

AMENDMENTS TO LB206

(Amendments to Standing Committee amendments, AM138)

Introduced by Linehan, 39.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new
3 sections:

4 Section 1. Section 77-2727, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-2727 (1) Except as provided in subsection (6) of this section and
7 subsection (5) of section 77-2775, a A partnership as such shall not be
8 subject to the income tax imposed by the Nebraska Revenue Act of 1967.
9 Persons or their authorized representatives carrying on business as
10 partners shall be liable for the income tax imposed by the Nebraska
11 Revenue Act of 1967 only in their separate or individual capacities.

12 (2) The partners of such partnership who are residents of this state
13 or corporations shall include in their incomes their proportionate share
14 of such partnership's income.

15 (3) If any partner of such partnership is a nonresident individual
16 during any part of the partnership's reporting year, he or she shall file
17 a Nebraska income tax return which shall include in Nebraska adjusted
18 gross income that portion of the partnership's Nebraska income, as
19 determined under the provisions of sections 77-2728 and 77-2729,
20 allocable to his or her interest in the partnership and shall execute and
21 forward to the partnership, on or before the original due date of the
22 Nebraska partnership return, an agreement which states that he or she
23 will file a Nebraska income tax return and pay income tax on all income
24 derived from or attributable to sources in this state, and such agreement
25 shall be attached to the partnership's Nebraska return for such reporting
26 year.

1 (4)(a) Except as provided in subdivision (c) of this subsection, in
2 the absence of the nonresident individual partner's executed agreement
3 being attached to the Nebraska partnership return, the partnership shall
4 remit a portion of such partner's income which was derived from or
5 attributable to Nebraska sources with its Nebraska return for the
6 reporting year. For tax years beginning or deemed to begin before January
7 1, 2013, the amount of remittance, in such instance, shall be the highest
8 individual income tax rate determined under section 77-2715.02 multiplied
9 by the nonresident individual partner's share of the partnership income
10 which was derived from or attributable to sources within this state. For
11 tax years beginning or deemed to begin on or after January 1, 2013, the
12 amount of remittance, in such instance, shall be the highest individual
13 income tax rate determined under section 77-2715.03 multiplied by the
14 nonresident individual partner's share of the partnership income which
15 was derived from or attributable to sources within this state.

16 (b) Any amount remitted on behalf of any partner shall be allowed as
17 a credit against the Nebraska income tax liability of the partner.

18 (c) Subdivision (a) of this subsection does not apply to a publicly
19 traded partnership as defined by section 7704(b) of the Internal Revenue
20 Code of 1986, as amended, that is treated as a partnership for the
21 purposes of the code and that has agreed to file an annual information
22 return with the Department of Revenue reporting the name, address,
23 taxpayer identification number, and other information requested by the
24 department of each unit holder with an income in the state in excess of
25 five hundred dollars.

26 (5) The Tax Commissioner may allow a nonresident individual partner
27 to not file a Nebraska income tax return if the nonresident individual
28 partner's only source of Nebraska income was his or her share of the
29 partnership's income which was derived from or attributable to sources
30 within this state, the nonresident did not file an agreement to file a
31 Nebraska income tax return, and the partnership has remitted the amount

1 required by subsection (4) of this section on behalf of such nonresident
2 individual partner. The amount remitted shall be retained in satisfaction
3 of the Nebraska income tax liability of the nonresident individual
4 partner.

5 (6) Notwithstanding any provision of this section to the contrary:

6 (a) For tax years beginning or deemed to begin on or after January
7 1, 2018, a partnership may annually make an irrevocable election to pay
8 the taxes, interest, or penalties levied by the Nebraska Revenue Act of
9 1967 at the entity level for the taxable period covered by such return.
10 For tax years beginning on or after January 1, 2023, such election must
11 be made on or before the due date for filing the applicable income tax
12 return, including any extensions that have been granted;

13 (b) An electing partnership with respect to a taxable period shall
14 pay an income tax equivalent to the highest individual income tax rate
15 provided in section 77-2715.03 multiplied by the electing partnership's
16 net income as apportioned or allocated to this state in accordance with
17 the Nebraska Revenue Act of 1967, for such taxable period;

