

LEGISLATIVE BILL 773

Approved by the Governor May 7, 1987

Introduced by Barrett, 39, Speaker, for the Governor

AN ACT relating to revenue and taxation; to amend sections 77-2701, 77-2701.01, 77-2714 to 77-2715.01, 77-2716, 77-2724, 77-2725, 77-2729, 77-2730, 77-2732, 77-2733, 77-2734.01, 77-2734.02, 77-2734.04, 77-2765, 77-2775, 77-2781, 77-2786, 77-2793, and 77-27,119.01, Reissue Revised Statutes of Nebraska, 1943, and section 77-2753, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 284, Ninetieth Legislature, First Session, 1987; to define terms; to change provisions relating to income taxes as prescribed; to change the income tax rate; to provide for adjustment to income as prescribed; to establish tax rate schedules; to provide for computation of income; to change provisions relating to deficiency determinations; to require the Tax Commissioner to furnish certain information; to eliminate certain provisions relating to estates, trusts, joint returns, and certain nonresidents; to harmonize provisions; to provide an operative date; and to repeal the original sections, and also sections 77-2718, 77-2719, 77-2721, 77-2723, 77-2762, and 77-2766, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 77-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135, 77-27,185, and 77-27,186 and sections 4, 6, 8, 10, 17, and 28 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967. After January 1, 1984, any reference to sections 77-2701 to 77-27,135 or the Nebraska Revenue Act of 1967 shall be construed to include sections 77-2734.01 to 77-2734.15 and any reference which would include sections 77-2734 to 77-2752 shall be construed to include sections 77-2734.01 to 77-2734.15.

Sec. 2. That section 77-2701.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2701.01. Pursuant to section 77-2715.01, the rate of the income tax levied pursuant to section 77-2715 shall be three and fifteen-hundredths per cent. nineteen per cent., except that for taxable years beginning or deemed to begin on or after January 1, 1985, and on or before December 31, 1985, the rate shall be twenty per cent.

Sec. 3. That section 77-2714, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2714. Any term used in sections 77-2714 to 77-27,124 and sections 4, 6, 8, 10, 17, and 28 of this act shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, 1986, 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, as the same may be or become effective, at any time or from time to time, for the taxable year. Any reference to either the Internal Revenue Code of 1954, the Internal Revenue Code of 1986, or the Internal Revenue Code shall mean and include a reference to the other, whenever appropriate. All other references to any tax contained within sections 77-2714 to 77-27,124 and sections 4, 6, 8, 10, 17, and 28 of this act refer to income tax unless the contrary appears. Any organization to the extent that it is exempt from income taxes under the laws of the United States shall be exempt from income tax under the provisions of the Nebraska Revenue Act of 1967.

Sec. 4. As used in sections 77-2714 to 77-27,123 and sections 4, 6, 8, 10, 17, and 28 of this act, unless the context otherwise requires:

(1) Nebraska adjusted gross income shall mean (a) for resident individuals, their federal adjusted gross income as modified in section 77-2716 and (b) for nonresident individuals and partial-year resident individuals, the portion of the federal adjusted gross income that is derived from or connected with sources within this state as provided in section 77-2715;

(2) Nebraska taxable income shall mean (a) for resident individuals, the amount of income subject to tax and (b) for nonresident individuals and partial-year

resident individuals, the amount of income on which the tax will be computed, before the proration contained in subsection (3) of section 77-2715 to determine the tax attributable to income from sources within this state;

(3) Nonresident estate or trust shall mean an estate or trust that is not a resident estate or trust;

(4) Nonresident individual shall mean an individual who is not a resident of this state at any time during the taxable year;

(5) Partial-year resident individual shall mean an individual who is a resident of this state during any part of the taxable year and a nonresident of this state the rest of the year;

(6) Resident estate or trust shall mean (a) the estate of a decedent who at his or her death was domiciled in this state, (b) a trust or portion of a trust consisting of property transferred by the will of a decedent who at his or her death was domiciled in this state, or (c) a trust or portion of a trust consisting of the property of an individual domiciled in this state at the time such individual may no longer exercise the power to revest title to such property in himself or herself; and

(7) Resident individual 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.

