

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

## LEGISLATIVE BILL 117

Introduced by Fischer, 43.

Read first time January 09, 2009

Committee: Revenue

### A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701, 77-2715.07, 77-2717, and 77-2734.03, Revised  
3 Statutes Cumulative Supplement, 2008; to provide an  
4 income tax credit for retail business taxpayers as  
5 prescribed; to harmonize provisions; to provide an  
6 operative date; and to repeal the original sections.

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

1                   Section 1. Section 77-2701, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3                   77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to  
4 77-27,236 and section 2 of this act shall be known and may be cited  
5 as the Nebraska Revenue Act of 1967.

6                   Sec. 2. (1) A retail business taxpayer shall be allowed  
7 an income tax credit equal to two percent of the net taxable sales  
8 reported on the retail business taxpayer's sales tax returns during  
9 the taxable year. The income tax credit shall be limited to ten  
10 thousand dollars for any taxable year. The income tax credit shall  
11 be refundable.

12                   (2) For purposes of this section:

13                   (a) Property has the same meaning as in section  
14 77-2701.27;

15                   (b) Retail business taxpayer means a retailer in a city  
16 or village with a population of two thousand five hundred or  
17 fewer inhabitants according to the most recent federal decennial  
18 census which is primarily in the business of sales of property  
19 to consumers and which has net taxable sales as reported on its  
20 sales tax returns during the taxable year of five hundred thousand  
21 dollars or less;

22                   (c) Retailer has the same meaning as in section  
23 77-2701.32; and

24                   (d) Sale has the same meaning as in section 77-2701.33.

25                   Sec. 3. Section 77-2715.07, Revised Statutes Cumulative

1       Supplement, 2008, is amended to read:

2                 77-2715.07 (1) There shall be allowed to qualified  
3       resident individuals as a nonrefundable credit against the income  
4       tax imposed by the Nebraska Revenue Act of 1967:

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

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

9                 (2) There shall be allowed to qualified resident  
10      individuals against the income tax imposed by the Nebraska Revenue  
11      Act of 1967:

12                 (a) For returns filed reporting federal adjusted  
13      gross incomes of greater than twenty-nine thousand dollars, a  
14      nonrefundable credit equal to twenty-five percent of the federal  
15      credit allowed under section 21 of the Internal Revenue Code of  
16      1986, as amended;

17                 (b) For returns filed reporting federal adjusted gross  
18      income of twenty-nine thousand dollars or less, a refundable credit  
19      equal to a percentage of the federal credit allowable under section  
20      21 of the Internal Revenue Code of 1986, as amended, whether or  
21      not the federal credit was limited by the federal tax liability.

22      The percentage of the federal credit shall be one hundred percent  
23      for incomes not greater than twenty-two thousand dollars, and  
24      the percentage shall be reduced by ten percent for each one  
25      thousand dollars, or fraction thereof, by which the reported

1       federal adjusted gross income exceeds twenty-two thousand dollars;

2                 (c) A refundable credit for individuals who qualify for

3       an income tax credit as an owner of agricultural assets under the

4       Beginning Farmer Tax Credit Act for all taxable years beginning or

5       deemed to begin on or after January 1, 2001, under the Internal

6       Revenue Code of 1986, as amended; and a refundable credit as

7       provided in section 77-5209.01 for individuals who qualify for an

8       income tax credit as a qualified beginning farmer or livestock

9       producer under the Beginning Farmer Tax Credit Act for all taxable

10      years beginning or deemed to begin on or after January 1, 2006,

11      under the Internal Revenue Code of 1986, as amended;

12                 (d) A refundable credit for individuals who qualify for

13       an income tax credit under the Nebraska Advantage Microenterprise

14       Tax Credit Act or the Nebraska Advantage Research and Development

15       Act; and

16                 (e) A refundable credit equal to ten percent of the

17       federal credit allowed under section 32 of the Internal Revenue

18       Code of 1986, as amended.

19                 (3) There shall be allowed to all individuals as a

20       nonrefundable credit against the income tax imposed by the Nebraska

21       Revenue Act of 1967:

22                 (a) A credit for personal exemptions allowed under

23       section 77-2716.01;

24                 (b) A credit for contributions to certified community

25       betterment programs as provided in the Community Development

1 Assistance Act. Each partner, each shareholder of an electing  
2 subchapter S corporation, each beneficiary of an estate or trust,  
3 or each member of a limited liability company shall report his or  
4 her share of the credit in the same manner and proportion as he  
5 or she reports the partnership, subchapter S corporation, estate,  
6 trust, or limited liability company income; and

7                 (c) A credit for investment in a biodiesel facility as  
8 provided in section 77-27,236.

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

11                 (a) A credit to all resident estates and trusts for taxes  
12 paid to another state as provided in section 77-2730; and  
13                 (b) A credit to all estates and trusts for contributions  
14 to certified community betterment programs as provided in the  
15 Community Development Assistance Act.

