

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 343

FINAL READING

(SECOND)

Introduced by Langemeier, 23; Preister, 5

Read first time January 12, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 77-2715.08 and 77-2715.09, Reissue Revised Statutes
 3 of Nebraska, and sections 77-2701, 77-2715.07, and
 4 77-2734.03, Revised Statutes Cumulative Supplement,
 5 2006; to create an investment tax credit for biodiesel
 6 facilities; to provide an adjustment to income for
 7 extraordinary dividends; to harmonize provisions; to
 8 provide an operative date; and to repeal the original
 9 sections.

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

1 Section 1. Section 77-2701, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, and
4 77-27,228 to 77-27,235 and section 2 of this act shall be known and
5 may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. (1) A taxpayer who makes an investment after
7 January 1, 2008, and prior to January 1, 2015, in a biodiesel
8 facility shall receive a nonrefundable income tax credit as
9 provided in this section.

10 (2) The credit provided in subsection (1) of this section
11 shall be equal to thirty percent of the amount invested by the
12 taxpayer in a biodiesel facility. The credit shall be taken over at
13 least four taxable years subject to the following conditions:

14 (a) No more than ten percent of the credit provided for
15 in subsection (1) of this section shall be taken in each of the
16 first two taxable years the biodiesel facility produces B100 and no
17 more than fifty percent of the credit provided for in subsection
18 (1) of this section shall be taken in the third taxable year
19 the biodiesel facility produces B100. The credit allowed under
20 subsection (1) of this section shall not exceed fifty percent of
21 the taxpayer's liability in any tax year;

22 (b) Any amount of credit not allowed because of the
23 limitations in this section may be carried forward for up
24 to fifteen taxable years after the taxable year in which the
25 investment was made. The aggregate maximum income tax credit a

1 taxpayer may obtain is two hundred fifty thousand dollars;

2 (c) The investment shall be at risk in the biodiesel
3 facility. The investment shall be in the form of a purchase of an
4 ownership interest or the right to receive payment of dividends
5 from the biodiesel facility and shall remain in the business for at
6 least three years. The Tax Commissioner may recapture any credits
7 used if the investment does not remain invested for the three-year
8 period. An investment placed in escrow does not qualify under this
9 subdivision;

10 (d) The entire amount of the investment shall be expended
11 by the biodiesel facility for plant, equipment, research and
12 development, marketing and sales activity, or working capital;

13 (e) A partnership, a subchapter S corporation, a limited
14 liability company that for tax purposes is treated like a
15 partnership, a cooperative, including a cooperative exempt under
16 section 521 of the Internal Revenue Code of 1986, as amended,
17 or any other pass-through entity that invests in a biodiesel
18 facility shall be considered to be the taxpayer for purposes
19 of the credit limitations. Except for the limitation under
20 subdivision (2)(a) of this section, the amount of the credit
21 allowed to a pass-through entity shall be determined at the
22 partnership, corporate, cooperative, or other organizational level.
23 The amount of the credit determined at the partnership, corporate,
24 cooperative, or other organizational level shall be allowed to
25 the partners, members, or other owners in proportion to their

1 respective ownership interests in the pass-through entity;

2 (f) The credit shall be taken only if (i) the biodiesel
3 facility produces B100, (ii) the biodiesel facility in which the
4 investment was made produces at a rate of at least seventy percent
5 of its rated capacity continuously for at least one week during
6 the first taxable year the credit is taken and produces at a rate
7 of at least seventy percent of its rated capacity over a six-month
8 period during each of the next two taxable years the credit is
9 taken, (iii) all processing takes place at the biodiesel facility
10 in which the investment was made and which is located in Nebraska,
11 and (iv) at least fifty-one percent of the ownership interest of
12 the biodiesel facility is held by Nebraska resident individuals or
13 Nebraska entities; and

14 (g) The biodiesel facility shall provide the Department
15 of Revenue written evidence substantiating that the biodiesel
16 facility has received the requisite authority from the Department
17 of Environmental Quality and from the United States Department
18 of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.
19 The biodiesel facility shall annually provide an analysis to the
20 Department of Revenue of samples of the product collected according
21 to procedures specified by the department. The analysis shall be
22 prepared by an independent laboratory meeting standards of the
23 International Organization for Standardization. Prior to collecting
24 the samples, the biodiesel facility shall notify the department
25 which may observe the sampling procedures utilized by the biodiesel

1 facility to obtain the samples to be submitted for independent
2 analysis.

3 (3) Any biodiesel facility for which credits are granted
4 shall, whenever possible, employ workers who are residents of the
5 State of Nebraska.

