

LEGISLATIVE BILL 459

Approved by the Governor March 6, 1989

Introduced by Revenue Committee, Hall, 7, Chairperson;
Labedz, 5; Hefner, 19; Peterson, 21;
Hartnett, 45

AN ACT relating to revenue and taxation; to amend section 77-2713, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2715, 77-2716, and 77-2732, Revised Statutes Supplement, 1988; to eliminate liability of corporate officers and employees as prescribed; to change provisions relating to calculation of taxable income as prescribed; to provide for joint and several tax liability as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. That section 77-2713, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2713. (1) Any person required under the provisions of sections 77-2702 to 77-2713 to collect, account for, or pay over any tax imposed by the Nebraska Revenue Act of 1967, who willfully fails to collect or truthfully account for or pay over such tax, and any person who willfully attempts in any manner to evade any tax imposed by such provisions of such act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a Class IV felony.

(2) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation of a false or fraudulent return, affidavit, claim, or document under or in connection with any matter arising under the provisions of sections 77-2702 to 77-2713, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, be guilty of a Class IV felony.

(3) A person who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, shall be

guilty of a Class IV misdemeanor. Each day of such operation shall constitute a separate offense.

(4) Any person who gives a resale certificate to the seller for property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business shall be guilty of a Class IV misdemeanor.

(5) Any violation of the provisions of sections 77-2702 to 77-2713, except as otherwise provided, shall be a Class IV misdemeanor.

(6) Any prosecution under the provisions of sections 77-2702 to 77-2713 shall be instituted within three years after the commission of the offense. ~~If PROVIDED, that~~ if such offense is the failure to do an act required by or under the provisions of any of such sections to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date. The failure to do any act required by or under the provisions of sections 77-2702 to 77-2713 shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution under the provisions of the Nebraska Revenue Act of 1967 may be conducted in any county where the person or corporation to whose liability the proceeding relates resides; or has a place of business or in any county in which such ~~crime~~ criminal act is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of any offenses under the provisions of such act the Nebraska Revenue Act of 1967.

~~(7) Any corporate officer or employee with the duty to pay taxes imposed upon a corporation or to perform some other act required of a corporation shall be personally liable for the payment of such taxes or penalties in the event of willful failure on his part to perform such act.~~

Sec. 2. That section 77-2715, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each taxable year on the entire income of every resident individual and on the income of every nonresident individual and partial-year resident individual which is derived from sources within this state, except that any individual who has no income tax liability under the Internal Revenue Code of 1986 and who has additions to adjusted gross income under pursuant to section 77-2716 of less than five thousand dollars shall not have an

individual income tax liability under the Nebraska Revenue Act of 1967.

(2) The tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, plus a percentage of the federal alternative minimum tax, ~~and the federal tax on premature individual retirement account distributions, and the federal tax on or lump-sum distributions of pensions from qualified retirement plans.~~ The additional taxes shall be recomputed to take into account any adjustments required by the Nebraska Revenue Act of 1967. The federal credit for prior year minimum tax, after recomputing the adjustments required by the act, shall be allowed as a reduction in the income tax due.

(3) The tax for each nonresident individual and partial-year resident individual shall be the portion of the tax imposed on resident individuals which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident individual with the same total income by a fraction, the numerator of which is the nonresident individual's or partial-year resident individual's Nebraska adjusted gross income as determined by section 77-2733 or 77-2733.01 and the denominator of which is his or her total federal adjusted gross income, after first adjusting each by the amounts provided in section 77-2716. If this determination attributes more or less tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for or the Tax Commissioner may require the employment of any other method to attribute an amount of tax which is reasonable and equitable in the circumstances.

(4) A refund shall be allowed to the extent that the income tax paid by the individual for the taxable year exceeds the income tax payable, except that no refund shall be made in any amount less than two dollars.

Sec. 3. That section 77-2716, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2716. (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or

dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes;

(c) There shall be added the total dividends and other income received from a regulated investment company to the extent excluded for federal income tax purposes, except that when a regulated investment company has reported to the recipient that as of the end of each quarter of the tax year of the company at least eighty percent of its total assets were (i) obligations described in subdivision (a) of this subsection, the total dividends and other income may be excluded or (ii) obligations described in subdivision (b) of this subsection and obligations issued under the laws of Nebraska that are exempt for federal income tax purposes, the dividends and other income may be excluded to the extent they are attributable to obligations issued under the laws of Nebraska that are exempt for federal income tax purposes; and

(d)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident

individual, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual or partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1988, the amount of any state income tax refund to the extent such refund is included in federal adjusted gross income.

(4) Federal adjusted gross income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted

from federal taxable income.

Sec. 4. That section 77-2732, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2732. (1) If the federal tax liability of husband or wife is determined on separate federal returns, their tax liabilities in this state shall be separately determined.

(2) Except as provided in subsection (3) of this section, if ~~if~~ the federal tax liability of husband and wife is determined on a joint federal return, their tax liability shall be determined in this state jointly except as provided in subsection (3) of this section and their tax liability shall be joint and several.

(3) If the federal tax liability of husband and wife is determined on a joint federal return and either husband or wife is a nonresident individual or partial-year resident individual and the other a resident individual, separate taxes shall be determined on their separate tax liabilities in this state on such forms as the Tax Commissioner shall prescribe and their tax liability shall be separate unless both elect to determine their joint tax liability in this state as if both were resident individuals, in which case their tax liability shall be joint and several. If a husband and wife file a joint federal income tax return but determine their tax liabilities in this state separately, they shall compute their tax liabilities in this state as if their federal tax liabilities had been determined separately.

(4) During the time a claim for credit or refund may be filed pursuant to section 77-2793, a husband and wife electing to be taxed as if both were residents of this state may revoke the election by each filing a separate return on such forms and in such manner as may be required by the Tax Commissioner.

Sec. 5. This act shall be operative for all taxable years beginning or deemed to begin on or after January 1, 1989, under the Internal Revenue Code.

Sec. 6. That original section 77-2713, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2715, 77-2716, and 77-2732, Revised Statutes Supplement, 1988, are repealed.