

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1059

Introduced by Linehan, 39.

Read first time January 08, 2024

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-2776, Revised Statutes Cumulative Supplement, 2022, and sections
3 77-2727 and 77-2734.01, Revised Statutes Supplement, 2023; to change
4 provisions relating to the taxation of partnerships and small
5 business corporations and notices of deficiency; and to repeal the
6 original sections.

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

1 Section 1. Section 77-2727, Revised Statutes Supplement, 2023, is
2 amended to read:

3 77-2727 (1) Except as provided in subsection (6) of this section and
4 subsection (5) of section 77-2775, a partnership as such shall not be
5 subject to the income tax imposed by the Nebraska Revenue Act of 1967.
6 Persons or their authorized representatives carrying on business as
7 partners shall be liable for the income tax imposed by the Nebraska
8 Revenue Act of 1967 only in their separate or individual capacities.

9 (2) The partners of such partnership who are residents of this state
10 or corporations shall include in their incomes their proportionate share
11 of such partnership's income.

12 (3) If any partner of such partnership is a nonresident individual
13 during any part of the partnership's reporting year, he or she shall file
14 a Nebraska income tax return which shall include in Nebraska adjusted
15 gross income that portion of the partnership's Nebraska income, as
16 determined under the provisions of sections 77-2728 and 77-2729,
17 allocable to his or her interest in the partnership and shall execute and
18 forward to the partnership, on or before the original due date of the
19 Nebraska partnership return, an agreement which states that he or she
20 will file a Nebraska income tax return and pay income tax on all income
21 derived from or attributable to sources in this state, and such agreement
22 shall be attached to the partnership's Nebraska return for such reporting
23 year.

24 (4)(a) Except as provided in subdivision (c) of this subsection, in
25 the absence of the nonresident individual partner's executed agreement
26 being attached to the Nebraska partnership return, the partnership shall
27 remit a portion of such partner's income which was derived from or
28 attributable to Nebraska sources with its Nebraska return for the
29 reporting year. For tax years beginning or deemed to begin before January
30 1, 2013, the amount of remittance, in such instance, shall be the highest
31 individual income tax rate determined under section 77-2715.02 multiplied

1 by the nonresident individual partner's share of the partnership income
2 which was derived from or attributable to sources within this state. For
3 tax years beginning or deemed to begin on or after January 1, 2013, the
4 amount of remittance, in such instance, shall be the highest individual
5 income tax rate determined under section 77-2715.03 multiplied by the
6 nonresident individual partner's share of the partnership income which
7 was derived from or attributable to sources within this state.

8 (b) Any amount remitted on behalf of any partner shall be allowed as
9 a credit against the Nebraska income tax liability of the partner.

10 (c) Subdivision (a) of this subsection does not apply to a publicly
11 traded partnership as defined by section 7704(b) of the Internal Revenue
12 Code of 1986, as amended, that is treated as a partnership for the
13 purposes of the code and that has agreed to file an annual information
14 return with the Department of Revenue reporting the name, address,
15 taxpayer identification number, and other information requested by the
16 department of each unit holder with an income in the state in excess of
17 five hundred dollars.

18 (5) The Tax Commissioner may allow a nonresident individual partner
19 to not file a Nebraska income tax return if the nonresident individual
20 partner's only source of Nebraska income was his or her share of the
21 partnership's income which was derived from or attributable to sources
22 within this state, the nonresident did not file an agreement to file a
23 Nebraska income tax return, and the partnership has remitted the amount
24 required by subsection (4) of this section on behalf of such nonresident
25 individual partner. The amount remitted shall be retained in satisfaction
26 of the Nebraska income tax liability of the nonresident individual
27 partner.

28 (6) Notwithstanding any provision of this section to the contrary:

29 (a) For tax years beginning or deemed to begin on or after January
30 1, 2018, a partnership may annually make an irrevocable election to pay
31 the taxes, interest, or penalties levied by the Nebraska Revenue Act of

1 1967 at the entity level for the taxable period covered by such return.
2 For tax years beginning on or after January 1, 2023, such election may be
3 made on the applicable income tax return and must be made on or before
4 the due date for filing the applicable income tax return, including any
5 extensions that have been granted;

6 (b) An electing partnership with respect to a taxable period shall
7 pay an income tax equivalent to the highest individual income tax rate
8 provided in section 77-2715.03 multiplied by the electing partnership's
9 net income as apportioned or allocated to this state in accordance with
10 the Nebraska Revenue Act of 1967, for such taxable period;

