

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1045**

Introduced by Schumacher, 22.

Read first time January 17, 2018

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Cumulative
- 3 Supplement, 2016; to adopt the Nebraska Excellence Fund Tax Credit
- 4 Act; to harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and may be  
2 cited as the Nebraska Excellence Fund Tax Credit Act.

3           Sec. 2. For purposes of the Nebraska Excellence Fund Tax Credit  
4 Act:

5           (1) Department means the Department of Revenue; and

6           (2) Taxpayer means any individual, firm, corporation, or other  
7 business entity that is subject to the income tax imposed by the Nebraska  
8 Revenue Act of 1967.

9           Sec. 3. For taxable years beginning or deemed to begin on or after  
10 January 1, 2018, there shall be allowed as a nonrefundable credit against  
11 the income tax imposed by the Nebraska Revenue Act of 1967 an amount  
12 equal to the amount contributed by the taxpayer during the taxable year  
13 to the Nebraska Excellence Fund.

14           Sec. 4. The Nebraska Excellence Fund is hereby created to accept  
15 monetary contributions for exclusively public purposes as specified under  
16 section 170 of the Internal Revenue Code of 1986, as amended. The fund  
17 shall be administered by the department. All amounts in the fund shall be  
18 used for such public purposes upon appropriation by the Legislature. Any  
19 money in the fund available for investment shall be invested by the state  
20 investment officer pursuant to the Nebraska Capital Expansion Act and the  
21 Nebraska State Funds Investment Act.

22           Sec. 5. The department shall accept monetary contributions to the  
23 Nebraska Excellence Fund from any taxpayer desiring to make such a  
24 contribution. Within forty-five days following receipt of a contribution,  
25 the department shall issue to the taxpayer a certification for the credit  
26 allowed by section 3 of this act. The taxpayer shall claim the credit by  
27 attaching the certification received from the department to the  
28 taxpayer's income tax return. If the credit exceeds the amount of tax  
29 due, the excess may be carried forward to subsequent taxable years until  
30 the credit is fully utilized.

31           Sec. 6. An income tax deduction shall not be allowed under the

1 Nebraska Revenue Act of 1967 for any amount taken into account in  
2 calculating the credit allowed by section 3 of this act.

3 Sec. 7. The department may adopt and promulgate rules and  
4 regulations to carry out the Nebraska Excellence Fund Tax Credit Act.

5 Sec. 8. Section 77-2715.07, Revised Statutes Cumulative Supplement,  
6 2016, is amended to read:

7 77-2715.07 (1) There shall be allowed to qualified resident  
8 individuals as a nonrefundable credit against the income tax imposed by  
9 the Nebraska Revenue Act of 1967:

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

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

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

16 (a) For returns filed reporting federal adjusted gross incomes of  
17 greater than twenty-nine thousand dollars, a nonrefundable credit equal  
18 to twenty-five percent of the federal credit allowed under section 21 of  
19 the Internal Revenue Code of 1986, as amended, except that for taxable  
20 years beginning or deemed to begin on or after January 1, 2015, such  
21 nonrefundable credit shall be allowed only if the individual would have  
22 received the federal credit allowed under section 21 of the code after  
23 adding back in any carryforward of a net operating loss that was deducted  
24 pursuant to such section in determining eligibility for the federal  
25 credit;

26 (b) For returns filed reporting federal adjusted gross income of  
27 twenty-nine thousand dollars or less, a refundable credit equal to a  
28 percentage of the federal credit allowable under section 21 of the  
29 Internal Revenue Code of 1986, as amended, whether or not the federal  
30 credit was limited by the federal tax liability. The percentage of the  
31 federal credit shall be one hundred percent for incomes not greater than

1 twenty-two thousand dollars, and the percentage shall be reduced by ten  
2 percent for each one thousand dollars, or fraction thereof, by which the  
3 reported federal adjusted gross income exceeds twenty-two thousand  
4 dollars, except that for taxable years beginning or deemed to begin on or  
5 after January 1, 2015, such refundable credit shall be allowed only if  
6 the individual would have received the federal credit allowed under  
7 section 21 of the code after adding back in any carryforward of a net  
8 operating loss that was deducted pursuant to such section in determining  
9 eligibility for the federal credit;