Sec. 5. That section 77-2715, Reissue Revised Statutes of Nebraska, 1943, 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 and partial-year resident individual of this state which is derived from sources within this state, except that any individual who has no income tax liability under the Internal Revenue Code of 1986 and who has additions to adjusted gross income under section 77-2716 of less than five thousand dollars shall not have an individual income tax liability under the Nebraska Revenue Act of 1967.

(2) The tax for each resident individual 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, and subchapter D, Part I 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 such individual's federal adjusted gross income as modified in section 77-2716 plus a percentage of the federal alternative minimum tax, the federal tax on premature individual retirement account distributions, and the federal tax on lump-sum distributions of pensions. The additional taxes shall be recomputed to take into account any adjustments required by the Nebraska Revenue Act of 1967. The federal credit for prior year minimum tax, after recomputing the adjustments required by the act, shall be allowed as a reduction in the income tax due.

(3) The tax for each nonresident individual and partial-year resident individual shall be the portion of the tax imposed on resident individuals which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying his or her adjusted federal income tax liability the liability to this state for a resident individual with the same total income by a fraction, the numerator of which is his or her taxable income derived from sources within this state the nonresident individual's or partial-year resident individual's Nebraska adjusted gross income as determined by section 77-2733 or section 17 of this act and the denominator of which is his or her total federal taxable adjusted gross income, after first subtracting from adjusting each by the amounts provided in subsection (1) of section 77-2716. If this 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) There shall be allowed to qualified resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit equal to fifty per cent of the federal credit allowed under section 22 of the Internal Revenue Code.

(4) There shall be allowed to individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit for renewable energy source systems as provided under section 66-1047. The provisions of this subsection shall terminate on January 1, 1986.

(5) There shall be allowed to individuals carrying on business as a sole proprietorship or as a partnership or having an election in effect under subchapter S of the Internal Revenue Code as a credit against the tax imposed by sections 77-2714 to 77-27,135 a credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner of a reporting business partnership or shareholder of a business firm with an election in effect under subchapter S of the Internal Revenue Code shall report the credit in the same manner and proportion as the partner reports the partnership income or the shareholder reports the subchapter S corporation income.

Sec. 6. (1) There shall be allowed to qualified resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,123 and sections 4, 6, 8, 10, 17, and 28 of this act:

(a) A credit equal to fifty per cent of the federal credit allowed under section 22 of the Internal Revenue Code; and

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

(2) There shall be allowed to all individuals as a credit against the tax imposed by the Nebraska Revenue Act of 1967:

(a) A carryover of the credit for renewable energy source systems as provided under section 66-1047; and

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner or each shareholder of an electing subchapter S corporation shall report his or her share of the credit in the same

manner and proportion as he or she reports the partnership or subchapter S corporation income.

Sec. 7. That section 77-2715.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2715.01. (1)(a) Commencing in 1984 ~~1987~~ the Legislature shall set the rate ~~of~~ for the income tax imposed by section 77-2715 and the rate of the sales tax imposed by subsection (1) of section 77-2703. The rate of the income tax set by the Legislature shall be considered the primary rate for establishing the tax rate schedules used to compute the tax.

(b) The Legislature shall set the rates of the sales tax and income tax so that the estimated funds available plus estimated receipts from the sales, use, income, and franchise taxes will be not less than three per cent nor more than seven per cent in excess of the appropriations and express obligations for the next two succeeding fiscal years. 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 of the state.

(c) 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. Total income and franchise taxes levied shall mean the total state income and franchise tax liability of all taxpayers for the calendar year.

(d) 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 Speaker of the Legislature and the chairpersons of the Legislature's Executive Board, Revenue Committee, and Appropriations Committee shall meet with the Tax Commissioner within ten days after July 15 and November 15 of each year and shall determine whether the rates for sales tax and income tax should be changed. In making such determination they 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 any session, all miscellaneous claims, deficiency bills, and all emergency appropriations.

