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2023 Nebraska Tax Law Updates

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What We'll Address Today

1. Income Tax Changes
2. Property Tax Changes
3. Incentive Changes
4. Potential Issues for the 2024 Legislature

Income Tax
Personal Rate Reductions

Nebraska’s top Individual Income Tax Rate will be reduced:

- 6.64% rate for 2023;
- 6.44% rate for 2024;
- 5.20% rate for 2025,
- 4.55% rate for 2026; and
- 3.99% rate for 2027 and later years.

Income Tax
Corporate Rate Reductions

Nebraska's top Corporate Income Tax Rate will be reduced:

- 7.25% rate for 2023;
- 5.84% rate for 2024;
- 5.20% rate for 2025,
- 4.55% rate for 2026; and
- 3.99% rate for 2027 and later years.

Income Tax
New Pass-Through Entity Tax

- The 2017 Tax Cuts and Jobs Act limited the amount of State and Local taxes that individuals can annually deduct, as an itemized deduction, to $10,000.
- This limitation has impacted many Nebraska taxpayers, particularly owners of businesses who pay well over $10,000 in Nebraska taxes (including income and property taxes).

Income Tax
New Pass-Through Entity Tax

- Nebraska’s new Pass-Through Entity Tax (PTET) law allows a pass-through entity, such as a partnership, LLC or S corporation, to make a voluntary election to directly pay the Nebraska income tax generated by the entity’s activity.
- This tax is paid on behalf of the entity’s owners.

Income Tax
New Pass-Through Entity Tax

- This direct payment has two impacts.
- Convenience
  - It may simply be more convenient for entity owners to have the taxes on their entity's income be paid by that entity
- Economic Effect
  - Payment of State and Local income taxes by the pass-through entity constitutes a deductible business expense for federal income tax purposes.
  - That expense is not limited by the $10,000 deduction cap
  - Often allowing business owners to avoid part of the impact of that cap

Income Tax
New Pass-Through Entity Tax

- This facilitates real federal income tax savings.
- Many Nebraska business owners could see a federal income tax reduction of approximately $30 to $35 for each $100 of Nebraska income taxes paid.

Income Tax
New Pass-Through Entity Tax

- Nebraska's new PTET law is, like certain other States, retroactive to 2018.
- Taxpayers need not file amended returns to take advantage of this change.
- Pass-through entity can elect to pay the Nebraska income taxes for a prior year sometime in 2023-2025, generating a federal income tax deduction in the year paid.
- Will generate a refundable credit for the entity's owners equal to their pro rata shares of the Nebraska income taxes paid.

Income Tax
New Pass-Through Entity Tax

- In addition, Nebraska’s resident credit was amended to allow a resident to claim a credit for elective entity-level taxes paid to another State
- If the other State’s PTET is similar to Nebraska’s PTET.

Income Tax
Tax Credits for Donations to Private Schools

- Nebraska taxpayers may now claim a nonrefundable income tax credit for contributions made to nonprofits that grant scholarships to students to attend private school.
- Eligible contributions from individuals, passthrough entities and corporations are capped at $100,000 annually, or up to 50% of their state tax liability.
- Contributions from estates or trusts are capped at $1 million annually, or up to 50% of their state tax liability.
- To qualify for the credit, a contribution may not have been claimed as a charitable contribution for federal income tax.

Income Tax
Tax Credits for Donations to Private Schools

- Only Nebraska resident students are eligible for the scholarships, which may be used at a qualifying privately operated elementary or secondary school.
- Priority for the scholarships will go to kids who live in poverty, foster care, experience bullying, harassment, or other victimizing behaviors, or have a parent or guardian who is serving in the military.

Income Tax
Tax Credits for Donations to Private Schools

- The Department of Revenue may grant $25 million in credits in 2024, 2025 and 2026.
- After that, if at least 90% of the credits are claimed, the annual limit will increase by 25%.
- Annual increases may continue until the total credit amount reaches $100 million.

