

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1117**

Introduced by Cornett, 45.

Read first time January 19, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2715 and 77-2724, Reissue Revised Statutes of  
3 Nebraska, and section 77-2717, Revised Statutes  
4 Supplement, 2011; to change income tax calculations  
5 relating to the federal alternative minimum tax; to  
6 harmonize provisions; and to repeal the original  
7 sections.

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

1           Section 1. Section 77-2715, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2715 (1) A tax is hereby imposed for each taxable year  
4 on the entire income of every resident individual and on the income  
5 of every nonresident individual and partial-year resident individual  
6 which is derived from sources within this state, except that any  
7 individual who has additions to adjusted gross income pursuant to  
8 section 77-2716 of less than five thousand dollars shall not have an  
9 individual income tax liability after nonrefundable credits under the  
10 Nebraska Revenue Act of 1967 that exceeds his or her individual  
11 income tax liability before credits under the Internal Revenue Code  
12 of 1986.

13           ~~(2)~~ The (2)(a) For taxable years beginning or deemed to  
14 begin before January 1, 2013, the tax for each resident individual  
15 shall be a percentage of such individual's federal adjusted gross  
16 income as modified in sections 77-2716 and 77-2716.01, plus a  
17 percentage of the federal alternative minimum tax and the federal tax  
18 on premature or lump-sum distributions from qualified retirement  
19 plans. The additional taxes shall be recomputed by ~~(a)~~ (i)  
20 substituting Nebraska taxable income for federal taxable income, ~~(b)~~  
21 (ii) calculating what the federal alternative minimum tax would be on  
22 Nebraska taxable income and adjusting such calculations for any items  
23 which are reflected differently in the determination of federal  
24 taxable income, and ~~(c)~~ (iii) applying Nebraska rates to the result.  
25 The federal credit for prior year minimum tax, after the

1 recomputations required by the act, shall be allowed as a reduction  
2 in the income tax due.

3 (b) For taxable years beginning or deemed to begin on or  
4 after January 1, 2013, the tax for each resident individual shall be  
5 a percentage of such individual's federal adjusted gross income as  
6 modified in sections 77-2716 and 77-2716.01, plus a percentage of the  
7 federal tax on premature or lump-sum distributions from qualified  
8 retirement plans. The additional taxes shall be recomputed by  
9 substituting Nebraska taxable income for federal taxable income and  
10 applying Nebraska rates to the result.

11 (3) The tax for each nonresident individual and partial-  
12 year resident individual shall be the portion of the tax imposed on  
13 resident individuals which is attributable to the income derived from  
14 sources within this state. The tax which is attributable to income  
15 derived from sources within this state shall be determined by  
16 subtracting from the liability to this state for a resident  
17 individual with the same total income the credit for personal  
18 exemptions and multiplying the result by a fraction, the numerator of  
19 which is the nonresident individual's or partial-year resident  
20 individual's Nebraska adjusted gross income as determined by section  
21 77-2733 or 77-2733.01 and the denominator of which is his or her  
22 total federal adjusted gross income, after first adjusting each by  
23 the amounts provided in section 77-2716. If this determination  
24 attributes more or less tax than is reasonably attributable to income  
25 derived from sources within this state, the taxpayer may petition for

1 or the Tax Commissioner may require the employment of any other  
2 method to attribute an amount of tax which is reasonable and  
3 equitable in the circumstances.

4 (4) The tax for each estate and trust, other than trusts  
5 taxed as corporations under the Internal Revenue Code of 1986, shall  
6 be as determined under section 77-2717.

7 (5) A refund shall be allowed to the extent that the  
8 income tax paid by the individual, estate, or trust for the taxable  
9 year exceeds the income tax payable, except that no refund shall be  
10 made in any amount less than two dollars.

