

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 282

Introduced by Mello, 5; Nantkes, 46.

Read first time January 14, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes
3 Cumulative Supplement, 2008; to adopt the Nebraska
4 Advantage Film Production Incentive Act; to provide
5 income tax incentives for film production; to harmonize
6 provisions; to provide an operative date; and to repeal
7 the original sections.

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

1 Section 1. Sections 1 to 4 of this act shall be known and
2 may be cited as the Nebraska Advantage Film Production Incentive
3 Act.

4 Sec. 2. For purposes of the Nebraska Advantage Film
5 Production Incentive Act:

6 (1) Crew means any person who works on preproduction,
7 principal photography, and postproduction, except producers,
8 principal cast, and the director;

9 (2) Film means a professional single media or multimedia
10 program or feature, which is not child pornography or obscene
11 material, including, but not limited to, national advertising
12 messages that are broadcast on a national affiliate or cable
13 network, fixed on film or digital video, which can be viewed
14 or reproduced and which is exhibited in theaters, licensed for
15 exhibition by individual television stations, groups of stations,
16 networks, cable television stations, or other means, or licensed
17 for home viewing markets;

18 (3) Production company means a person or company that
19 produces film for exhibition; and

20 (4) Production cost means:

21 (a) Wages or salaries of persons who are residents of
22 this state and who have earned income from working on a film in
23 this state, including payments to personal services corporations
24 with respect to the services of qualified performing artists, as
25 determined under section 62(a)(2)(B) of the Internal Revenue Code

1 of 1986, as amended;

2 (b) The cost of construction and operations, wardrobe,
3 and accessories;

4 (c) The cost of photography, sound, and lighting;

5 (d) The cost of editing;

6 (e) Rental of facilities, locations, and equipment; and

7 (f) Wages and salaries of persons who are defined and
8 registered as Nebraska expatriates by the Film Office of the
9 Department of Economic Development, not to exceed ten percent of
10 total production cost eligible for the credit.

11 Sec. 3. (1) An income tax credit as provided in this
12 section in the amount of up to twenty-five percent of documented
13 production costs incurred in Nebraska for production of a film in
14 this state shall be available to the production company responsible
15 for the production if the Film Office of the Department of
16 Economic Development determines that the proposed project has a
17 reasonable chance of economic success. The income tax credit shall
18 be refundable.

19 (2)(a) The amount of income tax credit available to a
20 production company with a minimum budget for a film of less than
21 thirty million dollars shall be:

22 (i) Twenty-five percent if fifty percent or more of the
23 crew are residents of Nebraska and are employed in this state;

24 (ii) Fifteen percent if twenty-five percent up to but not
25 including fifty percent of the crew are residents of Nebraska and

1 are employed in this state; and

2 (iii) Ten percent if less than twenty-five percent of the
3 crew are residents of Nebraska and are employed in this state.

4 (b) The amount of income tax credit available to a
5 production company with a minimum budget for a film of thirty
6 million dollars or more shall be twenty-five percent.

7 (3) The income tax credit program shall be administered
8 by the Film Office.

9 (4) To be eligible for an income tax credit:

10 (a) The production company responsible for a film shall
11 submit documentation to the Film Office of the amount of wages or
12 salaries paid to residents of this state directly relating to the
13 production and the amount of other production costs incurred in
14 this state directly relating to the production;

15 (b) The production company shall file a Nebraska income
16 tax return;

17 (c) Except for major studio productions, the production
18 company shall provide to the Film Office the name of the completion
19 guarantor and a copy of the bond guaranteeing the completion of
20 the project or, if a film has not secured a completion bond, the
21 production company shall provide evidence to the office that all
22 Nebraska crew and local vendors have been paid and there are no
23 liens against the production company pending in this state;

24 (d) The minimum budget for the film shall be two million
25 dollars of which not less than one million two hundred fifty

1 thousand dollars of the production costs are incurred in this
2 state. The minimum budget requirements of this subdivision shall be
3 met by any production company that produces multiple film projects
4 within one year if each project meets a minimum budget of three
5 hundred thousand dollars and the total budget of all projects
6 in one year is not less than two million dollars of which not
7 less than one million two hundred fifty thousand dollars of the
8 production costs are incurred in this state;

9 (e) The production company shall provide evidence to the
10 Film Office of complete financing for production prior to the
11 receipt of any income tax credit under this section; and

12 (f) The production company shall provide evidence to the
13 Film Office of a certificate of general liability insurance with a
14 minimum coverage of one million dollars and a workers' compensation
15 policy pursuant to state law which shall include coverage of
16 employer's liability prior to the receipt of any income tax credit
17 under this section.

