

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1403**

Introduced by Linehan, 39.

Read first time January 17, 2024

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-908 and 77-3806, Revised Statutes Cumulative Supplement, 2022,
- 3 and sections 77-7103, 77-7104, 77-7105, 77-7106, 77-7107, 77-7108,
- 4 and 77-7109, Revised Statutes Supplement, 2023; to change provisions
- 5 of the Opportunity Scholarships Act and change the use of credits
- 6 under such act; to harmonize provisions; and to repeal the original
- 7 sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-908, Revised Statutes Cumulative Supplement,  
2 2022, is amended to read:

3 77-908 Every insurance company organized under the stock, mutual,  
4 assessment, or reciprocal plan, except fraternal benefit societies, which  
5 is transacting business in this state shall, on or before March 1 of each  
6 year, pay a tax to the director of one percent of the gross amount of  
7 direct writing premiums received by it during the preceding calendar year  
8 for business done in this state, except that (1) for group sickness and  
9 accident insurance the rate of such tax shall be five-tenths of one  
10 percent and (2) for property and casualty insurance, excluding individual  
11 sickness and accident insurance, the rate of such tax shall be one  
12 percent. A captive insurer authorized under the Captive Insurers Act that  
13 is transacting business in this state shall, on or before March 1 of each  
14 year, pay to the director a tax of one-fourth of one percent of the gross  
15 amount of direct writing premiums received by such insurer during the  
16 preceding calendar year for business transacted in the state. The taxable  
17 premiums shall include premiums paid on the lives of persons residing in  
18 this state and premiums paid for risks located in this state whether the  
19 insurance was written in this state or not, including that portion of a  
20 group premium paid which represents the premium for insurance on Nebraska  
21 residents or risks located in Nebraska included within the group when the  
22 number of lives in the group exceeds five hundred. The tax shall also  
23 apply to premiums received by domestic companies for insurance written on  
24 individuals residing outside this state or risks located outside this  
25 state if no comparable tax is paid by the direct writing domestic company  
26 to any other appropriate taxing authority. Companies whose scheme of  
27 operation contemplates the return of a portion of premiums to  
28 policyholders, without such policyholders being claimants under the terms  
29 of their policies, may deduct such return premiums or dividends from  
30 their gross premiums for the purpose of tax calculations. Any such  
31 insurance company shall receive a credit on the tax imposed as provided

1 in the Community Development Assistance Act, the Nebraska Job Creation  
2 and Mainstreet Revitalization Act, the New Markets Job Growth Investment  
3 Act, the Nebraska Higher Blend Tax Credit Act, the Opportunity  
4 Scholarships Act, and the Affordable Housing Tax Credit Act.

5 Sec. 2. Section 77-3806, Revised Statutes Cumulative Supplement,  
6 2022, is amended to read:

7 77-3806 (1) The tax return shall be filed and the total amount of  
8 the franchise tax shall be due on the fifteenth day of the third month  
9 after the end of the taxable year. No extension of time to pay the tax  
10 shall be granted. If the Tax Commissioner determines that the amount of  
11 tax can be computed from available information filed by the financial  
12 institutions with either state or federal regulatory agencies, the Tax  
13 Commissioner may, by regulation, waive the requirement for the financial  
14 institutions to file returns.

15 (2) Sections 77-2714 to 77-27,135 relating to deficiencies,  
16 penalties, interest, the collection of delinquent amounts, and appeal  
17 procedures for the tax imposed by section 77-2734.02 shall also apply to  
18 the tax imposed by section 77-3802. If the filing of a return is waived  
19 by the Tax Commissioner, the payment of the tax shall be considered the  
20 filing of a return for purposes of sections 77-2714 to 77-27,135.

21 (3) No refund of the tax imposed by section 77-3802 shall be allowed  
22 unless a claim for such refund is filed within ninety days of the date on  
23 which (a) the tax is due or was paid, whichever is later, (b) a change is  
24 made to the amount of deposits or the net financial income of the  
25 financial institution by a state or federal regulatory agency, or (c) the  
26 Nebraska Investment Finance Authority issues an eligibility statement to  
27 the financial institution pursuant to the Affordable Housing Tax Credit  
28 Act.

