

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 888**

Introduced by Cornett, 45.

Read first time January 09, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2734.03, Reissue Revised Statutes of Nebraska, and  
3 sections 49-801.01, 77-2715.07, and 77-2717, Revised  
4 Statutes Supplement, 2011; to adopt the Historic Property  
5 Restoration and Reuse Act; to harmonize provisions; to  
6 provide an operative date; and to repeal the original  
7 sections.

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

1           Section 1. Sections 1 to 7 of this act shall be known and  
2 may be cited as the Historic Property Restoration and Reuse Act.

3           Sec. 2. For purposes of the Historic Property Restoration  
4 and Reuse Act:

5           (1) Eligible expenditure means any cost incurred for the  
6 improvement of eligible property, including, but not limited to,  
7 qualified rehabilitation expenditures as defined in section 47(c)(2)  
8 (A) of the Internal Revenue Code of 1986, as amended, and the related  
9 regulations thereunder, if such improvement is consistent with (a)  
10 the Secretary of the Interior's Standards for the Treatment of  
11 Historic Properties as prepared by the United States Department of  
12 the Interior or (b) specific standards for the conservation,  
13 preservation, restoration, and enhancement of eligible property  
14 contained in a duly adopted local ordinance that has been approved by  
15 the State Historic Preservation Officer;

16           (2) Eligible property means real property that is used  
17 for any purpose which is:

18           (a) Individually listed in the National Register of  
19 Historic Places or eligible for such listing;

20           (b) Within a district listed in the National Register of  
21 Historic Places that is historically significant as determined by the  
22 State Historic Preservation Officer and approved under section  
23 77-1387;

24           (c) Individually designated pursuant to a landmark  
25 ordinance that has been approved by the State Historic Preservation

1 Officer pursuant to section 77-1386 or eligible for such designation;  
2 or

3 (d) Within a district designated pursuant to a landmark  
4 ordinance or any other duly adopted local ordinance providing for the  
5 conservation, preservation, restoration, or enhancement of  
6 historically significant properties that has been approved by the  
7 State Historic Preservation Officer;

8 (3) Improvement means a rehabilitation, preservation,  
9 restoration, or redevelopment project that contributes to the basis  
10 of the eligible property; and

11 (4) Placed in service means that either (a) a temporary  
12 or final certificate of occupancy has been issued for the improvement  
13 or (b) the improvement is sufficiently complete to allow for the  
14 intended use of the improvement.

15 Sec. 3. (1) Any person incurring an eligible expenditure  
16 may receive a credit against the income tax imposed by the Nebraska  
17 Revenue Act of 1967 for the year the eligible property is placed in  
18 service in an amount equal to (a) twenty-five percent of the eligible  
19 expenditure incurred or (b) thirty percent of the eligible  
20 expenditure incurred if the eligible property is owned by an entity  
21 that is exempt from federal income taxation pursuant to section  
22 501(c)(3) of the Internal Revenue Code of 1986, as amended.

23 (2) To claim the credit authorized under this section, a  
24 person incurring an eligible expenditure shall apply to the  
25 Department of Revenue within twelve months after the date on which

1 the eligible property was placed in service. The department shall  
2 then refer the application to the State Historic Preservation Officer  
3 to determine whether the person qualifies for a credit under the  
4 Historic Property Restoration and Reuse Act. The State Historic  
5 Preservation Officer shall make his or her determination on the  
6 application within forty-five days after referral, and if no  
7 determination is made within such time, the application shall be  
8 deemed approved. If the application is approved, the department shall  
9 calculate the amount of the credit and issue a certificate to the  
10 person evidencing the credit. The department shall divide the credit  
11 and issue multiple certificates to a person who qualifies for the  
12 credit upon reasonable request.

13           Sec. 4. (1) If the amount of the credit received under  
14 section 3 of this act exceeds the person's income tax liability for  
15 the year in which the eligible property is placed in service, any  
16 amount that is unused may be carried forward to subsequent tax years  
17 until fully utilized.

18           (2) All or a portion of the credit received under section  
19 3 of this act shall be subject to recapture by the Department of  
20 Revenue if at any time during the five years after the eligible  
21 property is placed into service the eligible expenditure for which  
22 the credit was granted ceases to qualify as an eligible expenditure.  
23 The credit shall be subject to recapture as follows:

24           (a) If the eligible expenditure ceases to qualify during  
25 the first year after the credit was granted, one hundred percent of

1 the credit may be recaptured;

2 (b) If the eligible expenditure ceases to qualify during  
3 the second year after the credit was granted, eighty percent of the  
4 credit may be recaptured;

5 (c) If the eligible expenditure ceases to qualify during  
6 the third year after the credit was granted, sixty percent of the  
7 credit may be recaptured;

8 (d) If the eligible expenditure ceases to qualify during  
9 the fourth year after the credit was granted, forty percent of the  
10 credit may be recaptured;

11 (e) If the eligible expenditure ceases to qualify during  
12 the fifth year after the credit was granted, twenty percent of the  
13 credit may be recaptured.

