

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 238

Introduced by Crawford, 45; Murante, 49; Price, 3.

Read first time January 15, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2716, Revised Statutes Cumulative Supplement, 2012; to
3 exempt social security and certain retirement benefits
4 from state income taxation as prescribed; and to repeal
5 the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 77-2716 (1) The following adjustments to federal adjusted
4 gross income or, for corporations and fiduciaries, federal taxable
5 income shall be made for interest or dividends received:

6 (a) There shall be subtracted interest or dividends
7 received by the owner of obligations of the United States and its
8 territories and possessions or of any authority, commission, or
9 instrumentality of the United States to the extent includable in
10 gross income for federal income tax purposes but exempt from state
11 income taxes under the laws of the United States;

12 (b) There shall be subtracted that portion of the total
13 dividends and other income received from a regulated investment
14 company which is attributable to obligations described in subdivision
15 (a) of this subsection as reported to the recipient by the regulated
16 investment company;

17 (c) There shall be added interest or dividends received
18 by the owner of obligations of the District of Columbia, other states
19 of the United States, or their political subdivisions, authorities,
20 commissions, or instrumentalities to the extent excluded in the
21 computation of gross income for federal income tax purposes except
22 that such interest or dividends shall not be added if received by a
23 corporation which is a regulated investment company;

24 (d) There shall be added that portion of the total
25 dividends and other income received from a regulated investment

1 company which is attributable to obligations described in subdivision
2 (c) of this subsection and excluded for federal income tax purposes
3 as reported to the recipient by the regulated investment company; and

4 (e)(i) Any amount subtracted under this subsection shall
5 be reduced by any interest on indebtedness incurred to carry the
6 obligations or securities described in this subsection or the
7 investment in the regulated investment company and by any expenses
8 incurred in the production of interest or dividend income described
9 in this subsection to the extent that such expenses, including
10 amortizable bond premiums, are deductible in determining federal
11 taxable income.

12 (ii) Any amount added under this subsection shall be
13 reduced by any expenses incurred in the production of such income to
14 the extent disallowed in the computation of federal taxable income.

15 (2) There shall be allowed a net operating loss derived
16 from or connected with Nebraska sources computed under rules and
17 regulations adopted and promulgated by the Tax Commissioner
18 consistent, to the extent possible under the Nebraska Revenue Act of
19 1967, with the laws of the United States. For a resident individual,
20 estate, or trust, the net operating loss computed on the federal
21 income tax return shall be adjusted by the modifications contained in
22 this section. For a nonresident individual, estate, or trust or for a
23 partial-year resident individual, the net operating loss computed on
24 the federal return shall be adjusted by the modifications contained
25 in this section and any carryovers or carrybacks shall be limited to

1 the portion of the loss derived from or connected with Nebraska
2 sources.

3 (3) There shall be subtracted from federal adjusted gross
4 income for all taxable years beginning on or after January 1, 1987,
5 the amount of any state income tax refund to the extent such refund
6 was deducted under the Internal Revenue Code, was not allowed in the
7 computation of the tax due under the Nebraska Revenue Act of 1967,
8 and is included in federal adjusted gross income.

9 (4) Federal adjusted gross income, or, for a fiduciary,
10 federal taxable income shall be modified to exclude the portion of
11 the income or loss received from a small business corporation with an
12 election in effect under subchapter S of the Internal Revenue Code or
13 from a limited liability company organized pursuant to the Limited
14 Liability Company Act or the Nebraska Uniform Limited Liability
15 Company Act that is not derived from or connected with Nebraska
16 sources as determined in section 77-2734.01.

17 (5) There shall be subtracted from federal adjusted gross
18 income or, for corporations and fiduciaries, federal taxable income
19 dividends received or deemed to be received from corporations which
20 are not subject to the Internal Revenue Code.