29 (4) Any such financial institution shall receive a credit on the  
30 franchise tax as provided under the Affordable Housing Tax Credit Act,  
31 the Community Development Assistance Act, the Nebraska Higher Blend Tax

1 Credit Act, the Nebraska Job Creation and Mainstreet Revitalization Act,  
2 the Nebraska Property Tax Incentive Act, ~~and~~ the New Markets Job Growth  
3 Investment Act, and the Opportunity Scholarships Act.

4 Sec. 3. Section 77-7103, Revised Statutes Supplement, 2023, is  
5 amended to read:

6 77-7103 For purposes of the Opportunity Scholarships Act:

7 (1) Department means the Department of Revenue;

8 (2) Education scholarship means a financial grant-in-aid to be used  
9 to pay the cost to educate an eligible student ~~all or part of the tuition~~  
10 ~~and fees for attending a qualified school and includes any tuition~~  
11 ~~grants;~~

12 (3) Eligible student means a resident of Nebraska who:

13 (a) Is receiving an education scholarship for the first time and is  
14 (i) entering kindergarten, sixth grade, or ninth grade in a qualified  
15 school or (ii) transferring from a public school at which the student was  
16 enrolled for at least one semester immediately preceding the first  
17 semester for which the student receives an education scholarship to a  
18 qualified school and is entering any of grades kindergarten through  
19 twelve;

20 (b) Has previously received an education scholarship and is  
21 continuing education at a qualified school until such student graduates  
22 from high school or reaches twenty-one years of age, whichever comes  
23 first; or

24 (c) Is the sibling of a student who is receiving an education  
25 scholarship and resides in the same household as such student;

26 (4) Qualified school means any nongovernmental, privately operated  
27 elementary or secondary school located in this state that (a) is operated  
28 not for profit, (b) complies with the antidiscrimination provisions of 42  
29 U.S.C. 1981 as such section existed on January 1, 2023, (c) complies with  
30 all health and life safety laws or codes that apply to privately operated  
31 schools, and (d) fulfills the applicable accreditation or approval

1 requirements established by the State Board of Education pursuant to  
2 section 79-318;

3 (5) Scholarship-granting organization means a charitable  
4 organization in this state that is (a) exempt from federal income  
5 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of  
6 1986, as amended, and (b) certified pursuant to section 77-7104 to  
7 provide tax-credit-supported education scholarships to eligible students  
8 to assist them in attending qualified schools; and

9 (6) Tax credit means a credit that may be used against any income  
10 tax imposed by the Nebraska Revenue Act of 1967 or any tax imposed  
11 pursuant to sections 77-907 to 77-918 or 77-3801 to 77-3807.

12 ~~(6) Tuition means any amount charged by a qualified school for~~  
13 ~~enrollment in its instructional program. Tuition shall not exceed the~~  
14 ~~full cost of educating an eligible student at such qualified school.~~

15 Sec. 4. Section 77-7104, Revised Statutes Supplement, 2023, is  
16 amended to read:

17 77-7104 (1) An organization may apply to the department to become  
18 certified as a scholarship-granting organization under the Opportunity  
19 Scholarships Act. An organization shall obtain such certification prior  
20 to providing any education scholarships to eligible students under the  
21 act. The applicant shall provide the department with sufficient  
22 information to show:

23 (a) That the applicant is exempt from federal income taxation under  
24 section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

25 (b) That the applicant will offer one or more education scholarship  
26 programs for eligible students;

27 (c) That the applicant will be able to comply with the requirements  
28 of section 77-7110;

29 (d) That the applicant will provide education scholarships for  
30 eligible students without limiting education scholarship availability to  
31 only one qualified school;

1 (e) That the applicant will:

2 (i) Give first priority to:

3 (A) Eligible students who received an education scholarship from a  
4 scholarship-granting organization during the previous school year; and

5 (B) The sibling of a student who is receiving an education  
6 scholarship, so long as the sibling resides in the same household as such  
7 student;

8 (ii) Give second priority to:

9 (A) Eligible students whose household income levels do not exceed  
10 one hundred percent of the federal poverty level;

11 (B) Eligible students whose application for the enrollment option  
12 program established in section 79-234 has been denied;

13 (C) Eligible students who have an individualized education plan;

