

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 538**

Introduced by Giese, 17.

Read first time January 21, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2716, Revised Statutes Cumulative Supplement, 2008; to  
3 exempt government employee retirement benefits from state  
4 income taxation; to provide an operative date; and to  
5 repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2716, Revised Statutes Cumulative  
2 Supplement, 2008, 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  
7 received by the owner of obligations of the United States and its  
8 territories and possessions or of any authority, commission, or  
9 instrumentality of the United States to the extent includable in  
10 gross income for federal income tax purposes but exempt from state  
11 income taxes under the laws of the United States;

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

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

25           (d) There shall be added that portion of the total

1 dividends and other income received from a regulated investment  
2 company which is attributable to obligations described in  
3 subdivision (c) of this subsection and excluded for federal  
4 income tax purposes as reported to the recipient by the regulated  
5 investment company; and

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

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

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

1 individual, estate, or trust or for a partial-year resident  
2 individual, the net operating loss computed on the federal return  
3 shall be adjusted by the modifications contained in this section  
4 and any carryovers or carrybacks shall be limited to the portion of  
5 the loss derived from or connected with Nebraska sources.

6 (3) There shall be subtracted from federal adjusted gross  
7 income for all taxable years beginning on or after January 1, 1987,  
8 the amount of any state income tax refund to the extent such refund  
9 was deducted under the Internal Revenue Code, was not allowed in  
10 the computation of the tax due under the Nebraska Revenue Act of  
11 1967, and is included in federal adjusted gross income.

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

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

23 (6) There shall be subtracted from federal taxable income  
24 a portion of the income earned by a corporation subject to the  
25 Internal Revenue Code of 1986 that is actually taxed by a foreign

1 country or one of its political subdivisions at a rate in excess  
2 of the maximum federal tax rate for corporations. The taxpayer may  
3 make the computation for each foreign country or for groups of  
4 foreign countries. The portion of the taxes that may be deducted  
5 shall be computed in the following manner:

6 (a) The amount of federal taxable income from operations  
7 within a foreign taxing jurisdiction shall be reduced by the amount  
8 of taxes actually paid to the foreign jurisdiction that are not  
9 deductible solely because the foreign tax credit was elected on the  
10 federal income tax return;

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

14 (c) The result of the calculation in subdivision (b) of  
15 this subsection shall be subtracted from the amount of federal  
16 taxable income used in subdivision (a) of this subsection. The  
17 result of such calculation, if greater than zero, shall be  
18 subtracted from federal taxable income.

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

23 (8) (a) Federal adjusted gross income or, for corporations  
24 and fiduciaries, federal taxable income shall be reduced, to the  
25 extent included, by income from interest, earnings, and state

1 contributions received from the Nebraska educational savings plan  
2 trust created in sections 85-1801 to 85-1814.

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

8 (c) Federal adjusted gross income or, for corporations  
9 and fiduciaries, federal taxable income shall be reduced by any  
10 contributions as a participant in the Nebraska educational savings  
11 plan trust, to the extent not deducted for federal income tax  
12 purposes, but not to exceed two thousand five hundred dollars per  
13 married filing separate return or five thousand dollars for any  
14 other return.

15 (d) Federal adjusted gross income or, for corporations  
16 and fiduciaries, federal taxable income shall be increased by  
17 the amount resulting from the cancellation of a participation  
18 agreement refunded to the taxpayer as a participant in the Nebraska  
19 educational savings plan trust to the extent previously deducted as  
20 a contribution to the trust.

21 (9) (a) For income tax returns filed after September 10,  
22 2001, for taxable years beginning or deemed to begin before January  
23 1, 2006, under the Internal Revenue Code of 1986, as amended,  
24 federal adjusted gross income or, for corporations and fiduciaries,  
25 federal taxable income shall be increased by eighty-five percent

1 of any amount of any federal bonus depreciation received under  
2 the federal Job Creation and Worker Assistance Act of 2002 or the  
3 federal Jobs and Growth Tax Act of 2003, under section 168(k) or  
4 section 1400L of the Internal Revenue Code of 1986, as amended,  
5 for assets placed in service after September 10, 2001, and before  
6 December 31, 2005.

7 (b) For a partnership, limited liability company,  
8 cooperative, including any cooperative exempt from income taxes  
9 under section 521 of the Internal Revenue Code of 1986, as amended,  
10 limited cooperative association, subchapter S corporation, or  
11 joint venture, the increase shall be distributed to the partners,  
12 members, shareholders, patrons, or beneficiaries in the same  
13 manner as income is distributed for use against their income tax  
14 liabilities.

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

19 (d) The amount of bonus depreciation added to federal  
20 adjusted gross income or, for corporations and fiduciaries, federal  
21 taxable income by this subsection shall be subtracted in a  
22 later taxable year. Twenty percent of the total amount of bonus  
23 depreciation added back by this subsection for tax years beginning  
24 or deemed to begin before January 1, 2003, under the Internal  
25 Revenue Code of 1986, as amended, may be subtracted in the first

1 taxable year beginning or deemed to begin on or after January 1,  
2 2005, under the Internal Revenue Code of 1986, as amended, and  
3 twenty percent in each of the next four following taxable years.  
4 Twenty percent of the total amount of bonus depreciation added back  
5 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  
9 each of the next four following taxable years.

