

LEGISLATIVE BILL 619

Approved by the Governor May 23, 1983

Introduced by DeCamp, 40; Carsten, 2

AN ACT to amend section 77-2716, Reissue Revised Statutes of Nebraska, 1943, and section 77-2734, Revised Statutes Supplement, 1982, relating to revenue and taxation; to change a provision relating to income tax adjustments as prescribed; to define terms; to change provisions relating to the franchise tax as prescribed; to provide an operative date; and to repeal the original sections.

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

Section 1. That section 77-2716, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2716. (1) There shall be subtracted from federal taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States; ~~provided, that the~~ The amount subtracted under the provisions of this subsection shall, except as provided in subsections (2) to (6) of this section, be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection, 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.

(2) For taxpayers subject to the tax under subsection (2) of section 77-2734, in lieu of the reduction for expenses contained in subsection (1) of this section, there shall be added to federal taxable income, the investment interest expense incurred by the taxpayer to purchase and maintain exempt securities as determined under subsection (3) of this section.

(3) The investment interest expense provided in subsection (2) of this section shall be determined by (a) dividing the taxpayer's average investment in exempt securities by the taxpayer's average total assets and multiplying such ratio by the taxpayer's total interest expense and (b) subtracting any interest disallowed under 26 U.S.C. sections 265 and 291.

(4) As used in this section, unless the context otherwise requires:

(a) Exempt securities shall mean the obligations that earn income exempt from taxation under subsection (1) of this section or under 26 U.S.C. section 103;

(b) Average investment in exempt securities shall mean the average of the aggregate tax basis in exempt securities at the beginning and the end of the taxable year;

(c) Average total assets shall mean the average of the aggregate tax basis in total assets at the beginning and end of the taxable year; and

(d) Total interest expense shall mean the total interest expense allowed as a deduction in computing federal taxable income plus any interest disallowed under 26 U.S.C. sections 265 and 291.

(5) Whenever it is necessary to properly reflect the ratio of investment in exempt securities to total assets, the Tax Commissioner may permit or require the computation of the average provided for in subsection (3) of this section using amounts from interim balance sheets.

(6) The taxpayer may use in lieu of the tax basis for the computation in subsection (3) of this section, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the taxpayer from year to year. The Tax Commissioner may require a taxpayer to use the alternative amounts in order to maintain consistency or may require the taxpayer to show that the amounts used do not materially differ from the tax basis.

(7) There shall be added to or subtracted from federal taxable income, as the case may be, the taxpayer's share of the fiduciary adjustment determined under the provisions of section 77-2720.

Sec. 2. That section 77-2734, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2734. (1) A tax is hereby imposed for each taxable year on the taxable income derived from sources within this state of any corporation or any other entity

taxed as a corporation under the Internal Revenue Code whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both, at a rate equal to twenty-five per cent of the rate imposed on individuals under section 77-2715 on the first fifty thousand dollars of taxable income, and at the rate of thirty-five per cent of such rate on all taxable income in excess of fifty thousand dollars. For any taxpayer subject to this section whose fiscal year does not coincide with the calendar year, the rate initially set shall also apply for the period from January 1, 1968, to the last day of its then current fiscal year.

(2) Except as provided in subsection (1) of this section, for the privilege of exercising its franchise or doing business in this state in a corporate capacity, there is hereby imposed a franchise tax on each corporation or any other entity taxed as a corporation under the Internal Revenue Code according to or measured by its entire net income derived from all sources within this state for the taxable year at the rates imposed under subsection (1) of this section. For the purposes of this subsection the taxpayer's entire net income shall be its federal taxable income derived from sources within this state as determined pursuant to sections 77-2735 to 77-2749, without regard to the modification referred to in section 77-2741, the State of Nebraska hereby adopting method numbered (4) authorized by section 5219, United States Revised Statutes, as amended, 12 USC 548, for state taxation of national banking associations. The tax imposed by this subsection on national banking associations shall be in lieu of all taxes imposed by this state on national banking associations to the extent it is not permissible to tax such associations under federal law. For the purpose of computing the franchise or income tax levied in this section, the net income of cooperative organizations shall be the entire net income derived from all sources within this state, excluding distributions of earnings and profits of the cooperative to members or patrons such as dividends paid on capital stock, nonpatronage income allocated to patrons, or patronage dividends attributable to this state as shall be excludable or deductible by such corporation for federal income tax purposes. All provisions of sections 77-2714 to 77-27,124 relating to taxation of corporations shall apply to franchise taxes or income taxes imposed under this section unless the context requires otherwise.

Any (a) corporation subject to tax under section 44-1213, 77-908, 77-909, or 81-523, (b) corporations organized as cooperatives under Chapter 21, article 13, (c) electric cooperatives organized under

Chapter 70, article 7, (d) nonstock cooperative marketing companies organized under Chapter 21, article 14, (e) savings and loan associations, (f) production credit associations, (g) persons licensed to engage in this state in the business of purchasing installment paper, (h) installment loan companies, (i) credit unions, (j) mutual investment companies, (k) banks for cooperatives, and (l) industrial loan and investment companies, shall be credited, in the computation of tax due under the provisions of this section, with the amount paid during the taxable year as taxes in lieu of intangible tax.

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

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

(c) If any shareholder of such corporation is a nonresident during any part of the corporation's taxable year, he or she shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income that portion of the corporation's Nebraska income, as determined under the provisions of sections 77-2735 to 77-2749, allocable to his or her interest in the corporation. He or she shall execute and forward to the corporation, before the original due date of the Nebraska corporate return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's Nebraska return for such taxable year.

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

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

Sec. 3. This act shall be operative for all taxable years commencing on or after January 1, 1983, or deemed to begin on or after January 1, 1983, under the Internal Revenue Code of 1954, as amended.

Sec. 4. That original section 77-2716, Reissue Revised Statutes of Nebraska, 1943, and section 77-2734, Revised Statutes Supplement, 1982, are repealed.