14 (D) Eligible students who are experiencing bullying, harassment,  
15 hazing, assault, battery, kidnapping, robbery, sexual offenses, threat or  
16 intimidation, or fighting at school;

17 (E) Eligible students who are in foster care; and

18 (F) Eligible students who are in a family with a parent or guardian  
19 actively serving in a branch of the armed forces of the United States or  
20 in the National Guard, or whose parent or guardian was killed serving in  
21 the line of duty;

22 (iii) Give third priority to eligible students whose household  
23 income levels exceed one hundred percent of the federal poverty level but  
24 do not exceed one hundred eighty-five percent of the federal poverty  
25 level;

26 (iv) Give fourth priority to eligible students whose household  
27 income levels exceed one hundred eighty-five percent of the federal  
28 poverty level but do not exceed two hundred thirteen percent of the  
29 federal poverty level; and

30 (v) Give fifth priority to eligible students whose household income  
31 levels exceed two hundred thirteen percent of the federal poverty level

1 but do not exceed three hundred percent of the income indicated in the  
2 income eligibility guidelines for reduced price meals under the National  
3 School Lunch Program in 7 C.F.R. part 210;

4 (f) That the applicant will limit the maximum scholarship amount  
5 awarded to any student to the cost necessary to educate the eligible  
6 student of tuition and fees at the qualified school such student attends;  
7 and

8 (g) That the applicant will limit scholarship amounts awarded to  
9 students in a manner that assures that the average of the scholarship  
10 amounts awarded per student does not exceed seventy-five percent of the  
11 statewide average general fund operating expenditures per formula student  
12 for the most recently available complete data year as such terms are  
13 defined in section 79-1003.

14 (2) If the applicant meets the requirements of this section, the  
15 department shall certify it as a scholarship-granting organization for  
16 tax-credit purposes under the Opportunity Scholarships Act. Such  
17 certification is subject to revocation by the department if the  
18 scholarship-granting organization subsequently fails to fulfill the  
19 requirements of this section or section 77-7110.

20 Sec. 5. Section 77-7105, Revised Statutes Supplement, 2023, is  
21 amended to read:

22 77-7105 (1) An individual taxpayer who makes one or more cash  
23 contributions to one or more scholarship-granting organizations during a  
24 tax year shall be eligible for a tax credit ~~against the income tax due~~  
25 ~~under the Nebraska Revenue Act of 1967~~. Except as otherwise provided in  
26 the Opportunity Scholarships Act, the amount of the tax credit shall be  
27 equal to whichever of the following amounts is the lowest: (a) The total  
28 amount of such contributions made during the tax year; (b) fifty percent  
29 of the ~~income~~ tax liability of such taxpayer for the tax year; or (c) one  
30 hundred thousand dollars. A taxpayer may only claim a tax credit pursuant  
31 to this section for the portion of the contribution that was not claimed

1 as a charitable contribution under the Internal Revenue Code.

2 (2) Taxpayers who are married but file separate returns for a tax  
3 year in which they could have filed a joint return may each claim only  
4 one-half of the tax credit that would otherwise have been allowed for a  
5 joint return.

6 (3) The tax credit allowed under this section shall be a  
7 nonrefundable credit. Any amount of the tax credit that is unused may be  
8 carried forward and applied against the taxpayer's ~~income~~ tax liability  
9 for the next five years immediately following the tax year in which the  
10 tax credit is first allowed. The tax credit cannot be carried back.

11 (4) The taxpayer may not designate all or any part of the  
12 contribution to a scholarship-granting organization for the benefit of  
13 any eligible student specifically identified by the taxpayer.

14 (5) The tax credit allowed under this section is subject to section  
15 77-7109.