14 Sec. 5. Persons eligible for credits under the Historic  
15 Property Restoration and Reuse Act may transfer, sell, or assign the  
16 credits by transferring possession of the certificate received for  
17 such credits under section 3 of this act to the person acquiring the  
18 credits. Any person acquiring credits under this section may use such  
19 credits to offset up to one hundred percent of such person's income  
20 tax due under the Nebraska Revenue Act of 1967 in the year the  
21 credits are acquired and in subsequent years until all credits have  
22 been utilized. The person transferring, selling, or assigning the  
23 credits shall notify the Department of Revenue in writing within  
24 fifteen calendar days following the effective date of the transfer,  
25 sale, or assignment and shall provide any information as may be

1 required by the Department of Revenue or the State Historic  
2 Preservation Officer to administer and carry out the Historic  
3 Property Restoration and Reuse Act. Any transfer, sale, or assignment  
4 of credits under this section shall be void and of null effect until  
5 the requirements of this section are met.

6           Sec. 6. The Department of Revenue shall adopt and  
7 promulgate rules and regulations to carry out the Historic Property  
8 Restoration and Reuse Act. Such rules and regulations shall include  
9 an application fee to offset the costs of processing applications  
10 submitted under the act.

11           Sec. 7. There shall be no applications filed under the  
12 Historic Property Restoration and Reuse Act on or after January 1,  
13 2018, except that all applications and all credits pending or  
14 approved before such date shall continue in full force and effect.

15           Sec. 8. Section 49-801.01, Revised Statutes Supplement,  
16 2011, is amended to read:

17           49-801.01 Except as provided by Article VIII, section 1B,  
18 of the Constitution of Nebraska and in sections 77-2701.01, 77-2714  
19 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515,  
20 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802,  
21 77-5803, 77-5806, 77-5903, 77-6302, and 77-6306 and sections 2 and 3  
22 of this act, any reference to the Internal Revenue Code refers to the  
23 Internal Revenue Code of 1986 as it exists on February 23, 2011.

24           Sec. 9. Section 77-2715.07, Revised Statutes Supplement,  
25 2011, is amended to read:

1                   77-2715.07 (1) There shall be allowed to qualified  
2 resident individuals as a nonrefundable credit against the income tax  
3 imposed by the Nebraska Revenue Act of 1967:

4                   (a) A credit equal to the federal credit allowed under  
5 section 22 of the Internal Revenue Code; and

6                   (b) A credit for taxes paid to another state as provided  
7 in section 77-2730.

8                   (2) There shall be allowed to qualified resident  
9 individuals against the income tax imposed by the Nebraska Revenue  
10 Act of 1967:

11                   (a) For returns filed reporting federal adjusted gross  
12 incomes of greater than twenty-nine thousand dollars, a nonrefundable  
13 credit equal to twenty-five percent of the federal credit allowed  
14 under section 21 of the Internal Revenue Code of 1986, as amended;

15                   (b) For returns filed reporting federal adjusted gross  
16 income of twenty-nine thousand dollars or less, a refundable credit  
17 equal to a percentage of the federal credit allowable under section  
18 21 of the Internal Revenue Code of 1986, as amended, whether or not  
19 the federal credit was limited by the federal tax liability. The  
20 percentage of the federal credit shall be one hundred percent for  
21 incomes not greater than twenty-two thousand dollars, and the  
22 percentage shall be reduced by ten percent for each one thousand  
23 dollars, or fraction thereof, by which the reported federal adjusted  
24 gross income exceeds twenty-two thousand dollars;

25                   (c) A refundable credit as provided in section 77-5209.01

1 for individuals who qualify for an income tax credit as a qualified  
2 beginning farmer or livestock producer under the Beginning Farmer Tax  
3 Credit Act for all taxable years beginning or deemed to begin on or  
4 after January 1, 2006, under the Internal Revenue Code of 1986, as  
5 amended;

6 (d) A refundable credit for individuals who qualify for  
7 an income tax credit under the Angel Investment Tax Credit Act, the  
8 Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska  
9 Advantage Research and Development Act; and

10 (e) A refundable credit equal to ten percent of the  
11 federal credit allowed under section 32 of the Internal Revenue Code  
12 of 1986, as amended.