21 (6) There shall be subtracted from federal taxable income
22 a portion of the income earned by a corporation subject to the
23 Internal Revenue Code of 1986 that is actually taxed by a foreign
24 country or one of its political subdivisions at a rate in excess of
25 the maximum federal tax rate for corporations. The taxpayer may make

1 the computation for each foreign country or for groups of foreign
2 countries. The portion of the taxes that may be deducted shall be
3 computed in the following manner:

4 (a) The amount of federal taxable income from operations
5 within a foreign taxing jurisdiction shall be reduced by the amount
6 of taxes actually paid to the foreign jurisdiction that are not
7 deductible solely because the foreign tax credit was elected on the
8 federal income tax return;

9 (b) The amount of after-tax income shall be divided by
10 one minus the maximum tax rate for corporations in the Internal
11 Revenue Code; and

12 (c) The result of the calculation in subdivision (b) of
13 this subsection shall be subtracted from the amount of federal
14 taxable income used in subdivision (a) of this subsection. The result
15 of such calculation, if greater than zero, shall be subtracted from
16 federal taxable income.

17 (7) Federal adjusted gross income shall be modified to
18 exclude any amount repaid by the taxpayer for which a reduction in
19 federal tax is allowed under section 1341(a)(5) of the Internal
20 Revenue Code.

21 (8)(a) Federal adjusted gross income or, for corporations
22 and fiduciaries, federal taxable income shall be reduced, to the
23 extent included, by income from interest, earnings, and state
24 contributions received from the Nebraska educational savings plan
25 trust created in sections 85-1801 to 85-1814.

1 (b) Federal adjusted gross income or, for corporations
2 and fiduciaries, federal taxable income shall be reduced by any
3 contributions as a participant in the Nebraska educational savings
4 plan trust, to the extent not deducted for federal income tax
5 purposes, but not to exceed two thousand five hundred dollars per
6 married filing separate return or five thousand dollars for any other
7 return.

8 (c) Federal adjusted gross income or, for corporations
9 and fiduciaries, federal taxable income shall be increased by the
10 amount resulting from the cancellation of a participation agreement
11 refunded to the taxpayer as a participant in the Nebraska educational
12 savings plan trust to the extent previously deducted as a
13 contribution to the trust.

14 (9)(a) For income tax returns filed after September 10,
15 2001, for taxable years beginning or deemed to begin before January
16 1, 2006, under the Internal Revenue Code of 1986, as amended, federal
17 adjusted gross income or, for corporations and fiduciaries, federal
18 taxable income shall be increased by eighty-five percent of any
19 amount of any federal bonus depreciation received under the federal
20 Job Creation and Worker Assistance Act of 2002 or the federal Jobs
21 and Growth Tax Act of 2003, under section 168(k) or section 1400L of
22 the Internal Revenue Code of 1986, as amended, for assets placed in
23 service after September 10, 2001, and before December 31, 2005.

24 (b) For a partnership, limited liability company,
25 cooperative, including any cooperative exempt from income taxes under

1 section 521 of the Internal Revenue Code of 1986, as amended, limited
2 cooperative association, subchapter S corporation, or joint venture,
3 the increase shall be distributed to the partners, members,
4 shareholders, patrons, or beneficiaries in the same manner as income
5 is distributed for use against their income tax liabilities.

6 (c) For a corporation with a unitary business having
7 activity both inside and outside the state, the increase shall be
8 apportioned to Nebraska in the same manner as income is apportioned
9 to the state by section 77-2734.05.

10 (d) The amount of bonus depreciation added to federal
11 adjusted gross income or, for corporations and fiduciaries, federal
12 taxable income by this subsection shall be subtracted in a later
13 taxable year. Twenty percent of the total amount of bonus
14 depreciation added back by this subsection for tax years beginning or
15 deemed to begin before January 1, 2003, under the Internal Revenue
16 Code of 1986, as amended, may be subtracted in the first taxable year
17 beginning or deemed to begin on or after January 1, 2005, under the
18 Internal Revenue Code of 1986, as amended, and twenty percent in each
19 of the next four following taxable years. Twenty percent of the total
20 amount of bonus depreciation added back by this subsection for tax
21 years beginning or deemed to begin on or after January 1, 2003, may
22 be subtracted in the first taxable year beginning or deemed to begin
23 on or after January 1, 2006, under the Internal Revenue Code of 1986,
24 as amended, and twenty percent in each of the next four following
25 taxable years.