18 (c) An electing partnership shall be treated as a corporation with
19 respect to the requirements of section 77-2769 for payments of estimated
20 tax. The requirement for payment of estimated tax under section 77-2769
21 shall not apply for tax years beginning prior to January 1, 2024.
22 Payments of estimated tax made by an eligible partnership that does not
23 make an election under this subsection shall be treated as income tax
24 withholding on behalf of the partners;

25 (d) Except as provided in subdivision (e) of this subsection, the
26 partners of an electing partnership must file a Nebraska return to report
27 their pro rata or distributive share of the income of the electing
28 partnership in accordance with the Nebraska Revenue Act of 1967, as
29 applicable. In determining the sum of its pro rata or distributive share
30 and computing the tax under this subsection, an electing partnership
31 shall add back any amount of Nebraska tax imposed under the Nebraska

1 Revenue Act of 1967 and deducted by the electing partnership for federal
2 income tax purposes under section 164 of the Internal Revenue Code;

3 (e) A nonresident individual who is a partner of an electing
4 partnership shall not be required to file a Nebraska tax return for a
5 taxable year if, for such taxable year, the only source of income derived
6 from or connected with sources within this state for such partner, or for
7 the partner and the partner's spouse if a joint federal income tax return
8 is filed, is from one or more electing partnerships or electing small
9 business corporations as defined in subdivision (9)(a) of section
10 77-2734.01 for such taxable year and such nonresident individual
11 partner's tax under the Nebraska Revenue Act of 1967 would be fully
12 satisfied by the credit allowed to such partner under subdivision (g) of
13 this subsection;

14 (f) If the amount calculated under subdivision (a) of this
15 subsection results in a net operating loss, such net operating loss may
16 not be carried forward to succeeding taxable years;

17 (g)(i) A refundable credit shall be available to the partners in an
18 amount equal to their pro rata or distributive share of the Nebraska
19 income tax paid by the electing partnership;

20 (ii) In the case of a partnership or small business corporation that
21 is a partner of an electing partnership, the refundable credit under this
22 subdivision (g) shall (A) be allowed to its partners or shareholders in
23 accordance with the determination of income and distributive share of the
24 Nebraska income tax paid by the electing partnership or (B) be applied
25 against the partner's tax, interest, and penalty. Any excess credit
26 deemed an overpayment may be refunded or applied to the subsequent tax
27 year;

28 (iii) If a partnership making the election under this subsection is
29 a partner of another electing partnership, net income shall be computed
30 as provided in subsection (1) of this section. The upper tier electing
31 partnership shall claim a credit for the tax paid by the lower tier

1 electing partnership. The upper tier electing partnership shall
2 distribute out the pro rata or distributive share of the credits to its
3 partners for tax paid under this subsection by all tiers of electing
4 partnerships. As used in this subdivision, the term lower tier electing
5 partnership means an electing partnership in which some or all of the
6 partners are an electing partnership. The term upper tier electing
7 partnership means an electing partnership that is a partner of a lower
8 tier electing partnership. An electing partnership may have two or more
9 tiers; and

10 (h)(i) For tax years beginning or deemed to begin on or after
11 January 1, 2018, but prior to January 1, 2023, the electing partnership
12 must make the election under this subsection on or after January 1, 2023,
13 but before December 31, 2025, in the form and manner prescribed by the
14 Tax Commissioner for all years for which the election under this
15 subsection is made on behalf of the electing partnership. The Tax
16 Commissioner shall establish the form and manner, which shall not include
17 any changes to the past returns other than those that are directly
18 related to the election under this subsection.

19 (ii) Notwithstanding any other provision of law, if an electing
20 partnership files in the form and manner as specified in subdivision (h)
21 (i) of this subsection, the deadline for filing a claim for credit or
22 refund prescribed in section 77-2793 shall be extended for affected
23 partners of the electing partnership until the timeframe specified in
24 section 77-2793 or January 31, 2026, whichever is later. The resulting
25 claim of refund for tax years beginning prior to January 1, 2023, shall
26 be submitted in the form and manner as prescribed by the Tax
27 Commissioner. Neither the electing partnership nor its partners shall
28 incur any penalties for late filing nor owe interest on such amounts. The
29 Tax Commissioner shall not be required to pay interest on any amounts
30 owed to the partners resulting from such refund claims.

