

ENGROSSED LEGISLATIVE BILL 182

Introduced by Bostar, 29; Hallstrom, 1.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2506 and 81-523, Reissue Revised Statutes of Nebraska, and sections 77-908, 77-2502, 77-2503, 77-2508, 77-3806, 77-7202, and 77-7204, Revised Statutes Cumulative Supplement, 2024; to define, redefine, and eliminate terms and change provisions relating to the allocation, transfer, sale, and assignment of tax credits under the Affordable Housing Tax Credit Act; to authorize additional uses of the tax credits granted under the Child Care 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. Section 77-908, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-908 Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent and (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the

insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Creating High Impact Economic Futures Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the Nebraska Higher Blend Tax Credit Act, the Relocation Incentive Act, the Sustainable Aviation Fuel Tax Credit Act, the Nebraska Shortline Rail Modernization Act, the Child Care Tax Credit Act, and the Affordable Housing Tax Credit Act.

Sec. 2. Section 77-2502, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-2502 For purposes of the Affordable Housing Tax Credit Act:

(1) Allocation year means the year for which the authority awards Nebraska affordable housing tax credits pursuant to the act;

(2) Authority means the Nebraska Investment Finance Authority;

(3) Eligibility statement means a statement authorized and issued by the authority certifying that a given project is a qualified project that qualifies for Nebraska affordable housing tax credits;

(4) Federal low-income housing tax credit means the federal tax credit provided in section 42 of the Internal Revenue Code of 1986, as amended;

(5) Nebraska affordable housing tax credit means the nonrefundable tax credit authorized in section 77-2503;

(6) Pass-through entity means (a) a partnership, (b) a limited liability company, or (c) a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended;

(7) Qualified project means a qualified low-income building or buildings, as that term is defined in section 42 of the Internal Revenue Code of 1986, as amended; and

(8) Taxpayer means a person, firm, corporation, or other business entity subject to the income tax imposed by section 77-2715 or 77-2734.02, an insurance company subject to premium and related retaliatory tax liability imposed by section 44-150, 77-908, or 81-523, a financial institution subject to the franchise tax imposed by sections 77-3801 to 77-3807, or a nonprofit corporation of the type listed in 26 U.S.C. 501(c)(3) or 26 U.S.C. 501(c)(4).

Sec. 3. Section 77-2503, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-2503 (1) An owner of an affordable housing project seeking a Nebraska affordable housing tax credit shall file an application with the authority on a form prescribed by the authority. An owner shall be allowed a nonrefundable tax credit if the authority determines that (a) the project for which tax credits are sought is a qualified project and (b) tax credits are available.

(2) If the requirements of subsection (1) of this section are met, the authority shall issue an eligibility statement to the owner of such qualified project stating the amount of Nebraska affordable housing tax credits allocated to the qualified project. The amount of such tax credits shall be the amount of federal low-income housing tax credits available to such project, except as otherwise provided in subsection (4) of this section. Tax credits for each building in a qualified project shall be issued for the first six years of the credit period as defined in 26 U.S.C. 42(f)(1), except that any reduction in the credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. 42(f)(2) shall be allowable in the seventh year of the credit period. The authority shall only allocate tax credits to qualified projects that are placed in service after January 1, 2018.

(3) If the owner of the qualified project is a pass-through entity, the Nebraska affordable housing tax credit shall be allocated among some or all of the partners, members, or shareholders of the owner of the qualified project. Any pass-through entity that receives an allocation of the Nebraska affordable housing tax credit, either from the owner of the qualified project or from another pass-through entity, may (a) further allocate the tax credit among some or all of the partners, members, or shareholders, or (b) transfer, sell, or assign all or a portion of the tax credit to a taxpayer. A pass-through entity may allocate the tax credit in any manner agreed to by its partners, members, or shareholders. A partner, member, or shareholder allocated a tax credit must have been admitted as a partner or member, or have acquired his or her shares, on or prior to February 15 of the year in which the tax return, or amended return, claiming the tax credit is filed. A partner, member, or shareholder of a pass-through entity may transfer, sell, or assign all or part of his or her ownership interest, including his or her interest in the tax credits authorized in this section. A taxpayer may transfer, sell, or assign all or a portion of the tax credit to another taxpayer. A taxpayer must have received a transfer or assignment of a tax credit prior to the date a tax return, or amended return, claiming the tax credit is filed. For any tax year in which a credit is allocated, transferred, sold, or assigned pursuant to this subsection, the pass-through entity allocating the tax credit, or taxpayer transferring, selling, or assigning the tax credit, as applicable, shall notify the Department of Revenue of the allocation, transfer, sale, or assignment and provide the tax identification number of the allocatee or transferee at least thirty days prior to the taxpayer claiming the tax credit. The notification shall be in the manner prescribed by the department.