Income Tax
Tax Credits for Child Care

- The Department of Revenue is authorized to approve up to $15 million each year in refundable income tax credits intended to help parents and legal guardians pay for childcare.
- Eligibility is based upon household income.
- A credit of $2,000 per child is available for households with income below $75,000, while households with income up to $150,000 may receive a credit of $1,000 per child.
- Because the credit is refundable, it can be received even if the credit exceeds the total tax liability of the parents or legal guardians.

Income Tax
Tax Credits for Child Care

- In addition, individuals, estates, trusts and corporations may apply for a nonrefundable Nebraska income tax credit of up to $100,000 for contributions they make to eligible childcare programs.
- The Department of Revenue may annually approve $2.5 million in credits under this program.

Income Tax
Retirement Income Exemptions

- One hundred percent of Nebraskans’ Social Security income is now exempted from State income tax beginning in tax year 2024 rather than 2025.
- In addition, federal retirees may now exclude federal pension benefits from Nebraska taxation.

Income Tax
Credit for Donations to Food Banks

- Newly established nonrefundable Nebraska income tax credit to any grocery store retailer or restaurant that donates food to a food bank, food pantry, or food rescue during the taxable year;
- Also available to any agricultural producer that makes a qualifying agricultural food donation to a food bank, food pantry, or food rescue during the taxable year.

Income Tax
Credit for Donations to Food Banks

- Any amount relating to such food donations or qualifying agricultural food donations that was subtracted from the taxpayer's federal AGI or federal taxable income must be added back in the determination of Nebraska adjusted gross income or taxable income before the credit provided in this section may be claimed.
- The credit amount is equal to 50% of the value of the donations made during the taxable year, not to exceed $2,500.
- Taxpayers may carry forward unused credits to any of the three subsequent tax years.

Income Tax
Credit for Taxes Paid to Another State

- The credit for tax paid to another state for a resident individual, estate, or trust is expanded to include tax paid by a partnership or S corporation in another state
- When the partnership or S corporation is also subject to Nebraska income tax.

Property Tax
Changes to Nebraska Property Tax Credits

- Nebraska increased the minimum amount of property tax credits for 2023 from $275 million to $360 million, with subsequent increases in later years:
- 2024 - $395 million
- 2025 - $430 million
- 2026 - $445 million

Property Tax
Changes to Nebraska Property Tax Credits

- 2027 - $460 million
- 2028 - $475 million
- 2029 - $475 million PLUS the percentage increase in total assessed value from the prior year (2028) to the current year, plus $75 million; and
- 2030 and forward – amount from the prior year PLUS the percentage increase in total assessed value from the prior year to the current year.

Property Tax
Changes to Nebraska Property Tax Credits

- In addition, Nebraska eliminated the prior 5% cap on the school district tax credit's allowable growth percentage for future years.

Property Tax
Changes to Nebraska Property Tax Credits

- The tax credit for school district taxes paid pursuant to Neb. Rev. Stat. § 77-6703 is amended as follows:
- For tax years 2024 – 2028: DOR is to set the credit percentage so that the total amount of credits for the taxable years be the maximum amount of credits allowed in the prior year increased by the allowable growth percentage
- For tax year 2029: DOR is to set the credit percentage so that the total amount of credits for such taxable years shall be the maximum amount of credits allowed in the prior year increased by the allowable growth percentage plus an additional $75 million

Property Tax
Changes to Nebraska Property Tax Credits

- For tax year 2030 and each calendar year thereafter, DOR is to set the credit percentage so that the total amount of credits for such taxable years shall be the maximum amount of credits allowed in the prior year increased by the allowable growth percentage.