1 (10) For taxable years beginning or deemed to begin on or
2 after January 1, 2003, and before January 1, 2006, under the Internal
3 Revenue Code of 1986, as amended, federal adjusted gross income or,
4 for corporations and fiduciaries, federal taxable income shall be
5 increased by the amount of any capital investment that is expensed
6 under section 179 of the Internal Revenue Code of 1986, as amended,
7 that is in excess of twenty-five thousand dollars that is allowed
8 under the federal Jobs and Growth Tax Act of 2003. Twenty percent of
9 the total amount of expensing added back by this subsection for tax
10 years beginning or deemed to begin on or after January 1, 2003, may
11 be subtracted in the first taxable year beginning or deemed to begin
12 on or after January 1, 2006, under the Internal Revenue Code of 1986,
13 as amended, and twenty percent in each of the next four following tax
14 years.

15 (11)(a) Federal adjusted gross income shall be reduced by
16 contributions, up to two thousand dollars per married filing jointly
17 return or one thousand dollars for any other return, and any
18 investment earnings made as a participant in the Nebraska long-term
19 care savings plan under the Long-Term Care Savings Plan Act, to the
20 extent not deducted for federal income tax purposes.

21 (b) Federal adjusted gross income shall be increased by
22 the withdrawals made as a participant in the Nebraska long-term care
23 savings plan under the act by a person who is not a qualified
24 individual or for any reason other than transfer of funds to a
25 spouse, long-term care expenses, long-term care insurance premiums,

1 or death of the participant, including withdrawals made by reason of
2 cancellation of the participation agreement or termination of the
3 plan, to the extent previously deducted as a contribution or as
4 investment earnings.

5 (12) There shall be added to federal adjusted gross
6 income for individuals, estates, and trusts any amount taken as a
7 credit for franchise tax paid by a financial institution under
8 sections 77-3801 to 77-3807 as allowed by subsection (5) of section
9 77-2715.07.

10 (13)(a) For taxable years beginning or deemed to begin on
11 or after January 1, 2013, under the Internal Revenue Code of 1986, as
12 amended, federal adjusted gross income shall be modified to exclude
13 one dollar of retirement income for every one dollar of nonretirement
14 income. Subject to subdivision (b) of this subsection, the maximum
15 exclusion provided by this subsection shall be limited to:

16 (i) Sixty thousand dollars for taxpayers filing a married
17 filing joint return; and

18 (ii) Thirty thousand dollars for taxpayers filing any
19 other return.

20 (b) For taxpayers filing a married filing joint return,
21 if such taxpayer's federal adjusted gross income exceeds one hundred
22 twenty thousand dollars, the maximum exclusion provided in
23 subdivision (13)(a)(i) of this section shall be reduced by one dollar
24 for every one dollar that such taxpayer's income exceeds one hundred
25 twenty thousand dollars. For taxpayers filing any other return, if

1 such taxpayer's federal adjusted gross income exceeds sixty thousand
2 dollars, the maximum exclusion provided in subdivision (13)(a)(ii) of
3 this section shall be reduced by one dollar for every one dollar that
4 such taxpayer's income exceeds sixty thousand dollars.

5 (c) For purposes of this subsection:

6 (i) Nonretirement income means income other than
7 retirement income that is included in the taxpayer's federal adjusted
8 gross income and is earned in Nebraska. Nonretirement income excludes
9 investment income; and

10 (ii) Retirement income means any of the following amounts
11 received which are included in the taxpayer's federal adjusted gross
12 income:

13 (A) The amount received as benefits under the federal
14 Social Security Act;

15 (B) The amount received as a retirement benefit under a
16 retirement plan qualified under section 401(a) or 403(a) of the
17 Internal Revenue Code of 1986, as amended; and

18 (C) The amount received as a retirement benefit from the
19 retirement systems provided for in the Class V School Employees
20 Retirement Act, the County Employees Retirement Act, the Judges
21 Retirement Act, the Nebraska State Patrol Retirement Act, the School
22 Employees Retirement Act, the State Employees Retirement Act, the
23 United States civil service retirement system, and the United States
24 military employee retirement system.

25 Sec. 2. Original section 77-2716, Revised Statutes

- 1 Cumulative Supplement, 2012, is repealed.