

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SPECIAL SESSION

LEGISLATIVE BILL 51

Introduced by Wayne, 13.

Read first time July 29, 2024

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-2716, Revised Statutes Supplement, 2023, as amended by Laws 2024,
3 LB937, section 75, Laws 2024, LB1023, section 10, Laws 2024, LB1317,
4 section 85, and Laws 2024, LB1394, section 1; to provide an income
5 tax adjustment for unrealized capital gains; and to repeal the
6 original section.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Supplement, 2023, as
2 amended by Laws 2024, LB937, section 75, Laws 2024, LB1023, section 10,
3 Laws 2024, LB1317, section 85, and Laws 2024, LB1394, section 1, is
4 amended to read:

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

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

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

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

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

30 (d) There shall be added that portion of the total dividends and
31 other income received from a regulated investment company which is

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

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

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

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

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

1 (4) Federal adjusted gross income, or, for a fiduciary, federal
2 taxable income shall be modified to exclude the portion of the income or
3 loss received from a small business corporation with an election in
4 effect 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 85-1817 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) For taxable years beginning or deemed to begin on or after
27 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
28 federal adjusted gross income shall be reduced, to the extent included in
29 the adjusted gross income of an individual, by the amount of any
30 contribution made by the individual's employer into an account under the
31 Nebraska educational savings plan trust owned by the individual, not to

1 exceed five thousand dollars per married filing separate return or ten
2 thousand dollars for any other return.

3 (d) Federal adjusted gross income or, for corporations and
4 fiduciaries, federal taxable income shall be increased by:

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

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

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

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

30 (c) For a corporation with a unitary business having activity both
31 inside and outside the state, the increase shall be apportioned to

1 Nebraska in the same manner as income is apportioned to the state by
2 section 77-2734.05.

3 (d) The amount of bonus depreciation added to federal adjusted gross
4 income or, for corporations and fiduciaries, federal taxable income by
5 this subsection shall be subtracted in a later taxable year. Twenty
6 percent of the total amount of bonus depreciation added back by this
7 subsection for tax years beginning or deemed to begin before January 1,
8 2003, under the Internal Revenue Code of 1986, as amended, may be
9 subtracted in the first taxable year beginning or deemed to begin on or
10 after January 1, 2005, under the Internal Revenue Code of 1986, as
11 amended, and twenty percent in each of the next four following taxable
12 years. Twenty percent of the total amount of bonus depreciation added
13 back by this subsection for tax years beginning or deemed to begin on or
14 after January 1, 2003, may be subtracted in the first taxable year
15 beginning or deemed to begin on or after January 1, 2006, under the
16 Internal Revenue Code of 1986, as amended, and twenty percent in each of
17 the next four following taxable years.

18 (10) For taxable years beginning or deemed to begin on or after
19 January 1, 2003, and before January 1, 2006, under the Internal Revenue
20 Code of 1986, as amended, federal adjusted gross income or, for
21 corporations and fiduciaries, federal taxable income shall be increased
22 by the amount of any capital investment that is expensed under section
23 179 of the Internal Revenue Code of 1986, as amended, that is in excess
24 of twenty-five thousand dollars that is allowed under the federal Jobs
25 and Growth Tax Act of 2003. Twenty percent of the total amount of
26 expensing added back by this subsection for tax years beginning or deemed
27 to begin on or after January 1, 2003, may be subtracted in the first
28 taxable year beginning or deemed to begin on or after January 1, 2006,
29 under the Internal Revenue Code of 1986, as amended, and twenty percent
30 in each of the next four following tax years.

31 (11)(a) For taxable years beginning or deemed to begin before

1 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
2 federal adjusted gross income shall be reduced by contributions, up to
3 two thousand dollars per married filing jointly return or one thousand
4 dollars for any other return, and any investment earnings made as a
5 participant in the Nebraska long-term care savings plan under the Long-
6 Term Care Savings Plan Act, to the extent not deducted for federal income
7 tax purposes.

8 (b) For taxable years beginning or deemed to begin before January 1,
9 2018, under the Internal Revenue Code of 1986, as amended, federal
10 adjusted gross income shall be increased by the withdrawals made as a
11 participant in the Nebraska long-term care savings plan under the act by
12 a person who is not a qualified individual or for any reason other than
13 transfer of funds to a spouse, long-term care expenses, long-term care
14 insurance premiums, or death of the participant, including withdrawals
15 made by reason of cancellation of the participation agreement, to the
16 extent previously deducted as a contribution or as investment earnings.

17 (12) There shall be added to federal adjusted gross income for
18 individuals, estates, and trusts any amount taken as a credit for
19 franchise tax paid by a financial institution under sections 77-3801 to
20 77-3807 as allowed by subsection (5) of section 77-2715.07.