In the event it is determined by a majority vote that the rates must be changed as a result of a regular or special session or as a result of a change in

the provisions of the Internal Revenue Code of 1954 1986 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, they shall petition the Governor to call a special session of the Legislature to make whatever rate changes may be necessary.

Sec. 8. (1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) The income amounts for columns A, B, and E shall be the same as for the federal rate schedules in effect for tax year 1987;

(b) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(c) The amount in column D shall be the rate on the income in excess of the amount in column E;

(d) The primary rate set by Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .64, 1.0, 1.59, 1.87, and 1.87;

(e) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to tenths of one per cent, except for the primary rate which shall be expressed in hundredths of one per cent; and

(f) One rate schedule shall be established for each federal filing status.

(3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income	but not	Pay	plus	of the
over	over			amount over

(4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be seven times the primary rate.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be

determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemptions and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Sec. 9. That section 77-2716, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2716. (1) The following adjustments to federal adjusted gross income shall be made for interest or dividends received:

(a) There shall be subtracted from federal taxable income interest or dividends ~~on~~ received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States; -

(b) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes;

(c) There shall be added the total dividends and other income received from a regulated investment company to the extent excluded for federal income tax purposes, except that when a regulated investment company has reported to the recipient that as of the end of each quarter of the tax year of the company at least eighty per cent of its total assets were (i) obligations described in subdivision (a) of this subsection, the total dividends and other income may be excluded or (ii) obligations described in subdivision (b) of this subsection and obligations issued under the laws of Nebraska that are exempt for federal income tax purposes, the dividends and other income may be excluded to the extent they are attributable to obligations issued under the laws of Nebraska that are exempt for federal income tax purposes; and

(d)(i) Any ~~The~~ amount subtracted under this subsection shall be reduced by any interest on

indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual or partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1988, the amount of any state income tax refund to the extent such refund is included in federal adjusted gross income.

(4) Federal adjusted gross income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

~~{2}~~ (5) There shall be subtracted from federal taxable adjusted gross income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

~~{3}~~ (6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for

groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision ~~(3)(b)~~ (b) of this ~~section~~ subsection shall be subtracted from the amount of federal taxable income used in subdivision ~~(3)(a)~~ (a) of this ~~section~~ subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

Sec. 10. (1) Every individual shall be allowed to subtract from federal adjusted gross income an amount for personal exemptions. For tax year 1987, the amount allowed to be subtracted shall be one thousand one hundred dollars multiplied by the number of exemptions allowed on the federal return. For tax years commencing or deemed to begin on or after January 1, 1988, the amount allowed to be subtracted shall be one thousand one hundred thirty dollars multiplied by the number of exemptions allowed on the federal return.

(2) Every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction. The amount of the standard deduction shall depend upon the filing status used on the federal return. For tax year 1987, individuals who file as single or head of household shall be allowed two thousand five hundred thirty dollars, married filing jointly shall be allowed three thousand seven hundred forty dollars, and married filing separately shall be allowed one thousand eight hundred seventy dollars. For tax years commencing or deemed to begin on or after January 1, 1988, individuals who file as single or head of household shall be allowed two thousand five hundred fifty dollars, married filing jointly shall be allowed three thousand seven hundred eighty dollars, and married filing separately shall be allowed one thousand eight hundred ninety dollars.

(3) Every individual who itemized on his or her federal return shall be allowed to subtract from

federal adjusted gross income the greater of either the standard deduction allowed in subsection (2) of this section or all of his or her federal itemized deductions, except for the amount deducted on the federal return for state or local income taxes paid.

Sec. 11. That section 77-2724, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2724. (1) For purposes of taxation of nonresident estates or trusts:

(a) Items of income, gain, loss, and deduction shall mean those derived from or connected with sources in this state;

(b) Items of income, gain, loss, and deduction entering into the definition of federal distributable net income shall include such items from another estate or trust of which the estate or trust is a beneficiary; and

(c) The source of items of income, gain, loss, or deduction shall be determined under regulations prescribed by the Tax Commissioner in accordance with the general rules in section 77-2733 as if the estate or trust were a nonresident individual.

