

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 276**

Introduced by McCollister, 20.

Read first time January 15, 2019

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2716 and 77-2734.01, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to the taxation of income from certain
- 4 small business corporations and limited liability companies; and to
- 5 repeal the original sections.
- 6 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) For taxable years beginning or deemed to begin before January 1,  
31 2020, under the Internal Revenue Code of 1986, as amended, federal

1     Federal adjusted gross income, or, for a fiduciary, federal taxable  
2     income shall be modified to exclude the portion of the income or loss  
3     received from a small business corporation with an election in effect  
4     under subchapter S of the Internal Revenue Code or from a limited  
5     liability company organized pursuant to the Nebraska Uniform Limited  
6     Liability Company Act that is not derived from or connected with Nebraska  
7     sources as determined in section 77-2734.01.

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

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

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

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

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

31                 (7) Federal adjusted gross income shall be modified to exclude any

1 amount repaid by the taxpayer for which a reduction in federal tax is  
2 allowed under section 1341(a)(5) of the Internal Revenue Code.

3 (8)(a) Federal adjusted gross income or, for corporations and  
4 fiduciaries, federal taxable income shall be reduced, to the extent  
5 included, by income from interest, earnings, and state contributions  
6 received from the Nebraska educational savings plan trust created in  
7 sections 85-1801 to 85-1814 and any account established under the  
8 achieving a better life experience program as provided in sections  
9 77-1401 to 77-1409.

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

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

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

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

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

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

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

1       subtracted in the first taxable year beginning or deemed to begin on or  
2       after January 1, 2005, under the Internal Revenue Code of 1986, as  
3       amended, and twenty percent in each of the next four following taxable  
4       years. Twenty percent of the total amount of bonus depreciation added  
5       back by this subsection for tax years beginning or deemed to begin on or  
6       after January 1, 2003, may be subtracted in the first taxable year  
7       beginning or deemed to begin on or after January 1, 2006, under the  
8       Internal Revenue Code of 1986, as amended, and twenty percent in each of  
9       the next four following taxable years.

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

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

31           (b) For taxable years beginning or deemed to begin before January 1,

1 2018, under the Internal Revenue Code of 1986, as amended, federal  
2 adjusted gross income shall be increased by the withdrawals made as a  
3 participant in the Nebraska long-term care savings plan under the act by  
4 a person who is not a qualified individual or for any reason other than  
5 transfer of funds to a spouse, long-term care expenses, long-term care  
6 insurance premiums, or death of the participant, including withdrawals  
7 made by reason of cancellation of the participation agreement, to the  
8 extent previously deducted as a contribution or as investment earnings.

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

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

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

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

22 (b) For taxable years beginning or deemed to begin on or after  
23 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the  
24 Tax Commissioner shall adjust the dollar amounts provided in subdivisions  
25 (13)(a)(i) and (ii) of this section by the same percentage used to adjust  
26 individual income tax brackets under subsection (3) of section  
27 77-2715.03.

28 (14) For taxable years beginning or deemed to begin on or after  
29 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an  
30 individual may make a one-time election within two calendar years after  
31 the date of his or her retirement from the military to exclude income

1 received as a military retirement benefit by the individual to the extent  
2 included in federal adjusted gross income and as provided in this  
3 subsection. The individual may elect to exclude forty percent of his or  
4 her military retirement benefit income for seven consecutive taxable  
5 years beginning with the year in which the election is made or may elect  
6 to exclude fifteen percent of his or her military retirement benefit  
7 income for all taxable years beginning with the year in which he or she  
8 turns sixty-seven years of age. For purposes of this subsection, military  
9 retirement benefit means retirement benefits that are periodic payments  
10 attributable to service in the uniformed services of the United States  
11 for personal services performed by an individual prior to his or her  
12 retirement.

13 Sec. 2. Section 77-2734.01, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 77-2734.01 (1)(a) For taxable years beginning or deemed to begin  
16 before January 1, 2020, residents ~~(1) Residents~~ of Nebraska who are  
17 shareholders of a small business corporation having an election in effect  
18 under subchapter S of the Internal Revenue Code or who are members of a  
19 limited liability company organized pursuant to the Nebraska Uniform  
20 Limited Liability Company Act shall include in their Nebraska taxable  
21 income, to the extent includable in federal gross income, their  
22 proportionate share of such corporation's or limited liability company's  
23 federal income adjusted pursuant to this section. Income or loss from  
24 such corporation or limited liability company conducting a business,  
25 trade, profession, or occupation shall be included in the Nebraska  
26 taxable income of a shareholder or member who is a resident of this state  
27 to the extent of such shareholder's or member's proportionate share of  
28 the net income or loss from the conduct of such business, trade,  
29 profession, or occupation within this state, determined under subsection  
30 (2) of this section. A resident of Nebraska shall include in Nebraska  
31 taxable income fair compensation for services rendered to such

1 corporation or limited liability company. Compensation actually paid  
2 shall be presumed to be fair unless it is apparent to the Tax  
3 Commissioner that such compensation is materially different from fair  
4 value for the services rendered or has been manipulated for tax avoidance  
5 purposes.

