

LEGISLATIVE BILL 774

Approved by the Governor April 10, 1986

Introduced by Revenue Committee, V. Johnson, 8,
Chairperson; Landis, 46; Pirsch, 10;
Sieck, 24; Hartnett, 45; Rogers, 41;
Hefner, 19; Miller, 37

AN ACT relating to revenue and taxation; to amend section 21-17,126, Reissue Revised Statutes of Nebraska, 1943, sections 77-2734.04 and 77-2734.06, Revised Statutes Supplement, 1984, and section 77-2716, Revised Statutes Supplement, 1985; to define and redefine terms; to authorize the implementation of a tax on financial institutions as prescribed; to provide for computation of the tax; to provide procedures; to provide the Tax Commissioner with certain powers and duties; to eliminate a tax on credit unions; to change provisions relating to income tax adjustments; to change provisions relating to apportionment of income; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in sections 1 to 7 of this act, unless the context otherwise requires:

(1) All terms shall have the same meaning as provided in the Nebraska Revenue Act of 1967:

(2) Average deposits shall mean (a) for a financial institution on a calendar year, the total of the deposits held on the last day of the preceding year and the last day of each calendar quarter, divided by five or (b) for a financial institution on a fiscal year other than a calendar year, the total of the deposits held on the last day of the preceding fiscal year, the last day of each calendar quarter within the fiscal year, and the last day of the fiscal year, divided by the number of amounts added together;

(3) Deposits shall mean the amount of money placed in the custody of a financial institution for safety or convenience that may be withdrawn at the will of the depositor or under the rules or regulations agreed upon by the financial institution and the depositor. Deposits shall also include amounts for which a certificate may be issued and which are payable

on demand, on certain notice, or at a fixed future date or time. Deposits shall not include any money placed in a fiduciary capacity in the custody of a trust department of any financial institution having trust powers granted by appropriate regulatory authority which is not placed by the trust department as a deposit in such financial institution.

(4) Financial institution shall mean:

(a) Any bank, building and loan association, cooperative credit association, credit union, industrial loan and investment company, savings and loan association, or savings bank chartered or qualified to do business in this state, or any subsidiary of such financial institution; or

(b) Any bank, bank holding company or subsidiary of a bank holding company as defined in 12 U.S.C. 1841, affiliate of a bank holding company as defined in 12 U.S.C. 221a, building and loan association, cooperative credit association, credit union, industrial loan and investment company, savings and loan association, or savings bank which is not chartered to do business in this state but maintains a permanent place of business in this state and actively solicits deposits from residents of this state for an affiliate, regardless of whether the affiliate maintains an office in this state, in which event the deposits of the affiliate shall be deemed deposits of such institution; and

(5) Net financial income shall mean the income of the financial institution, including its subsidiaries, after ordinary and necessary expenses but before income taxes and extraordinary gains or losses. Net financial income shall include, but not be limited to, income from fiduciary activities, interest, rent, or service charges. Ordinary and necessary expenses shall include, but not be limited to, fees, depreciation on furniture and equipment, interest, salaries and benefits, and supplies. Income and expenses shall be computed according to the regular books and records of the institution.

Sec. 2. (1) There is hereby imposed for each taxable year for the privilege of doing business in this state a franchise tax on all financial institutions with business locations in this state. Such franchise tax shall be based on the average deposits of the financial institution.

(2) The amount of the tax imposed by this section shall be the number of cents, as determined by section 3 of this act, multiplied by the amount of

average deposits of the financial institution in thousands of dollars.

(3) The franchise tax imposed by this section shall not exceed the limitation amount prescribed in section 4 of this act.

(4) Each financial institution shall file a separate franchise tax return.

Sec. 3. The rate of tax on deposits shall be twelve and three-tenths times the limitation rate as determined in section 4 of this act, expressed in cents and rounded to the nearest cent.

Sec. 4. (1) The limitation rate shall be forty-eight and eight-tenths per cent of the maximum corporate income tax rate in effect for the taxable year, as prescribed in section 77-2734.02, rounded to the nearest hundredth of one per cent.

(2) The limitation amount shall be the product of the net financial income of the financial institution multiplied by the limitation rate.