(2) The taxable income of a nonresident an estate or trust consists shall consist of ~~(a)~~ its share of items of income, gain, loss, and deduction which enter into the federal definition of distributable net income; ~~(b)~~ (a) increased or reduced by the amount of any items of income, gain, loss, or deduction which are recognized for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust, ~~(b)~~ ; ~~and (c)~~ less the amount of the deduction for its federal exemption, and (c) increased or reduced by the modifications contained in section 77-2716 which relate to an item of estate or trust income.

Sec. 12. That section 77-2725, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2725. (1) The share of a nonresident estate or trust of items of income, gain, loss, and deduction entering into the definition of distributable net income and the share for purposes of section 77-2733 of a nonresident beneficiary of any estate or trust in estate or trust income, gain, loss, and deduction shall be the same amount, subject to the modifications contained in section 77-2716, and have the same character as for federal income tax purposes. Where When an item entering into the computation of such

amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust or incurred in the same manner as incurred by the estate or trust.

(2) The Tax Commissioner may by rule and regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources in this state as may be appropriate and equitable.

Sec. 13. That section 77-2729, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2729. (1) In determining the taxable income tax liability of a nonresident partner of any partnership, there shall be included in Nebraska adjusted gross income only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss, and deduction entering into his or her federal taxable income, as such part is determined under rules and regulations prescribed by the Tax Commissioner in accordance with the general rules in section 77-2733.

(2) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(a) Characterizes payments to the partner as being for services or for the use of capital, or allocated to the partner, as income or gain from sources outside this state, a greater proportion of his or her distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subsection (4) of this section; or

(b) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than his or her proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (4) of this section.

(3) Any modification described in subsection (1) of section 77-2716 which relates to an item of partnership income, gain, loss, or deduction, shall be made in accordance with the partner's distributive share, for federal income tax purposes of the item to which the modification relates, but limited to the portion of such item derived from or connected with

sources in this state.

(4) The Tax Commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as he or she may require.

(5) The character of partnership items for a nonresident partner shall be determined under ~~the provisions of~~ section 77-2725.

Sec. 14. 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 or her for each taxable year commencing on or after January 1, 1983, 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 sections 77-2714 to 77-27,124 and sections 4, 6, 8, 10, 17, and 28 of this act.

(2) The credit provided under sections 77-2714 to 77-27,135 and sections 4, 6, 8, 10, 17, and 28 of this act shall not exceed the proportion of the income tax otherwise due under such sections 77-2714 to 77-27,135 that the amount of the taxpayer's adjusted gross income or total income derived from sources in the other taxing jurisdiction bears to federal adjusted gross income or total federal income.

(3) For purposes of subsection (1) of this section, a resident individual, estate, or trust shall be deemed to have paid a portion of the income tax imposed by another state, a political subdivision thereof, or the District of Columbia on the income of any partnership, trust, ~~or estate, or corporation~~ when such resident individual, estate, or trust is a partner, ~~or beneficiary, or shareholder~~ and (a) the income taxed is included in the federal taxable income of the resident individual, estate, or trust, ~~(b) any corporation has made an election not to be taxed under subchapter S of the Internal Revenue Code for the taxable year, and (c) and (b) the taxation of such partnership, trust, or estate, or corporation by the other state is inconsistent with the taxation of such entity under the Internal Revenue Code.~~ The amount of income tax deemed paid by the resident individual,

estate, or trust shall be the same percentage of the total tax paid by the entity as the income included in federal taxable income of the resident is to the total taxable income of the entity as computed for the other state.

Sec. 15. That section 77-2732, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2732. (1) If the federal tax liability of husband or wife, ~~both nonresidents of this state,~~ is determined on separate federal returns, their tax liabilities in this state shall be separately determined.

