

LEGISLATIVE BILL 240

Approved by the Governor April 17, 1991

Introduced by Warner, 25

AN ACT relating to revenue and taxation; to amend sections 77-2788, 77-2792, and 77-2794, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to interest on certain taxes and provide the Tax Commissioner with power to waive certain penalties and abate certain interest as prescribed; to change provisions relating to the allowance of interest on overpayment of income tax; 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 77-2788, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2788. (1) If any amount of income tax imposed by the Nebraska Revenue Act of 1967 including tax withheld by an employer or payor is not paid on or before the last date prescribed for payment, interest on such amount at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be paid for the period from such last date to the date paid.

(2) For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

(3) If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the Tax Commissioner for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(4) Interest prescribed under this section on any income tax including tax withheld by an employer or payor shall be paid on notice and demand and shall be assessed, collected, and paid in the same manner as income taxes. Any reference to the income tax imposed by the Nebraska Revenue Act of 1967 shall be deemed also to refer to interest imposed by this section on such

tax.

(5) Interest shall be imposed under this section ~~in with~~ respect to any penalty or addition to tax only if such penalty or addition to tax is not paid within ten days of the notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(6) If notice and demand is made for the payment of any amount of tax and if such amount is paid within ten days after the date of such notice and demand, interest under the provisions of this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(7) If any portion of income tax is satisfied by credit of an overpayment, then no interest shall be imposed under the provisions of this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

~~(8) Any portion of the income tax imposed by the Nebraska Revenue Act of 1967 or any interest, penalty, or addition to such tax which is an erroneous refund as defined in the Internal Revenue Code and which is recoverable by the Tax Commissioner shall bear interest at the rate of six percent per annum from the date of payment of the refund.~~

~~(9) (8)~~ Interest prescribed under this section may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

Sec. 2. That section 77-2792, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2792. (1) The Tax Commissioner is authorized to abate the unpaid portion of the assessment of any income tax or any liability in respect ~~thereof thereto~~, which (a) is excessive in amount, (b) is assessed after the expiration of the period of limitations properly applicable thereto, or (c) is erroneously or illegally assessed.

(2) No claim for abatement shall be filed by a taxpayer in respect ~~of to~~ an assessment of any income tax imposed under the provisions of the Nebraska Revenue Act of 1967.

(3) The Tax Commissioner is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect ~~thereof thereto~~, if he ~~or~~

she determines under uniform rules prescribed by him or her that the administration and collection costs involved would not warrant collection of the amount due.

(4) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by such act but may not waive the minimum interest on delinquent taxes at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, except as provided in this section.

(5) The Tax Commissioner may abate interest when:

(a) The interest is attributable to error or unreasonable delay in performing a ministerial duty by the Department of Revenue or to erroneous written advice given to the taxpayer by the Tax Commissioner or an employee of the department acting in his or her official capacity when the written advice was a direct response to a request from the taxpayer and the taxpayer reasonably relied upon the advice;

(b) The interest is attributable to an amount previously refunded by the Tax Commissioner for the period interest on such amount was not allowed under section 77-2794;

(c) The interest is attributable to the recovery of an amount erroneously refunded by the Tax Commissioner for the period the amount was actually held by the state, and the first ninety days after such amount was refunded, when such refund was not requested or caused by information provided by the taxpayer; or

(d) The interest on the related federal amount was abated by the Internal Revenue Service.

Sec. 3. That section 77-2794, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2794. (1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, upon any overpayment in respect ~~of~~ to the income tax imposed by the ~~provisions of the~~ Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer; and

(b) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer.

(3) If any overpayment of income tax imposed by the ~~provisions of the~~ Nebraska Revenue Act of 1967 is refunded within ~~three months ninety days~~ after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ~~three months ninety days~~ after ~~the any~~ return, including any amended return, was filed, whichever is later, no interest shall be allowed under ~~the provisions of~~ this section on overpayment.

Sec. 4. That original sections 77-2788, 77-2792, and 77-2794, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.