

LEGISLATIVE BILL 526

Approved by the Governor June 2, 1973

Introduced by Zurbach, 19, Chmn. of Revenue, for the Governor

AN ACT to amend sections 77-2730, 77-2733, 77-2769, and 77-27,119, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2715 and 77-2734, Revised Statutes Supplement, 1972, relating to taxation; to correct internal references; to clarify provisions; to provide for resident estates or trusts; to provide for electing small business corporations; to provide for estimated tax of corporations; to provide for credits; to provide for mandatory examinations; to provide for the use of tax information; and to repeal the original sections.

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

Section 1. That section 77-2715, Revised Statutes Supplement, 1972, 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 of this state and on the income of every nonresident individual of this state which is derived from sources within this state. The tax shall be a flat percentage of, for each resident individual, the taxpayer's adjusted federal income tax liability for the taxable year, and for each nonresident individual, the taxpayer's adjusted federal income tax liability for the taxable year which is attributable to income derived from sources within this state.

The taxpayer's adjusted federal income tax liability shall be the amount of federal income tax, as determined under Subtitle A, Chapter I, subchapter A, Parts I, V, and VI of the Internal Revenue Code, for which the taxpayer would have been liable if such taxpayer had paid federal income tax based on federal taxable income as adjusted by the modifications provided in section 77-2716 without any allowance for credits against such tax permitted under the Internal Revenue Code.

The adjusted federal income tax liability of each nonresident individual taxpayer which is attributable to income derived from sources within this state shall be determined by multiplying his adjusted federal income tax

liability by a fraction, the numerator of which is his taxable income derived from sources within this state as determined by section 77-2733, and the denominator of which is his total federal taxable income, after first subtracting from each the amounts provided in subsection (1) of section 77-2716; Provided, that if the above determination attributes more or less federal income 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 federal income tax which is reasonable and equitable in the circumstances.

(2) (a) A resident of this state shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state; and

(b) A nonresident shall mean an individual who is not a resident of this state.

(3) (a) There shall also be allowed to resident individuals as a credit against the tax imposed by sections ~~77-2704~~ 77-2714 to 77-27,135, a food sales tax credit equal to ten dollars multiplied by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. A refund shall be allowed to the extent that the food sales tax credit exceeds the income tax payable by the resident individual for the taxable year but no refund shall be made in any amount less than two dollars.

(b) No individual who may be claimed as a personal exemption on another individual's return shall be entitled to a food sales tax credit or refund for himself. If a food sales tax credit or refund is claimed on more than one return for the same individual, the Tax Commissioner is authorized to determine the individual entitled to claim the credit or refund provided herein.

(c) Any individual, other than a person who for more than six months of the taxable year is a resident patient or inmate of a public institution or an organization exempt from tax as a charitable institution, who maintains a permanent place of abode within this state, spending in the aggregate more than six months of the taxable year within this state, shall be conclusively presumed to have paid or paid with respect to such personal exemptions retail sales and use taxes imposed by this state equal to the maximum food sales tax credit



allowable.

(d) The credits or refunds for sales taxes allowed by this subsection shall be claimed on income tax returns or in the case of an individual not having tax liability in this state on such forms or claims for refunds as the Tax Commissioner shall prescribe.

Sec. 2. That section 77-2730, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2730. (1) A resident individual and a resident estate or trust shall be allowed a credit against the income tax otherwise due for the amount of any income tax imposed on him for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia on income derived from sources therein and which is also subject to income tax under the provisions of sections 77-2714 to 77-27,124.

(2) The credit provided under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 shall not exceed the proportion of the income tax otherwise due under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 that the amount of the taxpayer's taxable adjusted gross income or total income derived from sources in the other taxing jurisdiction bears to ~~his entire taxable federal adjusted gross income as modified herein~~ or total federal income.

Sec. 3. That section 77-2733, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2733. (1) The taxable income of a nonresident derived from sources within this state shall be the sum of the following:

(a) The net amount of items of income, gain, loss, and deduction entering into his federal taxable income which are derived from or connected with sources in this state including (i) his distributive share of partnership income and deductions determined under the provisions of section 77-2729; (ii) his share of small business corporation taxable income determined under the provisions of section 77-2734; and (iii) his share of estate or trust income and deductions determined under the provisions of section 77-2725;

(b) The portion of the modifications described in subsection (1) of section 77-2716 which relates to income

derived from sources in this state, including any modifications attributable to him as a partner; and

(c) The amount of the standard deduction or itemized deductions and the personal exemptions allowable for a nonresident shall be limited by the percentage which his adjusted gross income from sources within this state is to his entire adjusted gross income.

(2) Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to:

(a) The ownership or disposition of any interest in real or tangible personal property in this state; and

(b) A business, trade, profession, or occupation carried on in this state.