(2) If the federal tax liability of husband and wife, ~~both nonresidents,~~ is determined on a joint federal return, their tax liability shall be determined in this state ~~on their joint federal tax liability jointly~~ except as provided in subsection (3) of this section.

(3) If the federal tax liability of husband and wife is determined on a joint federal return and either husband or wife is a nonresident individual or partial-year resident individual and the other a resident individual, separate taxes shall be determined on their separate tax liabilities in this state on such forms as the Tax Commissioner shall prescribe and their tax liability shall be separate unless both elect to determine their joint tax liability in this state as if both were residents resident individuals, in which case their tax liability shall be joint and several. If a husband and wife file a joint federal income tax return but determine their tax liabilities in this state separately, they shall compute their tax liabilities in this state as if their federal tax liabilities had been determined separately.

(4) During the time a claim for credit or refund may be filed pursuant to section 77-2793, a husband and wife electing to be taxed as if both were residents of this state may revoke the election by each filing a separate return on such forms and in such manner as may be required by the Tax Commissioner.

Sec. 16. 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 individual 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 or her federal

taxable income which are derived from or connected with sources in this state including (i) his or her distributive share of partnership income and deductions determined under the provisions of section 77-2729, (ii) his or her share of small business corporation income determined under the provisions of section 77-2734.01, and (iii) his or her share of estate or trust income and deductions determined under the provisions of section 77-2725; and

(b) The portion of the modifications described in subsection (1) of section 77-2716 and section 10 of this act which relates to income derived from sources in this state, including any modifications attributable to him or her 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 or her adjusted gross income from sources within this state is to his or her 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 rules and 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 rules and 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 individual 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. 17. The income of a partial-year resident individual derived from sources within this state shall be the sum of the following:

(1) All of the income, gain, loss, and deduction which is derived from or connected with sources within this state for a nonresident individual under section 77-2733; and

(2) Any income from intangible personal property, including, but not limited to, annuities, dividends, interest, and gains from the disposition of intangible personal property and any income from a partnership, estate, trust, or electing subchapter S corporation, that is realized while a resident of this state and that is not taxed by another state.

Sec. 18. That section 77-2734.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.01. (1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's federal income adjusted pursuant to this section. Income or loss from such corporation conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder who is a resident of this state to the extent of such shareholder's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15; and

(b) If the small business corporation is not a member of a unitary group, it shall apportion its income under sections 77-2734.05 to 77-2734.15.

(3) (2) Nonresidents of Nebraska who are shareholders of such corporations shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's Nebraska income, as determined under the provisions of sections 77-2734-05 to 77-2734-15 subsection (2) of this section.

(3) (4) The nonresident shareholder shall execute and forward to the corporation before the filing

of the corporation's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the 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.

{4} (5) In the absence of the nonresident shareholder's executed agreement being attached to the Nebraska small business corporate return, the corporation shall remit with the return an amount equal to ten per cent of the nonresident shareholder's share of the corporation's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder.

{5} (6) The Tax Commissioner may allow a nonresident individual shareholder to not file a Nebraska income tax return if the nonresident individual shareholder's only source of Nebraska income was his or her share of the small business corporation's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation has remitted the amount required by subsection {4} (5) of this section on behalf of such nonresident individual shareholder. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder.

Sec. 19. That section 77-2734.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.02. (1) A tax is hereby imposed for each taxable year on the taxable income of every corporate taxpayer that is doing business in this state at a rate equal to twenty-five one hundred fifty and eight-tenths per cent of the primary rate imposed on individuals under section 77-2715 77-2701.01 on the first fifty thousand dollars of taxable income and at the rate of thirty-five two hundred eleven per cent of such rate on all taxable income in excess of fifty thousand dollars. The resultant rates shall be rounded to the nearest one hundredth of one per cent.

(a) For corporate taxpayers with a fiscal year that does not coincide with the calendar year, the individual rate used for this subsection {1} of this section shall be the rate in effect on the first day, or the day deemed to be the first day, of the taxable year.

