

# **SECTION B**

## **Income Tax: Individual, Fiduciary, Corporation, and Financial Institution Tax**

### **BASIC PROVISIONS AND TAX BASE**

#### **Individual Income Tax<sup>1</sup>**

Nebraska individual income tax is imposed for each taxable year on the entire income of every resident individual. Nonresident and partial-year resident individuals are taxed on income derived from Nebraska sources. For tax year 2010, the rates are 2.56%, 3.57%, 5.12%, and 6.84% of Nebraska taxable income. Brackets for each filing status are outlined in [Neb. Rev. Stat. § 77-2715.02](#). A personal exemption credit is allowed against the tax computed for every federal personal exemption of the taxpayer. For tax year 2010, the credit is \$118.

The tax is calculated as a percentage of Nebraska taxable income. Additional taxes are computed on alternative minimum tax and premature and lump-sum distributions from qualified retirement plans at a rate equal to 29.6% of the federal tax amount. Nebraska taxable income starts with federal adjusted gross income (AGI), adds interest from non-Nebraska state and local government obligations, and subtracts U.S. government obligations and other adjustments decreasing income. Nebraska taxable income is further reduced by either federal itemized deductions less Nebraska income tax; or a standard deduction equal to the smaller of the federal standard deduction or the Nebraska standard deduction amounts specified in section [77-2716.01\(2\)\(b\)](#). Additional standard deduction amounts are allowed to elderly and blind taxpayers. For 2010, the standard deduction, including the additional standard deduction amounts, is adjusted for inflation. An additional tax which phases out the benefit of lower tax rates in the lower income brackets is also computed by higher income taxpayers.

#### **Fiduciary Income Tax<sup>1</sup>**

Nebraska income tax is imposed for each taxable year on the federal taxable income of a resident estate or trust after the adjustments contained in section [77-2716](#). Nonresident estates and trusts have the Nebraska income tax imposed for each taxable year on the portion of their income derived from sources within Nebraska.

In both cases, the tax is calculated as a percentage of Nebraska taxable income. The rates are 2.56%, 3.57%, 5.12%, and 6.84%. The brackets are established in section [77-2715.02](#). Additional tax is imposed on alternative minimum tax and premature and lump-sum distributions from qualified retirement plans at a rate equal to 29.6% of the federal amount.

#### **Corporation Income Tax<sup>1</sup>**

Nebraska corporation income tax is imposed upon any corporation or any other entity taxed as a corporation (not including a corporation with a valid federal subchapter S election or any financial institution defined in section [77-3801](#)) which is doing business in Nebraska. For a corporate taxpayer subject

<sup>1</sup>The taxes collected are deposited to the State General Fund for these tax programs.

to tax in another state, the entire federal taxable income of the unitary business, after the adjustments in sections [77-2716](#) and [77-2734.07\(1\)](#), is apportioned according to the statutory formula to determine the portion attributable to sources within Nebraska. For a corporate taxpayer not subject to tax in another state, the entire taxable income is subject to tax in Nebraska. Each corporate taxpayer is required to file a single, combined unitary tax return for each taxable year.

The corporation income tax rate is calculated as a percentage of the primary individual rate. The primary individual rate is 3.70%. The corporation rate on the first \$100,000 of taxable income is 150.8% of the primary rate and 211% of the primary rate on the excess. The 2009 and 2010 rates are 5.58% and 7.81% respectively.

## Financial Institution Tax<sup>1</sup>

Every financial institution which is chartered or qualified to do business in Nebraska, or which maintains a permanent place of business in Nebraska and actively solicits deposits from residents of Nebraska, must file a [Nebraska Financial Institution Tax Return, Form 1120NF](#). This franchise tax is based on the average deposits of the financial institution. The rate of tax on deposits is 12.3 times the limitation rate. The limitation rate is 48.8% of the maximum corporate income tax rate in effect for the taxable year. The maximum corporate income tax rate in effect for the 2010 taxable year is 7.81%. The franchise tax imposed cannot exceed the limitation amount. The limitation amount is the product of the net financial income of the financial institution multiplied by the limitation rate. Financial institutions pay a franchise tax of 47 cents per \$1,000 of average deposits, limited by the institution's net financial income multiplied by 3.81%. Each financial institution is required to file a separate franchise tax return.