6 (4) Trade secrets, academic and scientific research work,
7 and other proprietary or commercial information which may be
8 filed with the Tax Commissioner shall not be considered to be
9 public records as defined in section 84-712.01 if the release
10 of such trade secrets, work, or information would give advantage
11 to business competitors and serve no public purpose. Any person
12 seeking release of the trade secrets, work, or information as
13 a public record shall demonstrate to the satisfaction of the
14 department that the release would not violate this section.

15 (5) For purposes of this section:

16 (a) Biodiesel facility means a plant or facility related
17 to the processing, marketing, or distribution of biodiesel; and

18 (b) B100 means pure biodiesel containing mono-alkyl
19 esters of long chain fatty acids derived from vegetable oils
20 or animal fats, designated as B100, and meeting the American
21 Society for Testing and Materials standard, ASTM D6751.

22 Sec. 3. Section 77-2715.07, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 77-2715.07 (1) There shall be allowed to qualified
25 resident individuals as a nonrefundable credit against the income

1 tax imposed by the Nebraska Revenue Act of 1967:

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

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

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

9 (a) For returns filed reporting federal adjusted
10 gross incomes of greater than twenty-nine thousand dollars, a
11 nonrefundable credit equal to twenty-five percent of the federal
12 credit allowed under section 21 of the Internal Revenue Code of
13 1986, as amended;

14 (b) For returns filed reporting federal adjusted gross
15 income of twenty-nine thousand dollars or less, a refundable credit
16 equal to a percentage of the federal credit allowable under section
17 21 of the Internal Revenue Code of 1986, as amended, whether or
18 not the federal credit was limited by the federal tax liability.
19 The percentage of the federal credit shall be one hundred percent
20 for incomes not greater than twenty-two thousand dollars, and
21 the percentage shall be reduced by ten percent for each one
22 thousand dollars, or fraction thereof, by which the reported
23 federal adjusted gross income exceeds twenty-two thousand dollars;

24 (c) A refundable credit for individuals who qualify for
25 an income tax credit as an owner of agricultural assets under the

1 Beginning Farmer Tax Credit Act for all taxable years beginning or
2 deemed to begin on or after January 1, 2001, under the Internal
3 Revenue Code of 1986, as amended; and a refundable credit as
4 provided in section 77-5209.01 for individuals who qualify for an
5 income tax credit as a qualified beginning farmer or livestock
6 producer under the Beginning Farmer Tax Credit Act for all taxable
7 years beginning or deemed to begin on or after January 1, 2006,
8 under the Internal Revenue Code of 1986, as amended;

9 (d) A refundable credit for individuals who qualify for
10 an income tax credit under the Nebraska Advantage Microenterprise
11 Tax Credit Act or the Nebraska Advantage Research and Development
12 Act; and

13 (e) A refundable credit equal to eight percent of the
14 federal credit allowed under section 32 of the Internal Revenue
15 Code of 1986, as amended.

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

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

21 (b) A credit for contributions to certified community
22 betterment programs as provided in the Community Development
23 Assistance Act. Each partner, each shareholder of an electing
24 subchapter S corporation, each beneficiary of an estate or trust,
25 or each member of a limited liability company shall report his or

1 her share of the credit in the same manner and proportion as he
2 or she reports the partnership, subchapter S corporation, estate,
3 trust, or limited liability company income; and -

4 (c) A credit for investment in a biodiesel facility as
5 provided in section 2 of this act.

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

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

10 (b) A credit to all estates and trusts for contributions
11 to certified community betterment programs as provided in the
12 Community Development Assistance Act.

13 (5) There shall be allowed to all business firms as a
14 credit against the income tax imposed by the Nebraska Revenue Act
15 of 1967 a credit as provided in section 77-27,222.

16 Sec. 4. Section 77-2715.08, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-2715.08 For purposes of this section and section
19 77-2715.09, unless the context otherwise requires:

20 (1) Capital stock ~~shall mean~~ means common or preferred
21 stock, either voting or nonvoting. Capital stock ~~shall~~ does not
22 include stock rights, stock warrants, stock options, or debt
23 securities;

24 (2)(a) Corporation ~~shall mean~~ means any corporation
25 which, at the time of the first sale or exchange for which

1 the election is made, has been in existence and actively doing
2 business in this state for at least three years.

3 (b) Corporation ~~shall~~ also ~~include~~ includes:

4 (i) Any corporation which is a member of a unitary group
5 of corporations, as defined in section 77-2734.04, which includes a
6 corporation defined in subdivision (2)(a) of this section; and

7 (ii) Any predecessor or successor corporation of a
8 corporation defined in subdivision (2)(a) of this section.