(b) For fiscal years beginning before January 1, 1968, the rate initially set shall apply for the

period from January 1, 1968, to the end of that fiscal year.

(2) For a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15.

(3) Each corporate taxpayer shall file only one income tax return for each taxable year.

Sec. 20. That section 77-2734.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.04. As used in sections 77-2734.01 to 77-2734.15, unless the context otherwise requires:

(1) Commercial domicile shall mean the principal place from which the trade or business of the taxpayer is directed or managed;

(2) Compensation shall mean wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(3) Corporate taxpayer shall mean any corporation that is not a part of a unitary business or the part of a unitary business, whether it is one or more corporations, that is doing business in this state. Corporate taxpayer shall not include any corporation that has a valid election under subchapter S of the Internal Revenue Code or any financial institution as defined in section 77-3801;

(4) Corporation shall mean all corporations and all other entities that are taxed as corporations under the Internal Revenue Code;

(5) Doing business in this state shall mean the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax;

(6) Federal taxable income shall mean the corporate taxpayer's federal taxable income as reported to the Internal Revenue Service or as subsequently changed or amended. Except as provided in subsection ~~{2}~~ ~~or~~ ~~{3}~~ ~~{5}~~ ~~or~~ ~~{6}~~ of section 77-2716, no adjustment shall be allowed for a change from any election made or the method used in computing federal taxable income. An election to file a federal consolidated return shall not require the inclusion in any unitary group of a corporation that is not a part of the unitary business;

(7) Sales shall mean all gross receipts of the taxpayer;

(8) Single economic unit shall mean a business in which there is a sharing or exchange of value between the parts of the unit. A sharing or exchange of value occurs when the parts of the business are linked by (a) common management or (b) common operational resources that produce material (i) economies of scale, (ii) transfers of value, or (iii) flow of goods, capital, or services between the parts of the unit.

(A) For the purposes of this subdivision, common management ~~includes~~ shall include, but ~~is not be~~ limited to, (I) a centralized executive force or (II) review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations.

(B) For the purposes of this subdivision, common operational resources shall include, but ~~are not be~~ limited to, centralization of any of the following: Accounting, advertising, engineering, financing, insurance, legal, personnel, pension or benefit plans, purchasing, research and development, selling, or union relations;

(9) State shall mean any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(10) Subject to the Internal Revenue Code shall mean a corporation that meets the requirements of section 243 of the Internal Revenue Code in order for its distributions to qualify for the dividends-received deduction;

(11) Taxable income shall mean federal taxable income as adjusted and, if appropriate, as apportioned;

(12) Taxable year shall mean the period the corporate taxpayer used on its federal income tax return;

(13) Unitary business shall mean a business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

For the purposes of this subdivision, common ownership shall mean one or more corporations owning fifty per cent or more of another corporation; and

(14) Unitary group shall mean the group of corporations that are conducting a unitary business.

Sec. 21. That section 77-2753, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 284, Ninetieth Legislature,

First Session, 1987, be amended to read as follows:

77-2753. (1) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection ~~(4)~~ (3) of this section which are taxable under the provisions of the Nebraska Revenue Act of 1967 to a resident or nonresident any individual shall deduct and withhold from such wages for each payroll period and from such payments paid on or after March 1, 1987, an amount equal to twenty-one per cent of the amount of federal withholding until such withholding rate is changed by rule and regulation adopted and promulgated by the Tax Commissioner. In determining the withholding rate, the Tax Commissioner shall compute the rate in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under the provisions of such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the Tax Commissioner.

(2) For purposes of this section, an employee or payee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he or she is entitled for federal income tax withholding purposes. An employer or payer may rely upon the number of federal withholding exemptions claimed by the employee.

(3) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations prescribed by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(4) (3) Wages and other payments subject to withholding shall mean payments that are subject to

withholding under the Internal Revenue Code of 1954, as amended, 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. section 3405 or 3406, (b) payments of gambling winnings, or (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments.

