

## LEGISLATIVE BILL 283

Approved by the Governor May 30, 2003

Introduced by Landis, 46; Schrock, 38

AN ACT relating to revenue and taxation; to amend section 53-160, Reissue Revised Statutes of Nebraska, and sections 77-2101.03 and 77-27,222, Revised Statutes Supplement, 2002; to change provisions relating to tax on the sale of alcohol, estate taxes, and child care tax credits; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 53-160, Reissue Revised Statutes of Nebraska, is amended to read:

53-160. (1) For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of ~~twenty-three~~ thirty-one cents per gallon on all beer; ~~seventy-five~~ ninety-five cents per gallon for wine, ~~containing not more than fourteen percent but not less than five-tenths of one percent of alcohol by volume and one dollar and thirty-five cents per gallon for wines and other dilute alcoholic beverages containing more than fourteen percent of alcohol by volume,~~ except for wines produced in farm wineries; ~~five six~~ six cents per gallon for wine produced in farm wineries; and ~~three dollars~~ three dollars and seventy-five cents per gallon on alcohol and spirits manufactured and sold by such manufacturer or shipped for sale in this state by such wholesaler in the course of such business. The gallonage tax imposed by this subsection shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of alcoholic liquor shall be exempt from the payment of the gallonage tax on such alcoholic liquor upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such alcoholic liquor was manufactured in this state but shipped out of the state for sale and consumption outside this state.

(3) Dry wines or fortified wines manufactured or shipped into this state solely and exclusively for sacramental purposes and uses shall not be subject to the gallonage tax.

(4) The gallonage tax shall not be imposed upon any alcoholic liquor, whether manufactured in or shipped into this state, when sold to a licensed nonbeverage user for use in the manufacture of any of the following when such products are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, food products, and confections or candy; scientific, industrial, and chemical products, except denatured alcohol; or products for scientific, chemical, experimental, or mechanical purposes.

(5) The gallonage tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The gallonage tax shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(7) The commission shall collect the gallonage tax and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any alcoholic liquor manufactured in or shipped into this state is sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or wholesaler shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under the Nebraska Liquor Control Act. The net proceeds of all revenue arising under this section shall be credited to the General Fund.

Sec. 2. Section 77-2101.03, Revised Statutes Supplement, 2002, is amended to read:

77-2101.03. (1) For decedents dying on or after January 1, 2003, and before July 1, 2003, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table: The following table shall be used to determine the tax on

~~the Nebraska taxable estate:~~

Nebraska taxable estate		Tax =	+	%	Of Excess Over
At least	But less than				
\$ 0	\$ 40,000	\$ 0		0	\$ 0
40,000	90,000	0		.8	40,000
90,000	140,000	400		1.6	90,000
140,000	240,000	1,200		2.4	140,000
240,000	440,000	3,600		3.2	240,000
440,000	640,000	10,000		4	440,000
640,000	840,000	18,000		4.8	640,000
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000		1,082,800		16	10,040,000

(2) For decedents dying on or after July 1, 2003, the following table shall be used to determine the tax on the Nebraska taxable estate:

Nebraska taxable estate		Tax =	+	%	Of Excess Over
At least	But less than				
\$ 0	\$ 100,000	\$ 0		41	\$ 0
100,000	500,000	41,000		6.4	100,000
500,000	1,000,000	66,600		7.2	500,000
1,000,000	1,500,000	102,600		8	1,000,000
1,500,000	2,000,000	142,600		8.8	1,500,000
2,000,000	2,500,000	186,600		9.6	2,000,000
2,500,000	3,000,000	234,600		10.4	2,500,000
3,000,000	4,000,000	286,600		11.2	3,000,000
4,000,000	5,000,000	398,600		12	4,000,000
5,000,000	6,000,000	518,600		12.8	5,000,000
6,000,000	7,000,000	646,600		13.6	6,000,000
7,000,000	8,000,000	782,600		14.4	7,000,000
8,000,000	9,000,000	926,600		15.2	8,000,000
9,000,000		1,078,600		16	9,000,000

~~(2)~~ (3) Taxable generation-skipping transfers shall be taxed at a rate of sixteen percent of the Nebraska taxable transfer.

