

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

1 (ii) The amount of any withdrawals by the owner of an account
2 established under the achieving a better life experience program as
3 provided in sections 77-1401 to 77-1409 for nonqualified expenses to the
4 extent previously deducted under subdivision (8)(b) of this section.

5 (9)(a) For income tax returns filed after September 10, 2001, for
6 taxable years beginning or deemed to begin before January 1, 2006, under
7 the Internal Revenue Code of 1986, as amended, federal adjusted gross
8 income or, for corporations and fiduciaries, federal taxable income shall
9 be increased by eighty-five percent of any amount of any federal bonus
10 depreciation received under the federal Job Creation and Worker
11 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
12 under section 168(k) or section 1400L of the Internal Revenue Code of
13 1986, as amended, for assets placed in service after September 10, 2001,
14 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.