The tax imposed is based on the amount of average deposits connected with the financial institution's operations in Nebraska. These deposits are deposits which are accepted at the financial institution's offices located in Nebraska, plus deposits solicited from residents in Nebraska even if accepted at an office of the financial institution outside of Nebraska.

<sup>1</sup>The taxes collected are deposited to the State General Fund for these tax programs.

# INDIVIDUAL, FIDUCIARY, AND CORPORATION INCOME TAXES

| Statutory Reference<br>and Description | Actual or Estimated Tax<br>Expenditure Cost<br>(NA = Not Available) |
|--|---|
|--|---|

## EXEMPTIONS

|  |                       |
|--|-----------------------|
| <p>Nebraska utilizes the federal calculation of taxable income for corporations as a base for computing taxpayers' Nebraska liability. Federal adjusted gross income, plus and minus certain adjustments, is used to determine Nebraska taxable income for individuals. Income tax for fiduciaries is based on taxable income. Nebraska tax tables, rates,</p> | <p>NA<sup>2</sup></p> |
|--|-----------------------|

<sup>2</sup>Figures are not available, nor applicable for any deductions (corporate) and adjustments to income (individual, fiduciary, and corporate) allowed by the Internal Revenue Service and federal regulations; since Nebraska corporate income tax is based on federal taxable income, Nebraska individual income tax is based on federal adjusted gross income, plus and minus adjustments, and Nebraska fiduciary income tax is based on taxable income.

and credits are used to determine tax liability. Some deductions (Nebraska corporation income tax) and adjustments to income (Nebraska individual, fiduciary, and corporation income tax) adopted under the Internal Revenue Code and federal regulations are recognized by Nebraska due to the linkage between the two systems. Federal tax credits are not recognized unless specifically approved by the Legislature. Any federal taxable income that is exempt from state taxation pursuant to federal law is not taxed by Nebraska.

### **Nebraska income tax liability after nonrefundable credits no greater than federal income tax liability before credits.**

**Statutory citation:** [77-2715](#)

**Description:** A taxpayer with less than \$5,000 in adjustments increasing income will not have a Nebraska tax larger than their federal tax.

**Estimate:** \$5,600,000

## **DEDUCTIONS**

### **Interest and Dividends on U.S. Obligations**

**Statutory citation:** [77-2716\(1\)\(a\)\(b\)](#)

**Description:** A subtraction from the tax base is allowed for interest or dividend income derived from federal obligations. This applies to federal taxable income for corporations and fiduciaries and to adjusted gross income for individuals.

**Estimate:** \$41,000,000

### **Subtraction for Foreign Income Taxed in Excess of Maximum Federal Tax Rate**

**Statutory citation:** [77-2716\(6\)](#)

**Description:** A subtraction is allowed from federal taxable income for any portion of income subject to tax by a foreign country that is higher than the maximum federal tax rate.

**Estimate:** \$39,100,000

### **Net Operating Losses**

**Statutory citation:** [77-2716\(2\)](#)

**Description:** A subtraction is allowed a resident individual, estate, or trust for a federal net operating loss which is adjusted for the modifications to federal AGI in the statutes. A nonresident or partial-year resident individual, estate, or trust is allowed a subtraction for a federal NOL adjusted by the modifications in the statutes. Any carryovers or carrybacks are limited to the portion of the loss derived from Nebraska sources.

**Estimate:** \$6,200,000

### **State Income Tax Refund**

**Statutory citation:** [77-2716\(3\)](#)

**Description:** A subtraction is allowed for any state income tax refund included in federal AGI.

**Estimate:** \$8,900,000

### **Foreign Dividend Subtraction**

**Statutory citation:** [77-2716\(5\)](#)

**Description:** A subtraction is allowed from taxable income for any dividends received for a foreign corporation not subject to the Internal Revenue Code.

