

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1011

Introduced by Dubas, 34.

Read first time January 17, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2734.03, Reissue Revised Statutes of Nebraska, and
3 sections 77-2715.07, and 77-2717, Revised Statutes
4 Supplement, 2011; to adopt the Property Tax Relief Act;
5 to harmonize provisions; to provide an operative date;
6 and to repeal the original sections.

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

1 Section 1. Sections 1 to 6 of this act shall be known and
2 may be cited as the Property Tax Relief Act.

3 Sec. 2. For purposes of the Property Tax Relief Act:

4 (1) Agricultural land shall have the same meaning as
5 agricultural land and horticultural land in section 77-1359;

6 (2) Claimant means an owner of agricultural land or
7 owner-occupant of residential real property domiciled in this state
8 during the entire year for which a credit is claimed except:

9 (a) When two or more individuals of a household are able
10 to qualify individually as a claimant, they may determine between
11 them which one will be the claimant. If they are unable to agree, the
12 Tax Commissioner shall determine which one will be the claimant;

13 (b) For partnerships and limited liability companies,
14 claimant means each partner or member;

15 (c) For an estate or trust, claimant means the personal
16 representative or trustee. Claimant does not include the estate of a
17 nonresident, a trust which receives Nebraska real property from a
18 nonresident, or a trust in which a nonresident settlor retains a
19 beneficial interest;

20 (d) For a corporation, claimant means each shareholder;
21 and

22 (e) For land subject to a land contract, claimant means
23 the vendee under the contract;

24 (3) Household means an individual, his or her spouse, and
25 all minor dependents;

1 (4) Household income means all of the income of the
2 claimant, the claimant's spouse, and all minor dependents;

3 (5) Income means:

4 (a) For an individual, adjusted gross income as defined
5 in the Internal Revenue Code, plus any Nebraska adjustments
6 increasing the adjusted gross income, less first-year depreciation
7 allowances under section 179 of the Internal Revenue Code, and less
8 the first twenty-five thousand dollars of depreciation expense
9 claimed by all of the individuals in a household; and

10 (b) For an estate or trust, the same as income for an
11 individual except that the net income of the estate or trust before
12 subtracting any deduction claimed for income distributable to the
13 estate's or trust's beneficiaries shall be included instead of
14 Nebraska adjusted gross income; and

15 (6) Property taxes accrued means property taxes exclusive
16 of special assessments, delinquent interest, and charges for service
17 levied on the agricultural land and improvements or owner-occupied
18 residential real property owned by the claimant or any member of the
19 claimant's household in any calendar year. If agricultural land is
20 owned by a subchapter S corporation or by two or more persons or
21 entities as joint tenants, tenants in common, members of a limited
22 liability company, or partners or is marital property or survivorship
23 marital property and one or more such persons, entities, or owners is
24 not a member of the claimant's household, property taxes accrued
25 means that part of property taxes levied that reflects the ownership

1 percentage of the claimant and the claimant's household. For purposes
2 of this subdivision, property taxes are levied when certified.

3 Sec. 3. (1) A claimant may claim as a refundable credit
4 against Nebraska income taxes otherwise due the amount derived under
5 section 4 of this act.

6 (2) Every claimant shall supply, at the request of the
7 Tax Commissioner, in support of the claim, a copy of the property tax
8 statement relating to the agricultural land or owner-occupied
9 residential real property and certification by the claimant that all
10 taxes owed by the claimant on the property for which the claim is
11 made for the prior year have been paid.

12 (3) No tax credit shall be allowed unless a claim is
13 filed with the Tax Commissioner.

14 Sec. 4. The amount per calendar year of a claim for
15 income tax credit pursuant to the Property Tax Relief Act shall be
16 the amount determined by subtracting a percentage of the claimant's
17 household income from the amount of property taxes accrued in the
18 preceding calendar year. The tax credit shall not exceed four
19 thousand dollars per claimant. The percentage of the claimant's
20 household income used to determine the credit allowable to the
21 claimant is:

22 (1) Four percent if household income does not exceed
23 \$10,000;

24 (2) Five percent if household income is over \$10,000 but
25 less than or equal to \$15,000;

1 (3) Six and five-tenths percent if household income is
2 over \$15,000 but less than or equal to \$20,000;

3 (4) Nine percent if household income is over \$20,000 but
4 less than or equal to \$25,000;

5 (5) Twelve percent if household income is over \$25,000
6 but less than or equal to \$30,000; and

7 (6) Eighteen percent if household income is over \$30,000.