13 (3) There shall be allowed to all individuals as a  
14 nonrefundable credit against the income tax imposed by the Nebraska  
15 Revenue Act of 1967:

16 (a) A credit for personal exemptions allowed under  
17 section 77-2716.01;

18 (b) A credit for contributions to certified community  
19 betterment programs as provided in the Community Development  
20 Assistance Act. Each partner, each shareholder of an electing  
21 subchapter S corporation, each beneficiary of an estate or trust, or  
22 each member of a limited liability company shall report his or her  
23 share of the credit in the same manner and proportion as he or she  
24 reports the partnership, subchapter S corporation, estate, trust, or  
25 limited liability company income; ~~and~~

1           (c) A credit for investment in a biodiesel facility as  
2 provided in section 77-27,236; and -

3           (d) A credit for eligible expenditures incurred as  
4 provided in the Historic Property Restoration and Reuse Act.

5           (4) There shall be allowed as a credit against the income  
6 tax imposed by the Nebraska Revenue Act of 1967:

7           (a) A credit to all resident estates and trusts for taxes  
8 paid to another state as provided in section 77-2730;

9           (b) A credit to all estates and trusts for contributions  
10 to certified community betterment programs as provided in the  
11 Community Development Assistance Act; and

12           (c) A refundable credit for individuals who qualify for  
13 an income tax credit as an owner of agricultural assets under the  
14 Beginning Farmer Tax Credit Act for all taxable years beginning or  
15 deemed to begin on or after January 1, 2009, under the Internal  
16 Revenue Code of 1986, as amended. The credit allowed for each  
17 partner, shareholder, member, or beneficiary of a partnership,  
18 corporation, limited liability company, or estate or trust qualifying  
19 for an income tax credit as an owner of agricultural assets under the  
20 Beginning Farmer Tax Credit Act shall be equal to the partner's,  
21 shareholder's, member's, or beneficiary's portion of the amount of  
22 tax credit distributed pursuant to subsection (4) of section 77-5211.

23           (5)(a) For all taxable years beginning on or after  
24 January 1, 2007, and before January 1, 2009, under the Internal  
25 Revenue Code of 1986, as amended, there shall be allowed to each

1 partner, shareholder, member, or beneficiary of a partnership,  
2 subchapter S corporation, limited liability company, or estate or  
3 trust a nonrefundable credit against the income tax imposed by the  
4 Nebraska Revenue Act of 1967 equal to fifty percent of the partner's,  
5 shareholder's, member's, or beneficiary's portion of the amount of  
6 franchise tax paid to the state under sections 77-3801 to 77-3807 by  
7 a financial institution.

8 (b) For all taxable years beginning on or after January  
9 1, 2009, under the Internal Revenue Code of 1986, as amended, there  
10 shall be allowed to each partner, shareholder, member, or beneficiary  
11 of a partnership, subchapter S corporation, limited liability  
12 company, or estate or trust a nonrefundable credit against the income  
13 tax imposed by the Nebraska Revenue Act of 1967 equal to the  
14 partner's, shareholder's, member's, or beneficiary's portion of the  
15 amount of franchise tax paid to the state under sections 77-3801 to  
16 77-3807 by a financial institution.

17 (c) Each partner, shareholder, member, or beneficiary  
18 shall report his or her share of the credit in the same manner and  
19 proportion as he or she reports the partnership, subchapter S  
20 corporation, limited liability company, or estate or trust income. If  
21 any partner, shareholder, member, or beneficiary cannot fully utilize  
22 the credit for that year, the credit may not be carried forward or  
23 back.

24 Sec. 10. Section 77-2717, Revised Statutes Supplement,  
25 2011, is amended to read:

1                   77-2717 (1)(a) The tax imposed on all resident estates  
2 and trusts shall be a percentage of the federal taxable income of  
3 such estates and trusts as modified in section 77-2716, plus a  
4 percentage of the federal alternative minimum tax and the federal tax  
5 on premature or lump-sum distributions from qualified retirement  
6 plans. The additional taxes shall be recomputed by (i) substituting  
7 Nebraska taxable income for federal taxable income, (ii) calculating  
8 what the federal alternative minimum tax would be on Nebraska taxable  
9 income and adjusting such calculations for any items which are  
10 reflected differently in the determination of federal taxable income,  
11 and (iii) applying Nebraska rates to the result. The federal credit  
12 for prior year minimum tax, after the recomputations required by the  
13 Nebraska Revenue Act of 1967, and the credits provided in the  
14 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
15 Advantage Research and Development Act shall be allowed as a  
16 reduction in the income tax due. A refundable income tax credit shall  
17 be allowed for all resident estates and trusts under the Angel  
18 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
19 Credit Act, and the Nebraska Advantage Research and Development Act.  
20 A nonrefundable income tax credit shall be allowed for all resident  
21 estates and trusts under the Historic Property Restoration and Reuse  
22 Act.