Sec. 5. If a financial institution is subject to tax in more than one state:

(1) The tax imposed in section 2 of this act shall be based on the amount of average deposits connected with the financial institution's operations in this state. Such deposits shall be (a) deposits which are accepted at the financial institution's offices located in this state plus (b) deposits which are solicited from residents in this state even if accepted at an office of the financial institution outside of this state; and

(2) The limitation on the tax prescribed in subdivision (2) of section 4 of this act shall be computed using the portion of the net financial income of the financial institution that is apportioned to this state through the use of the property and payroll factors contained in sections 77-2734.12 and 77-2734.13.

Sec. 6. (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 2 of this act. 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 2 of this act 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, or (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.

Sec. 7. (1) The Tax Commissioner shall prescribe the necessary forms and the supporting documentation to be filed for the reporting and payment of the tax imposed by section 2 of this act.

(2) The Tax Commissioner shall adopt and promulgate rules and regulations to carry out sections 1 to 7 of this act.

(3) The Tax Commissioner may use electronic funds transfers to collect the tax imposed by section 2 of this act or to pay any refunds allowed under section 6 of this act. The use of electronic funds transfers shall not change the rights of any party from the rights such party would have if a different method of payment is used.

Sec. 8. That section 21-17,126, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-17,126. The real estate and tangible personal property of a credit union shall be subject to taxation in the same manner as provided by law in the case of other corporations and individuals. In lieu of all other taxes on intangible property, credit unions shall be assessed and taxed four mills on the dollar of their gross interest income during the preceding calendar year. Every credit union, liable to a tax on its gross interest income under this section, shall on March 1 of each year make a report, sworn to by some official of the credit union, to the county assessor or county clerk where he is ex officio county assessor, stating the amount of its gross earnings from all sources for the preceding calendar year. Such taxes shall be assessed and collected in the taxing district where the principal office or place of business of the credit union is located. Nothing herein contained in this section shall prevent holdings in any credit union, organized under sections 21-1760 to 21-17,120, from being included in the valuation of the personal property

of the owners or holders thereof in assessing taxes imposed by the authority of the state or any political subdivision thereof in which the credit union is located, ~~except~~ ; PROVIDED, that the duty or burden of collecting or enforcing the payment of such tax shall not be imposed upon any such credit union.

Sec. 9. That section 77-2716, Revised Statutes Supplement, 1985, be amended to read as follows:

77-2716. (1) There shall be subtracted from federal taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. The amount subtracted under the provisions of this subsection shall, ~~except as provided in subsections (2) to (6) of this section,~~ be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(2) For corporations subject to the tax under section 77-2734-02, in lieu of the reduction for expenses contained in subsection (1) of this section, there shall be added to federal taxable income the investment interest expense incurred by the corporation to purchase and maintain exempt securities as determined under subsection (3) of this section.

(3) The investment interest expense provided in subsection (2) of this section shall be determined by (a) dividing the corporation's average investment in exempt securities by the corporation's average total assets and multiplying such ratio by the corporation's total interest expense and (b) subtracting any interest disallowed under 26 U.S.C. sections 265 and 291.

(4) As used in this section, unless the context otherwise requires-

(a) Exempt securities shall mean the obligations that earn income exempt from taxation under subsection (1) of this section or under 26 U.S.C. section 103;

(b) Average investment in exempt securities shall mean the average of the aggregate tax basis in exempt securities at the beginning and the end of the

taxable year;

(c) Average total assets shall mean the average of the aggregate tax basis in total assets at the beginning and end of the taxable year; and

(d) Total interest expense shall mean the total interest expense allowed as a deduction in computing federal taxable income plus any interest disallowed under 26 U.S.C. sections 265 and 291.

(5) Whenever it is necessary to properly reflect the ratio of investment in exempt securities to total assets, the Tax Commissioner may permit or require the computation of the average provided for in subsection (3) of this section using amounts from interim balance sheets.

(6) The corporation may use, in lieu of the tax basis for the computation in subsection (3) of this section, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis; (b) the amounts are prepared consistently from year to year; and (c) absent a change in circumstances, the amounts are consistently used by the corporation from year to year. The Tax Commissioner may require a corporation to use the alternative amounts in order to maintain consistency or may require the corporation to show that the amounts used do not materially differ from the tax basis.