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

24 (11)(a) Federal adjusted gross income shall be reduced  
25 by contributions, up to two thousand dollars per married filing



1 jointly return or one thousand dollars for any other return, and  
2 any investment earnings made as a participant in the Nebraska  
3 long-term care savings plan under the Long-Term Care Savings Plan  
4 Act, to the extent not deducted for federal income tax purposes.

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

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

19 (13)(a) For taxable years beginning on January 1, 2009,  
20 and ending on December 31, 2009, under the Internal Revenue Code  
21 of 1986, as amended, and subject to the dollar limit in this  
22 subdivision, federal adjusted gross income shall be reduced by  
23 the amount received as a retirement benefit from the retirement  
24 systems provided for in the Class V School Employees Retirement  
25 Act, the County Employees Retirement Act, the Judges Retirement

1 Act, the Nebraska State Patrol Retirement Act, the School Employees  
2 Retirement Act, the State Employees Retirement Act, the United  
3 States civil service retirement system, and the United States  
4 military employee retirement system. For taxpayers filing a married  
5 filing joint return, the exclusion under this subdivision shall  
6 be limited to thirty thousand dollars of such retirement income  
7 if both spouses receive such retirement income, and for taxpayers  
8 filing any other return, the exclusion shall be limited to fifteen  
9 thousand dollars of such retirement income.

10 (b) For taxable years beginning on January 1, 2010,  
11 and ending on December 31, 2010, under the Internal Revenue Code  
12 of 1986, as amended, and subject to the dollar limit in this  
13 subdivision, federal adjusted gross income shall be reduced by  
14 the amount received as a retirement benefit from the retirement  
15 systems provided for in the Class V School Employees Retirement  
16 Act, the County Employees Retirement Act, the Judges Retirement  
17 Act, the Nebraska State Patrol Retirement Act, the School Employees  
18 Retirement Act, the State Employees Retirement Act, the United  
19 States civil service retirement system, and the United States  
20 military employee retirement system. For taxpayers filing a married  
21 filing joint return, the exclusion under this subdivision shall be  
22 limited to sixty thousand dollars of such retirement income if both  
23 spouses receive such retirement income, and for taxpayers filing  
24 any other return, the exclusion shall be limited to thirty thousand  
25 dollars of such retirement income.

1           (c) For taxable years beginning on January 1, 2011,  
2 and ending on December 31, 2011, under the Internal Revenue Code  
3 of 1986, as amended, and subject to the dollar limit in this  
4 subdivision, federal adjusted gross income shall be reduced by  
5 the amount received as a retirement benefit from the retirement  
6 systems provided for in the Class V School Employees Retirement  
7 Act, the County Employees Retirement Act, the Judges Retirement  
8 Act, the Nebraska State Patrol Retirement Act, the School Employees  
9 Retirement Act, the State Employees Retirement Act, the United  
10 States civil service retirement system, and the United States  
11 military employee retirement system. For taxpayers filing a married  
12 filing joint return, the exclusion under this subdivision shall be  
13 limited to ninety thousand dollars of such retirement income if  
14 both spouses receive such retirement income, and for taxpayers  
15 filing any other return, the exclusion shall be limited to  
16 forty-five thousand dollars of such retirement income.

17           (d) For taxable years beginning on January 1, 2012,  
18 and ending on December 31, 2012, under the Internal Revenue Code  
19 of 1986, as amended, and subject to the dollar limit in this  
20 subdivision, federal adjusted gross income shall be reduced by  
21 the amount received as a retirement benefit from the retirement  
22 systems provided for in the Class V School Employees Retirement  
23 Act, the County Employees Retirement Act, the Judges Retirement  
24 Act, the Nebraska State Patrol Retirement Act, the School Employees  
25 Retirement Act, the State Employees Retirement Act, the United

1 States civil service retirement system, and the United States  
2 military employee retirement system. For taxpayers filing a married  
3 filing joint return, the exclusion under this subdivision shall be  
4 limited to one hundred twenty thousand dollars of such retirement  
5 income if both spouses receive such retirement income, and for  
6 taxpayers filing any other return, the exclusion shall be limited  
7 to sixty thousand dollars of such retirement income.

8 (e) For taxable years beginning on or after January  
9 1, 2013, under the Internal Revenue Code of 1986, as amended,  
10 and subject to the dollar limit in this subdivision, federal  
11 adjusted gross income shall be reduced by the amount received  
12 as a retirement benefit from the retirement systems provided  
13 for in the Class V School Employees Retirement Act, the County  
14 Employees Retirement Act, the Judges Retirement Act, the Nebraska  
15 State Patrol Retirement Act, the School Employees Retirement Act,  
16 the State Employees Retirement Act, the United States civil  
17 service retirement system, and the United States military employee  
18 retirement system. For taxpayers filing a married filing joint  
19 return, the exclusion under this subdivision shall be limited to  
20 one hundred fifty thousand dollars of such retirement income if  
21 both spouses receive such retirement income, and for taxpayers  
22 filing any other return, the exclusion shall be limited to  
23 seventy-five thousand dollars of such retirement income.

24 Sec. 2. This act becomes operative for all taxable years  
25 beginning or deemed to begin on or after January 1, 2009, under the

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1 Internal Revenue Code of 1986, as amended.

2           Sec. 3. Original section 77-2716, Revised Statutes

3 Cumulative Supplement, 2008, is repealed.