18 (5) The Film Office shall approve or disapprove all
19 claims for income tax credits and shall notify the Tax Commissioner
20 of such approval or disapproval. The amount of income tax credits
21 approved by the office for any tax year shall not exceed five
22 million dollars.

23 (6) Any income tax credit allowable to a partnership,
24 a limited liability company, a subchapter S corporation, a
25 cooperative, including a cooperative exempt under section 521

1 of the Internal Revenue Code of 1986, as amended, a limited
2 cooperative association, or an estate or trust may be distributed
3 to the partners, members, shareholders, patrons, or beneficiaries
4 in the same manner as income is distributed for use against their
5 income tax liabilities.

6 Sec. 4. The Film Office is created within the Department
7 of Economic Development. The office shall be responsible for
8 administration of the Nebraska Advantage Film Production Incentive
9 Act and shall have such other duties as assigned by the department.
10 The department may develop forms and adopt and promulgate rules and
11 regulations to carry out the act.

12 Sec. 5. Section 77-2715.07, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 77-2715.07 (1) There shall be allowed to qualified
15 resident individuals as a nonrefundable credit against the income
16 tax imposed by the Nebraska Revenue Act of 1967:

17 (a) A credit equal to the federal credit allowed under
18 section 22 of the Internal Revenue Code; and

19 (b) A credit for taxes paid to another state as provided
20 in section 77-2730.

21 (2) There shall be allowed to qualified resident
22 individuals against the income tax imposed by the Nebraska Revenue
23 Act of 1967:

24 (a) For returns filed reporting federal adjusted
25 gross incomes of greater than twenty-nine thousand dollars, a

1 nonrefundable credit equal to twenty-five percent of the federal
2 credit allowed under section 21 of the Internal Revenue Code of
3 1986, as amended;

4 (b) For returns filed reporting federal adjusted gross
5 income of twenty-nine thousand dollars or less, a refundable credit
6 equal to a percentage of the federal credit allowable under section
7 21 of the Internal Revenue Code of 1986, as amended, whether or
8 not the federal credit was limited by the federal tax liability.
9 The percentage of the federal credit shall be one hundred percent
10 for incomes not greater than twenty-two thousand dollars, and
11 the percentage shall be reduced by ten percent for each one
12 thousand dollars, or fraction thereof, by which the reported
13 federal adjusted gross income exceeds twenty-two thousand dollars;

14 (c) A refundable credit for individuals who qualify for
15 an income tax credit as an owner of agricultural assets under the
16 Beginning Farmer Tax Credit Act for all taxable years beginning or
17 deemed to begin on or after January 1, 2001, under the Internal
18 Revenue Code of 1986, as amended; and a refundable credit as
19 provided in section 77-5209.01 for individuals who qualify for an
20 income tax credit as a qualified beginning farmer or livestock
21 producer under the Beginning Farmer Tax Credit Act for all taxable
22 years beginning or deemed to begin on or after January 1, 2006,
23 under the Internal Revenue Code of 1986, as amended;

24 (d) A refundable credit for individuals who qualify for
25 an income tax credit under the Nebraska Advantage Microenterprise

1 Tax Credit Act or the Nebraska Advantage Research and Development
2 Act; and

3 (e) A refundable credit equal to ten percent of the
4 federal credit allowed under section 32 of the Internal Revenue
5 Code of 1986, as amended.

