

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 343

Introduced by Langemeier, 23

Read first time January 12, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to biodiesel; to amend sections 77-2701,
2 77-2715.07, and 77-2734.03, Revised Statutes Cumulative
3 Supplement, 2006; to create an investment tax credit for
4 biodiesel facilities; to harmonize provisions; to provide
5 an operative date; and to repeal the original sections.
6 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 in a
7 biodiesel facility shall receive a nonrefundable income tax credit
8 as provided in this section.

9 (2) The credit provided in subsection (1) of this section
10 is thirty percent of the amount invested by the taxpayer in a
11 biodiesel facility during the taxable year subject to the following
12 conditions:

13 (a) A taxpayer may claim no more than fifty percent
14 of the credit attributable to qualified investments in a single
15 taxable year, and the amount of the credit allowed under this
16 section for any taxable year may not exceed fifty percent of the
17 taxpayer's tax liability;

18 (b) Any amount of credit not allowed because of the
19 limitations in this section may be carried forward for up
20 to fifteen taxable years after the taxable year in which the
21 investment was made. The aggregate maximum income tax credit a
22 taxpayer may obtain is two hundred fifty thousand dollars;

23 (c) The investment shall be at risk in the biodiesel
24 facility. The investment shall be in the form of a purchase of an
25 ownership interest or the right to receive payment of dividends

1 from the biodiesel facility and shall remain in the business for at
2 least three years. The Tax Commissioner may recapture any credits
3 used if the investment does not remain invested for the three-year
4 period. An investment placed in escrow does not qualify under this
5 subdivision;

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

9 (e) A partnership, a subchapter S corporation, a limited
10 liability company that for tax purposes is treated like a
11 partnership, or any other pass-through entity that invests in
12 a biodiesel facility shall be considered to be the taxpayer for
13 purposes of the investment limitations. Except for the limitation
14 under subdivision (2)(a) of this section, the amount of the
15 credit allowed to a pass-through entity shall be determined at the
16 partnership, corporate, or other organizational level. The amount
17 of the credit determined at the partnership, corporate, or other
18 organizational level shall be allowed to the partners, members, or
19 other owners in proportion to their respective ownership interests
20 in the pass-through entity;

21 (f) The credit shall be given only if the biodiesel
22 facility produces B100, all processing takes place at a biodiesel
23 facility in Nebraska, and at least fifty-one percent of the
24 ownership interest of the biodiesel facility is held by Nebraska
25 individuals or entities; and

1 (g) The biodiesel facility shall provide the Department
2 of Revenue written evidence substantiating that the biodiesel
3 facility has received the requisite authority from the Department
4 of Environmental Quality and from the United States Department
5 of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.
6 The biodiesel facility shall annually provide an analysis to the
7 Department of Revenue of samples of the product collected according
8 to procedures specified by the department. The analysis shall be
9 prepared by an independent laboratory meeting standards of the
10 International Organization for Standardization. Prior to collecting
11 the samples, the biodiesel facility shall notify the department
12 which may observe the sampling procedures utilized by the biodiesel
13 facility to obtain the samples to be submitted for independent
14 analysis.

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

18 (4) Trade secrets, academic and scientific research work,
19 and other proprietary or commercial information which may be
20 filed with the Tax Commissioner shall not be considered to be
21 public records as defined in section 84-712.01 if the release
22 of such trade secrets, work, or information would give advantage
23 to business competitors and serve no public purpose. Any person
24 seeking release of the trade secrets, work, or information as a
25 public record shall demonstrate to the satisfaction of the board

1 that the release would not violate this section.

2 (5) For purposes of this section:

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

5 (b) B100 means pure biodiesel containing mono-alkl esters
6 of long fatty acids derived from vegetable oils or animal fats,
7 designated as B100, and meeting the ASTM International D6751
8 standard.

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

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

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

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

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

21 (a) For returns filed reporting federal adjusted
22 gross incomes of greater than twenty-nine thousand dollars, a
23 nonrefundable credit equal to twenty-five percent of the federal
24 credit allowed under section 21 of the Internal Revenue Code of
25 1986, as amended;

1 (b) For returns filed reporting federal adjusted gross
2 income of twenty-nine thousand dollars or less, a refundable credit
3 equal to a percentage of the federal credit allowable under section
4 21 of the Internal Revenue Code of 1986, as amended, whether or
5 not the federal credit was limited by the federal tax liability.
6 The percentage of the federal credit shall be one hundred percent
7 for incomes not greater than twenty-two thousand dollars, and
8 the percentage shall be reduced by ten percent for each one
9 thousand dollars, or fraction thereof, by which the reported
10 federal adjusted gross income exceeds twenty-two thousand dollars;

11 (c) A refundable credit for individuals who qualify for
12 an income tax credit as an owner of agricultural assets under the
13 Beginning Farmer Tax Credit Act for all taxable years beginning or
14 deemed to begin on or after January 1, 2001, under the Internal
15 Revenue Code of 1986, as amended; and a refundable credit as
16 provided in section 77-5209.01 for individuals who qualify for an
17 income tax credit as a qualified beginning farmer or livestock
18 producer under the Beginning Farmer Tax Credit Act for all taxable
19 years beginning or deemed to begin on or after January 1, 2006,
20 under the Internal Revenue Code of 1986, as amended;

21 (d) A refundable credit for individuals who qualify for
22 an income tax credit under the Nebraska Advantage Microenterprise
23 Tax Credit Act or the Nebraska Advantage Research and Development
24 Act; and

25 (e) A refundable credit equal to eight percent of the

1 federal credit allowed under section 32 of the Internal Revenue
2 Code of 1986, as amended.

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

6 (a) A credit for personal exemptions allowed under
7 section 77-2716.01; ~~and~~

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

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

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

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

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

25 (5) There shall be allowed to all business firms as a

1 credit against the income tax imposed by the Nebraska Revenue Act
2 of 1967 a credit as provided in section 77-27,222.

3 Sec. 4. Section 77-2734.03, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

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

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

22 (c) For taxable years commencing or deemed to commence
23 prior to, on, or after January 1, 1998, any insurer paying a tax on
24 premiums and assessments pursuant to section 77-908 or 81-523 shall
25 be credited, in the computation of the tax due under the Nebraska

1 Revenue Act of 1967, with the amount paid during the taxable year
2 as assessments allowed as an offset against premium and related
3 retaliatory tax liability pursuant to section 44-4233.

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

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

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

14 (5) The changes made to this section by Laws 2004, LB
15 983, apply to motor fuels purchased during any tax year ending
16 or deemed to end on or after January 1, 2005, under the Internal
17 Revenue Code of 1986, as amended.

18 (6) There shall be allowed to corporate taxpayers
19 refundable income tax credits under the Nebraska Advantage
20 Microenterprise Tax Credit Act and the Nebraska Advantage Research
21 and Development Act.

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

25 Sec. 5. This act becomes operative for taxable years

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1 beginning or deemed to begin on or after January 1, 2007, under the
2 Internal Revenue Code of 1986, as amended.

3 Sec. 6. Original sections 77-2701, 77-2715.07, and
4 77-2734.03, Revised Statutes Cumulative Supplement, 2006, are
5 repealed.