31 (iii) Notwithstanding the dates provided in subdivision (h)(i) of

1 this subsection, the Tax Commissioner shall have one year from the date
2 an electing partnership files in the form and manner as specified in
3 subdivision (h)(i) of this subsection to review and make a written
4 proposed deficiency determination in accordance with section 77-2786. Any
5 notice of deficiency determination made as specified in this subdivision
6 may be enforced at any time within six years from the date of the notice
7 of deficiency determination.

8 (7) For purposes of this section:

9 (a) Electing partnership means, with respect to a taxable period, an
10 eligible partnership that has made an election pursuant to subsection (6)
11 of this section with respect to such taxable period; and

12 (b) Eligible partnership means any partnership as provided for in
13 section 7701(a)(2) of the Internal Revenue Code that has a filing
14 requirement under the Nebraska Revenue Act of 1967 other than a publicly
15 traded partnership as defined in section 7704 of the Internal Revenue
16 Code. An eligible partnership includes any entity, including a limited
17 liability company, treated as a partnership for federal income tax
18 purposes that otherwise meets the requirements of this subdivision.

19 (8) ~~(6)~~ For purposes of this section, any partner that is a grantor
20 trust of a nonresident shall be disregarded and this section shall apply
21 as though the nonresident grantor was the partner.

22 Sec. 2. Section 77-2730, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 77-2730 (1) A resident individual and a resident estate or trust
25 shall be allowed a credit against the income tax otherwise due for the
26 amount of any income tax imposed on him or her for each taxable year
27 commencing on or after January 1, 1983, by another state of the United
28 States or a political subdivision thereof or the District of Columbia on
29 income derived from sources therein and which is also subject to income
30 tax under sections 77-2714 to 77-27,123.

31 (2) The credit provided under sections 77-2714 to 77-27,135 shall

1 not exceed the proportion of the income tax otherwise due under such
2 sections that the amount of the taxpayer's adjusted gross income or total
3 income derived from sources in the other taxing jurisdiction bears to
4 federal adjusted gross income or total federal income.

5 (3) For purposes of subsection (1) of this section, a resident
6 individual, estate, or trust shall be deemed to have paid a portion of
7 the income tax imposed by another state, a political subdivision thereof,
8 or the District of Columbia on the income of any partnership, trust, or
9 estate when such resident individual, estate, or trust is a partner, or
10 beneficiary and (a) the income taxed is included in the federal taxable
11 income of the resident individual, estate, or trust and (b) the taxation
12 of such partnership, trust, or estate by the other state is inconsistent
13 with the taxation of such entity under the Internal Revenue Code,
14 including any tax similar to the tax imposed under subsection (6) of
15 section 77-2727 and subsection (8) of section 77-2734.01 for the taxable
16 year imposed by another state of the United States or a political
17 subdivision of such a state, or by the District of Columbia, with respect
18 to the direct and indirect taxable income attributable to the resident
19 individual, estate, or trust from an entity that is also subject to tax
20 under sections 77-2714 to 77-2734.16. The amount of income tax deemed
21 paid by the resident individual, estate, or trust shall be the same
22 percentage of the total tax paid by the entity as the income included in
23 federal taxable income of the resident is to the total taxable income of
24 the entity as computed for the other state.

25 Sec. 3. Section 77-2734.01, Revised Statutes Cumulative Supplement,
26 2022, is amended to read:

27 77-2734.01 (1) Residents of Nebraska who are shareholders of a small
28 business corporation having an election in effect under subchapter S of
29 the Internal Revenue Code or who are members of a limited liability
30 company organized pursuant to the Nebraska Uniform Limited Liability
31 Company Act shall include in their Nebraska taxable income, to the extent

1 includable in federal gross income, their proportionate share of such
2 corporation's or limited liability company's federal income adjusted
3 pursuant to this section. Income or loss from such corporation or limited
4 liability company conducting a business, trade, profession, or occupation
5 shall be included in the Nebraska taxable income of a shareholder or
6 member who is a resident of this state to the extent of such
7 shareholder's or member's proportionate share of the net income or loss
8 from the conduct of such business, trade, profession, or occupation
9 within this state, determined under subsection (2) of this section. A
10 resident of Nebraska shall include in Nebraska taxable income fair
11 compensation for services rendered to such corporation or limited
12 liability company. Compensation actually paid shall be presumed to be
13 fair unless it is apparent to the Tax Commissioner that such compensation
14 is materially different from fair value for the services rendered or has
15 been manipulated for tax avoidance purposes.

