

LEGISLATIVE BILL 433

Approved by the Governor May 25, 2001

Introduced by Landis, 46; Suttle, 10

AN ACT relating to child care; to amend sections 77-908 and 77-3806, Reissue Revised Statutes of Nebraska, and sections 77-2701, 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Supplement, 2000; to provide a tax credit for business child care expenditures; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 77-908, Reissue Revised Statutes of Nebraska, is amended to read:

77-908. Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent and (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act and section 3 of this act.

Sec. 2. Section 77-2701, Revised Statutes Supplement, 2000, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and section 3 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 3. (1) For purposes of this section:

(a) Accredited means accredited by the National Association for Family Child Care, the National Association for the Education of Young Children, the National School-Age Care Alliance, or a comparable accreditation process approved by the State Department of Education;

(b) Business firm means any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a limited liability company, or a corporation subject to the state income tax imposed by section 77-2715 or 77-2734.02, an insurance company paying premium or related retaliatory taxes in this state pursuant to section 44-150 or 77-908, or a financial institution paying the tax imposed pursuant to sections 77-3801 to 77-3807;

(c) Costs incurred by the business firm in providing child care services for children of employees means the amounts expended by the business firm during the year for improvements to the premises for purposes of making the premises suitable in whole or in part for use as a child care facility, including furnishing the facility with fencing, landscaping, sidewalks, furniture, fixtures, equipment, supplies, and other improvements and materials reasonably required to operate a child care facility and the direct operating costs of staffing, operating, and maintaining a child care facility. The costs include the payroll taxes and employee benefit costs of staffing the child care facility and sales and use taxes on purchases included in the costs of providing child care, but not an allocation of the business firm's general, administrative, and other operating expenses. The costs do not include the acquisition of land or the construction of new buildings. The costs include payments to third parties to reimburse the third parties for amounts expended by them and which would have been costs incurred by the business firm in

providing child care services if incurred directly by the business firm or to subsidize the cost of providing child care for the children of employees in such third parties' facilities; and

(d) Providing child care services means expending funds to improve, furnish, license, accredit, qualify for accreditation, staff, operate, or subsidize a child care facility licensed by the Department of Health and Human Services Regulation and Licensure which provides child care services to children of employees of the business firm or contracting with a child care facility licensed by the department to provide child care services to children of such employees.

(2) Any business firm which provides child care services shall be allowed a credit against the individual income tax, corporate income tax, premium or related retaliatory tax, or franchise tax equal to thirty percent of the costs incurred by the business firm in providing child care services for children of employees for each taxable year, up to fifty percent of such business firm's total tax liability. In the case of a sole proprietorship, partnership, or limited liability company which is taxed as a pass-through entity or a corporation which has in effect an election under subchapter S of the Internal Revenue Code, the maximum allowable amount of credit shall be fifty percent of the income tax liability determined as if such business firm had been a corporation subject to the state income tax imposed by section 77-2734.02. Such pass-through entities shall allocate the allowable credit among their proprietors, partners, members, or shareholders in the same manner as taxable income is allocated. In the case of a fiduciary, the maximum allowable amount of the credit shall be fifty percent of the income tax liability of the fiduciary computed without any deduction for distributions, and the allowable credit shall be allocated among the fiduciary and its beneficiaries in proportion to the taxable income included by each beneficiary in his or her Nebraska income tax returns. In the case of a corporation which is part of a unitary group as defined in section 77-2734.04 and which is included in the combined income tax return of such group, the unitary group shall be the business firm which is providing child care services. Entities which are disregarded for federal income tax purposes shall be disregarded for purposes of defining the business firm which is providing child care services. The credit shall only be used to reduce the tax liabilities of the business firm, or in the case of pass-through entities, the beneficiaries, proprietors, partners, members, or shareholders, for the year in which the costs were incurred. The credit may not be carried forward to the next taxable year. The credit may be taken by the business firm for not more than three taxable years, except that if the child care facility is accredited under section 43-2620 or becomes accredited under section 43-2620 during the three-taxable-year period, the credit may be taken for an additional consecutive two taxable years after the end of the third taxable year for which a credit was taken under this section.