11 (c) An electing partnership shall be treated as a corporation with
12 respect to the requirements of section 77-2769 for payments of estimated
13 tax. The requirement for payment of estimated tax under section 77-2769
14 shall not apply for tax years beginning prior to January 1, 2024.
15 Payments of estimated tax made by an eligible partnership that does not
16 make an election under this subsection shall be treated as income tax
17 withholding on behalf of the partners;

18 (d) Except as provided in subdivision (e) of this subsection, the
19 partners of an electing partnership must file a Nebraska return to report
20 their pro rata or distributive share of the income of the electing
21 partnership in accordance with the Nebraska Revenue Act of 1967, as
22 applicable. In determining the sum of its pro rata or distributive share
23 and computing the tax under this subsection, an electing partnership
24 shall add back any amount of Nebraska income tax imposed under the
25 Nebraska Revenue Act of 1967 and deducted by the electing partnership for
26 federal income tax purposes under section 164 of the Internal Revenue
27 Code;

28 (e) A nonresident individual who is a partner of an electing
29 partnership shall not be required to file a Nebraska tax return for a
30 taxable year if, for such taxable year, the only source of income derived
31 from or connected with sources within this state for such partner, or for

1 the partner and the partner's spouse if a joint federal income tax return
2 is filed, is from one or more electing partnerships or electing small
3 business corporations as defined in subdivision (9)(a) of section
4 77-2734.01 for such taxable year and such nonresident individual
5 partner's tax under the Nebraska Revenue Act of 1967 would be fully
6 satisfied by the credit allowed to such partner under subdivision (g) of
7 this subsection;

8 (f) If the amount calculated under subdivision (a) of this
9 subsection results in a net operating loss, such net operating loss may
10 not be carried forward to succeeding taxable years;

11 (g)(i) A refundable credit shall be available to the partners in an
12 amount equal to their pro rata or distributive share of the Nebraska
13 income tax paid by the electing partnership. For tax returns filed for
14 taxable years beginning or deemed to begin on or after January 1, 2022,
15 such credit shall be allowed for the same taxable year for which the
16 election is made, without regard to the year in which the tax is paid to
17 Nebraska or deducted on a federal income tax return;

18 (ii) In the case of a partnership or small business corporation that
19 is a partner of an electing partnership, the refundable credit under this
20 subdivision (g) shall (A) be allowed to its partners or shareholders in
21 accordance with the determination of income and distributive share of the
22 Nebraska income tax paid by the electing partnership or (B) be applied
23 against the partner's tax, interest, and penalty. Any excess credit
24 deemed an overpayment may be refunded or applied to the subsequent tax
25 year;

26 (iii) If a partnership making the election under this subsection is
27 a partner of another electing partnership, net income shall be computed
28 as provided in subsection (1) of this section. The upper tier electing
29 partnership shall claim a credit for the tax paid by the lower tier
30 electing partnership. The upper tier electing partnership shall
31 distribute out the pro rata or distributive share of the credits to its

1 partners for tax paid under this subsection by all tiers of electing
2 partnerships. As used in this subdivision, the term lower tier electing
3 partnership means an electing partnership in which some or all of the
4 partners are an electing partnership. The term upper tier electing
5 partnership means an electing partnership that is a partner of a lower
6 tier electing partnership. An electing partnership may have two or more
7 tiers; and

8 (h)(i) For tax years beginning or deemed to begin on or after
9 January 1, 2018, but prior to January 1, 2023, the electing partnership
10 must make the election under this subsection on or after January 1, 2023,
11 but before December 31, 2025, in the form and manner prescribed by the
12 Tax Commissioner for all years for which the election under this
13 subsection is made on behalf of the electing partnership. The Tax
14 Commissioner shall establish the form and manner, which shall not include
15 any changes to the past returns other than those that are directly
16 related to the election under this subsection.

17 (ii) Notwithstanding any other provision of law, if an electing
18 partnership files in the form and manner as specified in subdivision (h)
19 (i) of this subsection, the deadline for filing a claim for credit or
20 refund prescribed in section 77-2793 shall be extended for affected
21 partners of the electing partnership until the timeframe specified in
22 section 77-2793 or January 31, 2026, whichever is later. The resulting
23 claim of refund for tax years beginning prior to January 1, 2023, shall
24 be submitted in the form and manner as prescribed by the Tax
25 Commissioner. Neither the electing partnership nor its partners shall
26 incur any penalties for late filing nor owe interest on such amounts. The
27 Tax Commissioner shall not be required to pay interest on any amounts
28 owed to the partners resulting from such refund claims.