16                 (5)(a) For all taxable years beginning on or after  
17 January 1, 2007, and before January 1, 2009, under the Internal  
18 Revenue Code of 1986, as amended, there shall be allowed to each  
19 partner, shareholder, member, or beneficiary of a partnership,  
20 subchapter S corporation, limited liability company, or estate or  
21 trust a nonrefundable credit against the income tax imposed by  
22 the Nebraska Revenue Act of 1967 equal to fifty percent of the  
23 partner's, shareholder's, member's, or beneficiary's portion of the  
24 amount of franchise tax paid to the state under sections 77-3801 to  
25 77-3807 by a financial institution.

1                         (b) For all taxable years beginning on or after January  
2     1, 2009, under the Internal Revenue Code of 1986, as amended,  
3     there shall be allowed to each partner, shareholder, member, or  
4     beneficiary of a partnership, subchapter S corporation, limited  
5     liability company, or estate or trust a nonrefundable credit  
6     against the income tax imposed by the Nebraska Revenue Act of 1967  
7     equal to the partner's, shareholder's, member's, or beneficiary's  
8     portion of the amount of franchise tax paid to the state under  
9     sections 77-3801 to 77-3807 by a financial institution.

10                       (c) Each partner, shareholder, member, or beneficiary  
11    shall report his or her share of the credit in the same manner  
12    and proportion as he or she reports the partnership, subchapter S  
13    corporation, limited liability company, or estate or trust income.  
14    If any partner, shareholder, member, or beneficiary cannot fully  
15    utilize the credit for that year, the credit may not be carried  
16    forward or back.

17                       (6) There shall be allowed to individuals as a credit  
18    against the income tax imposed by the Nebraska Revenue Act of 1967  
19    a credit as provided in section 2 of this act.

20                       Sec. 4. Section 77-2717, Revised Statutes Cumulative  
21    Supplement, 2008, is amended to read:

22                       77-2717 (1)(a) The tax imposed on all resident estates  
23    and trusts shall be a percentage of the federal taxable income  
24    of such estates and trusts as modified in section 77-2716, plus  
25    a percentage of the federal alternative minimum tax and the

1     federal tax on premature or lump-sum distributions from qualified  
2     retirement plans. The additional taxes shall be recomputed by (i)  
3     substituting Nebraska taxable income for federal taxable income,  
4     (ii) calculating what the federal alternative minimum tax would  
5     be on Nebraska taxable income and adjusting such calculations for  
6     any items which are reflected differently in the determination of  
7     federal taxable income, and (iii) applying Nebraska rates to the  
8     result. The federal credit for prior year minimum tax, after the  
9     recomputations required by the Nebraska Revenue Act of 1967, and  
10    the credits provided in the Nebraska Advantage Microenterprise Tax  
11    Credit Act and the Nebraska Advantage Research and Development Act  
12    shall be allowed as a reduction in the income tax due. A refundable  
13    income tax credit shall be allowed for all resident estates and  
14    trusts under the Nebraska Advantage Microenterprise Tax Credit Act  
15    and the Nebraska Advantage Research and Development Act. An income  
16    tax credit shall be allowed for all resident estates and trusts  
17    under section 2 of this act.

18                 (b) The tax imposed on all nonresident estates and trusts  
19    shall be the portion of the tax imposed on resident estates and  
20    trusts which is attributable to the income derived from sources  
21    within this state. The tax which is attributable to income derived  
22    from sources within this state shall be determined by multiplying  
23    the liability to this state for a resident estate or trust with  
24    the same total income by a fraction, the numerator of which is  
25    the nonresident estate's or trust's Nebraska income as determined

1 by sections 77-2724 and 77-2725 and the denominator of which is  
2 its total federal income after first adjusting each by the amounts  
3 provided in section 77-2716. The federal credit for prior year  
4 minimum tax, after the recomputations required by the Nebraska  
5 Revenue Act of 1967, reduced by the percentage of the total income  
6 which is attributable to income from sources outside this state,  
7 and the credits provided in the Nebraska Advantage Microenterprise  
8 Tax Credit Act and the Nebraska Advantage Research and Development  
9 Act shall be allowed as a reduction in the income tax due. A  
10 refundable income tax credit shall be allowed for all nonresident  
11 estates and trusts under the Nebraska Advantage Microenterprise Tax  
12 Credit Act and the Nebraska Advantage Research and Development Act.  
13 An income tax credit shall be allowed for all nonresident estates  
14 and trusts under section 2 of this act.