16 Sec. 6. Section 77-7106, Revised Statutes Supplement, 2023, is  
17 amended to read:

18 77-7106 (1) Any partnership, limited liability company, or  
19 corporation having an election in effect under subchapter S of the  
20 Internal Revenue Code of 1986, as amended, that is carrying on any trade  
21 or business for which deductions would be allowed under section 162 of  
22 the Internal Revenue Code of 1986, as amended, or is carrying on any  
23 rental activity and that makes one or more cash contributions to one or  
24 more scholarship-granting organizations during a tax year shall be  
25 eligible for a tax credit ~~against the income tax due under the Nebraska~~  
26 ~~Revenue Act of 1967~~. Except as otherwise provided in the Opportunity  
27 Scholarships Act, the amount of the tax credit shall be equal to  
28 whichever of the following amounts is the lowest: (a) The total amount of  
29 such contributions made during the tax year; (b) fifty percent of the  
30 ~~income~~ tax liability of such taxpayer for the tax year; or (c) one  
31 hundred thousand dollars. A taxpayer may only claim a tax credit pursuant



1 to this section for the portion of the contribution that was not claimed  
2 as a charitable contribution under the Internal Revenue Code. The tax  
3 credit shall be attributed to each partner, member, or shareholder in the  
4 same proportion used to report the partnership's, limited liability  
5 company's, or subchapter S corporation's income or loss for ~~income~~ tax  
6 purposes.

7 (2) The tax credit allowed under this section shall be a  
8 nonrefundable credit. Any amount of the tax credit that is unused may be  
9 carried forward and applied against the taxpayer's ~~income~~ tax liability  
10 for the next five years immediately following the tax year in which the  
11 tax credit is first allowed. The tax credit cannot be carried back.

12 (3) The taxpayer may not designate all or any part of the  
13 contribution to a scholarship-granting organization for the benefit of  
14 any eligible student specifically identified by the taxpayer.

15 (4) The tax credit allowed under this section is subject to section  
16 77-7109.

17 Sec. 7. Section 77-7107, Revised Statutes Supplement, 2023, is  
18 amended to read:

19 77-7107 (1) An estate or trust which makes one or more cash  
20 contributions to one or more scholarship-granting organizations during a  
21 tax year shall be eligible for a tax credit ~~against the income tax due~~  
22 ~~under the Nebraska Revenue Act of 1967~~. Except as otherwise provided in  
23 the Opportunity Scholarships Act, the amount of the tax credit shall be  
24 equal to whichever of the following amounts is the lowest: (a) The total  
25 amount of such contributions made during the tax year; (b) fifty percent  
26 of the ~~income~~ tax liability of such taxpayer for the tax year; or (c) one  
27 million dollars. A taxpayer may only claim a tax credit pursuant to this  
28 section for the portion of the contribution that was not claimed as a  
29 charitable contribution under the Internal Revenue Code. Any tax credit  
30 not used by the estate or trust may be attributed to each beneficiary of  
31 the estate or trust in the same proportion used to report the

1 beneficiary's income from the estate or trust for ~~income~~ tax purposes.

2 (2) The tax credit allowed under this section shall be a  
3 nonrefundable credit. Any amount of the tax credit that is unused may be  
4 carried forward and applied against the taxpayer's ~~income~~ tax liability  
5 for the next five years immediately following the tax year in which the  
6 tax credit is first allowed. The tax credit cannot be carried back.

7 (3) The taxpayer may not designate all or any part of the  
8 contribution to a scholarship-granting organization for the benefit of  
9 any eligible student specifically identified by the taxpayer.

10 (4) The tax credit allowed under this section is subject to section  
11 77-7109.

12 Sec. 8. Section 77-7108, Revised Statutes Supplement, 2023, is  
13 amended to read:

14 77-7108 (1) A corporate taxpayer as defined in section 77-2734.04  
15 which makes one or more cash contributions to one or more scholarship-  
16 granting organizations during a tax year shall be eligible for a tax  
17 ~~credit against the income tax due under the Nebraska Revenue Act of 1967.~~  
18 Except as otherwise provided in the Opportunity Scholarships Act, the  
19 amount of the tax credit shall be equal to whichever of the following  
20 amounts is the lowest: (a) The total amount of such contributions made  
21 during the tax year; (b) fifty percent of the ~~income~~ tax liability of  
22 such taxpayer for the tax year; or (c) one hundred thousand dollars. A  
23 taxpayer may only claim a tax credit pursuant to this section for the  
24 portion of the contribution that was not claimed as a charitable  
25 contribution under the Internal Revenue Code.

26 (2) The tax credit allowed under this section shall be a  
27 nonrefundable credit. Any amount of the tax credit that is unused may be  
28 carried forward and applied against the taxpayer's ~~income~~ tax liability  
29 for the next five years immediately following the tax year in which the  
30 tax credit is first allowed. The tax credit cannot be carried back.