29 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
30 this subsection, the Tax Commissioner shall have one year from the date
31 an electing partnership files in the form and manner as specified in

1 subdivision (h)(i) of this subsection to review and make a written
2 proposed deficiency determination in accordance with section 77-2786. Any
3 notice of deficiency determination made as specified in this subdivision
4 may be enforced at any time within six years from the date of the notice
5 of deficiency determination.

6 (7) For purposes of this section:

7 (a) Electing partnership means, with respect to a taxable period, an
8 eligible partnership that has made an election pursuant to subsection (6)
9 of this section with respect to such taxable period; and

10 (b) Eligible partnership means any partnership as provided for in
11 section 7701(a)(2) of the Internal Revenue Code that has a filing
12 requirement under the Nebraska Revenue Act of 1967 other than a publicly
13 traded partnership as defined in section 7704 of the Internal Revenue
14 Code. An eligible partnership includes any entity, including a limited
15 liability company, treated as a partnership for federal income tax
16 purposes that otherwise meets the requirements of this subdivision.

17 (8) For purposes of this section, any partner that is a grantor
18 trust of a nonresident shall be disregarded and this section shall apply
19 as though the nonresident grantor was the partner.

20 Sec. 2. Section 77-2734.01, Revised Statutes Supplement, 2023, is
21 amended to read:

22 77-2734.01 (1) Residents of Nebraska who are shareholders of a small
23 business corporation having an election in effect under subchapter S of
24 the Internal Revenue Code or who are members of a limited liability
25 company organized pursuant to the Nebraska Uniform Limited Liability
26 Company Act shall include in their Nebraska taxable income, to the extent
27 includable in federal gross income, their proportionate share of such
28 corporation's or limited liability company's federal income adjusted
29 pursuant to this section. Income or loss from such corporation or limited
30 liability company conducting a business, trade, profession, or occupation
31 shall be included in the Nebraska taxable income of a shareholder or

1 member who is a resident of this state to the extent of such
2 shareholder's or member's proportionate share of the net income or loss
3 from the conduct of such business, trade, profession, or occupation
4 within this state, determined under subsection (2) of this section. A
5 resident of Nebraska shall include in Nebraska taxable income fair
6 compensation for services rendered to such corporation or limited
7 liability company. Compensation actually paid shall be presumed to be
8 fair unless it is apparent to the Tax Commissioner that such compensation
9 is materially different from fair value for the services rendered or has
10 been manipulated for tax avoidance purposes.

11 (2) The income of any small business corporation having an election
12 in effect under subchapter S of the Internal Revenue Code or limited
13 liability company organized pursuant to the Nebraska Uniform Limited
14 Liability Company Act that is derived from or connected with Nebraska
15 sources shall be determined in the following manner:

16 (a) If the small business corporation is a member of a unitary
17 group, the small business corporation shall be deemed to be doing
18 business within this state if any part of its income is derived from
19 transactions with other members of the unitary group doing business
20 within this state, and such corporation shall apportion its income by
21 using the apportionment factor determined for the entire unitary group,
22 including the small business corporation, under sections 77-2734.05 to
23 77-2734.15;

24 (b) If the small business corporation or limited liability company
25 is not a member of a unitary group and is subject to tax in another
26 state, it shall apportion its income under sections 77-2734.05 to
27 77-2734.15; and

28 (c) If the small business corporation or limited liability company
29 is not subject to tax in another state, all of its income is derived from
30 or connected with Nebraska sources.

31 (3) Nonresidents of Nebraska who are shareholders of such

1 corporations or members of such limited liability companies shall file a
2 Nebraska income tax return and shall include in Nebraska adjusted gross
3 income their proportionate share of the corporation's or limited
4 liability company's Nebraska income as determined under subsection (2) of
5 this section.

6 (4) The nonresident shareholder or member shall execute and forward
7 to the corporation or limited liability company before the filing of the
8 corporation's or limited liability company's return an agreement which
9 states he or she will file a Nebraska income tax return and pay the tax
10 on the income derived from or connected with sources in this state, and
11 such agreement shall be attached to the corporation's or limited
12 liability company's Nebraska return for such taxable year.

13 (5) For taxable years beginning or deemed to begin before January 1,
14 2013, in the absence of the nonresident shareholder's or member's
15 executed agreement being attached to the Nebraska return, the corporation
16 or limited liability company shall remit with the return an amount equal
17 to the highest individual income tax rate determined under section
18 77-2715.02 multiplied by the nonresident shareholder's or member's share
19 of the corporation's or limited liability company's income which was
20 derived from or attributable to this state. For taxable years beginning
21 or deemed to begin on or after January 1, 2013, in the absence of the
22 nonresident shareholder's or member's executed agreement being attached
23 to the Nebraska return, the corporation or limited liability company
24 shall remit with the return an amount equal to the highest individual
25 income tax rate determined under section 77-2715.03 multiplied by the
26 nonresident shareholder's or member's share of the corporation's or
27 limited liability company's income which was derived from or attributable
28 to this state. The amount remitted shall be allowed as a credit against
29 the Nebraska income tax liability of the shareholder or member.

