

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 23**

Introduced By: Wightman, 36;  
Read first time: January 4, 2007  
Committee: Revenue

A BILL

1       FOR AN ACT relating to revenue and taxation; to amend section  
2               77-2716, Revised Statutes Cumulative Supplement, 2006; to  
3               exclude capital gains from income taxation as prescribed;  
4               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  
2 Supplement, 2006, is amended to read:

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

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

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

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

24           (d) There shall be added that portion of the total dividends  
25 and other income received from a regulated investment company which is  
26 attributable to obligations described in subdivision (c) of this  
27 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  
3 reduced by any interest on indebtedness incurred to carry the  
4 obligations or securities described in this subsection or the  
5 investment in the regulated investment company and by any expenses  
6 incurred in the production of interest or dividend income described in  
7 this subsection to the extent that such expenses, including  
8 amortizable bond premiums, are deductible in determining federal  
9 taxable income.

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

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

25 (3) There shall be subtracted from federal adjusted gross  
26 income for all taxable years beginning on or after January 1, 1987,  
27 the amount of any state income tax refund to the extent such refund

1 was deducted under the Internal Revenue Code, was not allowed in the  
2 computation of the tax due under the Nebraska Revenue Act of 1967, and  
3 is included in federal adjusted gross income.

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

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

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

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

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

4           (c) The result of the calculation in subdivision (b) of this  
5 subsection shall be subtracted from the amount of federal taxable  
6 income used in subdivision (a) of this subsection. The result of such  
7 calculation, if greater than zero, shall be subtracted from federal  
8 taxable income.

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

13           (8)(a) Federal adjusted gross income or, for corporations  
14 and fiduciaries, federal taxable income shall be reduced, to the  
15 extent included, by income from interest, earnings, and state  
16 contributions received from the Nebraska educational savings plan  
17 trust created in sections 85-1801 to 85-1814.

18           (b) Federal adjusted gross income or, for corporations and  
19 fiduciaries, federal taxable income shall be reduced, to the extent  
20 not deducted for federal income tax purposes, by the amount of any  
21 gift, grant, or donation made to the Nebraska educational savings plan  
22 trust for deposit in the endowment fund of the trust.

23           (c) Federal adjusted gross income or, for corporations and  
24 fiduciaries, federal taxable income shall be reduced by any  
25 contributions as a participant in the Nebraska educational savings  
26 plan trust, to the extent not deducted for federal income tax  
27 purposes, but not to exceed five hundred dollars per married filing

1 separate return or one thousand dollars for any other return.

2 (d) Federal adjusted gross income or, for corporations and  
3 fiduciaries, federal taxable income shall be increased by the amount  
4 resulting from the cancellation of a participation agreement refunded  
5 to the taxpayer as a participant in the Nebraska educational savings  
6 plan trust to the extent previously deducted as a contribution to the  
7 trust.

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

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

25 (c) For a corporation with a unitary business having  
26 activity both inside and outside the state, the increase shall be  
27 apportioned to Nebraska in the same manner as income is apportioned to

1 the state by section 77-2734.05.

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

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

1 subtracted in the first taxable year beginning or deemed to begin on  
2 or after January 1, 2006, under the Internal Revenue Code of 1986, as  
3 amended, and twenty percent in each of the next four following tax  
4 years.

5 (11)(a) Federal adjusted gross income shall be reduced by  
6 contributions, up to two thousand dollars per married filing jointly  
7 return or one thousand dollars for any other return, and any  
8 investment earnings made as a participant in the Nebraska long-term  
9 care savings plan under the Long-Term Care Savings Plan Act, to the  
10 extent not deducted for federal income tax purposes.

11 (b) Federal adjusted gross income shall be increased by the  
12 withdrawals made as a participant in the Nebraska long-term care  
13 savings plan under the act by a person who is not a qualified  
14 individual or for any reason other than transfer of funds to a spouse,  
15 long-term care expenses, long-term care insurance premiums, or death  
16 of the participant, including withdrawals made by reason of  
17 cancellation of the participation agreement or termination of the  
18 plan, to the extent previously deducted as a contribution or as  
19 investment earnings.

20 (12) For taxable years beginning on or after January 1,  
21 2008, and before January 1, 2009, there shall be subtracted from  
22 federal adjusted gross income or, for fiduciaries, federal taxable  
23 income ten percent of any net long-term capital gains included in the  
24 calculation of such income. For taxable years beginning on or after  
25 January 1, 2009, and before January 1, 2010, there shall be  
26 subtracted from federal adjusted gross income or, for fiduciaries,  
27 federal taxable income twenty percent of any net long-term capital



1 gains included in the calculation of such income. For all taxable  
2 years beginning on or after January 1, 2010, there shall be  
3 subtracted from federal adjusted gross income or, for fiduciaries,  
4 federal taxable income thirty percent of any net long-term capital  
5 gains included in the calculation of such income.

6           Sec. 2. Original section 77-2716, Revised Statutes  
7 Cumulative Supplement, 2006, is repealed.