**Estimate:** Not available

**IRC Section 1341(A)(5) Exclusion****Statutory citation:** [77-2716\(7\)](#)**Description:** Federal AGI is reduced by any amount repaid by the taxpayer under the federal claim of right principle.**Estimate:** Not available**Nebraska Educational Savings Trust Income Allowed as a Deduction****Statutory citation:** [77-2716\(8\)\(a\)](#)**Description:** A subtraction from federal AGI, or for corporations and fiduciaries, from taxable income, is allowed for any income from interest and Nebraska contributions received from the Nebraska educational savings plan trust.**Estimate:** \$0**Donation to Nebraska Educational Savings Plan Trust****Statutory citation:** [77-2716\(8\)\(b\)](#)**Description:** A subtraction is allowed for any gift or donation, not deducted federally, that is made to the Nebraska educational savings plan trust.**Estimate:** Minimal**Contributions to the Nebraska Educational Savings Plan Trust****Statutory citation:** [77-2716\(8\)\(c\)](#)**Description:** A subtraction is allowed from AGI (for individuals), and from taxable income (for corporations and fiduciaries), for any contribution as a participant in the Nebraska educational savings plan trust. The subtraction cannot exceed \$2,500 for a married, filing separately return, or \$5,000 for any other return.**Estimate:** \$1,300,000**Nebraska Long-Term Care Savings Plan****Statutory citation:** [77-2716\(11\)\(a\)](#)**Description:** Individuals may take a deduction for contributions to the Nebraska Long-Term Care Savings Plan. The deduction is limited to \$2,000 per year for married, filing jointly returns and \$1,000 for all other returns.**Estimate:** Not available**Nebraska Standard Deduction****Statutory citation:** [77-2716.01\(2\)](#)**Description:** An individual taxpayer not itemizing deductions is allowed a standard deduction equal to the smaller of the federal standard deduction or the Nebraska standard deduction amounts in section [77-2716.01\(2\)\(b\)](#). Additional standard deduction amounts are allowed to elderly and blind taxpayers.**Estimate:** \$178,100,000**Nebraska Itemized Deductions****Statutory citation:** [77-2716.01\(3\)](#)**Description:** An individual taxpayer itemizing deductions is allowed the greater of either the Nebraska standard deduction or the federal itemized deduction, except for the amount deducted on the federal return for Nebraska income taxes paid.**Estimate:** \$264,200,000

**Corporation Allocable Income****Statutory citation:** [77-2734.06](#)**Description:** Corporate taxpayers are allowed to deduct allocable/nonapportionable income, less related expenses from the income subject to apportionment.**Estimate:** Not available**Corporation Net Operating/Capital Losses (NOL's)****Statutory citation:** [77-2734.07](#)**Description:** Corporate taxpayers are required to add to federal taxable income any federal deduction due to a carryforward of an NOL. Corporate taxpayers are allowed an NOL carryforward (if connected with operations in Nebraska) for the five years following the loss year.**Estimate:** \$16,500,000**Relocation Assistance Act Awards****Statutory citation:** [76-1235](#)**Description:** Awards to displaced persons under the Relocation Assistance Act can be deducted if included in federal AGI.**Estimate:** Not available

## EXCLUSIONS

**Dividends and Capital Gains Deduction****Statutory citation:** [77-2715.09](#)**Description:** Resident individuals or trusts may elect to subtract from federal AGI or from taxable income, respectively, the extraordinary dividends paid on, and the capital gain from the sale or exchange of, capital stock of a corporation acquired by the individual (i) on account of employment by the corporation, or (ii) while employed by the corporation.**Estimate:** \$29,300,000**Non-Nebraska S Corporation Income/Loss Deduction****Statutory citation:** [77-2716\(4\)](#)**Description:** An exclusion is allowed from federal AGI (or for a fiduciary, federal taxable income) for the portion of the income or loss received from an S corporation or from a limited liability company, that is not connected with Nebraska sources as determined in section [77-2734.01](#).**Estimate:** \$41,500,000

## CREDITS

**Credit for Elderly and Disabled****Statutory citation:** [77-2715.07\(1\)\(a\)](#)**Description:** A nonrefundable credit for qualified residents is allowed in an amount equal to 100% of the federal credit for the elderly and the disabled.**Estimate:** \$15,000**Credits for Child/Dependent Care****Statutory citation:** [77-2715.07\(1\)\(a\)](#)**Description:** A nonrefundable credit for qualified residents is allowed in an amount equal to 25% of the federal credit. For returns reporting federal AGI of \$29,000 or less, a refundable credit equal to a

percentage of the federal credit under section 21 of the Internal Revenue Code is allowed, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit varies for incomes between \$22,000 and \$29,000.

**Estimate:** \$5,900,000

#### **Credit for Tax Paid to Another State**

**Statutory citation:** [77-2715.07\(1\)\(b\)](#), [77-1507\(4\)\(a\)](#), [77-2730](#)

**Description:** A resident individual and a resident estate or trust are allowed a credit against income tax for some or all of any income tax imposed on them for the taxable year by another state, political subdivision, or the District of Columbia on income derived from sources therein which is also subject to Nebraska income tax.