15 (2) In all instances wherein a fiduciary income tax  
16 return is required under the provisions of the Internal Revenue  
17 Code, a Nebraska fiduciary return shall be filed, except that a  
18 fiduciary return shall not be required to be filed regarding a  
19 simple trust if all of the trust's beneficiaries are residents of  
20 the State of Nebraska, all of the trust's income is derived from  
21 sources in this state, and the trust has no federal tax liability.  
22 The fiduciary shall be responsible for making the return for the  
23 estate or trust for which he or she acts, whether the income be  
24 taxable to the estate or trust or to the beneficiaries thereof.  
25 The fiduciary shall include in the return a statement of each

1       beneficiary's distributive share of net income when such income is  
2       taxable to such beneficiaries.

3                 (3) The beneficiaries of such estate or trust who are  
4       residents of this state shall include in their income their  
5       proportionate share of such estate's or trust's federal income and  
6       shall reduce their Nebraska tax liability by their proportionate  
7       share of the credits as provided in section 2 of this act, the  
8       Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska  
9       Advantage Research and Development Act. There shall be allowed to  
10      a beneficiary a refundable income tax credit under the Beginning  
11      Farmer Tax Credit Act for all taxable years beginning or deemed to  
12      begin on or after January 1, 2001, under the Internal Revenue Code  
13      of 1986, as amended.

14                 (4) If any beneficiary of such estate or trust is a  
15       nonresident during any part of the estate's or trust's taxable  
16       year, he or she shall file a Nebraska income tax return which shall  
17       include (a) in Nebraska adjusted gross income that portion of the  
18       estate's or trust's Nebraska income, as determined under sections  
19       77-2724 and 77-2725, allocable to his or her interest in the estate  
20       or trust and (b) a reduction of the Nebraska tax liability by his  
21       or her proportionate share of the credits as provided in section 2  
22       of this act, the Nebraska Advantage Microenterprise Tax Credit Act,  
23       and the Nebraska Advantage Research and Development Act and shall  
24       execute and forward to the fiduciary, on or before the original due  
25       date of the Nebraska fiduciary return, an agreement which states

1       that he or she will file a Nebraska income tax return and pay  
2       income tax on all income derived from or connected with sources in  
3       this state, and such agreement shall be attached to the Nebraska  
4       fiduciary return for such taxable year.

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

16                 (6) The Tax Commissioner may allow a nonresident  
17      beneficiary to not file a Nebraska income tax return if the  
18      nonresident beneficiary's only source of Nebraska income was his or  
19      her share of the estate's or trust's income which was derived from  
20      or attributable to sources within this state, the nonresident did  
21      not file an agreement to file a Nebraska income tax return, and  
22      the estate or trust has remitted the amount required by subsection  
23      (5) of this section on behalf of such nonresident beneficiary. The  
24      amount remitted shall be retained in satisfaction of the Nebraska  
25      income tax liability of the nonresident beneficiary.

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

9                         (8) For purposes of this section, any beneficiary of an  
10 estate or trust that is a grantor trust of a nonresident shall be  
11 disregarded and this section shall apply as though the nonresident  
12 grantor was the beneficiary.

13                         Sec. 5. Section 77-2734.03, Revised Statutes Cumulative  
14 Supplement, 2008, is amended to read:

15                         77-2734.03 (1)(a) For taxable years commencing prior to  
16 January 1, 1997, any (i) insurer paying a tax on premiums and  
17 assessments pursuant to section 77-908 or 81-523, (ii) electric  
18 cooperative organized under the Joint Public Power Authority Act,  
19 or (iii) credit union shall be credited, in the computation of  
20 the tax due under the Nebraska Revenue Act of 1967, with the  
21 amount paid during the taxable year as taxes on such premiums and  
22 assessments and taxes in lieu of intangible tax.

23                         (b) For taxable years commencing on or after January 1,  
24 1997, any insurer paying a tax on premiums and assessments pursuant  
25 to section 77-908 or 81-523, any electric cooperative organized

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

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

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

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

22                 (4) The changes made to this section by Laws 2004, LB  
23 983, apply to motor fuels purchased during any tax year ending  
24 or deemed to end on or after January 1, 2005, under the Internal  
25 Revenue Code of 1986, as amended.

1                         (5) There shall be allowed to corporate taxpayers  
2 refundable income tax credits under the Nebraska Advantage  
3 Microenterprise Tax Credit Act and the Nebraska Advantage Research  
4 and Development Act.

5                         (6) There shall be allowed to corporate taxpayers a  
6 nonrefundable income tax credit for investment in a biodiesel  
7 facility as provided in section 77-27,236.

8                         (7) There shall be allowed to corporate taxpayers an  
9 income tax credit as provided in section 2 of this act.

10                         Sec. 6. This act becomes operative for all taxable years  
11 beginning or deemed to begin on or after January 1, 2009, under the  
12 Internal Revenue Code of 1986, as amended.

13                         Sec. 7. Original sections 77-2701, 77-2715.07, 77-2717,  
14 and 77-2734.03, Revised Statutes Cumulative Supplement, 2008, are  
15 repealed.