(4) The maximum amount of Nebraska affordable housing tax credits awarded to all qualified projects in any given allocation year shall be no more than one hundred percent of the total amount of federal low-income housing tax credits awarded by the authority in the same allocation year. Notwithstanding any other provision of the Affordable Housing Tax Credit Act, the authority is

prohibited from awarding to a qualified project any combined amount of federal low-income housing tax credits and Nebraska affordable housing tax credits that is more than necessary to make the qualified project financially feasible.

(5) Any Nebraska affordable housing tax credits granted under this section may be used to offset any income taxes due under section 77-2715 or 77-2734.02, any premium and related retaliatory taxes due under section 44-150, 77-908, or 81-523, or any franchise taxes due under sections 77-3801 to 77-3807.

(6) The tax credit shall not be used to reduce the tax liability of the taxpayer to less than zero. Any tax credit claimed but not used in a taxable year may be carried forward.

Sec. 4. Section 77-2506, Reissue Revised Statutes of Nebraska, is amended to read:

77-2506 If a portion of any federal low-income housing tax credits taken on a qualified project is required to be recaptured or is otherwise disallowed under 26 U.S.C. 42 during the 6-year period described in subsection (2) of section 77-2503, a portion of the Nebraska affordable housing tax credits with respect to such project shall also be recaptured from the taxpayer who claimed such credits. The percentage of Nebraska affordable housing tax credits subject to recapture under this section shall be equal to the percentage of federal low-income housing tax credits subject to recapture or otherwise disallowed during such period. Any Nebraska affordable housing tax credits recaptured or disallowed under this section shall increase the tax liability of the taxpayer who claimed the credits in the year the Department of Revenue declares the tax credits to be disallowed or recaptured.

Sec. 5. Section 77-2508, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-2508 (1) The changes made in sections 77-2502, 77-2503, and 77-2505 by Laws 2022, LB800, shall apply to taxable years beginning or deemed to begin on or after January 1, 2023.

(2) The changes made in sections 77-2502, 77-2503, and 77-2506 by this legislative bill shall apply to taxable years beginning or deemed to begin on

or after January 1, 2024.

Sec. 6. Section 77-3806, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-3806 (1) The tax return shall be filed and the total amount of the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency, or (c) the Nebraska Investment Finance Authority issues an eligibility statement to the financial institution pursuant to the Affordable Housing Tax Credit Act.

(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Affordable Housing Tax Credit Act, the Creating High Impact Economic Futures Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the Nebraska Property Tax Incentive Act, the Relocation Incentive Act, the New Markets Job Growth Investment Act, the Sustainable Aviation Fuel Tax Credit Act, the Child Care Tax Credit Act, and the Nebraska Shortline Rail Modernization Act.

Sec. 7. Section 77-7202, Revised Statutes Cumulative Supplement, 2024, is

amended to read:

77-7202 For purposes of the Child Care Tax Credit Act:

(1) Child means an individual who is five years of age or less;

(2) Department means the Department of Revenue;

(3) Eligible program means a program that is licensed as a family child care home I, family child care home II, child care center, or preschool and operates as a for-profit child care business or is a nonprofit organization under the Internal Revenue Code of 1986, as amended;

(4) Intermediary means any organization that distributes funds for the purpose of supporting an eligible program;

(5) Parent or legal guardian means an individual who claims a child as a dependent for federal income tax purposes;

(6) Qualifying contribution means a contribution in the form of cash, check, cash equivalent, agricultural commodity, livestock, or publicly traded security that is made:

(a) For the establishment or operation of an eligible program;

(b) For the establishment of a grant or loan program for parents requiring financial assistance for an eligible program;

(c) To an early childhood collaborative or another intermediary to provide training, technical assistance, or mentorship to child care providers;

(d) For the establishment or ongoing costs of an information dissemination program that assists parents with information and referral services for child care;

(e) To a for-profit child care business, including family home providers. The for-profit child care business must use the proceeds of a qualifying contribution for (i) the acquisition or improvement of child care facilities, (ii) the acquisition of equipment, (iii) providing services, or (iv) employee retention; or

(f) To an intermediary for the establishment or operation of an eligible program or for the establishment of a grant or loan program for parents requiring financial assistance for an eligible program;

(7) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, including resident and nonresident individuals, estates, trusts, and corporations, an insurance company subject to premium and related retaliatory tax liability imposed by section 44-150, 77-908, or 81-523, or a financial institution subject to the franchise tax imposed by sections 77-3801 to 77-3807; and

(8) Total household income means federal modified adjusted gross income.

