

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 496

Introduced by White, 8

Read first time January 17, 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; to provide an adjustment to income for
4 extraordinary dividends; to provide an operative date;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2715.08, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 77-2715.08 For purposes of this section and section
4 77-2715.09, unless the context otherwise requires:

5 (1) Capital stock ~~shall mean~~ means common or preferred
6 stock, either voting or nonvoting. Capital stock ~~shall~~ does not
7 include stock rights, stock warrants, stock options, or debt
8 securities;

9 (2)(a) Corporation ~~shall mean~~ means any corporation
10 which, at the time of the first sale or exchange for which
11 the election is made, has been in existence and actively doing
12 business in this state for at least three years.

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

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

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

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

25 For purposes of this subdivision, two persons shall

1 be considered to be related when, under section 318 of the
 2 Internal Revenue Code of 1986, one is a person who owns, directly
 3 or indirectly, capital stock that if directly owned would be
 4 attributed to the other person or is the brother, sister, aunt,
 5 uncle, cousin, niece, or nephew of the other person who owns
 6 capital stock either directly or indirectly; and

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

10 ~~(3)~~ (4) Predecessor or successor corporation shall mean
 11 means a corporation that was a party to a reorganization that was
 12 entirely or substantially tax free and that occurred during or
 13 after the employment of the individual making an election under
 14 section 77-2715.09.

15 Sec. 2. Section 77-2715.09, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 77-2715.09 ~~(1)-(a)~~ (1) Every resident individual may elect
 18 under this section to subtract from federal adjusted gross income
 19 or, for trusts qualifying under subdivision (2)(c) of this section,
 20 from taxable income the extraordinary dividends paid on and the
 21 capital gain from the sale or exchange of capital stock of a
 22 corporation acquired by the individual ~~(i)~~ (a) on account of
 23 employment by such corporation or ~~(ii)~~ (b) while employed by such
 24 corporation.

25 ~~(b)~~ The election may be made for all taxable years

1 ~~beginning or deemed to begin on or after January 1, 1989, except~~
2 ~~that such election may be made with respect to one-half of such~~
3 ~~gain included in federal adjusted gross income for taxable years~~
4 ~~beginning or deemed to begin on or after January 1, 1988.~~

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

8 (b) The election shall apply to subsequent extraordinary
9 dividends paid and sales and exchanges in any taxable year if the
10 dividend is received on, or the sale or exchange is of, capital
11 stock in the same corporation and such capital stock was acquired
12 as provided in subsection (1) of this section.

13 (c) After the individual makes an election, such election
14 shall apply to extraordinary dividends paid on, and the sale or
15 exchange of, capital stock of the corporation transferred by inter
16 vivos gift from the individual to his or her spouse or issue or a
17 trust for the benefit of the individual's spouse or issue if such
18 capital stock was acquired as provided in subsection (1) of this
19 section. This subdivision shall apply, in the case of the spouse,
20 only if the spouse was married to such individual on the date of
21 the extraordinary dividend or sale or exchange or the date of death
22 of the individual.

23 (d) If the individual dies without making an election,
24 the surviving spouse or, if there is no surviving spouse, the
25 oldest surviving issue may make the election for capital stock that

1 would have qualified under subdivision (c) of this subsection.

2 (3) An election under subsection (1) of this section
3 shall be made by including a written statement with the taxpayer's
4 Nebraska income tax return or an amended return for the taxable
5 year for which the election is made. The written statement shall
6 identify the corporation that issued the stock and the grounds for
7 the election under this section and shall state that the taxpayer
8 elects to have this section apply.

9 Sec. 3. This act becomes operative for all taxable years
10 beginning or deemed to begin on or after January 1, 2007, under the
11 Internal Revenue Code of 1986, as amended.

12 Sec. 4. Original sections 77-2715.08 and 77-2715.09,
13 Reissue Revised Statutes of Nebraska, are repealed.