

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 173

Introduced by Bostar, 29.

Read first time January 09, 2023

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2733, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to the taxation of nonresident income; to provide an
- 4 operative date; to provide severability; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2733, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2733 (1) The income of a nonresident individual derived from
4 sources within this state shall be the sum of the following:

5 (a) The net amount of items of income, gain, loss, and deduction
6 entering into his or her federal taxable income which are derived from or
7 connected with sources in this state including (i) his or her
8 distributive share of partnership income and deductions determined under
9 section 77-2729, (ii) his or her share of small business corporation or
10 limited liability company income determined under section 77-2734.01, and
11 (iii) his or her share of estate or trust income and deductions
12 determined under section 77-2725; and

13 (b) The portion of the modifications described in section 77-2716
14 which relates to income derived from sources in this state, including any
15 modifications attributable to him or her as a partner.

16 (2) Items of income, gain, loss, and deduction derived from or
17 connected with sources within this state are those items attributable to:

18 (a) The ownership or disposition of any interest in real or tangible
19 personal property in this state;

20 (b) A business, trade, profession, or occupation carried on in this
21 state; and

22 (c) Any lottery prize awarded in a lottery game conducted pursuant
23 to the State Lottery Act.

24 (3) Income from intangible personal property including annuities,
25 dividends, interest, and gains from the disposition of intangible
26 personal property shall constitute income derived from sources within
27 this state only to the extent that such income is from property employed
28 in a business, trade, profession, or occupation carried on in this state.

29 (4) Deductions with respect to capital losses, net long-term capital
30 gains, and net operating losses shall be based solely on income, gains,
31 losses, and deductions derived from or connected with sources in this

1 state, under rules and regulations to be prescribed by the Tax
2 Commissioner, but otherwise shall be determined in the same manner as the
3 corresponding federal deductions.

4 (5) If a business, trade, profession, or occupation is carried on
5 partly within and partly without this state, the items of income and
6 deduction derived from or connected with sources within this state shall
7 be determined by apportionment under rules and regulations to be
8 prescribed by the Tax Commissioner.

9 (6) Compensation paid by the United States for service in the armed
10 forces of the United States performed by a nonresident individual shall
11 not constitute income derived from sources within this state.

12 (7) Compensation paid by a resident estate or trust for services by
13 a nonresident fiduciary shall constitute income derived from sources
14 within this state.

15 (8) Except as provided in subsection (9) of this section,
16 compensation ~~Compensation~~ paid by a business, trade, or profession shall
17 constitute income derived from sources within this state if:

18 (a) The individual's service is performed entirely within this
19 state;

20 (b) The individual's service is performed both within and without
21 this state, but the service performed without this state is incidental to
22 the individual's service within this state;

23 (c) The individual's service is performed without this state, but
24 the service performed without this state is related to the transactions
25 and activity of the business, trade, or profession carried on within this
26 state; or

27 (d) Some of the service is performed in this state and (i) the base
28 of operations or, if there is no base of operations, the place from which
29 the service is directed or controlled is in this state or (ii) the base
30 of operations or the place from which the service is directed or
31 controlled is not in any state in which some part of the service is

1 performed, but the individual's residence is in this state.

2 (9)(a) For purposes of this subsection:

3 (i) Professional athlete means an athlete who performs services in a
4 professional athletic event for compensation;

5 (ii) Professional entertainer means a person who performs services
6 in the professional performing arts for compensation on a per-event
7 basis;

8 (iii) Public figure means a person of prominence who performs
9 services at discrete events, including, but not limited to, speeches,
10 public appearances, or similar events, for compensation on a per-event
11 basis. Public figure does not include a member of a business's board of
12 directors or similar governing body; and

13 (iv) Time and attendance system means a system through which an
14 individual is required to record the individual's work location for every
15 day worked outside the state where the individual's employment duties are
16 primarily performed and which is designed to allow the employer to
17 allocate the individual's compensation for income tax purposes among all
18 states in which the individual performs employment duties for the
19 employer.

20 (b) Compensation paid to a nonresident individual shall not
21 constitute income derived from sources within this state if all of the
22 following conditions apply:

23 (i) The compensation is paid for employment duties performed by the
24 individual while present in this state for thirty or fewer days in the
25 taxable year;

26 (ii) The individual performed employment duties in more than one
27 state during the taxable year; and

28 (iii) The compensation is not paid for employment duties performed
29 by the individual in the individual's capacity as a professional athlete,
30 professional entertainer, or public figure.

31 (c) An employer is not required to withhold taxes for compensation

1 that is paid to an individual described in subdivision (9)(b) of this
2 section, except that if, during the taxable year, the individual performs
3 employment duties while present in this state for more than thirty days,
4 an employer shall withhold and remit taxes for every day the individual
5 performed employment duties while present in this state in that taxable
6 year, including the first thirty days in which the individual performs
7 employment duties in this state.

8 (d) The Department of Revenue shall not require the payment of any
9 penalties or interest otherwise applicable for failing to deduct and
10 withhold income taxes if, when determining whether withholding was
11 required, the employer met either of the following conditions:

12 (i) The employer, in its sole discretion, maintains a time and
13 attendance system specifically designed to allocate employee wages for
14 income tax purposes among all taxing jurisdictions in which an individual
15 performs employment duties for such employer, and the employer relied on
16 data from that system; or

17 (ii) The employer does not maintain a time and attendance system and
18 the employer relied on (A) its own records, maintained in the regular
19 course of business, of the individual's location, (B) the individual's
20 reasonable determination of the time the individual expected to spend
21 performing employment duties in this state, provided that the employer
22 did not have actual knowledge of fraud on the part of the individual in
23 making the determination and that the employer and the individual did not
24 conspire to evade taxation in making the determination, (C) travel
25 records, (D) travel expense reimbursement records, or (E) a written
26 statement from the individual of the number of days spent performing
27 services in this state during the taxable year.

28 (e) Compensation that is paid to a nonresident individual who serves
29 on the board of directors or similar governing body of a business and
30 that relates to board or governing body activities taking place in this
31 state shall not constitute income derived from sources within this state.

1 (f) For purposes of this subsection, an individual shall be
2 considered present and performing employment duties within this state for
3 a day if the individual performs more of the individual's employment
4 duties in this state than in any other state during that day. Any portion
5 of the day during which the individual is in transit shall not be
6 considered in determining the location of an individual's performance of
7 employment duties.

8 Sec. 2. This act becomes operative for all taxable years beginning
9 or deemed to begin on or after January 1, 2024, under the Internal
10 Revenue Code of 1986, as amended.

11 Sec. 3. If any section in this act or any part of any section is
12 declared invalid or unconstitutional, the declaration shall not affect
13 the validity or constitutionality of the remaining portions.

14 Sec. 4. Original section 77-2733, Reissue Revised Statutes of
15 Nebraska, is repealed.