23                   (b) The tax imposed on all nonresident estates and trusts  
24 shall be the portion of the tax imposed on resident estates and  
25 trusts which is attributable to the income derived from sources

1 within this state. The tax which is attributable to income derived  
2 from sources within this state shall be determined by multiplying the  
3 liability to this state for a resident estate or trust with the same  
4 total income by a fraction, the numerator of which is the nonresident  
5 estate's or trust's Nebraska income as determined by sections 77-2724  
6 and 77-2725 and the denominator of which is its total federal income  
7 after first adjusting each by the amounts provided in section  
8 77-2716. The federal credit for prior year minimum tax, after the  
9 recomputations required by the Nebraska Revenue Act of 1967, reduced  
10 by the percentage of the total income which is attributable to income  
11 from sources outside this state, and the credits provided in the  
12 Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska  
13 Advantage Research and Development Act shall be allowed as a  
14 reduction in the income tax due. A refundable income tax credit shall  
15 be allowed for all nonresident estates and trusts under the Angel  
16 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax  
17 Credit Act, and the Nebraska Advantage Research and Development Act.  
18 A nonrefundable income tax credit shall be allowed for all  
19 nonresident estates and trusts under the Historic Property  
20 Restoration and Reuse Act.

21 (2) In all instances wherein a fiduciary income tax  
22 return is required under the provisions of the Internal Revenue Code,  
23 a Nebraska fiduciary return shall be filed, except that a fiduciary  
24 return shall not be required to be filed regarding a simple trust if  
25 all of the trust's beneficiaries are residents of the State of

1 Nebraska, all of the trust's income is derived from sources in this  
2 state, and the trust has no federal tax liability. The fiduciary  
3 shall be responsible for making the return for the estate or trust  
4 for which he or she acts, whether the income be taxable to the estate  
5 or trust or to the beneficiaries thereof. The fiduciary shall include  
6 in the return a statement of each beneficiary's distributive share of  
7 net income when such income is taxable to such beneficiaries.

8 (3) The beneficiaries of such estate or trust who are  
9 residents of this state shall include in their income their  
10 proportionate share of such estate's or trust's federal income and  
11 shall reduce their Nebraska tax liability by their proportionate  
12 share of the credits as provided in the Angel Investment Tax Credit  
13 Act, the Historic Property Restoration and Reuse Act, the Nebraska  
14 Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage  
15 Research and Development Act. There shall be allowed to a beneficiary  
16 a refundable income tax credit under the Beginning Farmer Tax Credit  
17 Act for all taxable years beginning or deemed to begin on or after  
18 January 1, 2001, under the Internal Revenue Code of 1986, as amended.

19 (4) If any beneficiary of such estate or trust is a  
20 nonresident during any part of the estate's or trust's taxable year,  
21 he or she shall file a Nebraska income tax return which shall include  
22 (a) in Nebraska adjusted gross income that portion of the estate's or  
23 trust's Nebraska income, as determined under sections 77-2724 and  
24 77-2725, allocable to his or her interest in the estate or trust and  
25 (b) a reduction of the Nebraska tax liability by his or her

1 proportionate share of the credits as provided in the Angel  
2 Investment Tax Credit Act, the Historic Property Restoration and  
3 Reuse Act, the Nebraska Advantage Microenterprise Tax Credit Act, and  
4 the Nebraska Advantage Research and Development Act and shall execute  
5 and forward to the fiduciary, on or before the original due date of  
6 the Nebraska fiduciary return, an agreement which states that he or  
7 she will file a Nebraska income tax return and pay income tax on all  
8 income derived from or connected with sources in this state, and such  
9 agreement shall be attached to the Nebraska fiduciary return for such  
10 taxable year.

11 (5) In the absence of the nonresident beneficiary's  
12 executed agreement being attached to the Nebraska fiduciary return,  
13 the estate or trust shall remit a portion of such beneficiary's  
14 income which was derived from or attributable to Nebraska sources  
15 with its Nebraska return for the taxable year. The amount of  
16 remittance, in such instance, shall be the highest individual income  
17 tax rate determined under section 77-2715.02 multiplied by the  
18 nonresident beneficiary's share of the estate or trust income which  
19 was derived from or attributable to sources within this state. The  
20 amount remitted shall be allowed as a credit against the Nebraska  
21 income tax liability of the beneficiary.