Sec. 8. Section 77-7204, Revised Statutes Cumulative Supplement, 2024, is amended to read:

77-7204 (1) For taxable years beginning or deemed to begin on or after January 1, 2024, under the Internal Revenue Code of 1986, as amended, any taxpayer who makes a qualifying contribution during the taxable year shall be eligible to receive a credit that may be used to offset any income taxes due under the Nebraska Revenue Act of 1967, any premium and related retaliatory taxes due under section 44-150, 77-908, or 81-523, or any franchise taxes due under sections 77-3801 to 77-3807.

(2) The credit provided in this section shall be a nonrefundable credit equal to either one hundred percent or seventy-five percent of the taxpayer's qualifying contribution made during the taxable year, except that the credit for a taxpayer shall not exceed one hundred thousand dollars for any single taxable year.

(3) The credit shall be equal to one hundred percent of the qualifying contribution if:

(a) The eligible program that receives the contribution has a physical presence in an opportunity zone in this state designated pursuant to the federal Tax Cuts and Jobs Act, Public Law 115-97; or

(b) The eligible program that receives the contribution has at least one child enrolled in the child care subsidy program established pursuant to sections 68-1202 and 68-1206 and the child care provider is actively caring and billing for the child as verified by the Department of Health and Human Services. Attracting child care providers into the child care subsidy program

and retaining providers in the program are directly connected to the administration of the program. Verifying that the child care provider is actively caring and billing for an eligible child is in furtherance of the child care subsidy program. The Department of Revenue shall not use any verification information obtained from the Department of Health and Human Services except for purposes directly connected with the administration of the Child Care Tax Credit Act.

(4) The credit shall be equal to seventy-five percent of the qualifying contribution if subsection (3) of this section does not apply.

(5) A taxpayer shall not be eligible for the credit provided in this section if the taxpayer claimed a charitable contribution deduction for the qualifying contribution on the taxpayer's federal income tax return.

(6) A taxpayer shall apply for the credit provided in this section by submitting an application to the department with the following information:

(a) Documentation to show that the contribution is a qualifying contribution; and

(b) Any other documentation required by the department.

(7) Subject to subsection (8) of this section, if the department determines that the taxpayer qualifies for tax credits under this section, the department shall approve the application and certify the amount of credits approved to the taxpayer.

(8) The department shall consider applications in the order in which they are received and may approve tax credits under this section each year until the total amount of credits approved for the year equals two million five hundred thousand dollars.

(9) If a taxpayer's credit under this section exceeds the total tax due, the taxpayer may carry forward the excess credit for up to five taxable years after the taxable year in which the credit was first allowed, but the taxpayer must use the carryover credit in the earliest taxable year possible.

(10) A contribution shall not qualify for a credit under this section if the contribution is made to a child care provider in which the taxpayer or a

person related to the taxpayer has a financial interest, unless the contribution is part of a bona fide arm's length transaction.

(11) A taxpayer claiming a tax credit under this section against any premium and related retaliatory taxes due under section 44-150, 77-908, or 81-523 shall not be required to pay any additional retaliatory tax as a result of claiming the tax credit. The tax credit may fully offset any retaliatory tax imposed under Nebraska law. Any tax credit claimed shall be considered a payment of tax for purposes of subsection (1) of section 77-2734.03.

Sec. 9. Section 81-523, Reissue Revised Statutes of Nebraska, is amended to read:

81-523 (1) For the purpose of maintaining the office of the State Fire Marshal and such other fire prevention activities as the Governor may direct, every foreign and alien insurance company including nonresident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-fourths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.

(2) For the purpose set forth in subsection (1) of this section, every domestic insurance company including resident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-eighths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.

(3) The term fire insurance business, as used in subsections (1), (2), and (4) of this section, shall include, but not be limited to, premiums of policies on fire risks on automobiles, whether written under floater form or otherwise.

(4) Return premiums on fire insurance business, subject to the fire insurance tax, in accordance with subsections (1) and (2) of this section, may be deducted from the gross direct writing premiums for the purpose of the tax calculations provided for by subsections (1) and (2) of this section. In the

case of mutual companies and assessment associations, the dividends paid or credited to policyholders or members in this state shall be construed to be return premiums.

(5) Any tax collected pursuant to subsections (1) and (2) of this section shall be remitted to the State Treasurer for credit to the General Fund.

(6) An insurance company described in this section shall receive a credit on the tax imposed under this section as provided in the Affordable Housing Tax Credit Act, the Child Care Tax Credit Act, and the Relocation Incentive Act.

Sec. 10. Original sections 77-2506 and 81-523, Reissue Revised Statutes of Nebraska, and sections 77-908, 77-2502, 77-2503, 77-2508, 77-3806, 77-7202, and 77-7204, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

THIS IS TO CERTIFY that the within LB 182 was passed by the One Hundred Ninth Legislature of Nebraska at its First Session on the day of 20.....

CLERK OF THE LEGISLATURE

Approved:

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GOVERNOR