16 (2) The income of any small business corporation having an election
17 in effect under subchapter S of the Internal Revenue Code or limited
18 liability company organized pursuant to the Nebraska Uniform Limited
19 Liability Company Act that is derived from or connected with Nebraska
20 sources shall be determined in the following manner:

21 (a) If the small business corporation is a member of a unitary
22 group, the small business corporation shall be deemed to be doing
23 business within this state if any part of its income is derived from
24 transactions with other members of the unitary group doing business
25 within this state, and such corporation shall apportion its income by
26 using the apportionment factor determined for the entire unitary group,
27 including the small business corporation, under sections 77-2734.05 to
28 77-2734.15;

29 (b) If the small business corporation or limited liability company
30 is not a member of a unitary group and is subject to tax in another
31 state, it shall apportion its income under sections 77-2734.05 to

1 77-2734.15; and

2 (c) If the small business corporation or limited liability company
3 is not subject to tax in another state, all of its income is derived from
4 or connected with Nebraska sources.

5 (3) Nonresidents of Nebraska who are shareholders of such
6 corporations or members of such limited liability companies shall file a
7 Nebraska income tax return and shall include in Nebraska adjusted gross
8 income their proportionate share of the corporation's or limited
9 liability company's Nebraska income as determined under subsection (2) of
10 this section.

11 (4) The nonresident shareholder or member shall execute and forward
12 to the corporation or limited liability company before the filing of the
13 corporation's or limited liability company's return an agreement which
14 states he or she will file a Nebraska income tax return and pay the tax
15 on the income derived from or connected with sources in this state, and
16 such agreement shall be attached to the corporation's or limited
17 liability company's Nebraska return for such taxable year.

18 (5) For taxable years beginning or deemed to begin before January 1,
19 2013, in the absence of the nonresident shareholder's or member's
20 executed agreement being attached to the Nebraska return, the corporation
21 or limited liability company shall remit with the return an amount equal
22 to the highest individual income tax rate determined under section
23 77-2715.02 multiplied by the nonresident shareholder's or member's share
24 of the corporation's or limited liability company's income which was
25 derived from or attributable to this state. For taxable years beginning
26 or deemed to begin on or after January 1, 2013, in the absence of the
27 nonresident shareholder's or member's executed agreement being attached
28 to the Nebraska return, the corporation or limited liability company
29 shall remit with the return an amount equal to the highest individual
30 income tax rate determined under section 77-2715.03 multiplied by the
31 nonresident shareholder's or member's share of the corporation's or

1 limited liability company's income which was derived from or attributable
2 to this state. The amount remitted shall be allowed as a credit against
3 the Nebraska income tax liability of the shareholder or member.

4 (6) The Tax Commissioner may allow a nonresident individual
5 shareholder or member to not file a Nebraska income tax return if the
6 nonresident individual shareholder's or member's only source of Nebraska
7 income was his or her share of the small business corporation's or
8 limited liability company's income which was derived from or attributable
9 to sources within this state, the nonresident did not file an agreement
10 to file a Nebraska income tax return, and the small business corporation
11 or limited liability company has remitted the amount required by
12 subsection (5) of this section on behalf of such nonresident individual
13 shareholder or member. The amount remitted shall be retained in
14 satisfaction of the Nebraska income tax liability of the nonresident
15 individual shareholder or member.

16 (7) A small business corporation or limited liability company return
17 shall be filed if the small business corporation or limited liability
18 company has income derived from Nebraska sources.