31 (3) The taxpayer may not designate all or any part of the

1 contribution to a scholarship-granting organization for the benefit of  
2 any eligible student specifically identified by the taxpayer.

3 (4) The tax credit allowed under this section is subject to section  
4 77-7109.

5 Sec. 9. Section 77-7109, Revised Statutes Supplement, 2023, is  
6 amended to read:

7 77-7109 (1) Prior to making a contribution to a scholarship-granting  
8 organization, any taxpayer desiring to claim a tax credit under the  
9 Opportunity Scholarships Act shall notify the scholarship-granting  
10 organization of the taxpayer's intent to make a contribution and the  
11 amount to be claimed as a tax credit. Upon receiving each such  
12 notification, the scholarship-granting organization shall notify the  
13 department of the intended tax credit amount. If the department  
14 determines that the intended tax credit amount in the notification would  
15 exceed the limit specified in subsection (3) of this section, the  
16 department shall notify the scholarship-granting organization of its  
17 determination within thirty days after receipt of the notification. The  
18 scholarship-granting organization shall then promptly notify the taxpayer  
19 of the department's determination that the intended tax credit amount in  
20 the notification is not available. If an amount less than the amount  
21 indicated in the notification is available for a tax credit, the  
22 department shall notify the scholarship-granting organization of the  
23 available amount and the scholarship-granting organization shall notify  
24 the taxpayer of the available amount within three business days.

25 (2) In order to be allowed a tax credit as provided by the act, the  
26 taxpayer shall make its contribution between thirty-one and sixty days  
27 after notifying the scholarship-granting organization of the taxpayer's  
28 intent to make a contribution. If the scholarship-granting organization  
29 does not receive the contribution within the required time period, it  
30 shall notify the department of such fact and the department shall no  
31 longer include such amount when calculating whether the limit prescribed

1 in subsection (3) of this section has been exceeded. If the scholarship-  
2 granting organization receives the contribution within the required time  
3 period, it shall provide the taxpayer with a receipt for the  
4 contribution. The receipt shall show the name and address of the  
5 scholarship-granting organization, the date the scholarship-granting  
6 organization was certified by the department in accordance with section  
7 77-7104, the name, address, and, if available, tax identification number  
8 of the taxpayer making the contribution, the amount of the contribution,  
9 and the date the contribution was received.

10 (3) The department shall consider notifications regarding intended  
11 tax credit amounts in the order in which they are received to ascertain  
12 whether the intended tax credit amounts are within the annual limit  
13 provided in this subsection. The annual limit on the total amount of tax  
14 credits for calendar years 2024, 2025, and 2026 shall be twenty-five  
15 million dollars. The annual limit on the total amount of tax credits for  
16 calendar year 2027 and each calendar year thereafter shall be calculated  
17 by taking the annual limit from the prior calendar year and then  
18 multiplying such amount by (a) one hundred twenty-five percent if the  
19 intended tax credit amounts in the prior calendar year exceeded ninety  
20 percent of the annual limit applicable to that calendar year or (b) one  
21 hundred percent if the intended tax credit amounts in the prior calendar  
22 year did not exceed ninety percent of the annual limit applicable to that  
23 calendar year. The annual limit may be increased as provided in this  
24 subsection until it reaches one hundred million dollars. Thereafter, no  
25 further increases shall be allowed.

26 (4) The State Department of Education and the Department of Revenue  
27 shall publish on their respective websites information identifying the  
28 annual limit when it is increased pursuant to subsection (3) of this  
29 section.

30 (5) Once tax credits have reached the designated annual limit for  
31 any calendar year, no additional tax credits shall be allowed for such

1 calendar year. Tax credits ~~Credits~~ shall be prorated among the  
2 notifications received on the day the annual limit is exceeded.

3 Sec. 10. Original sections 77-908 and 77-3806, Revised Statutes  
4 Cumulative Supplement, 2022, and sections 77-7103, 77-7104, 77-7105,  
5 77-7106, 77-7107, 77-7108, and 77-7109, Revised Statutes Supplement,  
6 2023, are repealed.