8 Sec. 5. (1) Any person who (a) makes any false or
9 fraudulent application for a tax credit pursuant to the Property Tax
10 Relief Act, (b) makes any false statement or false representation of
11 a material fact in support of an application, (c) assists another in
12 the preparation of any false or fraudulent application, or (d) enters
13 into any collusion with another by the execution of a fictitious deed
14 or other instrument for the purpose of obtaining unlawful tax credit
15 under the act shall be guilty of a Class II misdemeanor and shall be
16 subject to a forfeiture of the tax credit for a period of two years
17 after the date of conviction. Any person who makes an oath or
18 affirmation to any false or fraudulent application for a tax credit
19 under the act knowing the same to be false or fraudulent shall be
20 guilty of a Class I misdemeanor.

21 (2) In addition to the penalty provided in subsection (1)
22 of this section, if any person files an application for a tax credit
23 which is excessive due to misstatements by the owner filing the
24 application, the application may be disallowed in full and, if the
25 application has been granted, an amount equal to the tax credit shall

1 be due and shall upon entry of the amount thereof on the books of the
2 county treasurer be a lien on such property until paid and a penalty
3 equal to the amount of the tax credit shall be assessed.

4 Sec. 6. The Tax Commissioner shall adopt and promulgate
5 rules and regulations to carry out the Property Tax Relief Act.

6 Sec. 7. Section 77-2715.07, Revised Statutes Supplement,
7 2011, is amended to read:

8 77-2715.07 (1) There shall be allowed to qualified
9 resident individuals as a nonrefundable credit against the income tax
10 imposed by the Nebraska Revenue Act of 1967:

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

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

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

18 (a) For returns filed reporting federal adjusted gross
19 incomes of greater than twenty-nine thousand dollars, a nonrefundable
20 credit equal to twenty-five percent of the federal credit allowed
21 under section 21 of the Internal Revenue Code of 1986, as amended;

22 (b) For returns filed reporting federal adjusted gross
23 income of twenty-nine thousand dollars or less, a refundable credit
24 equal to a percentage of the federal credit allowable under section
25 21 of the Internal Revenue Code of 1986, as amended, whether or not

1 the federal credit was limited by the federal tax liability. The
2 percentage of the federal credit shall be one hundred percent for
3 incomes not greater than twenty-two thousand dollars, and the
4 percentage shall be reduced by ten percent for each one thousand
5 dollars, or fraction thereof, by which the reported federal adjusted
6 gross income exceeds twenty-two thousand dollars;

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

13 (d) A refundable credit for individuals who qualify for
14 an income tax credit under the Angel Investment Tax Credit Act, the
15 Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska
16 Advantage Research and Development Act; and

17 (e) A refundable credit equal to ten percent of the
18 federal credit allowed under section 32 of the Internal Revenue Code
19 of 1986, as amended; and .

20 (f) A refundable credit as provided in the Property Tax
21 Relief Act.

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

25 (a) A credit for personal exemptions allowed under

1 section 77-2716.01;

2 (b) A credit for contributions to certified community
3 betterment programs as provided in the Community Development
4 Assistance Act. Each partner, each shareholder of an electing
5 subchapter S corporation, each beneficiary of an estate or trust, or
6 each member of a limited liability company shall report his or her
7 share of the credit in the same manner and proportion as he or she
8 reports the partnership, subchapter S corporation, estate, trust, or
9 limited liability company income; and

10 (c) A credit for investment in a biodiesel facility as
11 provided in section 77-27,236.

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

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

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

19 (c) A refundable credit for individuals who qualify for
20 an income tax credit as an owner of agricultural assets under the
21 Beginning Farmer Tax Credit Act for all taxable years beginning or
22 deemed to begin on or after January 1, 2009, under the Internal
23 Revenue Code of 1986, as amended. The credit allowed for each
24 partner, shareholder, member, or beneficiary of a partnership,
25 corporation, limited liability company, or estate or trust qualifying

1 for an income tax credit as an owner of agricultural assets under the
2 Beginning Farmer Tax Credit Act shall be equal to the partner's,
3 shareholder's, member's, or beneficiary's portion of the amount of
4 tax credit distributed pursuant to subsection (4) of section 77-5211.

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

15 (b) For all taxable years beginning on or after January
16 1, 2009, under the Internal Revenue Code of 1986, as amended, there
17 shall be allowed to each partner, shareholder, member, or beneficiary
18 of a partnership, subchapter S corporation, limited liability
19 company, or estate or trust a nonrefundable credit against the income
20 tax imposed by the Nebraska Revenue Act of 1967 equal to the
21 partner's, shareholder's, member's, or beneficiary's portion of the
22 amount of franchise tax paid to the state under sections 77-3801 to
23 77-3807 by a financial institution.

