

LEGISLATIVE BILL 772

Approved by the Governor May 15, 1987

Introduced by Barrett, 39, Speaker, for the Governor

AN ACT relating to revenue and taxation; to amend sections 77-2701, 77-2734.05, 77-2734.07, and 77-2734.09, Reissue Revised Statutes of Nebraska, 1943; to change the calculation of taxable income for unitary businesses; to change the allowable time periods for carryforwards and carrybacks; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 77-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135, 77-27,185, and 77-27,186 and section 3 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967. After January 1, 1984, any reference to sections 77-2701 to 77-27,135 or the Nebraska Revenue Act of 1967 shall be construed to include sections 77-2734.01 to 77-2734.15 and any reference which would include sections 77-2734 to 77-2752 shall be construed to include sections 77-2734.01 to 77-2734.15.

Sec. 2. That section 77-2734.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.05. (1) Any unitary business having income from business activity that is taxable both within and without this state shall, for taxable years beginning or deemed to begin before January 1, 1988, determine its taxable income by multiplying its federal taxable income, as adjusted, by a fraction, which is the average of the property factor plus the payroll factor plus the sales factor. For taxable years beginning or deemed to begin on or after January 1, 1988, the weight given to the property and payroll factors in the average shall be reduced and the fraction shall be determined as provided in section 3 of this act. For taxable years beginning or deemed to begin on or after January 1, 1992, federal taxable income, as adjusted, shall be multiplied by the sales factor only.

(2) If a unitary business does not have any

property, payroll, or sales anywhere, then the average in subsection (1) of this section shall be the average of the remaining factors.

(3) In the computation of the factors only the part of a unitary group that is subject to the Internal Revenue Code shall be included, except as provided in section 77-2734.09.

Sec. 3. The fraction used in section 77-2734.05 shall be computed in the following manner for taxable years beginning or deemed to begin on or after January 1 of the given year. The average of the property, payroll, and sales factors, which shall be known as the three-factor formula, shall be computed for each year and then combined with the sales factor only using the following percentages:

(1) For 1987, the weight of the three-factor formula shall be one hundred per cent;

(2) For 1988, the weight of the three-factor formula shall be eighty per cent and the sales factor shall be twenty per cent;

(3) For 1989, the weight of the three-factor formula shall be sixty per cent and the sales factor shall be forty per cent;

(4) For 1990, the weight of the three-factor formula shall be forty per cent and the sales factor shall be sixty per cent; and

(5) For 1991, the weight of the three-factor formula shall be twenty per cent and the sales factor shall be eighty per cent.

For 1992 and each year thereafter, the fraction used in section 77-2734.05 shall be the sales factor only.

Sec. 4. That section 77-2734.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.07. (1) There shall be added to federal taxable income the amount of any federal deduction because of a carryforward of a net operating loss or any capital loss.

(2) There shall be allowed a deduction for a carryforward of a net operating loss or capital loss that is connected with operations in Nebraska. For a net operating loss or capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 1987, the deduction shall be allowed only for each of the five taxable years succeeding the year of the loss.

(3) Except as otherwise provided in this section, there There shall be allowed a carryback of a net operating loss or a capital loss that is connected

with operations in Nebraska. For a net operating loss or capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 1987, no such carryback shall be allowed.

(4) The amounts in subsections (2) and (3) of this section shall be computed pursuant to rules and regulations adopted and promulgated by the Tax Commissioner. Such regulations shall be in accord with the laws of the United States regarding carryforwards and carrybacks.

Sec. 5. That section 77-2734.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.09. Any member of a unitary group that is required or permitted to use an apportionment formula other than one based on property, payroll, and sales prescribed by section 77-2734.05 shall be included in a return only with other corporations using the same apportionment formula. The income and the factors of such corporation shall not be used in computing the taxable income of the rest of the unitary group that does not use such special formula. A corporation using a formula required by a regulation issued pursuant to subsection (3) of section 77-2734.15 is using a formula based on property, payroll, and sales prescribed by section 77-2734.05.

Sec. 6. Sections 4 and 7 of this act shall become operative for all taxable years beginning or deemed to begin on or after January 1, 1987. The remaining sections of this act shall become operative on their effective date.

Sec. 7. That original section 77-2734.07, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 8. That original sections 77-2701, 77-2734.05, and 77-2734.09, Reissue Revised Statutes of Nebraska, 1943, are repealed.