19 (8) Notwithstanding any provision of this section to the contrary:

20 (a) For tax years beginning or deemed to begin on or after January
21 1, 2018, a small business corporation may annually make an irrevocable
22 election to pay the taxes, interest, or penalties levied by the Nebraska
23 Revenue Act of 1967 at the entity level for the taxable period covered by
24 such return. For tax years beginning on or after January 1, 2023, such
25 election must be made on or before the due date for filing the applicable
26 income tax return, including any extensions that have been granted;

27 (b) An electing small business corporation with respect to a taxable
28 period shall pay an income tax equivalent to the highest individual
29 income tax rate provided in section 77-2715.03 multiplied by the electing
30 small business corporation's net income as apportioned or allocated to
31 this state in accordance with the Nebraska Revenue Act of 1967, for such

1 taxable period;

2 (c) An electing small business corporation shall be treated as a
3 corporation with respect to the requirements of section 77-2769 for
4 payments of estimated tax. The requirement for payment of estimated tax
5 under section 77-2769 shall not apply for tax years beginning prior to
6 January 1, 2024. Payments of estimated tax made by an eligible small
7 business corporation that does not make an election under this subsection
8 shall be treated as income tax withholding on behalf of the shareholders;

9 (d) Except as provided in subdivision (e) of this subsection, the
10 shareholders of an electing small business corporation must file a
11 Nebraska return to report their pro rata or distributive share of the
12 income of the electing small business corporation in accordance with the
13 Nebraska Revenue Act of 1967, as applicable. In determining the sum of
14 its pro rata or distributive share and computing the tax under this
15 subsection, an electing small business corporation shall add back any
16 amount of Nebraska tax imposed under the Nebraska Revenue Act of 1967 and
17 deducted by the electing small business corporation for federal income
18 tax purposes under section 164 of the Internal Revenue Code;

19 (e) A nonresident individual who is a shareholder of an electing
20 small business corporation shall not be required to file a Nebraska tax
21 return for a taxable year if, for such taxable year, the only source of
22 income derived from or connected with sources within this state for such
23 shareholder, or for the shareholder and the shareholder's spouse if a
24 joint federal income tax return is filed, is from one or more electing
25 small business corporations or electing partnerships as defined in
26 subdivision (7)(a) of section 77-2727 for such taxable year and such
27 nonresident individual shareholder's tax under the Nebraska Revenue Act
28 of 1967 would be fully satisfied by the credit allowed to such
29 shareholder under subdivision (g) of this subsection;

30 (f) If the amount calculated under subdivision (a) of this
31 subsection results in a net operating loss, such net operating loss may

1 not be carried forward to succeeding taxable years;

2 (g) A refundable credit shall be available to the shareholders in an
3 amount equal to their pro rata or distributive share of the Nebraska
4 income tax paid by the electing small business corporation; and

5 (h)(i) For tax years beginning or deemed to begin on or after
6 January 1, 2018, but prior to January 1, 2023, the electing small
7 business corporation must make the election under this subsection on or
8 after January 1, 2023, but before December 31, 2025, in the form and
9 manner prescribed by the Tax Commissioner for all years for which the
10 election under this subsection is made on behalf of the electing small
11 business corporation. The Tax Commissioner shall establish the form and
12 manner, which shall not include any changes to the past returns other
13 than those that are directly related to the election under this
14 subsection.

15 (ii) Notwithstanding any other provision of law, if an electing
16 small business corporation files in the form and manner as specified in
17 subdivision (h)(i) of this subsection, the deadline for filing a claim
18 for credit or refund prescribed in section 77-2793 shall be extended for
19 affected shareholders of the electing small business corporation until
20 the timeframe specified in section 77-2793 or January 31, 2026, whichever
21 is later. The resulting claim of refund for tax years beginning prior to
22 January 1, 2023, shall be submitted in the form and manner as prescribed
23 by the Tax Commissioner. Neither the electing small business corporation
24 nor its shareholders shall incur any penalties for late filing nor owe
25 interest on such amounts. The Tax Commissioner shall not be required to
26 pay interest on any amounts owed to the shareholders resulting from such
27 refund claims.

28 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
29 this subsection, the Tax Commissioner shall have one year from the date
30 an electing small business corporation files in the form and manner as
31 specified in subdivision (h)(i) of this subsection to review and make a

1 written proposed deficiency determination in accordance with section
2 77-2786. Any notice of deficiency determination made as specified in this
3 subdivision may be enforced at any time within six years from the date of
4 the notice of deficiency determination.