24 (c) Each partner, shareholder, member, or beneficiary
25 shall report his or her share of the credit in the same manner and

1 proportion as he or she reports the partnership, subchapter S
2 corporation, limited liability company, or estate or trust income. If
3 any partner, shareholder, member, or beneficiary cannot fully utilize
4 the credit for that year, the credit may not be carried forward or
5 back.

6 Sec. 8. Section 77-2717, Revised Statutes Supplement,
7 2011, is amended to read:

8 77-2717 (1)(a) The tax imposed on all resident estates
9 and trusts shall be a percentage of the federal taxable income of
10 such estates and trusts as modified in section 77-2716, plus a
11 percentage of the federal alternative minimum tax and the federal tax
12 on premature or lump-sum distributions from qualified retirement
13 plans. The additional taxes shall be recomputed by (i) substituting
14 Nebraska taxable income for federal taxable income, (ii) calculating
15 what the federal alternative minimum tax would be on Nebraska taxable
16 income and adjusting such calculations for any items which are
17 reflected differently in the determination of federal taxable income,
18 and (iii) applying Nebraska rates to the result. The federal credit
19 for prior year minimum tax, after the recomputations required by the
20 Nebraska Revenue Act of 1967, and the credits provided in the
21 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska
22 Advantage Research and Development Act shall be allowed as a
23 reduction in the income tax due. A refundable income tax credit shall
24 be allowed for all resident estates and trusts under the Angel
25 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax

1 Credit Act, ~~and~~ the Nebraska Advantage Research and Development Act,
2 and the Property Tax Relief Act.

3 (b) The tax imposed on all nonresident estates and trusts
4 shall be the portion of the tax imposed on resident estates and
5 trusts which is attributable to the income derived from sources
6 within this state. The tax which is attributable to income derived
7 from sources within this state shall be determined by multiplying the
8 liability to this state for a resident estate or trust with the same
9 total income by a fraction, the numerator of which is the nonresident
10 estate's or trust's Nebraska income as determined by sections 77-2724
11 and 77-2725 and the denominator of which is its total federal income
12 after first adjusting each by the amounts provided in section
13 77-2716. The federal credit for prior year minimum tax, after the
14 recomputations required by the Nebraska Revenue Act of 1967, reduced
15 by the percentage of the total income which is attributable to income
16 from sources outside this state, and the credits provided in the
17 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska
18 Advantage Research and Development Act shall be allowed as a
19 reduction in the income tax due. A refundable income tax credit shall
20 be allowed for all nonresident estates and trusts under the Angel
21 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax
22 Credit Act, ~~and~~ the Nebraska Advantage Research and Development Act,
23 and the Property Tax Relief Act.

24 (2) In all instances wherein a fiduciary income tax
25 return is required under the provisions of the Internal Revenue Code,

1 a Nebraska fiduciary return shall be filed, except that a fiduciary
2 return shall not be required to be filed regarding a simple trust if
3 all of the trust's beneficiaries are residents of the State of
4 Nebraska, all of the trust's income is derived from sources in this
5 state, and the trust has no federal tax liability. The fiduciary
6 shall be responsible for making the return for the estate or trust
7 for which he or she acts, whether the income be taxable to the estate
8 or trust or to the beneficiaries thereof. The fiduciary shall include
9 in the return a statement of each beneficiary's distributive share of
10 net income when such income is taxable to such beneficiaries.

11 (3) The beneficiaries of such estate or trust who are
12 residents of this state shall include in their income their
13 proportionate share of such estate's or trust's federal income and
14 shall reduce their Nebraska tax liability by their proportionate
15 share of the credits as provided in the Angel Investment Tax Credit
16 Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the
17 Nebraska Advantage Research and Development Act, and the Property Tax
18 Relief Act. There shall be allowed to a beneficiary a refundable
19 income tax credit under the Beginning Farmer Tax Credit Act for all
20 taxable years beginning or deemed to begin on or after January 1,
21 2001, under the Internal Revenue Code of 1986, as amended.