9 (c) All corporations issuing capital stock for which an
10 election under section 77-2715.09 is made shall, at the time of the
11 first sale or exchange for which the election is made, have (i)
12 at least five shareholders and (ii) at least two shareholders or
13 groups of shareholders who are not related to each other and each
14 of which owns at least ten percent of the capital stock.

15 For purposes of this subdivision, two persons shall
16 be considered to be related when, under section 318 of the
17 Internal Revenue Code of 1986, one is a person who owns, directly
18 or indirectly, capital stock that if directly owned would be
19 attributed to the other person or is the brother, sister, aunt,
20 uncle, cousin, niece, or nephew of the other person who owns
21 capital stock either directly or indirectly; ~~and~~

22 (3) Extraordinary dividend means any dividend exceeding
23 twenty percent of the fair market value of the stock on which it is
24 paid as of the date the dividend is declared; and

25 ~~(3)~~ (4) Predecessor or successor corporation shall mean

1 means a corporation that was a party to a reorganization that was
2 entirely or substantially tax free and that occurred during or
3 after the employment of the individual making an election under
4 section 77-2715.09.

5 Sec. 5. Section 77-2715.09, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-2715.09 ~~(1)(a)~~ (1) Every resident individual may elect
8 under this section to subtract from federal adjusted gross income,
9 or, for trusts qualifying under subdivision (2)(c) of this section,
10 from taxable income, the extraordinary dividends paid on and the
11 capital gain from the sale or exchange of capital stock of a
12 corporation acquired by the individual ~~(i)~~ (a) on account of
13 employment by such corporation or ~~(ii)~~ (b) while employed by such
14 corporation.

15 ~~(b) The election may be made for all taxable years~~
16 ~~beginning or deemed to begin on or after January 1, 1989, except~~
17 ~~that such election may be made with respect to one-half of such~~
18 ~~gain included in federal adjusted gross income for taxable years~~
19 ~~beginning or deemed to begin on or after January 1, 1988.~~

20 (2)(a) Each individual shall be entitled to one election
21 under subsection (1) of this section during his or her lifetime for
22 the capital stock of one corporation.

23 (b) The election shall apply to subsequent extraordinary
24 dividends paid and sales and exchanges in any taxable year if the
25 dividend is received on, or the sale or exchange is of, capital

1 stock in the same corporation and such capital stock was acquired
2 as provided in subsection (1) of this section.

3 (c) After the individual makes an election, such election
4 shall apply to extraordinary dividends paid on, and the sale or
5 exchange of capital stock of the corporation transferred by inter
6 vivos gift from the individual to his or her spouse or issue or a
7 trust for the benefit of the individual's spouse or issue if such
8 capital stock was acquired as provided in subsection (1) of this
9 section. This subdivision shall apply, in the case of the spouse,
10 only if the spouse was married to such individual on the date of
11 the extraordinary dividend or sale or exchange or the date of death
12 of the individual.

13 (d) If the individual dies without making an election,
14 the surviving spouse or, if there is no surviving spouse, the
15 oldest surviving issue may make the election for capital stock that
16 would have qualified under subdivision (c) of this subsection.

17 (3) An election under subsection (1) of this section
18 shall be made by including a written statement with the taxpayer's
19 Nebraska income tax return or an amended return for the taxable
20 year for which the election is made. The written statement shall
21 identify the corporation that issued the stock and the grounds for
22 the election under this section and shall state that the taxpayer
23 elects to have this section apply.

24 Sec. 6. Section 77-2734.03, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

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

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

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

25 (2) There shall be allowed to corporate taxpayers a

1 tax credit for contributions to community betterment programs as
2 provided in the Community Development Assistance Act.

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

8 (4) There shall be allowed to corporate taxpayers a tax
9 credit as provided in section 77-27,222.

10 (5) The changes made to this section by Laws 2004, LB
11 983, apply to motor fuels purchased during any tax year ending
12 or deemed to end on or after January 1, 2005, under the Internal
13 Revenue Code of 1986, as amended.

14 (6) There shall be allowed to corporate taxpayers
15 refundable income tax credits under the Nebraska Advantage
16 Microenterprise Tax Credit Act and the Nebraska Advantage Research
17 and Development Act.

18 (7) There shall be allowed to corporate taxpayers a
19 nonrefundable income tax credit for investment in a biodiesel
20 facility as provided in section 2 of this act.

21 Sec. 7. This act becomes operative for taxable years
22 beginning or deemed to begin on or after January 1, 2007, under the
23 Internal Revenue Code of 1986, as amended.

24 Sec. 8. Original sections 77-2715.08 and 77-2715.09,
25 Reissue Revised Statutes of Nebraska, and sections 77-2701,

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- 1 77-2715.07, and 77-2734.03, Revised Statutes Cumulative Supplement,
- 2 2006, are repealed.