

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 936

Introduced by Bostar, 29.

Read first time January 10, 2022

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; and to repeal the
- 4 original section.
- 5 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)(a) For taxable years beginning or deemed to begin before January
16 1, 2023, compensation ~~(8) Compensation~~ paid by a business, trade, or
17 profession shall constitute income derived from sources within this state
18 if:

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

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

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

28 (iv) (d) Some of the service is performed in this state and (A) (i)
29 the base of operations or, if there is no base of operations, the place
30 from which the service is directed or controlled is in this state or (B)
31 ~~(ii)~~ the base of operations or the place from which the service is

1 directed or controlled is not in any state in which some part of the
2 service is performed, but the individual's residence is in this state.

3 (b) For taxable years beginning or deemed to begin on or after
4 January 1, 2023, compensation paid by a business, trade, or profession
5 shall constitute income derived from sources within this state if the
6 individual is present in the state performing personal services for more
7 than twelve days during the taxable year and directly earns or derives
8 more than three thousand dollars in gross income during the year in the
9 state from all sources. Performance of the following personal services
10 for up to twenty-four days during a taxable year shall not be counted
11 toward the twelve-day threshold provided in this subdivision:

12 (i) Personal services performed in connection with presenting or
13 receiving employment-related training or education;

14 (ii) Personal services performed in connection with a site
15 inspection, review, analysis of management, or any other supervision of a
16 facility, affiliate, or subsidiary based in this state by a
17 representative from a company, not headquartered in this state, that owns
18 that facility or is the parent company of the affiliate or subsidiary;

19 (iii) Personal services performed in connection with research and
20 development at a facility based in this state or in connection with the
21 installation of new or upgraded equipment or systems at that facility; or

22 (iv) Personal services performed as part of a project team working
23 on the attraction or implementation of new investment in a facility based
24 in this state.

25 Sec. 2. Original section 77-2733, Reissue Revised Statutes of
26 Nebraska, is repealed.