LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 561

Introduced by Schumacher, 22.
Read first time January 18, 2017
Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend section 39-2703, Reissue Revised Statutes of Nebraska, and sections 77-2701 and 77-2715.07, Revised Statutes Cumulative Supplement, 2016; to create the Taxpayer Investment Program; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 39-2703, Reissue Revised Statutes of Nebraska, is amended to read:

39-2703 (1) The State Highway Capital Improvement Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132 and section 4 of this act and any other money as determined by the Legislature.

(2) The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund.

(3) 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. Investment earnings from investment of money in the fund shall be credited to the fund.

Sec. 2. Section 77-2701, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-2701 Sections 77-2701 to 77-27,135.01, 77-27,235, 77-27,236, and 77-27,238 and section 4 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 3. 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 77-2716.01;

(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;
and -

(h) A credit as provided in the Taxpayer Investment Program pursuant to section 4 of this 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. 4. (1) To encourage private investment and to mobilize private
capital for public purposes, the Taxpayer Investment Program is created.

(2) Any natural person may at the time of filing his or her Nebraska
income tax return pay to the state an advance tax payment not to exceed
ten thousand dollars per year. Each such payment made shall be known as a
tax investment and shall be identified on the books and records of the
Department of Revenue. Commencing on the earliest of five calendar years
after the making of a tax investment, the taxpayer becoming sixty-two
years of age, or the death of the taxpayer, the taxpayer making the tax
investment shall be entitled to claim a tax credit under section
77-2715.07 in an amount equal to the tax investment multiplied by the
program rate.

(3) For purposes of this section, program rate means the sum of (a)

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the lesser of the Treasury Yield Curve Rate, commonly referred to as the Constant Maturity Treasury rate, for a ten-year maturity United States Government note on the last business day of the month in which the tax investment was made or five percent per annum, times the number of years, or fraction thereof, between the making of the tax investment and the claiming of the tax credit, plus (b) an inflation adjustment calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, United States City Average, All Items factor, on June 30 of the year the credit is claimed by the Consumer Price Index for All Urban Consumers, United States City Average, All Items factor, for the month in which the tax investment was made. If the Consumer Price Index for All Urban Consumers is no longer published, then the factor shall be determined by use of an index having similar function.

(4) The sums paid to the state pursuant to the program shall become the property of the state. The sums shall be credited to the State Highway Capital Improvement Fund. The tax credits to which the taxpayer may be entitled to claim as a result thereof are not a debt or general obligation of the state. The tax credits (a) are not refundable, (b) are not taxable as state income, (c) have recourse only as provided in section 77-2715.07 for taxes otherwise coming due from the taxpayer or taxpayer's assignee subsequent to the time when the claim for the tax credit can be made pursuant to subsection (2) of this section, (d) may be claimed only as a credit against the taxpayer's liability for taxes in years subsequent to the time of commencement provided for in subsection (2) of this section, and (e) except as provided in this section, may not be transferred.

(5) Unless otherwise agreed between taxpayers, credits arising out of payments made in a year in which a joint individual tax return was filed shall be held as joint tenants with rights of survivorship between such joint filers. A taxpayer's tax credits remaining unclaimed upon the
death of the taxpayer entitled to claim the credit shall be used under section 77-2715.07 for taxes due from the decedent with the balance, if any, first reducing any inheritance tax arising as a result of the death of such decedent, then applied to reimburse the state for any aid or assistance paid by the state to or on behalf of the decedent under Chapter 68, and then, upon payment to the state of a transfer fee equal to ten percent of the credit, may be transferred to the heirs or devisees of the decedent pursuant to the laws of testacy or intestate succession. In cases not involving a transfer from a decedent, upon payment of a transaction transfer fee to the state of ten percent of the credit transferred and the cancellation of the corresponding credit amount arising under subdivision (3)(a) of this section, a credit, not to exceed the underlying tax investment adjusted for inflation pursuant to subdivision (3)(b) of this section, may be transferred. In such case, the transferee shall be entitled to the credit transferred in the same manner as if the taxpayer were the original depositor. The credits shall not be considered a security subject to the Securities Act of Nebraska.

(6) A taxpayer must claim credits held by the taxpayer on a first paid, first claimed basis. Credits once claimed are extinguished. The state may redeem outstanding credits by paying to the taxpayer entitled thereto the tax investment multiplied by the program rate or, in the case of a transferred credit, such lesser amount paid for the credit.

(7) Credits expire unless claimed within twenty years after the underlying payment or, in the case of credits held by the original payor, five years from the later of the date of death of the payor, or if applicable, the surviving joint filer.

(8) No advance tax payments shall be made during any calendar year if, on the preceding December 31, the outstanding tax credits under this section exceed twenty percent of the balance of the Cash Reserve Fund as of such date.

(9) The Tax Commissioner may adopt and promulgate rules and
regulations to carry out this section.

Sec. 5. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 6. Original section 39-2703, Reissue Revised Statutes of Nebraska, and sections 77-2701 and 77-2715.07, Revised Statutes Cumulative Supplement, 2016, are repealed.