10 (c) A refundable credit as provided in section 77-5209.01 for  
11 individuals who qualify for an income tax credit as a qualified beginning  
12 farmer or livestock producer under the Beginning Farmer Tax Credit Act  
13 for all taxable years beginning or deemed to begin on or after January 1,  
14 2006, under the Internal Revenue Code of 1986, as amended;

15 (d) A refundable credit for individuals who qualify for an income  
16 tax credit under the Angel Investment Tax Credit Act, the Nebraska  
17 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research  
18 and Development Act, or the Volunteer Emergency Responders Incentive Act;  
19 and

20 (e) A refundable credit equal to ten percent of the federal credit  
21 allowed under section 32 of the Internal Revenue Code of 1986, as  
22 amended, except that for taxable years beginning or deemed to begin on or  
23 after January 1, 2015, such refundable credit shall be allowed only if  
24 the individual would have received the federal credit allowed under  
25 section 32 of the code after adding back in any carryforward of a net  
26 operating loss that was deducted pursuant to such section in determining  
27 eligibility for the federal credit.

28 (3) There shall be allowed to all individuals as a nonrefundable  
29 credit against the income tax imposed by the Nebraska Revenue Act of  
30 1967:

31 (a) A credit for personal exemptions allowed under section

1 77-2716.01;

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

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

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

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

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

16 (g) A credit as provided in the Affordable Housing Tax Credit Act;  
17 and -

18 (h) A credit as provided in the Nebraska Excellence Fund Tax Credit  
19 Act.

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

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

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

27 (c) A refundable credit for individuals who qualify for an income  
28 tax credit as an owner of agricultural assets under the Beginning Farmer  
29 Tax Credit Act for all taxable years beginning or deemed to begin on or  
30 after January 1, 2009, under the Internal Revenue Code of 1986, as  
31 amended. The credit allowed for each partner, shareholder, member, or

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

7 (5)(a) For all taxable years beginning on or after January 1, 2007,  
8 and before January 1, 2009, under the Internal Revenue Code of 1986, as  
9 amended, there shall be allowed to each partner, shareholder, member, or  
10 beneficiary of a partnership, subchapter S corporation, limited liability  
11 company, or estate or trust a nonrefundable credit against the income tax  
12 imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the  
13 partner's, shareholder's, member's, or beneficiary's portion of the  
14 amount of franchise tax paid to the state under sections 77-3801 to  
15 77-3807 by a financial institution.

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

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

30 (6) There shall be allowed to all individuals nonrefundable credits  
31 against the income tax imposed by the Nebraska Revenue Act of 1967 as

1 provided in section 77-3604 and refundable credits against the income tax  
2 imposed by the Nebraska Revenue Act of 1967 as provided in section  
3 77-3605.

4 Sec. 9. Section 77-2717, Revised Statutes Cumulative Supplement,  
5 2016, is amended to read:

6 77-2717 (1)(a)(i) For taxable years beginning or deemed to begin  
7 before January 1, 2014, the tax imposed on all resident estates and  
8 trusts shall be a percentage of the federal taxable income of such  
9 estates and trusts as modified in section 77-2716, plus a percentage of  
10 the federal alternative minimum tax and the federal tax on premature or  
11 lump-sum distributions from qualified retirement plans. The additional  
12 taxes shall be recomputed by (A) substituting Nebraska taxable income for  
13 federal taxable income, (B) calculating what the federal alternative  
14 minimum tax would be on Nebraska taxable income and adjusting such  
15 calculations for any items which are reflected differently in the  
16 determination of federal taxable income, and (C) applying Nebraska rates  
17 to the result. The federal credit for prior year minimum tax, after the  
18 recomputations required by the Nebraska Revenue Act of 1967, and the  
19 credits provided in the Nebraska Advantage Microenterprise Tax Credit Act  
20 and the Nebraska Advantage Research and Development Act shall be allowed  
21 as a reduction in the income tax due. A refundable income tax credit  
22 shall be allowed for all resident estates and trusts under the Angel  
23 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
24 Credit Act, and the Nebraska Advantage Research and Development Act. A  
25 nonrefundable income tax credit shall be allowed for all resident estates  
26 and trusts as provided in the New Markets Job Growth Investment Act.

