

LEGISLATIVE BILL 589

Approved by the Governor May 27, 1975

Introduced by Carsten, 2, for the Governor

AN ACT to amend section 77-2715.01, Revised Statutes Supplement, 1974, and section 77-2734, Revised Statutes Supplement, 1974, as amended by section 1, Legislative Bill 123, Eighty-fourth Legislature, First Session, 1975, relating to taxation; to set the maximum personal income tax rate for 1975; to change the formula for setting rates; to provide additional times when rates may be changed; to decrease the corporate rate and provide step rates; to provide duties; to define a term; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 77-2715.01, Revised Statutes Supplement, 1974, be amended to read as follows:

77-2715.01. (1) ~~Except as provided in subsection (3) of this section, on or~~ On or before November 15 of each year, the State Board of Equalization and Assessment shall set the rate of the income tax imposed by section 77-2715 for the taxable year beginning in the subsequent calendar year, and the rate of the sales tax imposed by subsection (1) of section 77-2703 which will be effective from January 1 through December 31 of the succeeding year. For the taxable year commencing January 1, 1975, the individual income tax rate shall not exceed twelve per cent.

Recognizing that an adequate cash flow is necessary to maintain the orderly implementation of various legislative acts, it is mandatory that the funding of those acts which have a fiscal impact beyond a current appropriations year be considered when setting the sales and income tax rates. Accordingly, the purpose of this subsection is to provide that the State Board of Equalization and Assessment shall set rates based on appropriations and the express obligations of the Legislature for the two succeeding calendar years following the rate-setting date. Such action will provide an adequate cash flow, the orderly implementation of the funding of acts as intended by the Legislature, and eliminate drastic fluctuations in the state sales and income tax rates.

(a) In fixing the rates, the State Board of Equalization and Assessment shall first determine the status of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date which must be financed from the receipts from the sales and use taxes, the individual and corporation income and franchise taxes and other miscellaneous receipts to the General Fund, from a certified statement of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date made by the most recent regular session of the Legislature, which statement the Director of Administrative Services shall prepare and furnish prior to the convening of such board.

(b) If the Legislature should meet in a special session during any year, the board shall add to the appropriations and express obligations as certified pursuant to subdivision (a) of this subsection, the appropriation for the legislative session, all miscellaneous claims, deficiency bills, and all emergency appropriations and express obligations.

(c) The board shall then determine the balance of the General Fund at the beginning of the period under consideration and the estimated receipts to the General Fund from all sources other than the sales, use, income, and franchise taxes for this period.

(d) The board shall then set the rates of the sales tax and income tax so that the estimated funds available pursuant to subdivision (c) of this subsection plus estimated receipts from the sales, use, income, and franchise taxes will be not less than five per cent in excess of the appropriations and express obligations for the next two succeeding calendar years following the rate-setting date as determined pursuant to subdivisions (a) and (b) of this subsection. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations as certified as provided in subdivision (a) of this subsection.

(e) The rates of the sales and income taxes shall be fixed so that the total sales and use taxes levied will as nearly as possible equal the total individual income and franchise taxes tax levied for the calendar year for which the rates so fixed will be effective.

(f) For purposes of this subsection, total sales and use taxes levied shall mean the total state sales and use tax liability of all taxpayers for the calendar year

minus total food sales tax credits attributable to the same period. Total income and franchise taxes levied shall mean the total state income and franchise tax liability of all taxpayers for the calendar year, before deduction of food sales tax credits.

(j) The sales tax rate so fixed by the board shall be an increment of one half of one per cent, and the income tax rate so fixed shall be an increment of one per cent.

(h) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The board shall meet within fifteen days after the adjournment of each regular session of the Legislature, within thirty days after each special session of the Legislature, and also within thirty days after receiving a report from the Tax Commissioner that there have been significant changes in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, or the rules and regulations issued under such laws, and shall determine whether the rates for sales tax and income tax must be changed. In making such determination the board shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for such special session, all miscellaneous claims, deficiency bills, and all emergency appropriations.

In the event the board determines the rates must be changed as a result of such regular or special session or as a result of a change in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, such sales tax rate shall be made effective at the beginning of any calendar month within the current calendar year and such income tax rate shall be effective for the current taxable year.

~~(3) For the taxable year commencing January 1, 1973, the individual income tax rate shall be thirteen per cent.~~

Sec. 2. That section 77-2734, Revised Statutes Supplement, 1974, as amended by section 1, Legislative Bill 123, Eighty-fourth Legislature, First Session, 1975, 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 thirty twenty-five per cent of the rate imposed on individuals under section 77-2715 on the first twenty-five thousand dollars of taxable income, and at the rate of twenty-seven and one half per cent of such rate on all taxable income in excess of twenty-five thousand dollars. 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 rates 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 section, the net income of cooperative organizations shall be the entire net income derived from all sources within this state, including distributions of earnings and profits of the cooperative to members or patrons such as dividends paid on capital stock, nonpatronage income allocated to patrons, or patronage dividends attributable to this state as shall be excludible or deductible by such corporation for federal income tax purposes; provided, that the cooperative may deduct such distributions, not to include redemption of prior years' nonqualified notice of allocation, to members or patrons that are paid in money. 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 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.

(b) The shareholders of such corporation who are residents of Nebraska shall include in their incomes their proportionate share of such corporation's federal taxable income.

(c) If any shareholder of such corporation 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.

(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. 3. (1) The Tax Commissioner shall include in the revenue estimate provided to the State Board of Equalization and Assessment monthly estimates of the anticipated receipts for each source of General Fund revenue which provides in excess of five million dollars annually to such fund.

(2) On or before the fifteenth day of each month the Tax Commissioner shall provide to each member of the State Board of Equalization and Assessment a report reflecting the General Fund deposits for the preceding calendar month and the limitations of information contained in such report. Such report shall be made available to any individual upon request.

(3) After January 1, 1976, if the accumulative total deposits to the General Fund for the year shall at any time be less than ninety per cent or greater than one hundred ten per cent of the projected deposits for such period, the Governor may call a meeting of the State Board of Equalization and Assessment to determine whether the rates for the sales tax and income tax shall be changed. If such a change is required, the board shall establish the new rates pursuant to section 77-2715.01.

Sec. 4. (1) For the purposes of this act, express obligations shall include, but not be limited to, incremental increases in the homestead exemption, personal property tax relief, specific appropriations for future years, or other items identified by the State Board of Equalization and Assessment as express obligations under the provisions of subsections (2) and (3) of this section.

(2) The State Board of Equalization and Assessment shall adopt and promulgate rules and regulations pursuant to Chapter 84, article 9, prescribing what the board considers to be an express obligation for purposes of section 77-2715.01, estimates of costs for each of the obligations, and the method of determining such costs.

(3) The State Board of Equalization and Assessment shall annually submit a statement to the

Governor and the Clerk of the Legislature identifying all express obligations, along with the factors considered in making such determinations, and the costs of such obligations. Such statement shall be submitted on or before September 1 of each year. The clerk shall distribute copies of the statement to each member of the Legislature and to the Legislative Fiscal Analyst.

Sec. 5. This act shall be applicable for all taxable years retroactive to January 1, 1975.

Sec. 6. That original section 77-2715.01, Revised Statutes Supplement, 1974, and section 77-2734, Revised Statutes Supplement, 1974, as amended by section 1, Legislative Bill 123, Eighty-fourth Legislature, First Session, 1975, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.