Property Tax
Changes to Nebraska Property Tax Credits

- The tax credit for community college taxes paid pursuant to Neb. Rev. Stat. § 77-6706 is amended as follows:
- For 2023, the total credits shall be $100 million;
- For taxable years beginning or deemed to begin on or after January 1, 2024, the credit shall be equal to 100% of the community college taxes paid by the eligible taxpayer during the taxable year.

Property Tax
Changes to Nebraska Property Tax Credits

- So Many Unused Credits
  - 2022: 40% of Credits Unused as of September 2022
  - 2023: 23% of Credits Unused as of September 2023

Property Tax
Gaming Tax Revenue

- As Nebraska casinos open, the gaming tax revenue generated will primarily go to property tax relief:
  - 70% to Real Property Tax Credit Fund
  - 25% to City / County of Casino
  - 5% to General Fund / Problem Gamblers Program
- Not much money yet: $17 million projected in 2023

Property Tax
Tax Deeds and Notice to Owners

- Notice due to property owners associated with the purchase of delinquent taxes and tax deeds is increased
- Notably, within 30 days after recording of a tax deed, the grantee of the deed must pay the previous owner of the property a surplus that is equal to: the sale price of the property (if sold by the tax deed grantee) or the assessed value (if not sold by the tax deed grantee) minus the amount needed to redeem the property and pay all encumbrances
- As well as an administrative fee of $500 or reasonable attorney fees in the event of a judicial foreclosure.

Property Tax
Limitation on School District Budget Increases

- Nebraska now limits the amount by which a school district may increase its property tax request from one year to the next by 3 percent.
- There are exceptions based on a district's growth in student enrollment, the number of limited English proficiency students in the district and the number of students in poverty in that district.

Property Tax
Limitation on School District Budget Increases

- Notwithstanding this limitation, a district may exceed its property tax request authority by an amount approved by a 60 percent majority of voters at a special election.
- A school board may also vote to exceed a district's property tax request authority by 4 to 7 percent, depending on the number of students enrolled, if at least 70 percent of its members approve.

Property Tax
Community College Levy Eliminated

- Nebraska ended the ability of community colleges to levy property taxes after fiscal year 2023-24.
- After that year, the State of Nebraska will distribute funds to community colleges to offset their lost property tax revenue.

Property Tax
Tax Increment Financing

- The above statutes are amended so that the designation of extremely blighted is valid for 25 years unless the designation is removed by specified procedures.
- If an area has carried a substandard and blighted or extremely blighted designation for more than 30 years, a TIF project cannot be approved until an analysis of the existing projects has occurred.
- Additionally, cities may now declare an area substandard or blighted by adopting a resolution after a public hearing, rather than holding additional hearings.

Incentive Changes Impacting Business Climate
Nebraska R&D Credits

- The Nebraska Advantage Research and Development Act, which provides State tax credits for companies which conduct Research and Development in Nebraska, had been closed to new applicants at the start of 2023.
- The State reopened the program for new applicants.
- As part of doing so, the State also eliminated the prior 21-year cap on credits, so companies conducting Research and Development in Nebraska can continue to claim credits for the life of their Research and Development activities.

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Incentive Changes Impacting Business Climate Nebraska R&D Credits

- One Strike and You’re Out: Department of Revenue was interpreting prior law to mean that, if a company failed to perform a verification under the federal E-Verify system on each and every newly hired employee in Nebraska within a few days of hire, that company would lose its entire research and development credits for that year.
- This was true even if a non-verified employee had nothing to do with the company’s research and development.

Incentive Changes Impacting Business Climate Nebraska R&D Credits

- The Legislature amended the Nebraska Advantage Research and Development Act to extend the timeframe for E-Verify verification to 90 days
- And to confirm that this E-Verify requirement only applied to employees engaged in research and development.
- In addition, the penalty for failure to E-Verify an employee will become a loss of the credit for the wages of that employee – not a loss of all credits for all Nebraska activities.
    - Matches treatment for other incentive programs

Incentive Changes Impacting Business Climate
Good Life Transformational Projects Act

- This allows the Department of Economic Development to approve applications to enact “Good Life Districts.”
- Such districts would have to meet certain development cost and job creation thresholds.
- In addition, for districts in counties with at least 100,000 inhabitants, an applicant must show that:
  - At least 20% of sales would be to non-Nebraska residents,
  - The project will attract retail businesses not yet in the market, and
  - The project would attract at least 3 million visitors annually.

