

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2023-24		FY 2024-25	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS		(\$20,308,000)		(\$48,253,000)
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS		(\$20,308,000)		(\$48,253,000)

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 173 seeks to make changes to the income of nonresident individuals. Under LB 173, compensation paid to a nonresident individual would not include income derived from sources within this state if all of the following conditions apply:

- The compensation is paid for employment duties performed by the individual while present in this state for 30 or fewer days in the taxable year;
- The individual performed employment duties in more than one state during the taxable year; and
- The compensation is not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, professional entertainer, or public figure.

Under the bill, the Department of Revenue (DOR) is not to require the payment of any penalties or interest otherwise applicable for failing to deduct and withhold income taxes if, when determining whether withholding was required, the employer meets certain conditions including methods of record keeping, among others.

The bill also adds that nonresident income is not to include compensation that is paid to an individual who serves on the board of directors or similar governing body of a business and that relates to board or governing body activities taking place in this state.

LB 173 would become operative for taxable years 2024 and after.

The DOR estimates the following reduction to General Fund revenues from this bill:

- FY 23-24: \$20,308,000
- FY 24-25: \$48,253,000
- FY 25-26: \$47,771,000
- FY 26-27: \$47,293,000

The DOR estimates no costs for it to implement the bill.

There is no basis to disagree with these estimates.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 173	AM:	AGENCY/POLT. SUB: Department of Revenue
REVIEWED BY: Neil Sullivan	DATE: 2/21/2023	PHONE: (402) 471-4179
COMMENTS: The Department of Revenue assessment of fiscal impact from LB 173 appears reasonable.		

State Agency Estimate

State Agency Name: Department of Revenue Date Due LFO:
Approved by: Glen White Date Prepared: 02/17/2023 Phone: 471-5896

Table with 3 columns for fiscal years (FY 2023-2024, FY 2024-2025, FY 2025-2026) and 2 rows per year for Expenditures and Revenue. Total Revenue for each year is (\$20,308,000), (\$48,253,000), and (\$47,771,000) respectively.

LB 173 amends Neb. Rev. Stat. 77-2733 to change (1) the meaning of income derived from sources within this state of compensation paid by a business, trade, or profession to nonresident individuals, and (2) when employers are required to withhold on compensation paid to certain nonresident individuals.

The bill provides that compensation paid to a nonresident individual serving on a board of directors or similar governing body of a business and that relates to board or governing board activities taking place in Nebraska is not derived from sources within Nebraska.

The bill also provides that compensation paid to a nonresident individual is not derived from sources within Nebraska if all three conditions apply:

- The compensation is paid for employment duties performed by the individual while present in Nebraska for 30 or fewer days in the tax year;
• The individual performed employment duties in more than one state during the tax year; and
• The compensation is not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, professional entertainer, or public figure.

Employers are not required to withhold taxes on nonresident individuals who meet the 30 day or less exemption. However, employers must withhold taxes from compensation paid to these nonresident individuals if the individual performs employment duties while present in Nebraska for more than 30 days during the tax year. If required to withhold, the employer must withhold and remit taxes for every day the individual performed employment duties while present in Nebraska including the first 30 days in which the individual performs duties in Nebraska.

Major Objects of Expenditure

Table with 8 columns: Class Code, Classification Title, and three columns for FTE (23-24, 24-25, 25-26) and three columns for Expenditures (23-24, 24-25, 25-26). Rows include Benefits, Operating Costs, Travel, Capital Outlay, Capital Improvements, and Total.

For purposes of the 30 day test an nonresident individual is considered present and performing duties in Nebraska for a day if the individual performs more of the individual’s employment duties in Nebraska than in any other state during the day. Any portion of the day during which the individual is in transit must not be considered in determining the location of an individual’s performance of employment duties. This is different from the DOR test for resident individuals.

LB 173 becomes operative for tax years beginning on or after January 1, 2024.

To estimate the fiscal impact, the Department of Revenue (DOR) assumes 25% of nonresident tax withholding net of entertainers and public figures as revenue foregone as a result of LB 173. DOR estimated the withholding amount from entertainers and public figures are approximately 2% of total non-resident withholding. With that assumption, the estimated reduction to the General Fund revenues are as follows:

FY 2023-24	\$	20,308,000
FY 2024-25	\$	48,253,000
FY 2025-26	\$	47,771,000
FY 2026-27	\$	47,293,000

It is estimated that there will be no costs to DOR to implement LB 173.