5 (9) For purposes of this section:

6 (a) Electing small business corporation means, with respect to a
7 taxable period, an eligible small business corporation having an election
8 in effect under subchapter S of the Internal Revenue Code that has made
9 an election pursuant to subsection (8) of this section with respect to
10 such taxable period; and

11 (b) Eligible small business corporation means an entity subject to
12 taxation under subchapter S of the Internal Revenue Code and the
13 regulations thereunder.

14 (10) ~~(8)~~ For purposes of this section, any shareholder or member of
15 the corporation or limited liability company that is a grantor trust of a
16 nonresident shall be disregarded and this section shall apply as though
17 the nonresident grantor was the shareholder or member.

18 Sec. 4. Section 77-2775, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-2775 (1) If the amount of a taxpayer's federal adjusted gross
21 income, taxable income, or tax liability reported on his or her federal
22 income tax return for any taxable year is changed or corrected by the
23 Internal Revenue Service or other competent authority or as the result of
24 a renegotiation of a contract or subcontract with the United States, the
25 taxpayer shall report such change or correction in federal adjusted gross
26 income, taxable income, or tax liability within sixty days after the
27 final determination of such change, correction, or renegotiation.

28 (2) Whenever the amount of a taxpayer's income which is taxable in
29 any state for any taxable year or any tax credits allowable in such state
30 are changed or corrected in a way material to the tax liability owed to
31 this state by the agency having authority to examine returns filed with

1 such state or any other competent authority or whenever an amended return
2 is filed by any taxpayer with a change or correction material to the tax
3 liability owed to this state with another state, such change or
4 correction shall be reported to the Tax Commissioner within sixty days
5 after the final change or correction or filing of the amended return. The
6 Tax Commissioner shall by rule and regulation provide the nature of any
7 change or correction which must be reported.

8 (3) The taxpayer shall report all changes or corrections required to
9 be reported under this section by filing an amended income tax return and
10 shall give such information as the Tax Commissioner may require. The
11 taxpayer shall concede the accuracy of any change or correction or state
12 why it is erroneous.

13 (4) Any taxpayer filing an amended federal income tax return shall
14 also file within sixty days thereafter an amended income tax return under
15 the Nebraska Revenue Act of 1967 and shall give such information as the
16 Tax Commissioner may require. For any amended federal income tax return
17 requesting a credit or refund, the amended Nebraska income tax return
18 shall be filed within sixty days after the taxpayer has received proof of
19 federal acceptance of the credit or refund or within the time for filing
20 an amended Nebraska income tax return that would otherwise be applicable
21 notwithstanding the amended federal income tax return, whichever is
22 later.

23 (5) Notwithstanding the foregoing, any partnership that is required
24 to file an amended return pursuant to this section shall be allowed, at
25 the partnership's election, to file an amended Nebraska income tax return
26 and to pay all Nebraska income tax, penalties, or interest associated
27 with such amended return, determined after taking into consideration
28 offsetting positive and negative adjustments of partnership items, at the
29 top individual tax rate set forth in section 77-2715.03 as if the
30 partnership were an individual. For a partnership making an election
31 pursuant to this subsection and paying the tax, penalties, or interest

1 arising from the amended return, (a) the partners of such electing
2 partnership shall not be required to file amended Nebraska income tax
3 returns for the year of the election and shall not be required to pay
4 Nebraska income tax, penalties, or interest arising as a result of such
5 amended return and (b) the basis, and other tax items in the hands of the
6 partner, arising from the partner's interest in the partnership shall be
7 determined as if the election under this subsection had not been made and
8 shall be determined in a similar manner as set forth for federal income
9 tax purposes.

10 Sec. 5. Original sections 77-2727, 77-2730, and 77-2775, Reissue
11 Revised Statutes of Nebraska, and section 77-2734.01, Revised Statutes
12 Cumulative Supplement, 2022, are repealed.

13 Sec. 6. Since an emergency exists, this act takes effect when
14 passed and approved according to law.