

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 561**

Introduced by Schumacher, 22.

Read first time January 18, 2017

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 39-2703, Reissue Revised Statutes of Nebraska, and sections 77-2701
- 3 and 77-2715.07, Revised Statutes Cumulative Supplement, 2016; to
- 4 create the Taxpayer Investment Program; to harmonize provisions; to
- 5 provide severability; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 39-2703, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 39-2703 (1) The State Highway Capital Improvement Fund is created.  
4 The fund shall consist of money credited to the fund pursuant to section  
5 77-27,132 and section 4 of this act and any other money as determined by  
6 the Legislature.

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

10 (3) Any money in the fund available for investment shall be invested  
11 by the state investment officer pursuant to the Nebraska Capital  
12 Expansion Act and the Nebraska State Funds Investment Act. Investment  
13 earnings from investment of money in the fund shall be credited to the  
14 fund.

15 Sec. 2. Section 77-2701, Revised Statutes Cumulative Supplement,  
16 2016, is amended to read:

17 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,235, 77-27,236, and  
18 77-27,238 and section 4 of this act shall be known and may be cited as  
19 the Nebraska Revenue Act of 1967.

20 Sec. 3. Section 77-2715.07, Revised Statutes Cumulative Supplement,  
21 2016, is amended to read:

22 77-2715.07 (1) There shall be allowed to qualified resident  
23 individuals as a nonrefundable credit against the income tax imposed by  
24 the Nebraska Revenue Act of 1967:

25 (a) A credit equal to the federal credit allowed under section 22 of  
26 the Internal Revenue Code; and

27 (b) A credit for taxes paid to another state as provided in section  
28 77-2730.

29 (2) There shall be allowed to qualified resident individuals against  
30 the income tax imposed by the Nebraska Revenue Act of 1967:

31 (a) For returns filed reporting federal adjusted gross incomes of

1 greater than twenty-nine thousand dollars, a nonrefundable credit equal  
2 to twenty-five percent of the federal credit allowed under section 21 of  
3 the Internal Revenue Code of 1986, as amended, except that for taxable  
4 years beginning or deemed to begin on or after January 1, 2015, such  
5 nonrefundable credit shall be allowed only if the individual would have  
6 received the federal credit allowed under section 21 of the code after  
7 adding back in any carryforward of a net operating loss that was deducted  
8 pursuant to such section in determining eligibility for the federal  
9 credit;

10 (b) For returns filed reporting federal adjusted gross income of  
11 twenty-nine thousand dollars or less, a refundable credit equal to a  
12 percentage of the federal credit allowable under section 21 of the  
13 Internal Revenue Code of 1986, as amended, whether or not the federal  
14 credit was limited by the federal tax liability. The percentage of the  
15 federal credit shall be one hundred percent for incomes not greater than  
16 twenty-two thousand dollars, and the percentage shall be reduced by ten  
17 percent for each one thousand dollars, or fraction thereof, by which the  
18 reported federal adjusted gross income exceeds twenty-two thousand  
19 dollars, except that for taxable years beginning or deemed to begin on or  
20 after January 1, 2015, such refundable credit shall be allowed only if  
21 the individual would have received the federal credit allowed under  
22 section 21 of the code after adding back in any carryforward of a net  
23 operating loss that was deducted pursuant to such section in determining  
24 eligibility for the federal credit;

25 (c) A refundable credit as provided in section 77-5209.01 for  
26 individuals who qualify for an income tax credit as a qualified beginning  
27 farmer or livestock producer under the Beginning Farmer Tax Credit Act  
28 for all taxable years beginning or deemed to begin on or after January 1,  
29 2006, under the Internal Revenue Code of 1986, as amended;

30 (d) A refundable credit for individuals who qualify for an income  
31 tax credit under the Angel Investment Tax Credit Act, the Nebraska

1 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research  
2 and Development Act, or the Volunteer Emergency Responders Incentive Act;  
3 and

4 (e) A refundable credit equal to ten percent of the federal credit  
5 allowed under section 32 of the Internal Revenue Code of 1986, as  
6 amended, except that for taxable years beginning or deemed to begin on or  
7 after January 1, 2015, such refundable credit shall be allowed only if  
8 the individual would have received the federal credit allowed under  
9 section 32 of the code after adding back in any carryforward of a net  
10 operating loss that was deducted pursuant to such section in determining  
11 eligibility for the federal credit.

12 (3) There shall be allowed to all individuals as a nonrefundable  
13 credit against the income tax imposed by the Nebraska Revenue Act of  
14 1967:

15 (a) A credit for personal exemptions allowed under section  
16 77-2716.01;

17 (b) A credit for contributions to certified community betterment  
18 programs as provided in the Community Development Assistance Act. Each  
19 partner, each shareholder of an electing subchapter S corporation, each  
20 beneficiary of an estate or trust, or each member of a limited liability  
21 company shall report his or her share of the credit in the same manner  
22 and proportion as he or she reports the partnership, subchapter S  
23 corporation, estate, trust, or limited liability company income;

24 (c) A credit for investment in a biodiesel facility as provided in  
25 section 77-27,236;

26 (d) A credit as provided in the New Markets Job Growth Investment  
27 Act;

28 (e) A credit as provided in the Nebraska Job Creation and Mainstreet  
29 Revitalization Act;

30 (f) A credit to employers as provided in section 77-27,238;~~and~~

31 (g) A credit as provided in the Affordable Housing Tax Credit Act;

1 and -

2 (h) A credit as provided in the Taxpayer Investment Program pursuant  
3 to section 4 of this act.

