Introducing by Schumacher, 22.

Read first time January 17, 2018

Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Cumulative Supplement, 2016; to adopt the Nebraska Excellence Fund Tax Credit Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Nebraska Excellence Fund Tax Credit Act.

Sec. 2. For purposes of the Nebraska Excellence Fund Tax Credit Act:

(1) Department means the Department of Revenue; and

(2) Taxpayer means any individual, firm, corporation, or other business entity that is subject to the income tax imposed by the Nebraska Revenue Act of 1967.

Sec. 3. For taxable years beginning or deemed to begin on or after January 1, 2018, there shall be allowed as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 an amount equal to the amount contributed by the taxpayer during the taxable year to the Nebraska Excellence Fund.

Sec. 4. The Nebraska Excellence Fund is hereby created to accept monetary contributions for exclusively public purposes as specified under section 170 of the Internal Revenue Code of 1986, as amended. The fund shall be administered by the department. All amounts in the fund shall be used for such public purposes upon appropriation by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 5. The department shall accept monetary contributions to the Nebraska Excellence Fund from any taxpayer desiring to make such a contribution. Within forty-five days following receipt of a contribution, the department shall issue to the taxpayer a certification for the credit allowed by section 3 of this act. The taxpayer shall claim the credit by attaching the certification received from the department to the taxpayer's income tax return. If the credit exceeds the amount of tax due, the excess may be carried forward to subsequent taxable years until the credit is fully utilized.

Sec. 6. An income tax deduction shall not be allowed under the
Nebraska Revenue Act of 1967 for any amount taken into account in calculating the credit allowed by section 3 of this act.

Sec. 7. The department may adopt and promulgate rules and regulations to carry out the Nebraska Excellence Fund Tax Credit Act.

Sec. 8. Section 77-2715.07, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

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

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

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

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such nonrefundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than
twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Volunteer Emergency Responders Incentive Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 32 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit.

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

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

c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

d) A credit as provided in the New Markets Job Growth Investment Act;

e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act;

(f) A credit to employers as provided in section 77-27,238; and

(g) A credit as provided in the Affordable Housing Tax Credit Act;

(h) A credit as provided in the Nebraska Excellence Fund Tax Credit Act.

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

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

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

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or
beneficiary of a partnership, corporation, limited liability company, or
estate or trust qualifying for an income tax credit as an owner of
agricultural assets under the Beginning Farmer Tax Credit Act shall be
equal to the partner's, shareholder's, member's, or beneficiary's portion
of the amount of tax credit distributed pursuant to subsection (4) of
section 77-5211.

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

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

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

(6) There shall be allowed to all individuals nonrefundable credits
against the income tax imposed by the Nebraska Revenue Act of 1967 as
provided in section 77-3604 and refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3605.

Sec. 9. Section 77-2717, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-2717 (1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (A) substituting Nebraska taxable income for federal taxable income, (B) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (C) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The
additional taxes shall be recomputed by substituting Nebraska taxable
income for federal taxable income and applying Nebraska rates to the
result. The credits provided in the Nebraska Advantage Microenterprise
Tax Credit Act and the Nebraska Advantage Research and Development Act
shall be allowed as a reduction in the income tax due. A refundable
income tax credit shall be allowed for all resident estates and trusts
under the Angel Investment Tax Credit Act, the Nebraska Advantage
Microenterprise Tax Credit Act, and the Nebraska Advantage Research and
Development Act. A nonrefundable income tax credit shall be allowed for
all resident estates and trusts as provided in the Nebraska Job Creation
and Mainstreet Revitalization Act, the New Markets Job Growth Investment
Act, the School Readiness Tax Credit Act, the Affordable Housing Tax
Credit Act, the Nebraska Excellence Fund Tax Credit Act, and section
77-27,238.

(b) The tax imposed on all nonresident estates and trusts shall be
the portion of the tax imposed on resident estates and trusts which is
attributable to the income derived from sources within this state. The
tax which is attributable to income derived from sources within this
state shall be determined by multiplying the liability to this state for
a resident estate or trust with the same total income by a fraction, the
numerator of which is the nonresident estate's or trust's Nebraska income
as determined by sections 77-2724 and 77-2725 and the denominator of
which is its total federal income after first adjusting each by the
amounts provided in section 77-2716. The federal credit for prior year
minimum tax, after the recomputations required by the Nebraska Revenue
Act of 1967, reduced by the percentage of the total income which is
attributable to income from sources outside this state, and the credits
provided in the Nebraska Advantage Microenterprise Tax Credit Act and the
Nebraska Advantage Research and Development Act shall be allowed as a
reduction in the income tax due. A refundable income tax credit shall be
allowed for all nonresident estates and trusts under the Angel Investment
Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Excellence Fund Tax Credit Act, and section 77-27,238.

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

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Excellence Fund Tax Credit Act, and section 77-27,238. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed
to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Excellence Fund Tax Credit Act, and section 77-27,238 and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. For taxable years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. For taxable years beginning or deemed to begin on or
after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

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

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

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

Sec. 10. Section 77-2734.03, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

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

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

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

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

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

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

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

(7) There shall be allowed to corporate taxpayers a nonrefundable
income tax credit as provided in the Nebraska Job Creation and Mainstreet
Revitalization Act, the New Markets Job Growth Investment Act, the School
Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Excellence Fund Tax Credit Act, and section 77-27,238.

Sec. 11. Original sections 77-2715.07, 77-2717, and 77-2734.03,
Revised Statutes Cumulative Supplement, 2016, are repealed.