

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 491**

Introduced by von Gillern, 4.

Read first time January 17, 2023

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Advantage Research and
- 2 Development Act; to amend sections 77-5803, 77-5806, and 77-5808,
- 3 Reissue Revised Statutes of Nebraska; to change provisions relating
- 4 to claiming tax credits; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5803, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 77-5803 (1)(a) Except as provided in subdivision (1)(b) of this  
4 section, any business firm which makes expenditures in research and  
5 experimental activities as defined in section 174 of the Internal Revenue  
6 Code of 1986, as amended, in this state shall be allowed a research tax  
7 credit as provided in the Nebraska Advantage Research and Development  
8 Act. The credit amount under this subdivision shall equal fifteen percent  
9 of the federal credit allowed under section 41 of the Internal Revenue  
10 Code of 1986, as amended, or as apportioned to this state under  
11 subsection (2) of this section. For all tax years of a taxpayer (i) which  
12 are open for assessment or filing a refund claim, (ii) for which a refund  
13 claim, including a refund request in an income tax return, concerning  
14 this credit has been filed but not yet paid, or (iii) for which the Tax  
15 Commissioner has issued a notice of proposed assessment of a deficiency,  
16 which is not yet final, concerning this credit, the credit shall be  
17 allowed for the first tax year it is claimed and for each tax year the  
18 twenty tax years immediately following.

19 (b) Any business firm which makes expenditures in research and  
20 experimental activities as defined in section 174 of the Internal Revenue  
21 Code of 1986, as amended, on the campus of a college or university in  
22 this state or at a facility owned by a college or university in this  
23 state shall be allowed a research tax credit as provided in the Nebraska  
24 Advantage Research and Development Act. The credit amount under this  
25 subdivision shall equal thirty-five percent of the federal credit allowed  
26 under section 41 of the Internal Revenue Code of 1986, as amended, or as  
27 apportioned to this state under subsection (2) of this section. For all  
28 tax years of a taxpayer (i) which are open for assessment or filing a  
29 refund claim, (ii) for which a refund claim, including a refund request  
30 in an income tax return, concerning this credit has been filed but not  
31 yet paid, or (iii) for which the Tax Commissioner has issued a notice of

1 proposed assessment of a deficiency, which is not yet final, concerning  
2 this credit, the ~~The credit shall be allowed for the first tax year it is~~  
3 ~~claimed and for~~ each tax year ~~the twenty tax years immediately~~ following.

4 (2) For any business firm doing business both within and without  
5 this state, the amount of the ~~federal~~ credit may be determined either by  
6 dividing the amount expended in research and experimental activities in  
7 this state in any tax year by the total amount expended in research and  
8 experimental activities or by apportioning the amount of the credit on  
9 the federal income tax return to the state based on the average of the  
10 property factor as determined in section 77-2734.12 and the payroll  
11 factor as determined in section 77-2734.13.

12 Sec. 2. Section 77-5806, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 77-5806 The Nebraska Advantage Research and Development Act shall be  
15 operative for all tax years beginning or deemed to begin on or after  
16 January 1, 2006, under the Internal Revenue Code of 1986, as amended. No  
17 business firm shall be allowed to first claim the credit for any tax year  
18 beginning or deemed to begin after December 31, 2033 ~~2022~~, under the  
19 Internal Revenue Code of 1986, as amended.

20 Sec. 3. Section 77-5808, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 77-5808 (1) This subsection shall apply for tax years beginning or  
23 deemed to begin on or after January 1, 2009, and before January 1, 2023,  
24 except for such tax year or years for which the taxpayer elects to apply  
25 subsection (2) of this section. ~~The Tax Commissioner shall not approve or~~  
26 ~~grant to any person any tax incentive under the Nebraska Advantage~~  
27 ~~Research and Development Act unless the taxpayer provides evidence~~  
28 ~~satisfactory to the Tax Commissioner that the taxpayer electronically~~  
29 ~~verified the work eligibility status of all newly hired employees~~  
30 ~~employed in Nebraska. This section does not apply to any credit claimed~~  
31 ~~in a tax year beginning or deemed to begin before January 1, 2009, under~~

1 ~~the Internal Revenue Code of 1986, as amended.~~

2       (2) This subsection shall apply for tax years beginning or deemed to  
3 begin on or after January 1, 2023, and, if the taxpayer so elects, such  
4 tax year or tax years beginning or deemed to begin on or after January 1,  
5 2009, and before January 1, 2023. When calculating the research tax  
6 credit as provided in the Nebraska Advantage Research and Development  
7 Act, the qualified research expenses claimed in computing the federal  
8 credit allowed under section 41 of the Internal Revenue Code of 1986, as  
9 amended, shall be adjusted to the extent the taxpayer includes, in such  
10 qualified research expenses, compensation paid to an employee of such  
11 taxpayer hired during or after the first tax year for which the Nebraska  
12 Advantage Research and Development Act credit is claimed by such firm and  
13 to the extent such compensation is subject to Nebraska income tax. Such  
14 compensation, for the tax year in which the credit is being claimed,  
15 shall be deducted from the taxpayer's qualified research expenses unless  
16 such employee was verified as eligible to work in the United States using  
17 the federal E-Verify system within ninety days after the date of hire of  
18 such employee or such longer period as may be permitted under the rules  
19 of the federal E-Verify system. Such verification may be performed by the  
20 taxpayer or by someone on the taxpayer's behalf.

21       (3) The taxpayer may, by correspondence provided to the Tax  
22 Commissioner, make the elections referred to in subsections (1) and (2)  
23 of this section for each tax year beginning or deemed to begin on or  
24 after January 1, 2009, and before January 1, 2023, (i) which is open for  
25 assessment or filing a refund claim, (ii) for which a refund claim,  
26 including a refund request in an income tax return, concerning the  
27 research tax credit has been filed but not yet paid, or (iii) for which  
28 the Tax Commissioner has issued a notice of proposed assessment of a  
29 deficiency, which is not yet final, concerning such credit. When made,  
30 such elections shall apply for the tax year or tax years for which they  
31 are made.

1           Sec. 4. Original sections 77-5803, 77-5806, and 77-5808, Reissue  
2 Revised Statutes of Nebraska, are repealed.