6 (b) For taxable years beginning or deemed to begin on or after  
7 January 1, 2020, residents of Nebraska who are shareholders of a small  
8 business corporation having an election in effect under subchapter S of  
9 the Internal Revenue Code or who are members of a limited liability  
10 company organized pursuant to the Nebraska Uniform Limited Liability  
11 Company Act shall include in their Nebraska taxable income, to the extent  
12 includable in federal gross income, their proportionate share of such  
13 corporation's or limited liability company's federal income. A resident  
14 of Nebraska shall include in Nebraska taxable income fair compensation  
15 for services rendered to such corporation or limited liability company.  
16 Compensation actually paid shall be presumed to be fair unless it is  
17 apparent to the Tax Commissioner that such compensation is materially  
18 different from fair value for the services rendered or has been  
19 manipulated for tax avoidance purposes.

20 (2) The income of any small business corporation having an election  
21 in effect under subchapter S of the Internal Revenue Code or limited  
22 liability company organized pursuant to the Nebraska Uniform Limited  
23 Liability Company Act that is derived from or connected with Nebraska  
24 sources shall be determined in the following manner:

25 (a) If the small business corporation is a member of a unitary  
26 group, the small business corporation shall be deemed to be doing  
27 business within this state if any part of its income is derived from  
28 transactions with other members of the unitary group doing business  
29 within this state, and such corporation shall apportion its income by  
30 using the apportionment factor determined for the entire unitary group,  
31 including the small business corporation, under sections 77-2734.05 to

1 77-2734.15;

2 (b) If the small business corporation or limited liability company  
3 is not a member of a unitary group and is subject to tax in another  
4 state, it shall apportion its income under sections 77-2734.05 to  
5 77-2734.15; and

6 (c) If the small business corporation or limited liability company  
7 is not subject to tax in another state, all of its income is derived from  
8 or connected with Nebraska sources.

9 (3) Nonresidents of Nebraska who are shareholders of such  
10 corporations or members of such limited liability companies shall file a  
11 Nebraska income tax return and shall include in Nebraska adjusted gross  
12 income their proportionate share of the corporation's or limited  
13 liability company's Nebraska income as determined under subsection (2) of  
14 this section.

15 (4) The nonresident shareholder or member shall execute and forward  
16 to the corporation or limited liability company before the filing of the  
17 corporation's or limited liability company's return an agreement which  
18 states he or she will file a Nebraska income tax return and pay the tax  
19 on the income derived from or connected with sources in this state, and  
20 such agreement shall be attached to the corporation's or limited  
21 liability company's Nebraska return for such taxable year.

22 (5) For taxable years beginning or deemed to begin before January 1,  
23 2013, in the absence of the nonresident shareholder's or member's  
24 executed agreement being attached to the Nebraska return, the corporation  
25 or limited liability company shall remit with the return an amount equal  
26 to the highest individual income tax rate determined under section  
27 77-2715.02 multiplied by the nonresident shareholder's or member's share  
28 of the corporation's or limited liability company's income which was  
29 derived from or attributable to this state. For taxable years beginning  
30 or deemed to begin on or after January 1, 2013, in the absence of the  
31 nonresident shareholder's or member's executed agreement being attached

1 to the Nebraska return, the corporation or limited liability company  
2 shall remit with the return an amount equal to the highest individual  
3 income tax rate determined under section 77-2715.03 multiplied by the  
4 nonresident shareholder's or member's share of the corporation's or  
5 limited liability company's income which was derived from or attributable  
6 to this state. The amount remitted shall be allowed as a credit against  
7 the Nebraska income tax liability of the shareholder or member.

8 (6) The Tax Commissioner may allow a nonresident individual  
9 shareholder or member to not file a Nebraska income tax return if the  
10 nonresident individual shareholder's or member's only source of Nebraska  
11 income was his or her share of the small business corporation's or  
12 limited liability company's income which was derived from or attributable  
13 to sources within this state, the nonresident did not file an agreement  
14 to file a Nebraska income tax return, and the small business corporation  
15 or limited liability company has remitted the amount required by  
16 subsection (5) of this section on behalf of such nonresident individual  
17 shareholder or member. The amount remitted shall be retained in  
18 satisfaction of the Nebraska income tax liability of the nonresident  
19 individual shareholder or member.

20 (7) A small business corporation or limited liability company return  
21 shall be filed only if one or more of the shareholders of the corporation  
22 or members of the limited liability company are not residents of the  
23 State of Nebraska or if such corporation or limited liability company has  
24 income derived from sources outside this state.

25 (8) For purposes of this section, any shareholder or member of the  
26 corporation or limited liability company that is a grantor trust of a  
27 nonresident shall be disregarded and this section shall apply as though  
28 the nonresident grantor was the shareholder or member.

29 Sec. 3. Original sections 77-2716 and 77-2734.01, Reissue Revised  
30 Statutes of Nebraska, are repealed.