**Estimate:** \$38,000,000

#### **Beginning Farmer Tax Credit**

**Statutory citation:** [77-2715.07\(2\)\(c\)](#), [77-3403\(3\)](#), [77-5701](#) through [5715](#).

**Description:** Individuals, estates, trusts, and corporations are allowed a refundable credit under the Beginning Farmer Tax Credit Act.

**Estimate:** \$560,000

#### **Community Development Tax Credit**

**Statutory citation:** [77-2715.07\(3\)\(b\)](#), [77-2715.07\(4\)\(b\)](#), [77-2734.03\(2\)](#), [13-203](#) through [13-207](#)

**Description:** Individuals, estates, trusts, and corporations are allowed a credit for contributions to certified community betterment programs.

**Estimate:** \$175,000

#### **Credits for Franchise Tax Paid by Financial institution**

**Statutory citation:** [77-2715.07\(5\)\(b\)](#)

**Description:** A nonrefundable credit for partners, S corporation shareholders, LLC members, or beneficiaries of an estate or trust which have ownership in a financial institution is allowed against an individual's income tax liability for 100% of the individual's share of the franchise taxes paid by the financial institution.

**Estimate:** \$3,200,000

#### **Refundable Earned Income Credits**

**Statutory citation:** [77-2715.07\(2\)](#)

**Description:** A refundable credit is allowed to resident individuals equal to 10% of the federal earned income credit.

**Estimate:** \$28,500,000

#### **Nebraska Personal Exemption Credit**

**Statutory citation:** [77-2716.01](#)

**Description:** A nonrefundable credit of \$118 for 2010 is allowed to resident individuals for every federal personal exemption.

**Estimate:** \$170,000,000

#### **Resident of Two States**

**Statutory citation:** [77-2731](#)

**Description:** An individual considered to be a resident of Nebraska and of another state (dual state resident), is allowed a reduction of tax on the portion of income subject to tax in both jurisdictions.

**Estimate:** Minimal

### **Credit for In-lieu-of Intangible Tax Paid**

**Statutory citation:** [77-2734.03](#), [77-908](#), [81-523](#), [44-4233](#)

**Description:** A credit is allowed to insurers, electric cooperatives, or credit unions for certain in-lieu-of intangible taxes paid.

**Estimate:** \$22,000,000

### **Income Tax Credit for Investment in Biodiesel Facility**

**Statutory citation:** [77-2734.03\(6\)](#), [77-27,236\(1\)](#), [77-27,236\(2\)\(a\)through\(f\)](#)

**Description:** A nonrefundable credit is allowed a taxpayer investing in a biodiesel facility.

**Estimate:** \$0

### **LB775 (Tax Incentive) Credits**

**Statutory citation:** [77-4101](#)

**Description:** A taxpayer's business may be eligible for tax incentives under the Employment and Investment Growth Act if the business is in a qualified activity and the plans result in (a) the investment in qualified property of at least \$3,000,000 and the hiring of at least 30 new employees, (b) the investment in qualified property of at least \$10,000,000 and the hiring of at least 100 new employees, or (c) the investment in qualified property of at least \$20,000,000. New applications are no longer being accepted after January 1, 2006.

**Estimate:** See Section V

### **Quality Jobs Act Credits**

**Statutory citation:** [77-4901](#)

**Description:** Taxpayers who have previously been approved may qualify for additional benefits beyond those received under section [77-4101](#) (LB775). Each taxpayer must make an investment of \$50 million in qualified property and hire 500 new employees, or \$100 million in investment and hire 250 new employees by the end of the sixth year after filing of the application. New applications are no longer being accepted.

**Estimate:** See Section V

### **Rural Economic Opportunities Credit**

**Statutory citation:** [77-5401](#)

**Description:** Any taxpayer who qualifies for incentives by adding the number of employees, wages, and investment required in section [77-5405](#) is entitled to: (1) A credit equal to five percent of the amount by which the total compensation paid during the year exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees; and (2) A credit equal to ten percent of the investment made in qualified property at the project. New applications are no longer being accepted.