Incentive Changes Impacting Business Climate Good Life Transformational Projects Act

- Retail sales occurring within a Good Life District would incur a reduced State sales tax rate of 2.75%.
- The remaining 2.75% of tax would go toward financing the development of the District.

Incentive Changes Impacting Business Climate Imagine Nebraska Act

- Allow certain Waste Treatment and Disposal Facilities to qualify for incentives.
- Allows Nebraska-based entities participating in the federal Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act to qualify for incentives
- The Imagine Nebraska Act was enacted in 2021 as the successor to the 2005 Nebraska Advantage Act.
- The addition of new qualified business activities provides a solid indication that Nebraska is willing to continue to develop its principal incentive platform.

Incentive Changes Impacting Business Climate Additional Provisions

- The Legislature also passed the following changes that impact Nebraska's overall Business Climate:
- The State created a State income tax credit for retail stores that sell biodiesel.
- The State will direct taxes collected on the sale of aircraft to a specific fund that will be used to construct, repair and improve infrastructure at Nebraska's airports.

Incentive Changes Impacting Business Climate Additional Provisions

- The State authorized Nebraska's highway commission to issue bonds to facilitate faster completion of highway construction.
- The State revised Nebraska's tax sale certificate process to require grantees of tax deeds to pay any surplus, using either the property's assessed value or its sale price, to the prior owner.

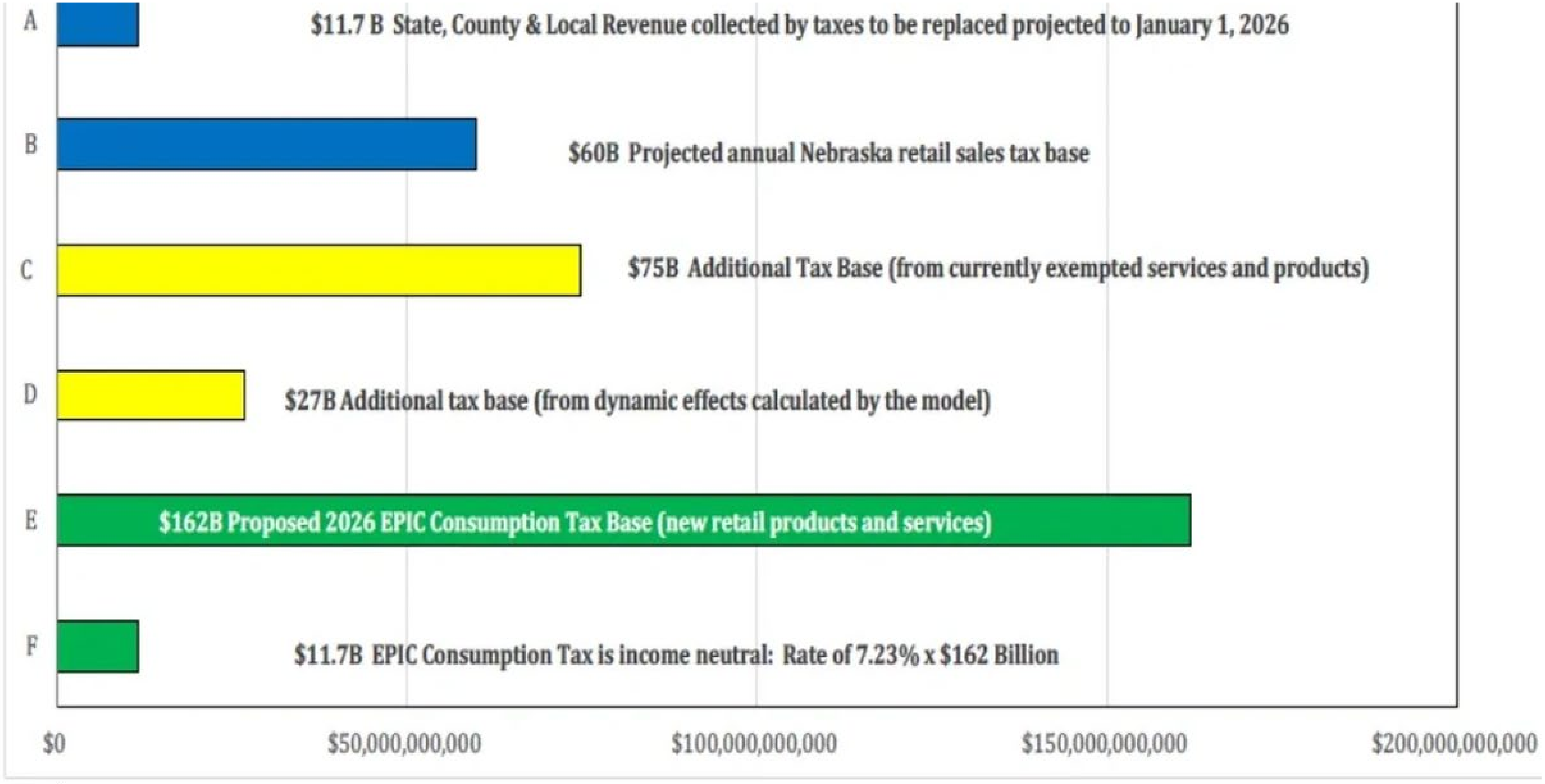
Potential Changes: EPIC Tax
What the Proposal Says It Will Do