30 (6) The Tax Commissioner may allow a nonresident individual
31 shareholder or member to not file a Nebraska income tax return if the

1 nonresident individual shareholder's or member's only source of Nebraska
2 income was his or her share of the small business corporation's or
3 limited liability company's income which was derived from or attributable
4 to sources within this state, the nonresident did not file an agreement
5 to file a Nebraska income tax return, and the small business corporation
6 or limited liability company has remitted the amount required by
7 subsection (5) of this section on behalf of such nonresident individual
8 shareholder or member. The amount remitted shall be retained in
9 satisfaction of the Nebraska income tax liability of the nonresident
10 individual shareholder or member.

11 (7) A small business corporation or limited liability company return
12 shall be filed if the small business corporation or limited liability
13 company has income derived from Nebraska sources.

14 (8) Notwithstanding any provision of this section to the contrary:

15 (a) For tax years beginning or deemed to begin on or after January
16 1, 2018, a small business corporation may annually make an irrevocable
17 election to pay the taxes, interest, or penalties levied by the Nebraska
18 Revenue Act of 1967 at the entity level for the taxable period covered by
19 such return. For tax years beginning on or after January 1, 2023, such
20 election may be made on the applicable income tax return and must be made
21 on or before the due date for filing the applicable income tax return,
22 including any extensions that have been granted;

23 (b) An electing small business corporation with respect to a taxable
24 period shall pay an income tax equivalent to the highest individual
25 income tax rate provided in section 77-2715.03 multiplied by the electing
26 small business corporation's net income as apportioned or allocated to
27 this state in accordance with the Nebraska Revenue Act of 1967, for such
28 taxable period;

29 (c) An electing small business corporation shall be treated as a
30 corporation with respect to the requirements of section 77-2769 for
31 payments of estimated tax. The requirement for payment of estimated tax

1 under section 77-2769 shall not apply for tax years beginning prior to
2 January 1, 2024. Payments of estimated tax made by an eligible small
3 business corporation that does not make an election under this subsection
4 shall be treated as income tax withholding on behalf of the shareholders;

5 (d) Except as provided in subdivision (e) of this subsection, the
6 shareholders of an electing small business corporation must file a
7 Nebraska return to report their pro rata or distributive share of the
8 income of the electing small business corporation in accordance with the
9 Nebraska Revenue Act of 1967, as applicable. In determining the sum of
10 its pro rata or distributive share and computing the tax under this
11 subsection, an electing small business corporation shall add back any
12 amount of Nebraska income tax imposed under the Nebraska Revenue Act of
13 1967 and deducted by the electing small business corporation for federal
14 income tax purposes under section 164 of the Internal Revenue Code;

15 (e) A nonresident individual who is a shareholder of an electing
16 small business corporation shall not be required to file a Nebraska tax
17 return for a taxable year if, for such taxable year, the only source of
18 income derived from or connected with sources within this state for such
19 shareholder, or for the shareholder and the shareholder's spouse if a
20 joint federal income tax return is filed, is from one or more electing
21 small business corporations or electing partnerships as defined in
22 subdivision (7)(a) of section 77-2727 for such taxable year and such
23 nonresident individual shareholder's tax under the Nebraska Revenue Act
24 of 1967 would be fully satisfied by the credit allowed to such
25 shareholder under subdivision (g) of this subsection;

26 (f) If the amount calculated under subdivision (a) of this
27 subsection results in a net operating loss, such net operating loss may
28 not be carried forward to succeeding taxable years;

29 (g) A refundable credit shall be available to the shareholders in an
30 amount equal to their pro rata or distributive share of the Nebraska
31 income tax paid by the electing small business corporation. For tax

1 returns filed for taxable years beginning or deemed to begin on or after
2 January 1, 2022, such credit shall be allowed for the same taxable year
3 for which the election is made, without regard to the year in which the
4 tax is paid to Nebraska or deducted on a federal income tax return; and

5 (h)(i) For tax years beginning or deemed to begin on or after
6 January 1, 2018, but prior to January 1, 2023, the electing small
7 business corporation must make the election under this subsection on or
8 after January 1, 2023, but before December 31, 2025, in the form and
9 manner prescribed by the Tax Commissioner for all years for which the
10 election under this subsection is made on behalf of the electing small
11 business corporation. The Tax Commissioner shall establish the form and
12 manner, which shall not include any changes to the past returns other
13 than those that are directly related to the election under this
14 subsection.

