

LEGISLATIVE BILL 28

Approved by the Governor June 2, 2005

Introduced by Connealy, 16; Baker, 44; Bourne, 8; Cornett, 45; Foley, 29;
 Kruse, 13; Dw. Pedersen, 39; Price, 26; Synowiecki, 7;
 Wehrbein, 2; Aguilar, 35; Byars, 30; Cunningham, 40;
 McDonald, 41; Schimek, 27; Thompson, 14; Janssen, 15;
 Johnson, 37; Preister, 5; Stuhr, 24; Hudkins, 21; Howard, 9

AN ACT relating to revenue and taxation; to amend section 77-2701, Revised Statutes Supplement, 2004; to provide an income tax credit for certain charitable contributions; to provide a termination date; to provide an operative date; and to repeal the original section.

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

Section 1. Section 77-2701, Revised Statutes Supplement, 2004, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222 and sections 2 to 8 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 2. (1) For purposes of sections 2 to 8 of this act, subject to subsection (2) of this section, planned gift means an irrevocable contribution to a qualified endowment when the contribution uses any of the following techniques authorized under the Internal Revenue Code of 1986, as amended:

(a) Charitable remainder unitrusts, as defined by section 664(d) (2) of the code;

(b) Charitable remainder annuity trusts, as defined by section 664(d) (1) of the code;

(c) Pooled income fund trusts, as defined by section 642(c) (5) of the code;

(d) Charitable lead unitrusts qualifying under section 170(f) (2) (B) of the code;

(e) Charitable lead annuity trusts qualifying under section 170(f) (2) (B) of the code;

(f) Charitable gift annuities undertaken pursuant to section 1011(b) of the code;

(g) Deferred charitable gift annuities undertaken pursuant to section 1011(b) of the code;

(h) Charitable life estate agreements qualifying under section 170(f) (3) (B) of the code; or

(i) Paid-up life insurance policies qualifying as a deduction under section 170 of the code.

(2) (a) A contribution using a technique described in subdivision (1) (a) or (1) (b) of this section is not a planned gift unless the trust agreement provides that the trust cannot terminate and the beneficiaries' interest in the trust cannot be assigned or contributed to the qualified endowment sooner than the earlier of:

(i) The date of death of the beneficiaries; or

(ii) Five years after the date of the contribution.

(b) A contribution using the technique described in subdivision (1) (g) of this section is not a planned gift unless the payment of the annuity is required to begin within the life expectancy of the annuitant or of the joint life expectancies of the annuitants, if more than one annuitant, as determined using the actuarial tables adopted by the Department of Revenue in effect on the date of the contribution. The department may adopt and promulgate rules and regulations adopting life expectancy tables that are derived from the actuarial tables contained in the publications of the Internal Revenue Service.

(c) A contribution using a technique described in subdivision (1) (f) or (1) (g) of this section is not a planned gift unless the annuity agreement provides that the interest of the annuitant or annuitants in the gift annuity cannot be assigned to the qualified endowment sooner than the earlier of:

(i) The date of death of the annuitant or annuitants; or

(ii) Five years after the date of the contribution.

(d) A contribution using a technique described in subdivision (1) (f) or (1) (g) of this section is not a planned gift unless the annuity is a qualified charitable gift annuity as defined in section 59-1802.

Sec. 3. For purposes of sections 2 to 8 of this act, qualified endowment means a permanent, irrevocable fund that is used for Nebraska charitable purposes and held by a Nebraska incorporated or established

organization that:

(1) (a) Is a tax-exempt organization under section 501(c) (3) of the Internal Revenue Code of 1986, as amended; or

(b) Is a bank or trust company that is holding the fund on behalf of a tax-exempt organization; and

(2) Holds the fund as a permanent endowment fund.

Sec. 4. (1) A resident individual shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to thirty percent of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the individual during the tax year to any qualified endowment. The maximum credit per individual per tax year is ten thousand dollars. The credit allowed under this section shall not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section cannot be claimed to the extent that the taxpayer has included the contribution upon which the amount of the credit was computed as a deduction on his or her state income tax return.

(3) The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the planned gift is made.

Sec. 5. A contribution to a qualified endowment by a small business corporation, partnership, or limited liability company carrying on any trade or business for which deductions would be allowed under section 162 of the Internal Revenue Code or carrying on any rental activity qualifies for the credit provided in section 4 of this act. The credit shall be attributed to shareholders, partners, or members in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for income tax purposes. The maximum credit per shareholder, partner, or member per tax year is ten thousand dollars, subject to the limitation in subsection (2) of section 4 of this act. The credit allowed under this section may not exceed the taxpayer's income tax liability. The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the contribution is made.

Sec. 6. A corporation shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to twenty percent of any contribution made by the corporation to a qualified endowment. The maximum credit that may be claimed by a corporation for contributions made per tax year under this section is ten thousand dollars. The credit allowed under this section shall not exceed the taxpayer's income tax liability. The credit allowed under this section cannot be claimed to the extent that the taxpayer has included the contribution upon which the amount of the credit was computed as a deduction on its state income tax return. The credit cannot be carried back or forward, and the credit shall be applied to the tax year in which the contribution is made.

Sec. 7. A contribution to a qualified endowment by a resident estate or trust qualifies for the credit provided in section 4 of this act if the contribution is a planned gift or in section 6 of this act if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Nebraska income tax purposes. The maximum credit per beneficiary is ten thousand dollars, subject to the limitation in subsection (2) of section 4 of this act, and the credit can only be claimed in the tax year in which the contribution is made. The credit cannot be carried back or forward.

Sec. 8. Sections 2 to 7 of this act terminate for taxable years beginning or deemed to begin on or after January 1, 2010, under the Internal Revenue Code of 1986, as amended.

Sec. 9. This act becomes operative for taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended.

Sec. 10. Original section 77-2701, Revised Statutes Supplement, 2004, is repealed.