6 (3) There shall be allowed to all individuals as a
7 nonrefundable credit against the income tax imposed by the Nebraska
8 Revenue Act of 1967:

9 (a) A credit for personal exemptions allowed under
10 section 77-2716.01;

11 (b) A credit for contributions to certified community
12 betterment programs as provided in the Community Development
13 Assistance Act. Each partner, each shareholder of an electing
14 subchapter S corporation, each beneficiary of an estate or trust,
15 or each member of a limited liability company shall report his or
16 her share of the credit in the same manner and proportion as he
17 or she reports the partnership, subchapter S corporation, estate,
18 trust, or limited liability company income; and

19 (c) A credit for investment in a biodiesel facility as
20 provided in section 77-27,236.

21 (4) There shall be allowed as a credit against the income
22 tax imposed by the Nebraska Revenue Act of 1967:

23 (a) A credit to all resident estates and trusts for taxes
24 paid to another state as provided in section 77-2730; and

25 (b) A credit to all estates and trusts for contributions

1 to certified community betterment programs as provided in the
2 Community Development Assistance Act.

3 (5)(a) For all taxable years beginning on or after
4 January 1, 2007, and before January 1, 2009, under the Internal
5 Revenue Code of 1986, as amended, there shall be allowed to each
6 partner, shareholder, member, or beneficiary of a partnership,
7 subchapter S corporation, limited liability company, or estate or
8 trust a nonrefundable credit against the income tax imposed by
9 the Nebraska Revenue Act of 1967 equal to fifty percent of the
10 partner's, shareholder's, member's, or beneficiary's portion of the
11 amount of franchise tax paid to the state under sections 77-3801 to
12 77-3807 by a financial institution.

13 (b) For all taxable years beginning on or after January
14 1, 2009, under the Internal Revenue Code of 1986, as amended,
15 there shall be allowed to each partner, shareholder, member, or
16 beneficiary of a partnership, subchapter S corporation, limited
17 liability company, or estate or trust a nonrefundable credit
18 against the income tax imposed by the Nebraska Revenue Act of 1967
19 equal to the partner's, shareholder's, member's, or beneficiary's
20 portion of the amount of franchise tax paid to the state under
21 sections 77-3801 to 77-3807 by a financial institution.

22 (c) Each partner, shareholder, member, or beneficiary
23 shall report his or her share of the credit in the same manner
24 and proportion as he or she reports the partnership, subchapter S
25 corporation, limited liability company, or estate or trust income.

1 If any partner, shareholder, member, or beneficiary cannot fully
2 utilize the credit for that year, the credit may not be carried
3 forward or back.

4 (6) There shall be allowed to individuals as a credit
5 against the income tax imposed by the Nebraska Revenue Act of 1967
6 a credit as provided in the Nebraska Advantage Film Production
7 Incentive Act.

8 Sec. 6. Section 77-2717, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 77-2717 (1)(a) The tax imposed on all resident estates
11 and trusts shall be a percentage of the federal taxable income
12 of such estates and trusts as modified in section 77-2716, plus
13 a percentage of the federal alternative minimum tax and the
14 federal tax on premature or lump-sum distributions from qualified
15 retirement plans. The additional taxes shall be recomputed by (i)
16 substituting Nebraska taxable income for federal taxable income,
17 (ii) calculating what the federal alternative minimum tax would
18 be on Nebraska taxable income and adjusting such calculations for
19 any items which are reflected differently in the determination of
20 federal taxable income, and (iii) applying Nebraska rates to the
21 result. The federal credit for prior year minimum tax, after the
22 recomputations required by the Nebraska Revenue Act of 1967, and
23 the credits provided in the Nebraska Advantage Microenterprise Tax
24 Credit Act and the Nebraska Advantage Research and Development Act
25 shall be allowed as a reduction in the income tax due. A refundable

1 income tax credit shall be allowed for all resident estates and
2 trusts under the Nebraska Advantage Microenterprise Tax Credit Act
3 and the Nebraska Advantage Research and Development Act. An income
4 tax credit shall be allowed for all resident estates and trusts
5 under the Nebraska Advantage Film Production Incentive Act.

