

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 491

Introduced by von Gillern, 4.

Read first time January 17, 2023

Committee: Revenue

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Research and
- 2 Development Act; to amend sections 77-5803, 77-5806, and 77-5808,
- 3 Reissue Revised Statutes of Nebraska; to change provisions relating
- 4 to claiming tax credits; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5803, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-5803 (1)(a) Except as provided in subdivision (1)(b) of this
4 section, any business firm which makes expenditures in research and
5 experimental activities as defined in section 174 of the Internal Revenue
6 Code of 1986, as amended, in this state shall be allowed a research tax
7 credit as provided in the Nebraska Advantage Research and Development
8 Act. The credit amount under this subdivision shall equal fifteen percent
9 of the federal credit allowed under section 41 of the Internal Revenue
10 Code of 1986, as amended, or as apportioned to this state under
11 subsection (2) of this section. For all tax years of a taxpayer (i) which
12 are open for assessment or filing a refund claim, (ii) for which a refund
13 claim, including a refund request in an income tax return, concerning
14 this credit has been filed but not yet paid, or (iii) for which the Tax
15 Commissioner has issued a notice of proposed assessment of a deficiency,
16 which is not yet final, concerning this credit, the credit shall be
17 allowed for the first tax year it is claimed and for each tax year the
18 twenty tax years immediately following.

19 (b) Any business firm which makes expenditures in research and
20 experimental activities as defined in section 174 of the Internal Revenue
21 Code of 1986, as amended, on the campus of a college or university in
22 this state or at a facility owned by a college or university in this
23 state shall be allowed a research tax credit as provided in the Nebraska
24 Advantage Research and Development Act. The credit amount under this
25 subdivision shall equal thirty-five percent of the federal credit allowed
26 under section 41 of the Internal Revenue Code of 1986, as amended, or as
27 apportioned to this state under subsection (2) of this section. For all
28 tax years of a taxpayer (i) which are open for assessment or filing a
29 refund claim, (ii) for which a refund claim, including a refund request
30 in an income tax return, concerning this credit has been filed but not
31 yet paid, or (iii) for which the Tax Commissioner has issued a notice of

1 proposed assessment of a deficiency, which is not yet final, concerning
2 this credit, the The credit shall be allowed for the first tax year it is
3 claimed and for each tax year ~~the twenty tax years immediately~~ following.

4 (2) For any business firm doing business both within and without
5 this state, the amount of the ~~federal~~ credit may be determined either by
6 dividing the amount expended in research and experimental activities in
7 this state in any tax year by the total amount expended in research and
8 experimental activities or by apportioning the amount of the credit on
9 the federal income tax return to the state based on the average of the
10 property factor as determined in section 77-2734.12 and the payroll
11 factor as determined in section 77-2734.13.

12 Sec. 2. Section 77-5806, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 77-5806 The Nebraska Advantage Research and Development Act shall be
15 operative for all tax years beginning or deemed to begin on or after
16 January 1, 2006, under the Internal Revenue Code of 1986, as amended. No
17 business firm shall be allowed to first claim the credit for any tax year
18 beginning or deemed to begin after December 31, 2033 ~~2022~~, under the
19 Internal Revenue Code of 1986, as amended.

20 Sec. 3. Section 77-5808, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 77-5808 (1) This subsection shall apply for tax years beginning or
23 deemed to begin on or after January 1, 2009, and before January 1, 2023,
24 except for such tax year or years for which the taxpayer elects to apply
25 subsection (2) of this section. The Tax Commissioner shall not approve or
26 grant to any person any tax incentive under the Nebraska Advantage
27 Research and Development Act unless the taxpayer provides evidence
28 satisfactory to the Tax Commissioner that the taxpayer electronically
29 verified the work eligibility status of ~~all~~ newly hired employees
30 employed in Nebraska. ~~This section does not apply to any credit claimed~~
31 ~~in a tax year beginning or deemed to begin before January 1, 2009, under~~

1 ~~the Internal Revenue Code of 1986, as amended.~~

2 (2) This subsection shall apply for tax years beginning or deemed to
3 begin on or after January 1, 2023, and, if the taxpayer so elects, such
4 tax year or tax years beginning or deemed to begin on or after January 1,
5 2009, and before January 1, 2023. When calculating the research tax
6 credit as provided in the Nebraska Advantage Research and Development
7 Act, the qualified research expenses claimed in computing the federal
8 credit allowed under section 41 of the Internal Revenue Code of 1986, as
9 amended, shall be adjusted to the extent the taxpayer includes, in such
10 qualified research expenses, compensation paid to an employee of such
11 taxpayer hired during or after the first tax year for which the Nebraska
12 Advantage Research and Development Act credit is claimed by such firm and
13 to the extent such compensation is subject to Nebraska income tax. Such
14 compensation, for the tax year in which the credit is being claimed,
15 shall be deducted from the taxpayer's qualified research expenses unless
16 such employee was verified as eligible to work in the United States using
17 the federal E-Verify system within ninety days after the date of hire of
18 such employee or such longer period as may be permitted under the rules
19 of the federal E-Verify system. Such verification may be performed by the
20 taxpayer or by someone on the taxpayer's behalf.

21 (3) The taxpayer may, by correspondence provided to the Tax
22 Commissioner, make the elections referred to in subsections (1) and (2)
23 of this section for each tax year beginning or deemed to begin on or
24 after January 1, 2009, and before January 1, 2023, (i) which is open for
25 assessment or filing a refund claim, (ii) for which a refund claim,
26 including a refund request in an income tax return, concerning the
27 research tax credit has been filed but not yet paid, or (iii) for which
28 the Tax Commissioner has issued a notice of proposed assessment of a
29 deficiency, which is not yet final, concerning such credit. When made,
30 such elections shall apply for the tax year or tax years for which they
31 are made.

1 Sec. 4. Original sections 77-5803, 77-5806, and 77-5808, Reissue
2 Revised Statutes of Nebraska, are repealed.