- State Constitutional amendment to provide generally for a retail consumption tax (+ existing excise taxes) to replace property taxes, income taxes, sales taxes, and inheritance taxes.
- Tax would apply broadly to retail sale of most all new (not used goods) goods and services. Certain government services to individuals would also be taxed.
- Exclusions and exemptions would only include groceries for off-premises consumption and B2B transactions and would not include standard sales tax exemptions common to other neighboring states.

Potential Changes: EPIC Tax
What the Proposal Says It Will Do

- An associated economic study by the Beacon Hill Institute in Massachusetts is being cited to suggest that it would be possible to maintain a consumption tax rate below 8% and still produce all the revenues needed for state and local government.
- Local governments could enact their own additional consumption tax.
- Local government and school board budgets would be controlled by the State.

Potential Changes: EPIC Tax
What the Proposal Says It Will Do



Potential Changes: EPIC Tax
Likely Shortfall in Revenue

Problems with Economic Study by “Beacon Hill”:

- Uses personal consumption forecasts which are inconsistent with historic national data
  - With the exception of COVID years, which was influenced heavily by one-time government stimulus
  - For example, assumes a growth in personal consumption of over 7% annually by 2030
- Does not explain how it can raise the consumption base by over $100 billion, while simultaneously exempting:
  - Business to Business purchases
  - Third Party payor purchases of health care (i.e. government and private insurance)

Potential Changes: EPIC Tax
Likely Shortfall in Revenue

Problems with Economic Study by “Beacon Hill”:

- Computes tax rate by including government purchases
  - This would create need for additional funding of government, as they would instantly spend more
- Does not account for loss of sales to Iowa and Other States
  - 75% of Nebraskans live within 40 miles of the border

Potential Changes: EPIC Tax
Likely Shortfall in Revenue

Tax	Amount ('22)
Individual Income	$3.3 Billion
Corporate Income	$0.7 Billion
Sales Tax	$2.4 Billion
Property Tax	$5.0 Billion
Other State Taxes	$0.3 Billion
Inheritance Tax	$0.1 Billion
Total	$11.8 Billion