Sec. 22. That section 77-2765, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2765. If an individual changes his status during his taxable year from resident to nonresident or from nonresident to resident is a partial-year resident individual, the Tax Commissioner may by rule and regulation require him or her to file one return as a partial-year resident individual or to file one return for the portion of the year during which he or she is a resident and one for the portion of the year during which he or she is a nonresident.

Sec. 23. That section 77-2775, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2775. If the amount of a taxpayer's federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return for any taxable year is changed or corrected by the Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such change or correction in federal adjusted gross income, taxable income, or tax liability within ninety days after the final determination of such change, correction, or renegotiation and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended income tax return under the provisions of the Nebraska Revenue Act of 1967, and shall give such information as the Tax Commissioner may require.

Sec. 24. That section 77-2781, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2781. In any proceeding before the Tax Commissioner, the burden of proof shall be on the taxpayer except for the following issues, as to which the burden of proof shall be on the Tax Commissioner:

- (1) Whether the taxpayer has been guilty of fraud with attempt to evade tax;
- (2) Whether the petitioner is liable as the

transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;

(3) Whether the taxpayer is liable for any increase in a deficiency determination when such increase is asserted initially after the notice of deficiency determination was mailed and a protest petition under section 77-2778 filed, unless such increase in deficiency is the result of a change or correction of federal adjusted gross income, taxable income, or tax liability required to be reported under section 77-2775; and of which change or correction the Tax Commissioner had no notice at the time he or she mailed the notice of deficiency determination; or

(4) Whether the taxpayer or petitioner is liable for any penalty imposed under subsection (7) or (8) of section 77-2790.

Sec. 25. That section 77-2786, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2786. (1) Except as otherwise provided in the Nebraska Revenue Act of 1967, a notice of a proposed deficiency assessment determination shall be mailed to the taxpayer within three years after the return was filed. No Except as otherwise provided in the Nebraska Revenue Act of 1967, no deficiency shall be assessed or collected with respect to the year for which the return was filed unless a notice of a proposed deficiency assessment shall have been determination is mailed within three years after the return was filed or the period otherwise fixed.

(2) If the taxpayer omits from Nebraska taxable income an amount properly includable therein which is in excess of twenty-five per cent of the amount of taxable income stated in the return or a corporate return omits a properly includable member of the unitary group as defined in section 77-2734.04, a notice of a proposed deficiency assessment determination may be mailed to the taxpayer within six years after the return was filed. A notice of deficiency determination based on the omission of a member of a unitary group shall be limited to the increase in the tax caused by including the omitted member. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Tax Commissioner of the nature and amount of such item and the manner in which such item would affect the computation of Nebraska taxable income.

(3) If no return is filed or a false and fraudulent return is filed with intent to evade the income tax imposed by the Nebraska Revenue Act of 1967, a notice of deficiency determination may be mailed to the taxpayer at any time.

(4) If a taxpayer fails to comply with the requirement of section 77-2775 by not reporting a change or correction increasing his or her federal adjusted gross income, taxable income, or tax liability, or a change or correction which is treated in the same manner as if it were a deficiency determination for federal income tax purposes, or in not filing an amended return, a notice of deficiency determination based on a complete examination of the tax liability for the tax years involved may be mailed to the taxpayer at any time.

(5) If the taxpayer shall, pursuant to ~~the provisions of~~ section 77-2775, report a change or correction, file an amended return increasing his or her federal adjusted gross income, taxable income, or tax liability, or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of a deficiency determination based on a redetermination of Nebraska tax liability to reflect the change or correction increasing his or her federal adjusted gross income, taxable income, or tax liability for the tax years involved may be mailed at any time within two years after such report or amended return was filed.