4 (4) There shall be allowed as a credit against the income tax  
5 imposed by the Nebraska Revenue Act of 1967:

6 (a) A credit to all resident estates and trusts for taxes paid to  
7 another state as provided in section 77-2730;

8 (b) A credit to all estates and trusts for contributions to  
9 certified community betterment programs as provided in the Community  
10 Development Assistance Act; and

11 (c) A refundable credit for individuals who qualify for an income  
12 tax credit as an owner of agricultural assets under the Beginning Farmer  
13 Tax Credit Act for all taxable years beginning or deemed to begin on or  
14 after January 1, 2009, under the Internal Revenue Code of 1986, as  
15 amended. The credit allowed for each partner, shareholder, member, or  
16 beneficiary of a partnership, corporation, limited liability company, or  
17 estate or trust qualifying for an income tax credit as an owner of  
18 agricultural assets under the Beginning Farmer Tax Credit Act shall be  
19 equal to the partner's, shareholder's, member's, or beneficiary's portion  
20 of the amount of tax credit distributed pursuant to subsection (4) of  
21 section 77-5211.

22 (5)(a) For all taxable years beginning on or after January 1, 2007,  
23 and before January 1, 2009, under the Internal Revenue Code of 1986, as  
24 amended, there shall be allowed to each partner, shareholder, member, or  
25 beneficiary of a partnership, subchapter S corporation, limited liability  
26 company, or estate or trust a nonrefundable credit against the income tax  
27 imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the  
28 partner's, shareholder's, member's, or beneficiary's portion of the  
29 amount of franchise tax paid to the state under sections 77-3801 to  
30 77-3807 by a financial institution.

31 (b) For all taxable years beginning on or after January 1, 2009,

1 under the Internal Revenue Code of 1986, as amended, there shall be  
2 allowed to each partner, shareholder, member, or beneficiary of a  
3 partnership, subchapter S corporation, limited liability company, or  
4 estate or trust a nonrefundable credit against the income tax imposed by  
5 the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's,  
6 member's, or beneficiary's portion of the amount of franchise tax paid to  
7 the state under sections 77-3801 to 77-3807 by a financial institution.

8 (c) Each partner, shareholder, member, or beneficiary shall report  
9 his or her share of the credit in the same manner and proportion as he or  
10 she reports the partnership, subchapter S corporation, limited liability  
11 company, or estate or trust income. If any partner, shareholder, member,  
12 or beneficiary cannot fully utilize the credit for that year, the credit  
13 may not be carried forward or back.

14 (6) There shall be allowed to all individuals nonrefundable credits  
15 against the income tax imposed by the Nebraska Revenue Act of 1967 as  
16 provided in section 77-3604 and refundable credits against the income tax  
17 imposed by the Nebraska Revenue Act of 1967 as provided in section  
18 77-3605.

19 Sec. 4. (1) To encourage private investment and to mobilize private  
20 capital for public purposes, the Taxpayer Investment Program is created.

21 (2) Any natural person may at the time of filing his or her Nebraska  
22 income tax return pay to the state an advance tax payment not to exceed  
23 ten thousand dollars per year. Each such payment made shall be known as a  
24 tax investment and shall be identified on the books and records of the  
25 Department of Revenue. Commencing on the earliest of five calendar years  
26 after the making of a tax investment, the taxpayer becoming sixty-two  
27 years of age, or the death of the taxpayer, the taxpayer making the tax  
28 investment shall be entitled to claim a tax credit under section  
29 77-2715.07 in an amount equal to the tax investment multiplied by the  
30 program rate.

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

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

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

28 (5) Unless otherwise agreed between taxpayers, credits arising out  
29 of payments made in a year in which a joint individual tax return was  
30 filed shall be held as joint tenants with rights of survivorship between  
31 such joint filers. A taxpayer's tax credits remaining unclaimed upon the

1 death of the taxpayer entitled to claim the credit shall be used under  
2 section 77-2715.07 for taxes due from the decedent with the balance, if  
3 any, first reducing any inheritance tax arising as a result of the death  
4 of such decedent, then applied to reimburse the state for any aid or  
5 assistance paid by the state to or on behalf of the decedent under  
6 Chapter 68, and then, upon payment to the state of a transfer fee equal  
7 to ten percent of the credit, may be transferred to the heirs or devisees  
8 of the decedent pursuant to the laws of testacy or intestate succession.  
9 In cases not involving a transfer from a decedent, upon payment of a  
10 transaction transfer fee to the state of ten percent of the credit  
11 transferred and the cancellation of the corresponding credit amount  
12 arising under subdivision (3)(a) of this section, a credit, not to exceed  
13 the underlying tax investment adjusted for inflation pursuant to  
14 subdivision (3)(b) of this section, may be transferred. In such case, the  
15 transferee shall be entitled to the credit transferred in the same manner  
16 as if the taxpayer were the original depositor. The credits shall not be  
17 considered a security subject to the Securities Act of Nebraska.

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

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

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

31 (9) The Tax Commissioner may adopt and promulgate rules and

1 regulations to carry out this section.

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

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