Other Statistics

GDP	$162 Billion
Population	2.0 Million
Employed	1.0 Million
Per Capita Income	$38,000

Epic Tax @ 7.9%	Amount
100% Total Personal Income (2 million people x $38,000)	$76 Billion
Presumed EPIC Tax Rate	7.9%
EPIC Tax Revenues Other Taxes Total Taxes	$6.0 Billion $0.3 Billion $6.3 Billion
EPIC REVENUE DEFICIT ($11.8 Billion - $6.3 Billion)	**$5.5 Billion**

Potential Changes: EPIC Tax
Unexpected Problems

- Would tax government services
- Would tax health care services paid for out of pocket
  - Seniors would likely be taxed on Nursing Homes & Home Health Care paid from their own funds
- Tax would apply to sales of new homes
  - Raising prices of building and existing homes
- At actual rates, this would make Nebraska businesses less competitive

Potential Changes: EPIC Tax
Unexpected Problems

- Would make Nebraska less attractive for young families
    - Higher consumption rates
    - Purchasing real estate
- Potentially cause local governments that issued bonds to be in default

Potential Changes: Remote Employees

- In the last Legislative Session, Nebraska failed to address income tax effects for remote employees

Current Law
Income Tax For Employees

Nonresidents

Taxed to Nebraska by Statute if:

- Service is performed entirely in Nebraska
- Service is performed both within and without Nebraska, but service performed outside Nebraska is incidental to individual’s service within Nebraska
- Service is performed outside Nebraska, but that service is related to the transactions and activity of the business carried on in Nebraska

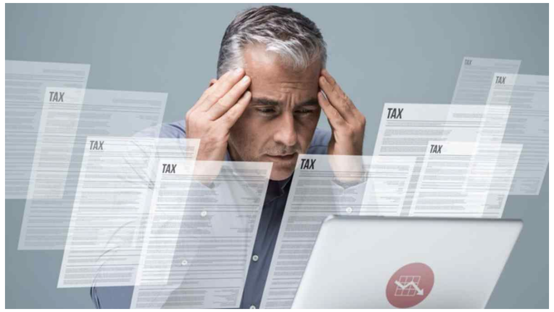
Current Law
Income Tax For Employees

<u>Nonresidents</u>

Taxed to Nebraska by Statute if:

- Some of the service is performed in Nebraska; and
- Base of operations or place from which service is directed or controlled is in Nebraska

Current Law
Income Tax For Employees



Nonresidents

Taxed to Nebraska by Statute if:

NDR Regulation Interpretation

- Nebraska source income if:
- The nonresident's services are performed entirely within Nebraska,
- Services performed without Nebraska are incidental to the services performed within Nebraska, or
- If the services that have to be performed in Nebraska are an essential part of the services performed.

Current Law
Income Tax For Employees

<u>Nonresidents</u>

Taxed to Nebraska by Statute if:

NDR Regulation Interpretation

- Nebraska source income if:
- The nonresident's service is performed without Nebraska for his or her convenience
- But the service is directly related to a business, trade, or profession carried on within Nebraska; and
- Except for the nonresident's convenience, the service could have been performed within Nebraska

Current Law
Income Tax Withholding

Specific NDR Regulation

- Wages paid to a nonresident employee
- For work performed entirely outside of Nebraska
- Are not subject to Nebraska income tax withholding.

Current Law
Income Tax Withholding

General NDR Regulation

Employer must deduct and withhold Nebraska income tax if:

1. The employer is maintaining an office or transacting business in Nebraska;
2. The wages are subject to federal withholding;
3. The wages are taxable under the Nebraska Revenue Act.

Current Law
Income Tax Withholding

Which to Apply?

- NDR is aware of this issue. May issue additional guidance.

Thank You!

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