(2) (7) There shall be subtracted from federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(3) (8) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for

corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision ~~(8)~~ (3)(b) of this section shall be subtracted from the amount of federal taxable income used in subdivision ~~(8)~~ (3)(a) of this section. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

Sec. 10. That section 77-2734.04, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.04. As used in sections 77-2734.01 to 77-2734.15, unless the context otherwise requires:

(1) Commercial domicile shall mean the principal place from which the trade or business of the taxpayer is directed or managed;

(2) Compensation shall mean wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(3) Corporate taxpayer shall mean any corporation that is not a part of a unitary business or the part of a unitary business, whether it is one or more corporations, that is doing business in this state. Corporate taxpayer shall not include any corporation that has a valid election under subchapter S of the Internal Revenue Code or any financial institution as defined in section 1 of this act;

(4) Corporation shall mean all corporations and all other entities that are taxed as corporations under the Internal Revenue Code;

(5) Doing business in this state shall mean the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax;

(6) Federal taxable income shall mean the corporate taxpayer's federal taxable income as reported to the Internal Revenue Service, or as subsequently changed or amended. Except as provided in subsection ~~(7)~~ (2) or (3) of section 77-2716, no adjustment shall be allowed for a change from any election made or the method used in computing federal taxable income. An election to file a federal consolidated return shall not require the inclusion in any unitary group of a corporation that is not a part of the unitary business;

(7) Sales shall mean all gross receipts of the taxpayer;

(8) Single economic unit shall mean a business where in which there is a sharing or exchange of value between the parts of the unit. A sharing or exchange of

value occurs when the parts of the business are linked by (a) common management or (b) common operational resources that produce material (i) economies of scale, (ii) transfers of value, or (iii) flow of goods, capital, or services between the parts of the unit. †

(A) For the purposes of this subdivision common management includes, but is not limited to, (I) a centralized executive force or (II) review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations. † and

(B) For the purposes of this subdivision, common operational resources include, but are not limited to, centralization of any of the following: Accounting, advertising, engineering, financing, insurance, legal, personnel, pension or benefit plans, purchasing, research and development, selling, or union relations;

(9) State shall mean any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(10) Subject to the Internal Revenue Code shall mean a corporation that meets the requirements of section 243 of the Internal Revenue Code sections 243 in order for its distributions to qualify for the dividends received deduction;

(11) Taxable income shall mean federal taxable income as adjusted and, if appropriate, as apportioned;

(12) Taxable year shall mean the period the corporate taxpayer used on its federal income tax return;

(13) Unitary business shall mean a business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

For the purposes of this subdivision, common ownership shall mean one or more corporations owning fifty per cent or more of another corporation; and

(14) Unitary group shall mean the group of corporations that are conducting a unitary business.

Sec. 11. That section 77-2734.06, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2734.06. (1) The entire federal taxable income of a unitary business operating both within and without this state is presumed to be subject to

apportionment. Other than for adjustments required to be made under the Nebraska Revenue Act of 1967, for any income that is claimed to be not subject to apportionment, a taxpayer needs to show by a preponderance of the evidence (a) that the income is not a part of the unitary business and (b) that the taxpayer has not claimed the same income is part of the unitary business and subject to apportionment in another state with substantially the same law on apportionability of income.

(2) There shall be subtracted from federal taxable income any income that the taxpayer has shown is not subject to apportionment under subsection (1) of this section. The amount subtracted under this section shall be reduced, but not below zero, by a portion of the interest expense as determined under subsection (3) of this section and any expense incurred in the production of the income described in this section.

(3) The interest expense for the reduction required in subsection (2) of this section shall be determined by dividing the taxpayer's average investment in the activities producing the income by the taxpayer's average total assets and multiplying such ratio by the total interest deduction allowed in the computation of federal taxable income.

(4) For the purposes of this section, investment in activities producing the income described in this section shall mean the tax basis of the assets, both tangible and intangible, that are used in the activities or are the basis of the receipt of the described income.

(5) The computation in this section is subject to the same modifications as contained in subsections (5) and (6) of section 77-2716. Whenever it is necessary to properly reflect the ratio of investment in the activities to total assets, the Tax Commissioner may permit or require the computation of the average provided for in subsection (3) of this section using amounts from interim balance sheets.

(6) The corporation may use, in lieu of the tax basis for the computation in subsection (3) of this section, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the corporation from year to year. The Tax Commissioner may require a corporation to use

the alternative amounts in order to maintain consistency or may require the corporation to show that the amounts used do not materially differ from the tax basis.

Sec. 12. This act shall be operative for all taxable years beginning, or deemed to begin, on or after January 1, 1986.

Sec. 13. That original section 21-17,126, Reissue Revised Statutes of Nebraska, 1943, sections 77-2734.04 and 77-2734.06, Revised Statutes Supplement, 1984, and section 77-2716, Revised Statutes Supplement, 1985, are repealed.