27 (ii) For taxable years beginning or deemed to begin on or after  
28 January 1, 2014, the tax imposed on all resident estates and trusts shall  
29 be a percentage of the federal taxable income of such estates and trusts  
30 as modified in section 77-2716, plus a percentage of the federal tax on  
31 premature or lump-sum distributions from qualified retirement plans. The

1 additional taxes shall be recomputed by substituting Nebraska taxable  
2 income for federal taxable income and applying Nebraska rates to the  
3 result. The credits provided in the Nebraska Advantage Microenterprise  
4 Tax Credit Act and the Nebraska Advantage Research and Development Act  
5 shall be allowed as a reduction in the income tax due. A refundable  
6 income tax credit shall be allowed for all resident estates and trusts  
7 under the Angel Investment Tax Credit Act, the Nebraska Advantage  
8 Microenterprise Tax Credit Act, and the Nebraska Advantage Research and  
9 Development Act. A nonrefundable income tax credit shall be allowed for  
10 all resident estates and trusts as provided in the Nebraska Job Creation  
11 and Mainstreet Revitalization Act, the New Markets Job Growth Investment  
12 Act, the School Readiness Tax Credit Act, the Affordable Housing Tax  
13 Credit Act, the Nebraska Excellence Fund Tax Credit Act, and section  
14 77-27,238.

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



1 Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act,  
2 and the Nebraska Advantage Research and Development Act. A nonrefundable  
3 income tax credit shall be allowed for all nonresident estates and trusts  
4 as provided in the Nebraska Job Creation and Mainstreet Revitalization  
5 Act, the New Markets Job Growth Investment Act, the School Readiness Tax  
6 Credit Act, the Affordable Housing Tax Credit Act, the Nebraska  
7 Excellence Fund Tax Credit Act, and section 77-27,238.

8 (2) In all instances wherein a fiduciary income tax return is  
9 required under the provisions of the Internal Revenue Code, a Nebraska  
10 fiduciary return shall be filed, except that a fiduciary return shall not  
11 be required to be filed regarding a simple trust if all of the trust's  
12 beneficiaries are residents of the State of Nebraska, all of the trust's  
13 income is derived from sources in this state, and the trust has no  
14 federal tax liability. The fiduciary shall be responsible for making the  
15 return for the estate or trust for which he or she acts, whether the  
16 income be taxable to the estate or trust or to the beneficiaries thereof.  
17 The fiduciary shall include in the return a statement of each  
18 beneficiary's distributive share of net income when such income is  
19 taxable to such beneficiaries.

20 (3) The beneficiaries of such estate or trust who are residents of  
21 this state shall include in their income their proportionate share of  
22 such estate's or trust's federal income and shall reduce their Nebraska  
23 tax liability by their proportionate share of the credits as provided in  
24 the Angel Investment Tax Credit Act, the Nebraska Advantage  
25 Microenterprise Tax Credit Act, the Nebraska Advantage Research and  
26 Development Act, the Nebraska Job Creation and Mainstreet Revitalization  
27 Act, the New Markets Job Growth Investment Act, the School Readiness Tax  
28 Credit Act, the Affordable Housing Tax Credit Act, the Nebraska  
29 Excellence Fund Tax Credit Act, and section 77-27,238. There shall be  
30 allowed to a beneficiary a refundable income tax credit under the  
31 Beginning Farmer Tax Credit Act for all taxable years beginning or deemed

1 to begin on or after January 1, 2001, under the Internal Revenue Code of  
2 1986, as amended.

