

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 263

Introduced by Clements, 2; Bostelman, 23; Brewer, 43; Briese, 41;
Gragert, 40; Lowe, 37.

Read first time January 15, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2716, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to the taxation of military retirement benefits; and to
- 4 repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

12 (ii) There shall be subtracted interest received by the owner of
13 obligations of the State of Nebraska or its political subdivisions or
14 authorities which are Build America Bonds to the extent includable in
15 gross income for federal income tax purposes;

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

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

28 (d) There shall be added that portion of the total dividends and
29 other income received from a regulated investment company which is
30 attributable to obligations described in subdivision (c) of this
31 subsection and excluded for federal income tax purposes as reported to

1 the recipient by the regulated investment company; and

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

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

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

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

30 (4) Federal adjusted gross income, or, for a fiduciary, federal
31 taxable income shall be modified to exclude the portion of the income or

1 loss received from a small business corporation with an election in
2 effect under subchapter S of the Internal Revenue Code or from a limited
3 liability company organized pursuant to the Nebraska Uniform Limited
4 Liability Company Act that is not derived from or connected with Nebraska
5 sources as determined in section 77-2734.01.

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

10 (6) There shall be subtracted from federal taxable income a portion
11 of the income earned by a corporation subject to the Internal Revenue
12 Code of 1986 that is actually taxed by a foreign country or one of its
13 political subdivisions at a rate in excess of the maximum federal tax
14 rate for corporations. The taxpayer may make the computation for each
15 foreign country or for groups of foreign countries. The portion of the
16 taxes that may be deducted shall be computed in the following manner:

17 (a) The amount of federal taxable income from operations within a
18 foreign taxing jurisdiction shall be reduced by the amount of taxes
19 actually paid to the foreign jurisdiction that are not deductible solely
20 because the foreign tax credit was elected on the federal income tax
21 return;

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

24 (c) The result of the calculation in subdivision (b) of this
25 subsection shall be subtracted from the amount of federal taxable income
26 used in subdivision (a) of this subsection. The result of such
27 calculation, if greater than zero, shall be subtracted from federal
28 taxable income.

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

1 (8)(a) Federal adjusted gross income or, for corporations and
2 fiduciaries, federal taxable income shall be reduced, to the extent
3 included, by income from interest, earnings, and state contributions
4 received from the Nebraska educational savings plan trust created in
5 sections 85-1801 to 85-1814 and any account established under the
6 achieving a better life experience program as provided in sections
7 77-1401 to 77-1409.

8 (b) Federal adjusted gross income or, for corporations and
9 fiduciaries, federal taxable income shall be reduced by any contributions
10 as a participant in the Nebraska educational savings plan trust or
11 contributions to an account established under the achieving a better life
12 experience program made for the benefit of a beneficiary as provided in
13 sections 77-1401 to 77-1409, to the extent not deducted for federal
14 income tax purposes, but not to exceed five thousand dollars per married
15 filing separate return or ten thousand dollars for any other return. With
16 respect to a qualified rollover within the meaning of section 529 of the
17 Internal Revenue Code from another state's plan, any interest, earnings,
18 and state contributions received from the other state's educational
19 savings plan which is qualified under section 529 of the code shall
20 qualify for the reduction provided in this subdivision. For contributions
21 by a custodian of a custodial account including rollovers from another
22 custodial account, the reduction shall only apply to funds added to the
23 custodial account after January 1, 2014.

24 (c) Federal adjusted gross income or, for corporations and
25 fiduciaries, federal taxable income shall be increased by:

26 (i) The amount resulting from the cancellation of a participation
27 agreement refunded to the taxpayer as a participant in the Nebraska
28 educational savings plan trust to the extent previously deducted under
29 subdivision (8)(b) of this section; and

30 (ii) The amount of any withdrawals by the owner of an account
31 established under the achieving a better life experience program as

1 provided in sections 77-1401 to 77-1409 for nonqualified expenses to the
2 extent previously deducted under subdivision (8)(b) of this section.

3 (9)(a) For income tax returns filed after September 10, 2001, for
4 taxable years beginning or deemed to begin before January 1, 2006, under
5 the Internal Revenue Code of 1986, as amended, federal adjusted gross
6 income or, for corporations and fiduciaries, federal taxable income shall
7 be increased by eighty-five percent of any amount of any federal bonus
8 depreciation received under the federal Job Creation and Worker
9 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
10 under section 168(k) or section 1400L of the Internal Revenue Code of
11 1986, as amended, for assets placed in service after September 10, 2001,
12 and before December 31, 2005.