22 (4) If any beneficiary of such estate or trust is a
23 nonresident during any part of the estate's or trust's taxable year,
24 he or she shall file a Nebraska income tax return which shall include
25 (a) in Nebraska adjusted gross income that portion of the estate's or

1 trust's Nebraska income, as determined under sections 77-2724 and
2 77-2725, allocable to his or her interest in the estate or trust and
3 (b) a reduction of the Nebraska tax liability by his or her
4 proportionate share of the credits as provided in the Angel
5 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax
6 Credit Act, ~~and the~~ Nebraska Advantage Research and Development Act,
7 and the Property Tax Relief Act and shall execute and forward to the
8 fiduciary, on or before the original due date of the Nebraska
9 fiduciary return, an agreement which states that he or she will file
10 a Nebraska income tax return and pay income tax on all income derived
11 from or connected with sources in this state, and such agreement
12 shall be attached to the Nebraska fiduciary return for such taxable
13 year.

14 (5) In the absence of the nonresident beneficiary's
15 executed agreement being attached to the Nebraska fiduciary return,
16 the estate or trust shall remit a portion of such beneficiary's
17 income which was derived from or attributable to Nebraska sources
18 with its Nebraska return for the taxable year. The amount of
19 remittance, in such instance, shall be the highest individual income
20 tax rate determined under section 77-2715.02 multiplied by the
21 nonresident beneficiary's share of the estate or trust income which
22 was derived from or attributable to sources within this state. The
23 amount remitted shall be allowed as a credit against the Nebraska
24 income tax liability of the beneficiary.

25 (6) The Tax Commissioner may allow a nonresident

1 beneficiary to not file a Nebraska income tax return if the
2 nonresident beneficiary's only source of Nebraska income was his or
3 her share of the estate's or trust's income which was derived from or
4 attributable to sources within this state, the nonresident did not
5 file an agreement to file a Nebraska income tax return, and the
6 estate or trust has remitted the amount required by subsection (5) of
7 this section on behalf of such nonresident beneficiary. The amount
8 remitted shall be retained in satisfaction of the Nebraska income tax
9 liability of the nonresident beneficiary.

10 (7) For purposes of this section, unless the context
11 otherwise requires, simple trust shall mean any trust instrument
12 which (a) requires that all income shall be distributed currently to
13 the beneficiaries, (b) does not allow amounts to be paid, permanently
14 set aside, or used in the tax year for charitable purposes, and (c)
15 does not distribute amounts allocated in the corpus of the trust. Any
16 trust which does not qualify as a simple trust shall be deemed a
17 complex trust.

18 (8) For purposes of this section, any beneficiary of an
19 estate or trust that is a grantor trust of a nonresident shall be
20 disregarded and this section shall apply as though the nonresident
21 grantor was the beneficiary.

22 Sec. 9. Section 77-2734.03, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-2734.03 (1)(a) For taxable years commencing prior to
25 January 1, 1997, any (i) insurer paying a tax on premiums and

1 assessments pursuant to section 77-908 or 81-523, (ii) electric
2 cooperative organized under the Joint Public Power Authority Act, or
3 (iii) credit union shall be credited, in the computation of the tax
4 due under the Nebraska Revenue Act of 1967, with the amount paid
5 during the taxable year as taxes on such premiums and assessments and
6 taxes in lieu of intangible tax.

7 (b) For taxable years commencing on or after January 1,
8 1997, any insurer paying a tax on premiums and assessments pursuant
9 to section 77-908 or 81-523, any electric cooperative organized under
10 the Joint Public Power Authority Act, or any credit union shall be
11 credited, in the computation of the tax due under the Nebraska
12 Revenue Act of 1967, with the amount paid during the taxable year as
13 (i) taxes on such premiums and assessments included as Nebraska
14 premiums and assessments under section 77-2734.05 and (ii) taxes in
15 lieu of intangible tax.

16 (c) For taxable years commencing or deemed to commence
17 prior to, on, or after January 1, 1998, any insurer paying a tax on
18 premiums and assessments pursuant to section 77-908 or 81-523 shall
19 be credited, in the computation of the tax due under the Nebraska
20 Revenue Act of 1967, with the amount paid during the taxable year as
21 assessments allowed as an offset against premium and related
22 retaliatory tax liability pursuant to section 44-4233.

23 (2) There shall be allowed to corporate taxpayers a tax
24 credit for contributions to community betterment programs as provided
25 in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

16 Sec. 10. This act becomes operative for all taxable years
17 beginning or deemed to begin on or after January 1, 2012, under the
18 Internal Revenue Code of 1986, as amended.

19 Sec. 11. Original section 77-2734.03, Reissue Revised
20 Statutes of Nebraska, and sections 77-2715.07 and 77-2717, Revised
21 Statutes Supplement, 2011, are repealed.