6 (b) The tax imposed on all nonresident estates and trusts
7 shall be the portion of the tax imposed on resident estates and
8 trusts which is attributable to the income derived from sources
9 within this state. The tax which is attributable to income derived
10 from sources within this state shall be determined by multiplying
11 the liability to this state for a resident estate or trust with
12 the same total income by a fraction, the numerator of which is
13 the nonresident estate's or trust's Nebraska income as determined
14 by sections 77-2724 and 77-2725 and the denominator of which is
15 its total federal income after first adjusting each by the amounts
16 provided in section 77-2716. The federal credit for prior year
17 minimum tax, after the recomputations required by the Nebraska
18 Revenue Act of 1967, reduced by the percentage of the total income
19 which is attributable to income from sources outside this state,
20 and the credits provided in the Nebraska Advantage Microenterprise
21 Tax Credit Act and the Nebraska Advantage Research and Development
22 Act shall be allowed as a reduction in the income tax due. A
23 refundable income tax credit shall be allowed for all nonresident
24 estates and trusts under the Nebraska Advantage Microenterprise Tax
25 Credit Act and the Nebraska Advantage Research and Development Act.

1 An income tax credit shall be allowed for all nonresident estates
2 and trusts under the Nebraska Advantage Film Production Incentive
3 Act.

4 (2) In all instances wherein a fiduciary income tax
5 return is required under the provisions of the Internal Revenue
6 Code, a Nebraska fiduciary return shall be filed, except that a
7 fiduciary return shall not be required to be filed regarding a
8 simple trust if all of the trust's beneficiaries are residents of
9 the State of Nebraska, all of the trust's income is derived from
10 sources in this state, and the trust has no federal tax liability.
11 The fiduciary shall be responsible for making the return for the
12 estate or trust for which he or she acts, whether the income be
13 taxable to the estate or trust or to the beneficiaries thereof.
14 The fiduciary shall include in the return a statement of each
15 beneficiary's distributive share of net income when such income is
16 taxable to such beneficiaries.

17 (3) The beneficiaries of such estate or trust who are
18 residents of this state shall include in their income their
19 proportionate share of such estate's or trust's federal income and
20 shall reduce their Nebraska tax liability by their proportionate
21 share of the credits as provided in the Nebraska Advantage Film
22 Production Incentive Act, the Nebraska Advantage Microenterprise
23 Tax Credit Act, and the Nebraska Advantage Research and Development
24 Act. There shall be allowed to a beneficiary a refundable income
25 tax credit under the Beginning Farmer Tax Credit Act for all

1 taxable years beginning or deemed to begin on or after January 1,
2 2001, under the Internal Revenue Code of 1986, as amended.

3 (4) If any beneficiary of such estate or trust is a
4 nonresident during any part of the estate's or trust's taxable
5 year, he or she shall file a Nebraska income tax return which
6 shall include (a) in Nebraska adjusted gross income that portion
7 of the estate's or trust's Nebraska income, as determined under
8 sections 77-2724 and 77-2725, allocable to his or her interest
9 in the estate or trust and (b) a reduction of the Nebraska tax
10 liability by his or her proportionate share of the credits as
11 provided in the Nebraska Advantage Film Production Incentive Act,
12 the Nebraska Advantage Microenterprise Tax Credit Act, and the
13 Nebraska Advantage Research and Development Act and shall execute
14 and forward to the fiduciary, on or before the original due date
15 of the Nebraska fiduciary return, an agreement which states that he
16 or she will file a Nebraska income tax return and pay income tax
17 on all income derived from or connected with sources in this state,
18 and such agreement shall be attached to the Nebraska fiduciary
19 return for such taxable year.

20 (5) In the absence of the nonresident beneficiary's
21 executed agreement being attached to the Nebraska fiduciary return,
22 the estate or trust shall remit a portion of such beneficiary's
23 income which was derived from or attributable to Nebraska sources
24 with its Nebraska return for the taxable year. The amount of
25 remittance, in such instance, shall be the highest individual

1 income tax rate determined under section 77-2715.02 multiplied by
2 the nonresident beneficiary's share of the estate or trust income
3 which was derived from or attributable to sources within this
4 state. The amount remitted shall be allowed as a credit against the
5 Nebraska income tax liability of the beneficiary.