21 (13)(a) For taxable years beginning or deemed to begin on or after
22 January 1, 2015, and before January 1, 2024, under the Internal Revenue
23 Code of 1986, as amended, federal adjusted gross income shall be reduced
24 by the amount received as benefits under the federal Social Security Act
25 which are included in the federal adjusted gross income if:

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

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

30 (b) For taxable years beginning or deemed to begin on or after
31 January 1, 2020, and before January 1, 2024, under the Internal Revenue

1 Code of 1986, as amended, the Tax Commissioner shall adjust the dollar
2 amounts provided in subdivisions (13)(a)(i) and (ii) of this section by
3 the same percentage used to adjust individual income tax brackets under
4 subsection (3) of section 77-2715.03.

5 (c) For taxable years beginning or deemed to begin on or after
6 January 1, 2021, and before January 1, 2024, under the Internal Revenue
7 Code of 1986, as amended, a taxpayer may claim the reduction to federal
8 adjusted gross income allowed under this subsection or the reduction to
9 federal adjusted gross income allowed under subsection (14) of this
10 section, whichever provides the greater reduction.

11 (14)(a) For taxable years beginning or deemed to begin on or after
12 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
13 federal adjusted gross income shall be reduced by a percentage of the
14 social security benefits that are received and included in federal
15 adjusted gross income. The pertinent percentage shall be:

16 (i) Five percent for taxable years beginning or deemed to begin on
17 or after January 1, 2021, and before January 1, 2022, under the Internal
18 Revenue Code of 1986, as amended;

19 (ii) Forty percent for taxable years beginning or deemed to begin on
20 or after January 1, 2022, and before January 1, 2023, under the Internal
21 Revenue Code of 1986, as amended;

22 (iii) Sixty percent for taxable years beginning or deemed to begin
23 on or after January 1, 2023, and before January 1, 2024, under the
24 Internal Revenue Code of 1986, as amended; and

25 (iv) One hundred percent for taxable years beginning or deemed to
26 begin on or after January 1, 2024, under the Internal Revenue Code of
27 1986, as amended.

28 (b) For purposes of this subsection, social security benefits means
29 benefits received under the federal Social Security Act.

30 (c) For taxable years beginning or deemed to begin on or after
31 January 1, 2021, and before January 1, 2024, under the Internal Revenue

1 Code of 1986, as amended, a taxpayer may claim the reduction to federal
2 adjusted gross income allowed under this subsection or the reduction to
3 federal adjusted gross income allowed under subsection (13) of this
4 section, whichever provides the greater reduction.

5 (15)(a) For taxable years beginning or deemed to begin on or after
6 January 1, 2015, and before January 1, 2022, under the Internal Revenue
7 Code of 1986, as amended, an individual may make a one-time election
8 within two calendar years after the date of his or her retirement from
9 the military to exclude income received as a military retirement benefit
10 by the individual to the extent included in federal adjusted gross income
11 and as provided in this subdivision. The individual may elect to exclude
12 forty percent of his or her military retirement benefit income for seven
13 consecutive taxable years beginning with the year in which the election
14 is made or may elect to exclude fifteen percent of his or her military
15 retirement benefit income for all taxable years beginning with the year
16 in which he or she turns sixty-seven years of age.

17 (b) For taxable years beginning or deemed to begin on or after
18 January 1, 2022, under the Internal Revenue Code of 1986, as amended, an
19 individual may exclude one hundred percent of the military retirement
20 benefit income received by such individual to the extent included in
21 federal adjusted gross income.

22 (c) For purposes of this subsection, military retirement benefit
23 means retirement benefits that are periodic payments attributable to
24 service in the uniformed services of the United States for personal
25 services performed by an individual prior to his or her retirement. The
26 term includes retirement benefits described in this subdivision that are
27 reported to the individual on either:

28 (i) An Internal Revenue Service Form 1099-R received from the United
29 States Department of Defense; or

30 (ii) An Internal Revenue Service Form 1099-R received from the
31 United States Office of Personnel Management.

1 (16) For taxable years beginning or deemed to begin on or after
2 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
3 federal adjusted gross income shall be reduced by the amount received as
4 a Segal AmeriCorps Education Award, to the extent such amount is included
5 in federal adjusted gross income.

6 (17) For taxable years beginning or deemed to begin on or after
7 January 1, 2022, under the Internal Revenue Code of 1986, as amended,
8 federal adjusted gross income shall be reduced by the amount received by
9 or on behalf of a firefighter for cancer benefits under the Firefighter
10 Cancer Benefits Act to the extent included in federal adjusted gross
11 income.

12 (18) There shall be subtracted from the federal adjusted gross
13 income of individuals any amount received by the individual as student
14 loan repayment assistance under the Teach in Nebraska Today Act, to the
15 extent such amount is included in federal adjusted gross income.

16 (19) For taxable years beginning or deemed to begin on or after
17 January 1, 2023, under the Internal Revenue Code of 1986, as amended, a
18 retired individual who was employed full time as a firefighter or
19 certified law enforcement officer for at least twenty years and who is at
20 least sixty years of age as of the end of the taxable year may reduce his
21 or her federal adjusted gross income by the amount of health insurance
22 premiums paid by such individual during the taxable year, to the extent
23 such premiums were not already deducted in determining the individual's
24 federal adjusted gross income.