22 (6) The Tax Commissioner may allow a nonresident  
23 beneficiary to not file a Nebraska income tax return if the  
24 nonresident beneficiary's only source of Nebraska income was his or  
25 her share of the estate's or trust's income which was derived from or

1 attributable to sources within this state, the nonresident did not  
2 file an agreement to file a Nebraska income tax return, and the  
3 estate or trust has remitted the amount required by subsection (5) of  
4 this section on behalf of such nonresident beneficiary. The amount  
5 remitted shall be retained in satisfaction of the Nebraska income tax  
6 liability of the nonresident beneficiary.

7           (7) For purposes of this section, unless the context  
8 otherwise requires, simple trust shall mean any trust instrument  
9 which (a) requires that all income shall be distributed currently to  
10 the beneficiaries, (b) does not allow amounts to be paid, permanently  
11 set aside, or used in the tax year for charitable purposes, and (c)  
12 does not distribute amounts allocated in the corpus of the trust. Any  
13 trust which does not qualify as a simple trust shall be deemed a  
14 complex trust.

15           (8) For purposes of this section, any beneficiary of an  
16 estate or trust that is a grantor trust of a nonresident shall be  
17 disregarded and this section shall apply as though the nonresident  
18 grantor was the beneficiary.

19           Sec. 11. Section 77-2734.03, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           77-2734.03 (1)(a) For taxable years commencing prior to  
22 January 1, 1997, any (i) insurer paying a tax on premiums and  
23 assessments pursuant to section 77-908 or 81-523, (ii) electric  
24 cooperative organized under the Joint Public Power Authority Act, or  
25 (iii) credit union shall be credited, in the computation of the tax

1 due under the Nebraska Revenue Act of 1967, with the amount paid  
2 during the taxable year as taxes on such premiums and assessments and  
3 taxes in lieu of intangible tax.

4 (b) For taxable years commencing on or after January 1,  
5 1997, any insurer paying a tax on premiums and assessments pursuant  
6 to section 77-908 or 81-523, any electric cooperative organized under  
7 the Joint Public Power Authority Act, or any credit union shall be  
8 credited, in the computation of the tax due under the Nebraska  
9 Revenue Act of 1967, with the amount paid during the taxable year as  
10 (i) taxes on such premiums and assessments included as Nebraska  
11 premiums and assessments under section 77-2734.05 and (ii) taxes in  
12 lieu of intangible tax.

13 (c) For taxable years commencing or deemed to commence  
14 prior to, on, or after January 1, 1998, any insurer paying a tax on  
15 premiums and assessments pursuant to section 77-908 or 81-523 shall  
16 be credited, in the computation of the tax due under the Nebraska  
17 Revenue Act of 1967, with the amount paid during the taxable year as  
18 assessments allowed as an offset against premium and related  
19 retaliatory tax liability pursuant to section 44-4233.

20 (2) There shall be allowed to corporate taxpayers a tax  
21 credit for contributions to community betterment programs as provided  
22 in the Community Development Assistance Act.

23 (3) There shall be allowed to corporate taxpayers a  
24 refundable income tax credit under the Beginning Farmer Tax Credit  
25 Act for all taxable years beginning or deemed to begin on or after

1 January 1, 2001, under the Internal Revenue Code of 1986, as amended.

2 (4) The changes made to this section by Laws 2004, LB  
3 983, apply to motor fuels purchased during any tax year ending or  
4 deemed to end on or after January 1, 2005, under the Internal Revenue  
5 Code of 1986, as amended.

6 (5) There shall be allowed to corporate taxpayers  
7 refundable income tax credits under the Nebraska Advantage  
8 Microenterprise Tax Credit Act and the Nebraska Advantage Research  
9 and Development Act.

10 (6) There shall be allowed to corporate taxpayers a  
11 nonrefundable income tax credit for investment in a biodiesel  
12 facility as provided in section 77-27,236.

13 (7) There shall be allowed to corporate taxpayers a  
14 nonrefundable income tax credit for eligible expenditures incurred as  
15 provided in the Historic Property Restoration and Reuse Act.

16 Sec. 12. This act becomes operative for all taxable years  
17 beginning or deemed to begin on or after January 1, 2012, under the  
18 Internal Revenue Code of 1986, as amended.

19 Sec. 13. Original section 77-2734.03, Reissue Revised  
20 Statutes of Nebraska, and sections 49-801.01, 77-2715.07, and  
21 77-2717, Revised Statutes Supplement, 2011, are repealed.