(6) When, before the expiration of the time prescribed in this section for the assessment of a deficiency mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer shall have consented in writing to ~~its assessment~~ the mailing after such time, the notice of deficiency determination may be assessed mailed at any time prior to the expiration of the period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

An agreement between the taxpayer and the Internal Revenue Service providing for the extension of the period for assessment the mailing of a notice of deficiency determination of federal income taxes shall constitute an agreement with the Tax Commissioner to extend the period for assessment of income taxes under the Nebraska Revenue Act of 1967 through the ending date shown on the federal agreement. A copy of all such agreements and extensions thereof shall be filed with the Tax Commissioner within thirty days after their

execution. If the copy of the extension agreement with the Internal Revenue Service is not filed pursuant to this subsection, the notice of deficiency determination for such taxable year may be mailed at any time within one year of the discovery of the extension by the Tax Commissioner.

(7) For purposes of this section, an income tax return filed before the last day prescribed by the Nebraska Revenue Act of 1967 for the filing thereof shall be deemed to be filed on such last day. If a return or withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

(8) When it becomes necessary for the Tax Commissioner to apply for a court order under subsection (2) of section 77-27,109 for the production of books, papers, records, or memoranda or the testimony of any person, the period for assessment of a deficiency the mailing of a notice of deficiency determination shall be tolled from the date the Tax Commissioner first applies to the appropriate court for the order until the last date on which the information or testimony contained in the application for the court order is obtained by the Tax Commissioner.

This subsection shall not apply if the court finds that the information is not relevant to the determination of the tax liability, the information was provided prior to the filing of the application, or the application was not filed within the time period otherwise provided in this section for the mailing of a notice of deficiency determination.

Sec. 26. That section 77-2793, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2793. (1) A claim for credit or refund of an overpayment of any income tax imposed by the Nebraska Revenue Act of 1967 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later, ~~or if no return was filed by the taxpayer, within two years from the time the tax was paid.~~ No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) If the claim is filed by the taxpayer during the three-year period prescribed in subsection

(1) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return if such return was filed prior to the end of the extension of time. If the claim is not filed within such three-year period, but is filed within the two-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

(3) If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection (1) of this section for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(4) If a taxpayer is required by section 77-2775 to report a change or correction in federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the Tax Commissioner, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner. If the report or amended return required by section 77-2775 is not filed within the ninety-day period therein specified, interest on any resulting refund or credit shall cease to accrue after such ninetieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(5) If the claim for credit or refund relates to an overpayment attributable to a net operating loss

carryback derived from or connected with Nebraska sources, the claim may be made under rules and regulations prescribed by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States.

(6) For purposes of this section and section 77-2795, a timely filed petition for redetermination shall be considered a claim for credit or refund filed on the date the notice of deficiency determination was mailed.

Sec. 27. That section 77-27,119.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,119.01. The Tax Commissioner shall include on the individual income tax return form space in which the individual taxpayer may, if a refund is due, designate one dollar, ~~five dollars, ten dollars,~~ or a greater amount of such refund as a contribution to the Nongame and Endangered Species Conservation Fund created in section 37-439. ~~if the income tax return is a joint return, space shall be included for each spouse to make such designation.~~

Sec. 28. Pursuant to section 50-420 and the duties prescribed in subdivision (6) of section 50-419 and section 77-27,159, the Tax Commissioner shall upon request provide the Legislative Fiscal Analyst all information used to develop revenue projections under section 77-27,159 and all information used to develop fiscal notes that may relate to revised revenue forecasts. Such information shall be provided in a form which does not violate section 77-27,119.

Sec. 29. This act shall be operative for all taxable years commencing or deemed to begin on or after January 1, 1987, under the Internal Revenue Code of 1986.

Sec. 30. That original sections 77-2701, 77-2701.01, 77-2714 to 77-2715.01, 77-2716, 77-2724, 77-2725, 77-2729, 77-2730, 77-2732, 77-2733, 77-2734.01, 77-2734.02, 77-2734.04, 77-2765, 77-2775, 77-2781, 77-2786, 77-2793, and 77-27,119.01, Reissue Revised Statutes of Nebraska, 1943, and section 77-2753, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 284, Ninetieth Legislature, First Session, 1987, and also sections 77-2718, 77-2719, 77-2721, 77-2723, 77-2762, and 77-2766, Reissue Revised Statutes of Nebraska, 1943, are repealed.