(3) Costs incurred by the business firm in providing child care services for children of employees shall be reduced by payments received by the business firm from employees. If the business firm provides child care services for the children of employees and also for the children of non-employees, the direct operating costs of staffing, operating, and maintaining the child care facility, including the related payroll taxes, employee benefits, and sales and use taxes, shall be multiplied by a fraction, the numerator of which is the total child hours of care provided to the children of employees and the denominator of which is the total child hours of care provided in the child care facility. Child hour means one hour of care provided for one child. For purposes of calculating child hours, if the business firm does not in the ordinary course of its business compile the actual child hours of care, it may determine the number of child hours based on a reasonable convention if such convention is used consistently for each year that the credit is claimed or the business firm obtains the advance consent of the Tax Commissioner to change the convention. Costs shall be considered incurred in the taxable year in which they are either accruable or are paid in accordance with the business firm's overall income tax method of accounting.

(4) A business firm operating a child care facility on the operative date of this act shall only qualify for the two years of tax credits allowed under subsection (2) of this section relating to expenditures by the business firm for direct operating costs if the child care facility is accredited after January 1, 2001.

(5) A business firm shall not be considered to be providing child care services for purposes of this section unless the child care services are provided to the employees of the firm who qualify under classifications established by the business firm which are found by the Tax Commissioner not

to be discriminatory in favor of highly compensated employees. For purposes of this section, highly compensated employee means an employee who was a five-percent owner of the business firm at any time during the year or the preceding year or, for the preceding year, either (a) had compensation from the employer in excess of eighty thousand dollars or (b) was among the highest twenty percent of employees ranked by compensation, whichever results in the smaller group. Whether an employer's classifications are nondiscriminatory shall be determined on the basis of employees' eligibility to place children in the child care facility.

(6) No amount paid or incurred by an employer to provide child care assistance to an employee shall qualify for the credit if the amount was paid or incurred pursuant to a salary reduction plan or is not paid for services performed within this state.

(7) This section shall only apply to business firms that meet the requirements of this section on or before December 31, 2005.

(8) If two or more business firms share in the cost of providing child care services for children of such business firms' employees, each business firm shall be allowed a tax credit in proportion to such business firm's share of the total costs.

(9) The Department of Revenue and the Department of Insurance shall issue a joint report by December 1, 2002, and by each December 1 thereafter for so long as the credit is effective, that provides the following information:

(a) The number of business firms qualifying for the credit under this section during taxable years ending on or before the previous December 31;

(b) The number and location by county of child care facilities qualifying for the credit under this section during the taxable years ending on or before the previous December 31;

(c) The total child-years of child care provided, the range of child-years of child care provided per qualifying business, and the average and median child-years of care provided per qualifying business, sorted in reasonable groupings by maximum enrollment during the year that include a sufficient number of qualifying businesses in each group to maintain the confidentiality of the taxpayers qualifying for the credit;

(d) The percentage of costs paid by the employees in each size grouping in subdivision (c) of this subsection;

(e) The percentage of such child-years of care provided in accredited facilities in each size grouping in subdivision (c) of this subsection; and

(f) The total credits claimed and the total credits allowed in each size grouping in subdivision (c) of this subsection.

(10) The Department of Revenue shall develop a form for claiming the credit allowed by this section stating that any business firm seeking a credit under this section must supply the information listed in subsection (9) of this section as a condition for receiving the credit.

(11) The Tax Commissioner and Director of Insurance may adopt and promulgate rules and regulations as necessary to carry out this section.

Sec. 4. Section 77-2715.07, Revised Statutes Supplement, 2000, is amended to read:

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

(a) A credit equal to 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 qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

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

(c) A refundable credit for individuals who qualify for an income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

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

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

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

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

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

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act.

(5) There shall be allowed to all business firms as a credit against the income tax imposed by the Nebraska Revenue Act of 1967 a credit as provided in section 3 of this act.

Sec. 5. Section 77-2717, Revised Statutes Supplement, 2000, is amended to read:

77-2717. (1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credit provided in section 3 of this act shall be allowed as a reduction in the income tax due.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts 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 the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716.

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

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credit as provided in section 3 of this act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as

determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credit as provided in section 3 of this act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary 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 Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust'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 estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

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

Sec. 6. Section 77-2734.03, Revised Statutes Supplement, 2000, is amended to read:

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

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

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a credit for nonhighway use motor vehicle fuels as provided in section 66-4,124.

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

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

(5) There shall be allowed to corporate taxpayers a tax credit as provided in section 3 of this act.

Sec. 7. Section 77-3806, Reissue Revised Statutes of Nebraska, is amended to read:

77-3806. (1) The tax return shall be filed and the total amount of

the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, or (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency.

(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Community Development Assistance Act and section 3 of this act.

Sec. 8. This act becomes operative for taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

Sec. 9. Original sections 77-908 and 77-3806, Reissue Revised Statutes of Nebraska, and sections 77-2701, 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Supplement, 2000, are repealed.