15 (ii) Notwithstanding any other provision of law, if an electing
16 small business corporation files in the form and manner as specified in
17 subdivision (h)(i) of this subsection, the deadline for filing a claim
18 for credit or refund prescribed in section 77-2793 shall be extended for
19 affected shareholders of the electing small business corporation until
20 the timeframe specified in section 77-2793 or January 31, 2026, whichever
21 is later. The resulting claim of refund for tax years beginning prior to
22 January 1, 2023, shall be submitted in the form and manner as prescribed
23 by the Tax Commissioner. Neither the electing small business corporation
24 nor its shareholders shall incur any penalties for late filing nor owe
25 interest on such amounts. The Tax Commissioner shall not be required to
26 pay interest on any amounts owed to the shareholders resulting from such
27 refund claims.

28 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
29 this subsection, the Tax Commissioner shall have one year from the date
30 an electing small business corporation files in the form and manner as
31 specified in subdivision (h)(i) of this subsection to review and make a

1 written proposed deficiency determination in accordance with section
2 77-2786. Any notice of deficiency determination made as specified in this
3 subdivision may be enforced at any time within six years from the date of
4 the notice of deficiency determination.

5 (9) For purposes of this section:

6 (a) Electing small business corporation means, with respect to a
7 taxable period, an eligible small business corporation having an election
8 in effect under subchapter S of the Internal Revenue Code that has made
9 an election pursuant to subsection (8) of this section with respect to
10 such taxable period; and

11 (b) Eligible small business corporation means an entity subject to
12 taxation under subchapter S of the Internal Revenue Code and the
13 regulations thereunder.

14 (10) For purposes of this section, any shareholder or member of the
15 corporation or limited liability company that is a grantor trust of a
16 nonresident shall be disregarded and this section shall apply as though
17 the nonresident grantor was the shareholder or member.

18 Sec. 3. Section 77-2776, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 77-2776 (1) As soon as practical after an income tax return is
21 filed, the Tax Commissioner shall examine it to determine the correct
22 amount of tax. If the Tax Commissioner finds that the amount of tax shown
23 on the return is less than the correct amount, he or she shall notify the
24 taxpayer of the amount of the deficiency proposed to be assessed. If the
25 Tax Commissioner finds that the tax paid is more than the correct amount,
26 he or she shall credit the overpayment against any taxes due by the
27 taxpayer and refund the difference. The Tax Commissioner shall, upon
28 request, make prompt assessment of taxes due as provided by the laws of
29 the United States for federal income tax purposes.

30 (2) If the taxpayer fails to file an income tax return, the Tax
31 Commissioner shall estimate the taxpayer's tax liability from any

1 available information and notify the taxpayer of the amount proposed to
2 be assessed as in the case of a deficiency.

3 (3) A notice of deficiency shall set forth the reason for the
4 proposed assessment or for the change in the amount of credit or loss to
5 be carried over to another year. The notice shall include a written
6 statement containing the details of the facts, circumstances, and reasons
7 the Tax Commissioner used to determine the amount of tax shown on the
8 return is less than the correct amount. The notice may be mailed to the
9 taxpayer at his or her last-known address. In the case of a joint return,
10 the notice of deficiency may be a single joint notice, except that if the
11 Tax Commissioner is notified by either spouse that separate residences
12 have been established, the Tax Commissioner shall mail joint notices to
13 each spouse. If the taxpayer is deceased or under a legal disability, a
14 notice of deficiency may be mailed to his or her last-known address
15 unless the Tax Commissioner has received notice of the existence of a
16 fiduciary relationship with respect to such taxpayer.

17 (4) A notice of deficiency regarding an item of entity income may be
18 mailed to the entity at its last-known address or to the address of the
19 entity's tax matters person for federal income tax purposes. Such notice
20 shall be deemed to have been received by each partner, shareholder, or
21 member of such entity, but only for items of entity income reported by
22 the partner, shareholder, or member. The actions taken thereon on behalf
23 of the partnership, limited liability company, small business
24 corporation, estate, or trust are binding on the partners, members,
25 shareholders, or beneficiaries.

26 Sec. 4. Original section 77-2776, Revised Statutes Cumulative
27 Supplement, 2022, and sections 77-2727 and 77-2734.01, Revised Statutes
28 Supplement, 2023, are repealed.