6 (6) The Tax Commissioner may allow a nonresident
7 beneficiary to not file a Nebraska income tax return if the
8 nonresident beneficiary's only source of Nebraska income was his or
9 her share of the estate's or trust's income which was derived from
10 or attributable to sources within this state, the nonresident did
11 not file an agreement to file a Nebraska income tax return, and
12 the estate or trust has remitted the amount required by subsection
13 (5) of this section on behalf of such nonresident beneficiary. The
14 amount remitted shall be retained in satisfaction of the Nebraska
15 income tax liability of the nonresident beneficiary.

16 (7) For purposes of this section, unless the context
17 otherwise requires, simple trust shall mean any trust instrument
18 which (a) requires that all income shall be distributed currently
19 to the beneficiaries, (b) does not allow amounts to be paid,
20 permanently set aside, or used in the tax year for charitable
21 purposes, and (c) does not distribute amounts allocated in the
22 corpus of the trust. Any trust which does not qualify as a simple
23 trust shall be deemed a complex trust.

24 (8) For purposes of this section, any beneficiary of an
25 estate or trust that is a grantor trust of a nonresident shall be

1 disregarded and this section shall apply as though the nonresident
2 grantor was the beneficiary.

3 Sec. 7. Section 77-2734.03, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 77-2734.03 (1)(a) For taxable years commencing prior to
6 January 1, 1997, any (i) insurer paying a tax on premiums and
7 assessments pursuant to section 77-908 or 81-523, (ii) electric
8 cooperative organized under the Joint Public Power Authority Act,
9 or (iii) credit union shall be credited, in the computation of
10 the tax due under the Nebraska Revenue Act of 1967, with the
11 amount paid during the taxable year as taxes on such premiums and
12 assessments and taxes in lieu of intangible tax.

13 (b) For taxable years commencing on or after January 1,
14 1997, any insurer paying a tax on premiums and assessments pursuant
15 to section 77-908 or 81-523, any electric cooperative organized
16 under the Joint Public Power Authority Act, or any credit union
17 shall be credited, in the computation of the tax due under the
18 Nebraska Revenue Act of 1967, with the amount paid during the
19 taxable year as (i) taxes on such premiums and assessments included
20 as Nebraska premiums and assessments under section 77-2734.05 and
21 (ii) taxes in lieu of intangible tax.

22 (c) For taxable years commencing or deemed to commence
23 prior to, on, or after January 1, 1998, any insurer paying a tax on
24 premiums and assessments pursuant to section 77-908 or 81-523 shall
25 be credited, in the computation of the tax due under the Nebraska

1 Revenue Act of 1967, with the amount paid during the taxable year
2 as assessments allowed as an offset against premium and related
3 retaliatory tax liability pursuant to section 44-4233.

4 (2) There shall be allowed to corporate taxpayers a
5 tax credit for contributions to community betterment programs as
6 provided in the Community Development Assistance Act.

7 (3) There shall be allowed to corporate taxpayers a
8 refundable income tax credit under the Beginning Farmer Tax Credit
9 Act for all taxable years beginning or deemed to begin on or
10 after January 1, 2001, under the Internal Revenue Code of 1986, as
11 amended.

12 (4) The changes made to this section by Laws 2004, LB
13 983, apply to motor fuels purchased during any tax year ending
14 or deemed to end on or after January 1, 2005, under the Internal
15 Revenue Code of 1986, as amended.

16 (5) There shall be allowed to corporate taxpayers
17 refundable income tax credits under the Nebraska Advantage
18 Microenterprise Tax Credit Act and the Nebraska Advantage Research
19 and Development Act.

20 (6) There shall be allowed to corporate taxpayers a
21 nonrefundable income tax credit for investment in a biodiesel
22 facility as provided in section 77-27,236.

23 (7) There shall be allowed to corporate taxpayers an
24 income tax credit as provided in the Nebraska Advantage Film
25 Production Incentive Act.

1 Sec. 8. This act becomes operative for all taxable years
2 beginning or deemed to begin on or after January 1, 2009, under the
3 Internal Revenue Code of 1986, as amended.

4 Sec. 9. Original sections 77-2715.07, 77-2717, and
5 77-2734.03, Revised Statutes Cumulative Supplement, 2008, are
6 repealed.