13 (b) For a partnership, limited liability company, cooperative,
14 including any cooperative exempt from income taxes under section 521 of
15 the Internal Revenue Code of 1986, as amended, limited cooperative
16 association, subchapter S corporation, or joint venture, the increase
17 shall be distributed to the partners, members, shareholders, patrons, or
18 beneficiaries in the same manner as income is distributed for use against
19 their income tax liabilities.

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

24 (d) The amount of bonus depreciation added to federal adjusted gross
25 income or, for corporations and fiduciaries, federal taxable income by
26 this subsection shall be subtracted in a later taxable year. Twenty
27 percent of the total amount of bonus depreciation added back by this
28 subsection for tax years beginning or deemed to begin before January 1,
29 2003, under the Internal Revenue Code of 1986, as amended, may be
30 subtracted in the first taxable year beginning or deemed to begin on or
31 after January 1, 2005, under the Internal Revenue Code of 1986, as

1 amended, and twenty percent in each of the next four following taxable
2 years. Twenty percent of the total amount of bonus depreciation added
3 back by this subsection for tax years beginning or deemed to begin on or
4 after January 1, 2003, may be subtracted in the first taxable year
5 beginning or deemed to begin on or after January 1, 2006, under the
6 Internal Revenue Code of 1986, as amended, and twenty percent in each of
7 the next four following taxable years.

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

21 (11)(a) For taxable years beginning or deemed to begin before
22 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
23 federal adjusted gross income shall be reduced by contributions, up to
24 two thousand dollars per married filing jointly return or one thousand
25 dollars for any other return, and any investment earnings made as a
26 participant in the Nebraska long-term care savings plan under the Long-
27 Term Care Savings Plan Act, to the extent not deducted for federal income
28 tax purposes.

29 (b) For taxable years beginning or deemed to begin before January 1,
30 2018, under the Internal Revenue Code of 1986, as amended, federal
31 adjusted gross income shall be increased by the withdrawals made as a

1 participant in the Nebraska long-term care savings plan under the act by
2 a person who is not a qualified individual or for any reason other than
3 transfer of funds to a spouse, long-term care expenses, long-term care
4 insurance premiums, or death of the participant, including withdrawals
5 made by reason of cancellation of the participation agreement, to the
6 extent previously deducted as a contribution or as investment earnings.

7 (12) There shall be added to federal adjusted gross income for
8 individuals, estates, and trusts any amount taken as a credit for
9 franchise tax paid by a financial institution under sections 77-3801 to
10 77-3807 as allowed by subsection (5) of section 77-2715.07.

11 (13)(a) For taxable years beginning or deemed to begin on or after
12 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
13 federal adjusted gross income shall be reduced by the amount received as
14 benefits under the federal Social Security Act which are included in the
15 federal adjusted gross income if:

16 (i) For taxpayers filing a married filing joint return, federal
17 adjusted gross income is fifty-eight thousand dollars or less; or

18 (ii) For taxpayers filing any other return, federal adjusted gross
19 income is forty-three thousand dollars or less.

20 (b) For taxable years beginning or deemed to begin on or after
21 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the
22 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
23 (13)(a)(i) and (ii) of this section by the same percentage used to adjust
24 individual income tax brackets under subsection (3) of section
25 77-2715.03.

26 ~~(14)(a) An (14) For taxable years beginning or deemed to begin on or~~
27 ~~after January 1, 2015, under the Internal Revenue Code of 1986, as~~
28 ~~amended,~~ an individual may make a one-time election within two calendar
29 years after the date of his or her retirement from the military to
30 exclude income received as a military retirement benefit by the
31 individual to the extent included in federal adjusted gross income and as

1 provided in this subsection.

2 (b) For elections made prior to the effective date of this act, the
3 The individual may elect to exclude;

4 (i) Forty ~~forty~~ percent of his or her military retirement benefit
5 income for seven consecutive taxable years beginning with the year in
6 which the election is made; or

7 (ii) Fifteen ~~may elect to exclude fifteen~~ percent of his or her
8 military retirement benefit income for all taxable years beginning with
9 the year in which he or she turns sixty-seven years of age.

10 (c) For elections made on or after the effective date of this act,
11 the individual may elect to exclude;

12 (i) Forty percent of his or her military retirement benefit income
13 for seven consecutive taxable years beginning with the year in which the
14 election is made or the year in which the individual begins receiving
15 military retirement benefits, whichever is later; or

16 (ii) Fifteen percent of his or her military retirement benefit
17 income for all taxable years beginning with the year in which he or she
18 turns sixty-seven years of age.

19 (d) For purposes of this subsection, military retirement benefit
20 means retirement benefits that are periodic payments attributable to
21 service in the uniformed services of the United States for personal
22 services performed by an individual prior to his or her retirement.

23 Sec. 2. Original section 77-2716, Reissue Revised Statutes of
24 Nebraska, is repealed.