(3) Income from intangible personal property including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(4) Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses, and deductions derived from or connected with sources in this state, under regulations to be prescribed by the Tax Commissioner but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment and allocation under regulations to be prescribed by the Tax Commissioner.

(6) Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident shall not constitute income derived from sources within this state.

(7) Compensation paid by a resident estate or trust for services by a nonresident fiduciary shall constitute income derived from sources within this state.

(8) Compensation paid by a business, trade, or profession shall constitute income derived from sources



within this state if:

(a) The individual's service is performed entirely within this state;

(b) The individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state;

(c) The individual's service is performed without this state, but the service performed without this state is related to the transactions and activity of the business, trade, or profession carried on within this state; or

(d) Some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled is in this state, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Sec. 4. That section 77-2734, Revised Statutes Supplement, 1972, be amended to read as follows:

77-2734. (1) A tax is hereby imposed for each taxable year on the taxable income derived from sources within this state of any corporation or any other entity taxed as a corporation under the Internal Revenue Code whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both, at a rate equal to twenty-five per cent of the rate imposed on individuals under section 77-2715. For any taxpayer subject to this section whose fiscal year does not coincide with the calendar year, the rate initially set shall also apply for the period from January 1, 1968, to the last day of his then current fiscal year.

(2) Except as provided in subsection (1) of this section, for the privilege of exercising its franchise or doing business in this state in a corporate capacity, there is hereby imposed a franchise tax on each corporation or any other entity taxed as a corporation under the Internal Revenue Code according to or measured by its entire net income derived from all sources within this state for the taxable year at the rate imposed under subsection (1) of this section. For the purposes of this subsection the taxpayer's entire net income shall be its federal taxable income derived from sources within this

state as determined pursuant to sections 77-2735 to 77-2749 without regard to the modification referred to in section 77-2741, the State of Nebraska hereby adopting method numbered (4) authorized by section 5219, United States Revised Statutes, as amended, 12 USC 548, for state taxation of national banking associations. The tax imposed by this subsection on national banking associations shall be in lieu of all taxes imposed by this state on national banking associations to the extent it is not permissible to tax such associations under federal law. For the purpose of computing the franchise or income tax levied in this subsection section, the net income of cooperative organizations shall be the entire net income derived from all sources within this state, including distributions of the cooperative to members or patrons such portion of as per unit retains, patronage refunds or dividends on stock derived in attributable to this state as shall be excludible from gross income of or deductible by such corporation for federal income tax purposes. All provisions of sections 77-2714 to 77-27,124 relating to taxation of corporations shall apply to franchise taxes or income taxes imposed under this subsection section unless the context requires otherwise.

Any (a) corporation subject to tax under section 44-1213, 77-908, 77-909, or 81-523, (b) corporations organized as cooperatives under Chapter 21, article 13, (c) electric cooperatives organized under Chapter 70, article 7, (d) nonstock cooperative marketing companies organized under Chapter 21, article 14, (e) savings and loan associations, (f) production credit associations, (g) persons licensed to engage in this state in the business of purchasing installment paper, (h) installment loan companies, (i) credit unions, (j) mutual investment companies, (k) banks for cooperatives, and (l) industrial loan and investment companies, shall be credited, in the computation of tax due under the provisions of this section, with the amount paid during the taxable year as taxes in lieu of intangible tax.

(3) (a) A small business corporation having an election in effect under subchapter S of the Internal Revenue Code shall not be subject to the Nebraska income tax or franchise tax on corporations, ~~and the~~

(b) The shareholders of such corporation who are residents of Nebraska shall include in their taxable incomes their proportionate part share of such corporation's federal taxable income, ~~provided, that if~~



(c) If any of the shareholders shareholder of such corporation are nonresidents is a nonresident during any part of the corporation's taxable year, he shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income that portion of the corporation's Nebraska income, as determined under the provisions of sections 77-2735 to 77-2749, allocable to his interest in the corporation. He shall execute and forward to the corporation, before the original due date of the Nebraska corporate return, an agreement which states that he will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's Nebraska return for such taxable year. Such corporation shall be subject to the income tax or franchise tax, as the case may be, for such year on that part of the corporation's income, as determined under the provisions of sections 77-2735 to 77-2749, allocable to the shares of stock owned by such nonresident unless the corporation files with its return for such year an agreement executed by each nonresident stockholder stating that such nonresident will file a Nebraska income tax return which will include in his Nebraska nonresident adjusted gross income that portion of the corporation's Nebraska taxable income allocable to such nonresident's interest in such corporation.

(d) In the absence of the nonresident shareholder's executed agreement being attached to the Nebraska corporate return, the corporation shall remit a portion of his share of the corporation's taxable income which was derived from or attributable to this state, which portion shall be ten per cent of the nonresident shareholder's share of the corporation's income which was derived from or attributable to sources within this state.