Sec. 3. Section 77-27,222, Revised Statutes Supplement, 2002, is amended to read:

77-27,222. (1) For purposes of this section:

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

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

(c) Costs incurred by the business firm in providing child care services for children of employees means the amounts expended by the business firm during the year for improvements to the premises for purposes of making the premises suitable in whole or in part for use as a child care facility, including furnishing the facility with fencing, landscaping, sidewalks, furniture, fixtures, equipment, supplies, and other improvements and materials reasonably required to operate a child care facility and the direct operating costs of staffing, operating, and maintaining a child care facility. The costs include the payroll taxes and employee benefit costs of staffing the child care facility and sales and use taxes on purchases included in the costs of providing child care, but not an allocation of the business firm's general, administrative, and other operating expenses. The costs do not include the acquisition of land or the construction of new buildings. The costs include payments to third parties to reimburse the third parties for amounts expended

by them and which would have been costs incurred by the business firm in providing child care services if incurred directly by the business firm or to subsidize the cost of providing child care for the children of employees in such third parties' facilities; and

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

(2) ~~Any~~ For taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended, any business firm which provides child care services shall be allowed a credit against the individual income tax, corporate income tax, premium or related retaliatory tax, or franchise tax equal to thirty percent of the costs incurred by the business firm in providing child care services for children of employees for each taxable year, up to fifty percent of such business firm's total tax liability. In the case of a sole proprietorship, partnership, or limited liability company which is taxed as a pass-through entity or a corporation which has in effect an election under subchapter S of the Internal Revenue Code, the maximum allowable amount of credit shall be fifty percent of the income tax liability determined as if such business firm had been a corporation subject to the state income tax imposed by section 77-2734.02. Such pass-through entities shall allocate the allowable credit among their proprietors, partners, members, or shareholders in the same manner as taxable income is allocated. In the case of a fiduciary, the maximum allowable amount of the credit shall be fifty percent of the income tax liability of the fiduciary computed without any deduction for distributions, and the allowable credit shall be allocated among the fiduciary and its beneficiaries in proportion to the taxable income included by each beneficiary in his or her Nebraska income tax returns. In the case of a corporation which is part of a unitary group as defined in section 77-2734.04 and which is included in the combined income tax return of such group, the unitary group shall be the business firm which is providing child care services. Entities which are disregarded for federal income tax purposes shall be disregarded for purposes of defining the business firm which is providing child care services. The credit shall only be used to reduce the tax liabilities of the business firm, or in the case of pass-through entities, the beneficiaries, proprietors, partners, members, or shareholders, for the year in which the costs were incurred. The credit may not be carried forward to the next taxable year. The credit may be taken by the business firm for not more than three taxable years, except that if the child care facility is accredited under section 43-2620 or becomes accredited under section 43-2620 during the three-taxable-year period, the credit may be taken for an additional consecutive two taxable years after the end of the third taxable year for which a credit was taken under this section.

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

(4) A business firm operating a child care facility on January 1, ~~2003~~ 2007, shall only qualify for the two years of tax credits allowed under subsection (2) of this section relating to expenditures by the business firm for direct operating costs if the child care facility is accredited after January 1, ~~2003~~ 2007.

(5) A business firm shall not be considered to be providing child

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

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

(7) This section shall only apply to business firms that meet the requirements of this section on or before December 31, ~~2007~~ 2011.

(8) If two or more business firms share in the cost of providing child care services for children of such business firms' employees, each business firm shall be allowed a tax credit in proportion to such business firm's share of the total costs.

(9) The Department of Revenue and the Department of Insurance shall issue a joint report by December 1, ~~2004~~ 2008, and by each December 1 thereafter for so long as the credit is effective, that provides the following information:

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

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

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

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

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

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

(10) The Department of Revenue shall develop a form for claiming the credit allowed by this section stating that any business firm seeking a credit under this section must supply the information listed in subsection (9) of this section as a condition for receiving the credit.

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

Sec. 4. Sections 2 and 6 of this act become operative on January 1, 2003. The other sections of this act become operative on July 1, 2003.

Sec. 5. Original section 53-160, Reissue Revised Statutes of Nebraska, and section 77-27,222, Revised Statutes Supplement, 2002, are repealed.

Sec. 6. Original section 77-2101.03, Revised Statutes Supplement, 2002, is repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.