3 (4) If any beneficiary of such estate or trust is a nonresident  
4 during any part of the estate's or trust's taxable year, he or she shall  
5 file a Nebraska income tax return which shall include (a) in Nebraska  
6 adjusted gross income that portion of the estate's or trust's Nebraska  
7 income, as determined under sections 77-2724 and 77-2725, allocable to  
8 his or her interest in the estate or trust and (b) a reduction of the  
9 Nebraska tax liability by his or her proportionate share of the credits  
10 as provided in the Angel Investment Tax Credit Act, the Nebraska  
11 Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research  
12 and Development Act, the Nebraska Job Creation and Mainstreet  
13 Revitalization Act, the New Markets Job Growth Investment Act, the School  
14 Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the  
15 Nebraska Excellence Fund Tax Credit Act, and section 77-27,238 and shall  
16 execute and forward to the fiduciary, on or before the original due date  
17 of the Nebraska fiduciary return, an agreement which states that he or  
18 she will file a Nebraska income tax return and pay income tax on all  
19 income derived from or connected with sources in this state, and such  
20 agreement shall be attached to the Nebraska fiduciary return for such  
21 taxable year.

22 (5) In the absence of the nonresident beneficiary's executed  
23 agreement being attached to the Nebraska fiduciary return, the estate or  
24 trust shall remit a portion of such beneficiary's income which was  
25 derived from or attributable to Nebraska sources with its Nebraska return  
26 for the taxable year. For taxable years beginning or deemed to begin  
27 before January 1, 2013, the amount of remittance, in such instance, shall  
28 be the highest individual income tax rate determined under section  
29 77-2715.02 multiplied by the nonresident beneficiary's share of the  
30 estate or trust income which was derived from or attributable to sources  
31 within this state. For taxable years beginning or deemed to begin on or

1 after January 1, 2013, the amount of remittance, in such instance, shall  
2 be the highest individual income tax rate determined under section  
3 77-2715.03 multiplied by the nonresident beneficiary's share of the  
4 estate or trust income which was derived from or attributable to sources  
5 within this state. The amount remitted shall be allowed as a credit  
6 against the Nebraska income tax liability of the beneficiary.

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

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

23 (8) For purposes of this section, any beneficiary of an estate or  
24 trust that is a grantor trust of a nonresident shall be disregarded and  
25 this section shall apply as though the nonresident grantor was the  
26 beneficiary.

27 Sec. 10. Section 77-2734.03, Revised Statutes Cumulative Supplement,  
28 2016, is amended to read:

29 77-2734.03 (1)(a) For taxable years commencing prior to January 1,  
30 1997, any (i) insurer paying a tax on premiums and assessments pursuant  
31 to section 77-908 or 81-523, (ii) electric cooperative organized under

1 the Joint Public Power Authority Act, or (iii) credit union shall be  
2 credited, in the computation of the tax due under the Nebraska Revenue  
3 Act of 1967, with the amount paid during the taxable year as taxes on  
4 such premiums and assessments and taxes in lieu of intangible tax.

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

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

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

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

27 (4) The changes made to this section by Laws 2004, LB 983, apply to  
28 motor fuels purchased during any tax year ending or deemed to end on or  
29 after January 1, 2005, under the Internal Revenue Code of 1986, as  
30 amended.

31 (5) There shall be allowed to corporate taxpayers refundable income

1 tax credits under the Nebraska Advantage Microenterprise Tax Credit Act  
2 and the Nebraska Advantage Research and Development Act.

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

6 (7) There shall be allowed to corporate taxpayers a nonrefundable  
7 income tax credit as provided in the Nebraska Job Creation and Mainstreet  
8 Revitalization Act, the New Markets Job Growth Investment Act, the School  
9 Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the  
10 Nebraska Excellence Fund Tax Credit Act, and section 77-27,238.

11 Sec. 11. Original sections 77-2715.07, 77-2717, and 77-2734.03,  
12 Revised Statutes Cumulative Supplement, 2016, are repealed.