11 Sec. 2. Section 77-2717, Revised Statutes Supplement,  
12 2011, is amended to read:

13 77-2717 (1)(a) ~~The~~ For taxable years beginning or deemed  
14 to being before January 1, 2013, the tax imposed on all resident  
15 estates and trusts shall be a percentage of the federal taxable  
16 income of such estates and trusts as modified in section 77-2716,  
17 plus a percentage of the federal alternative minimum tax and the  
18 federal tax on premature or lump-sum distributions from qualified  
19 retirement plans. The additional taxes shall be recomputed by (i)  
20 substituting Nebraska taxable income for federal taxable income, (ii)  
21 calculating what the federal alternative minimum tax would be on  
22 Nebraska taxable income and adjusting such calculations for any items  
23 which are reflected differently in the determination of federal  
24 taxable income, and (iii) applying Nebraska rates to the result. The  
25 federal credit for prior year minimum tax, after the recomputations

1 required by the Nebraska Revenue Act of 1967, and the credits  
2 provided in the Nebraska Advantage Microenterprise Tax Credit Act and  
3 the Nebraska Advantage Research and Development Act shall be allowed  
4 as a reduction in the income tax due. A refundable income tax credit  
5 shall be allowed for all resident estates and trusts under the Angel  
6 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
7 Credit Act, and the Nebraska Advantage Research and Development Act.

8 (b) For taxable years beginning or deemed to begin on or  
9 after January 1, 2013, the tax imposed on all resident estates and  
10 trusts shall be a percentage of the federal taxable income of such  
11 estates and trusts as modified in section 77-2716, plus a percentage  
12 of the federal tax on premature or lump-sum distributions from  
13 qualified retirement plans. The additional taxes shall be recomputed  
14 by substituting Nebraska taxable income for federal taxable income  
15 and applying Nebraska rates to the result. The credits provided in  
16 the Nebraska Advantage Microenterprise Tax Credit Act and the  
17 Nebraska Advantage Research and Development Act shall be allowed as a  
18 reduction in the income tax due. A refundable income tax credit shall  
19 be allowed for all resident estates and trusts under the Angel  
20 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
21 Credit Act, and the Nebraska Advantage Research and Development Act.

22 (b)-(c) The tax imposed on all nonresident estates and  
23 trusts shall be the portion of the tax imposed on resident estates  
24 and trusts which is attributable to the income derived from sources  
25 within this state. The tax which is attributable to income derived

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

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

1 or trust or to the beneficiaries thereof. The fiduciary shall include  
2 in the return a statement of each beneficiary's distributive share of  
3 net income when such income is taxable to such beneficiaries.

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

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

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

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

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

1 liability of the nonresident beneficiary.

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

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

14 Sec. 3. Section 77-2724, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 77-2724 (1) For purposes of taxation of nonresident  
17 estates or trusts:

18 (a) Items of income, gain, loss, and deduction shall mean  
19 those items entering into the definition of federal distributable  
20 income;

21 (b) Items of income, gain, loss, and deduction entering  
22 into the definition of federal distributable net income shall include  
23 such items from another estate or trust of which the estate or trust  
24 is a beneficiary; and

25 (c) The source of items of income, gain, loss, or

1 deduction shall be determined under regulations prescribed by the Tax  
2 Commissioner in accordance with the general rules in section 77-2733  
3 as if the estate or trust were a nonresident individual.

4 (2) The taxable income of an estate or trust, before the  
5 proration required in subdivision ~~(1)(b)~~ (1)(c) of section 77-2717 to  
6 determine the tax attributable to income from sources within this  
7 state, shall consist of its share of items of income, gain, loss, and  
8 deduction which enter into the federal definition of distributable  
9 net income (a) increased or reduced by the amount of any items of  
10 income, gain, loss, or deduction which are recognized for federal  
11 income tax purposes but excluded from the federal definition of  
12 distributable net income of the estate or trust, (b) less the amount  
13 of the deduction for its federal exemption, and (c) increased or  
14 reduced by the modifications contained in section 77-2716 which  
15 relate to an item of estate or trust income.

16 Sec. 4. Original sections 77-2715 and 77-2724, Reissue  
17 Revised Statutes of Nebraska, and section 77-2717, Revised Statutes  
18 Supplement, 2011, are repealed.