
26 income of twenty-nine thousand dollars or less, a refundable credit
27 equal to a percentage of the federal credit allowable under section
28 21 of the Internal Revenue Code of 1986, as amended, whether or not

1 the federal credit was limited by the federal tax liability. The
2 percentage of the federal credit shall be one hundred percent for
3 incomes not greater than twenty-two thousand dollars, and the
4 percentage shall be reduced by ten percent for each one thousand
5 dollars, or fraction thereof, by which the reported federal
6 adjusted gross income exceeds twenty-two thousand dollars; and

7 (c) A refundable credit for individuals who qualify for
8 an income tax credit under the Beginning Farmer Tax Credit Act for
9 all taxable years beginning or deemed to begin on or after January
10 1, 2001, under the Internal Revenue Code of 1986, as amended.

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

14 (a) A credit for personal exemptions allowed under
15 section 77-2716.01; and

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

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

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

28 (b) A credit to all estates and trusts for contributions

1 to certified community betterment programs as provided in the
2 Community Development Assistance Act.

3 (5) There shall be allowed to all business firms as a
4 credit against the income tax imposed by the Nebraska Revenue Act
5 of 1967 a credit as provided in section 3 of this act.

6 Sec. 5. Section 77-2717, Revised Statutes Supplement,
7 2000, is amended to read:

8 77-2717. (1)(a) The tax imposed on all resident estates
9 and trusts shall be a percentage of the federal taxable income of
10 such estates and trusts as modified in section 77-2716, plus a
11 percentage of the federal alternative minimum tax and the federal
12 tax on premature or lump-sum distributions from qualified
13 retirement plans. The additional taxes shall be recomputed by (i)
14 substituting Nebraska taxable income for federal taxable income,
15 (ii) calculating what the federal alternative minimum tax would be
16 on Nebraska taxable income and adjusting such calculations for any
17 items which are reflected differently in the determination of
18 federal taxable income, and (iii) applying Nebraska rates to the
19 result. The federal credit for prior year minimum tax, after the
20 recomputations required by the Nebraska Revenue Act of 1967, and
21 the credit provided in section 3 of this act shall be allowed as a
22 reduction in the income tax due.

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

1 same total income by a fraction, the numerator of which is the
2 nonresident estate's or trust's Nebraska income as determined by
3 sections 77-2724 and 77-2725 and the denominator of which is its
4 total federal income after first adjusting each by the amounts
5 provided in section 77-2716.

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

19 (3) The beneficiaries of such estate or trust who are
20 residents of this state shall include in their income their
21 proportionate share of such estate's or trust's federal income and
22 shall reduce their Nebraska tax liability by their proportionate
23 share of the credit as provided in section 3 of this act. There
24 shall be allowed to a beneficiary a refundable income tax credit
25 under the Beginning Farmer Tax Credit Act for all taxable years
26 beginning or deemed to begin on or after January 1, 2001, under the
27 Internal Revenue Code of 1986, as amended.

28 (4) If any beneficiary of such estate or trust is a

1 nonresident during any part of the estate's or trust's taxable
2 year, he or she shall file a Nebraska income tax return which shall
3 include (a) in Nebraska adjusted gross income that portion of the
4 estate's or trust's Nebraska income, as determined under sections
5 77-2724 and 77-2725, allocable to his or her interest in the estate
6 or trust and (b) a reduction of the Nebraska tax liability by his
7 or her proportionate share of the credit as provided in section 3
8 of this act and shall execute and forward to the fiduciary, on or
9 before the original due date of the Nebraska fiduciary return, an
10 agreement which states that he or she will file a Nebraska income
11 tax return and pay income tax on all income derived from or
12 connected with sources in this state, and such agreement shall be
13 attached to the Nebraska fiduciary return for such taxable year.

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

25 (6) The Tax Commissioner may allow a nonresident
26 beneficiary to not file a Nebraska income tax return if the
27 nonresident beneficiary's only source of Nebraska income was his or
28 her share of the estate's or trust's income which was derived from

1 or attributable to sources within this state, the nonresident did
2 not file an agreement to file a Nebraska income tax return, and the
3 estate or trust has remitted the amount required by subsection (5)
4 of this section on behalf of such nonresident beneficiary. The
5 amount remitted shall be retained in satisfaction of the Nebraska
6 income tax liability of the nonresident beneficiary.

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

15 Sec. 6. Section 77-2734.03, Revised Statutes Supplement,
16 2000, is amended to read:

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

25 (b) For taxable years commencing on or after January 1,
26 1997, any insurer paying a tax on premiums and assessments pursuant
27 to section 77-908 or 81-523, any electric cooperative organized
28 under the Joint Public Power Authority Act, or any credit union

1 shall be credited, in the computation of the tax due under the
2 Nebraska Revenue Act of 1967, with the amount paid during the
3 taxable year as (i) taxes on such premiums and assessments included
4 as Nebraska premiums and assessments under section 77-2734.05 and
5 (ii) taxes in lieu of intangible tax.

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

13 (2) There shall be allowed to corporate taxpayers a
14 credit for nonhighway use motor vehicle fuels as provided in
15 section 66-4,124.

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

19 (4) There shall be allowed to corporate taxpayers 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
23 amended.

24 (5) There shall be allowed to corporate taxpayers a tax
25 credit as provided in section 3 of this act.

26 Sec. 7. Section 77-3806, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 77-3806. (1) The tax return shall be filed and the total

1 amount of the franchise tax shall be due on the fifteenth day of
2 the third month after the end of the taxable year. No extension of
3 time to pay the tax shall be granted. If the Tax Commissioner
4 determines that the amount of tax can be computed from available
5 information filed by the financial institutions with either state
6 or federal regulatory agencies, the Tax Commissioner may, by
7 regulation, waive the requirement for the financial institutions to
8 file returns.

9 (2) Sections 77-2714 to 77-27,135 relating to
10 deficiencies, penalties, interest, the collection of delinquent
11 amounts, and appeal procedures for the tax imposed by section
12 77-2734.02 shall also apply to the tax imposed by section 77-3802.
13 If the filing of a return is waived by the Tax Commissioner, the
14 payment of the tax shall be considered the filing of a return for
15 purposes of sections 77-2714 to 77-27,135.

16 (3) No refund of the tax imposed by section 77-3802 shall
17 be allowed unless a claim for such refund is filed within ninety
18 days of the date on which (a) the tax is due or was paid, whichever
19 is later, or (b) a change is made to the amount of deposits or the
20 net financial income of the financial institution by a state or
21 federal regulatory agency.

22 (4) Any such financial institution shall receive a credit
23 on the franchise tax as provided under the Community Development
24 Assistance Act and section 3 of this act.

25 Sec. 8. This act becomes operative for taxable years
26 beginning or deemed to begin on or after January 1, 2001, under the
27 Internal Revenue Code of 1986, as amended.

28 Sec. 9. Original sections 77-908 and 77-3806, Reissue

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1 Revised Statutes of Nebraska, and sections 77-2701, 77-2715.07,
2 77-2717, and 77-2734.03, Revised Statutes Supplement, 2000, are
3 repealed.