(e) The Tax Commissioner may require a nonresident shareholder to file a Nebraska income tax return even though his only source of Nebraska income was his share of the corporation's income which was derived from or attributable to sources within this state, and the amount of remittance by the corporation on behalf of such nonresident shareholder shall be allowed as a credit against his Nebraska income tax liability.

Sec. 5. That section 77-2769, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2769. (1) Every resident and nonresident individual, corporation and other entity taxed as a corporation under the Internal Revenue Code shall make a



declaration of the estimated tax for the taxable year, in such form as the Tax Commissioner may prescribe; Provided, that (a) no declaration is required by an individual if the estimated tax can reasonably be expected to be less than forty dollars, and (b) no declaration is required by a corporation or other entity taxed as a corporation under the Internal Revenue Code if the estimated tax can reasonably be expected to be less than one hundred dollars.

(2) (a) Estimated tax for an individual shall mean the amount which the individual estimates to be his income tax under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 for the taxable year less the amount which he estimates to be the sum of any credits allowable for tax withheld under section 77-2753, food sales tax credit under section 77-2715, tax paid to another state under section 77-2730, and tax paid on gasoline and motor fuels used for agricultural, industrial, and nonhighway purposes under section 66-452.

(b) Estimated tax for a corporation or other entity taxed as a corporation under the Internal Revenue Code shall mean the amount which the corporation or business estimates to be its franchise or income tax under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 for the taxable year in excess of five thousand dollars, computed as prescribed by the laws of the United States for estimating federal income tax and apportioned to Nebraska in the same manner as taxable income is so apportioned less the amount which is estimated to be the sum of any credits allowable for in lieu of intangible tax paid under subsection (2) of section 77-2734 and tax paid on gasoline and motor fuels used for agricultural, industrial, and nonhighway purposes under section 66-452.

(3) If they are eligible to do so for federal tax purposes, a husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(4) An individual or corporation may amend a declaration under regulations prescribed by the Tax Commissioner.

(5) The declaration of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection (2) of section 77-2763



for an income tax return.

(6) The declaration and payment of estimated tax shall be filed or paid, as the case may be, on or before the dates prescribed by the laws of the United States for filing declarations and payment of estimated federal income tax, except that the Tax Commissioner, by rule and regulation, may establish other dates for filing declarations and payment of estimated tax.

(7) The application of the provisions of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

(8) Payment of the estimated income tax or any installment thereof, shall be considered payment on account of the income tax imposed under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 for the taxable year.

Sec. 6. That section 77-27,119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,119. (1) The Tax Commissioner shall administer and enforce the income tax imposed by sections ~~77-2704~~ 77-2714 to 77-27,135 and he is authorized to conduct hearings and to make such rules and regulations and to require such facts and information to be reported as he may deem necessary to enforce the income tax provisions of sections ~~77-2704~~ 77-2714 to 77-27,135; Provided, that such rules, regulations and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions of sections ~~77-2704~~ 77-2714 to 77-27,135; Provided, that such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States; and provided further, that commencing with the taxable year 1971, the form shall have a place for the taxpayer to designate the school district in which he lives and the county in which the district is located.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other

document required to be filed under the income tax provisions of sections 77-2704 77-2714 to 77-27,135, for the purpose of determining corporate income, corporate franchise, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon such matters and may, by summons, require the attendance of the person responsible for rendering such return or other document, or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons. Such examination shall be made in the case of any corporation which (a) is not incorporated or domesticated in Nebraska, (b) has gross annual sales of ten million dollars or more, and (c) is not examined by a state with which Nebraska has an agreement for the exchange of examination or audit information.

(4) The time and place of examination pursuant to the provisions of this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or any other person, to divulge, or make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing the provisions of sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the



provisions of the tax law to which he is a party, or on behalf of any party to any action or proceeding under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed (a) to prohibit the delivery to a taxpayer, his duly authorized representative, or his successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted, or (d) to prohibit furnishing to the Nebraska Workmen's Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court. Any person who violates the provisions of this subsection shall be guilty of a felony and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the state, he shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 shall be preserved for three years and thereafter until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his delegates, or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning an item of income contained in any return, or disclosed by the report of any investigation of the

income or return of income of any taxpayer but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135.

(9) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under the provisions of sections ~~77-2704~~ 77-2714 to 77-27,135 but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the regulations of the Tax Commissioner. The Tax Commissioner may furnish to the Multistate Tax Commission any information contained in the tax returns and reports and related schedules and documents filed pursuant to the laws of this state and in the report of an audit or investigation made with respect thereto. Such information may be furnished solely for tax purposes, and the Multistate Tax Commission may make such information available to the tax officials of any other state, the District of Columbia, or the United States and its territories for tax purposes.

Sec. 7. This act shall become operative for all taxable years beginning after December 31, 1973.

Sec. 8. That original sections 77-2730, 77-2733, 77-2769, and 77-27,119, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2715 and 77-2734, Revised Statutes Supplement, 1972, are repealed.