25 (20) For taxable years beginning or deemed to begin on or after
26 January 1, 2024, under the Internal Revenue Code of 1986, as amended, an
27 individual may reduce his or her federal adjusted gross income by the
28 amounts received as annuities under the Civil Service Retirement System
29 which were earned for being employed by the federal government, to the
30 extent such amounts are included in federal adjusted gross income.

31 (21) For taxable years beginning or deemed to begin on or after

1 January 1, 2025, under the Internal Revenue Code of 1986, as amended, an
2 individual who is a member of the Nebraska National Guard may exclude one
3 hundred percent of the income received from any of the following sources
4 to the extent such income is included in the individual's federal
5 adjusted gross income:

6 (a) Serving in a 32 U.S.C. duty status such as members attending
7 drills, annual training, and military schools and members who are serving
8 in a 32 U.S.C. active guard reserve or active duty for operational
9 support duty status;

10 (b) Employment as a 32 U.S.C. federal dual-status technician with
11 the Nebraska National Guard; or

12 (c) Serving in a state active duty status.

13 (22)(a) For taxable years beginning or deemed to begin on or after
14 January 1, 2024, under the Internal Revenue Code of 1986, as amended, an
15 individual may reduce his or her federal adjusted gross income by the
16 amount of interest and principal balance of medical debt discharged under
17 the Medical Debt Relief Act, to the extent included in such individual's
18 federal adjusted gross income.

19 (b) For taxable years beginning or deemed to begin on or after
20 January 1, 2024, under the Internal Revenue Code of 1986, as amended,
21 federal adjusted gross income or, for corporations and fiduciaries,
22 federal taxable income shall be reduced by the amount of contributions
23 made to the Medical Debt Relief Fund, to the extent not deducted for
24 federal income tax purposes.

25 (23) For taxable years beginning or deemed to begin on or after
26 January 1, 2025, under the Internal Revenue Code of 1986, as amended, an
27 individual who is a qualifying employee as defined in section 2 of this
28 act may reduce his or her federal adjusted gross income by the amount
29 allowed under section 5 of this act.

30 (24) For taxable years beginning or deemed to begin on or after
31 January 1, 2026, under the Internal Revenue Code of 1986, as amended,

1 federal adjusted gross income or, for corporations and fiduciaries,
2 federal taxable income shall be reduced by the amounts allowed to be
3 deducted pursuant to section 11 of this act.

4 (25) There shall be added to federal adjusted gross income or, for
5 corporations and fiduciaries, federal taxable income for all taxable
6 years beginning on or after January 1, 2025, the amount of any net
7 capital loss that is derived from the sale or exchange of gold or silver
8 bullion to the extent such loss is included in federal adjusted gross
9 income except that such loss shall not be added if the loss is derived
10 from the sale of bullion as a taxable distribution from any retirement
11 plan account that holds gold or silver bullion. For the purposes of this
12 subsection, bullion has the same meaning as in section 77-2704.66.

13 (26) There shall be subtracted from federal adjusted gross income
14 or, for corporations and fiduciaries, federal taxable income for all
15 taxable years beginning on or after January 1, 2025, the amount of any
16 net capital gain that is derived from the sale or exchange of gold or
17 silver bullion to the extent such gain is included in federal adjusted
18 gross income except that such gain shall not be subtracted if the gain is
19 derived from the sale of bullion as a taxable distribution from any
20 retirement plan account that holds gold or silver bullion. For the
21 purposes of this subsection, bullion has the same meaning as in section
22 77-2704.66.

23 (27)(a) For taxable years beginning or deemed to begin on or after
24 January 1, 2025, and before January 1, 2026, under the Internal Revenue
25 Code of 1986, as amended, federal adjusted gross income or, for
26 corporations and fiduciaries, federal taxable income shall be increased
27 by an amount equal to ten percent of the unrealized capital gains of a
28 corporation, fiduciary, or individual in a taxable year.

29 (b) For taxable years beginning or deemed to begin on or after
30 January 1, 2026, and before January 1, 2027, under the Internal Revenue
31 Code of 1986, as amended, federal adjusted gross income or, for

1 corporations and fiduciaries, federal taxable income shall be increased
2 by an amount equal to eight percent of the unrealized capital gains of a
3 corporation, fiduciary, or individual in a taxable year.

4 (c) For taxable years beginning or deemed to begin on or after
5 January 1, 2027, under the Internal Revenue Code of 1986, as amended,
6 federal adjusted gross income or, for corporations and fiduciaries,
7 federal taxable income shall be increased by an amount equal to seven
8 percent of the unrealized capital gains of a corporation, fiduciary, or
9 individual in a taxable year.

10 Sec. 2. Original section 77-2716, Revised Statutes Supplement,
11 2023, as amended by Laws 2024, LB937, section 75, Laws 2024, LB1023,
12 section 10, Laws 2024, LB1317, section 85, and Laws 2024, LB1394, section
13 1, is repealed.