**Estimate:** See Section V

### **Invest Nebraska Act Credits**

**Statutory citation:** [77-5501](#)

**Description:** A qualifying business selects one of the following options in its application: (1) \$10,000,000 investment and 25 new employees whose annual wage exceeds the Nebraska average annual wage. This option is only available for projects located outside of counties with 100,000 or more population; (2) \$50,000,000 investment and 500 new employees, or \$100,000,000 investment and 250 new employees. The new employee's annual wage must exceed 110% of the Nebraska average annual wage; or (3) \$200,000,000 investment and 500 new employees. The new employee's annual wage must exceed 125% of the Nebraska average annual wage. If the company reaches and maintains the selected level, it is eligible for benefits. New applications are no longer being accepted.

**Estimate:** See Section V

### **Nebraska Advantage Act Credits**

**Statutory citation:** 77-5426

**Description:** Businesses may qualify for benefits under six different tiers of new investment and new jobs ranging from an investment of at least \$1,000,000 and the hiring of at least ten new employees to \$30,000,000 of new investment and maintaining the same number of employees.

**Estimate:** See Section V

### **Nebraska Advantage Research and Development Act Credits**

**Statutory citation:** 77-5801

**Description:** Businesses which make investments in research and experimental activities in Nebraska are allowed a research tax credit equal to 15% of any federal credit allowed under section 41 of the IRC of 1986, as amended. If the investment in research and experimental activities takes place on the campus of a college or university in Nebraska or at a facility in Nebraska owned by a college or university, the credit is increased to 35%. The credit may be used to obtain a refund of sales and use taxes paid, or as a refundable income tax credit.

**Estimate:** Not available

### **Nebraska Advantage Act Microenterprise Tax Credit Act**

**Statutory citation:** 77-5901

**Description:** Businesses creating or expanding microbusinesses (five or fewer employees) are entitled to refundable tax credits equal to 20% of new investment or employment.

**Estimate:** Not available

### **Nebraska Advantage Rural Development Act Credits**

**Statutory citation:** 77-27,188

**Description:** Income tax credits are available to businesses which make investment in new property and/or add employees. There are required levels of employment and investment for counties with populations of less than 25,000 and for those with less than 15,000.

**Estimate:** Not available

### **Renewable Energy Tax Credit**

**Statutory citation:** 77-27,235

**Description:** Income tax credits or sales tax refunds are available to producers of electricity generated by a new zero emission facility based on kilowatt-hours generated.

**Estimate:** Not available

## **PREFERENTIAL TAX RATES**

### **Individual and Fiduciary Income Tax Rates**

**Statutory citation:** 77-2715.02

**Description:** The individual and fiduciary income tax rates are calculated as a percentage of the primary rate of 3.7%. The primary rate set by the Legislature is multiplied by the following factors to compute the tax rates. The factors for the brackets, from lowest to highest bracket, are .6932, .9646, 1.3846, and 1.848. The tax rates for the 2010 tax year are 2.56%, 3.57%, 5.12%, and 6.84% of Nebraska taxable income, using the brackets listed in section 77-2715.02. The preferential rate is the difference between the top rate, 6.84%, and the lowest rate, 2.56%.

**Estimate:** \$633,500,000

### **Corporate Income Tax Rates**

**Statutory citation:** [77-2734.02\(1\)](#)

**Description:** The corporate income tax rates are calculated as a percentage of the primary rate of 3.7%. This results in a corporate rate of 5.58% applied to the first \$100,000 of taxable income and a rate of 7.81% applied to the excess.

**Estimate:** \$7,300,000

### **Insurance Company Tax Rates**

**Statutory citation:** [77-2734.02\(2\)](#)

**Description:** Insurance companies are subject to the lesser of the rates set under section [77-2734.02\(1\)](#) or the rate of tax imposed in the state or country in which the insurance company is domiciled, if the state or country of domicile imposes a retaliatory tax on Nebraska insurance companies, which includes the Nebraska corporate income tax.

**Estimate:** Not available

## **FINANCIAL INSTITUTION TAX**

### **EXEMPTIONS**

#### **Federal Credit Unions & Mutual Fund Companies**

**Statutory citation:** [77-3802\(1\)](#), [77-3801\(4\)\(a\)](#), [77-3801\(4\)\(b\)](#)

**Description:** The franchise tax is not imposed on federal credit unions and mutual fund companies.

**Estimate:** \$350,000

### **CREDITS**

#### **Community Development Tax Credit**

**Statutory citation:** [13-201](#) through [13-208](#)

**Description:** Financial institutions are allowed a credit for contributions to certified community betterment programs.

**Estimate:** \$41,000

## **RECOMMENDATIONS**

The Nebraska Department of Revenue has no recommendations.