

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 48**

Introduced by Schumacher, 22.

Read first time January 05, 2017

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2716, Revised Statutes Cumulative Supplement, 2016; to provide an
- 3 income tax adjustment relating to certain gains on the sale of real
- 4 estate; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Cumulative Supplement,  
2 2016, is 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) 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 (a) For taxpayers filing a married filing joint return, federal  
17 adjusted gross income is fifty-eight thousand dollars or less; or

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

20 (14) For taxable years beginning or deemed to begin on or after  
21 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an  
22 individual may make a one-time election within two calendar years after  
23 the date of his or her retirement from the military to exclude income  
24 received as a military retirement benefit by the individual to the extent  
25 included in federal adjusted gross income and as provided in this  
26 subsection. The individual may elect to exclude forty percent of his or  
27 her military retirement benefit income for seven consecutive taxable  
28 years beginning with the year in which the election is made or may elect  
29 to exclude fifteen percent of his or her military retirement benefit  
30 income for all taxable years beginning with the year in which he or she  
31 turns sixty-seven years of age. For purposes of this subsection, military



1 retirement benefit means retirement benefits that are periodic payments  
2 attributable to service in the uniformed services of the United States  
3 for personal services performed by an individual prior to his or her  
4 retirement.

5 (15) For taxable years beginning or deemed to begin on or after  
6 January 1, 2018, under the Internal Revenue Code of 1986, as amended, the  
7 federal adjusted gross income of any person disposing of real estate that  
8 is located in this state and that was acquired from a decedent shall be  
9 modified by determining the gain on the sale of such real estate using  
10 the basis of the real estate in the hands of the decedent and not using  
11 the basis prescribed in section 1014 or 2032A of the code.

12 Sec. 2. Original section 77-2716, Revised Statutes Cumulative  
13 Supplement, 2016, is repealed.