

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 756

Introduced by Legislative Performance Audit Committee: Watermeier, 1,
Chairperson; Krist, 10; Kuehn, 38; Larson, 40; Mello, 5;
Scheer, 19; Bolz, 29.

Read first time January 06, 2016

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-6103, Reissue Revised Statutes of Nebraska, and section 77-2716,
- 3 Revised Statutes Supplement, 2015; to terminate the Nebraska long-
- 4 term care savings plan; to harmonize provisions; to repeal the
- 5 original sections; to outright repeal sections 77-6101, 77-6102,
- 6 77-6104, and 77-6105, Reissue Revised Statutes of Nebraska; and to
- 7 declare an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Supplement, 2015, 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) There shall be subtracted interest or dividends received by the
7 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;

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

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

24 (d) There shall be added that portion of the total dividends and
25 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
28 the recipient by the regulated investment company; and

29 (e)(i) Any amount subtracted under this subsection shall be reduced
30 by any interest on indebtedness incurred to carry the obligations or
31 securities described in this subsection or the investment in the

1 regulated investment company and by any expenses incurred in the
2 production of interest or dividend income described in this subsection to
3 the extent that such expenses, including amortizable bond premiums, are
4 deductible in determining federal taxable income.

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

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

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

26 (4) Federal adjusted gross income, or, for a fiduciary, federal
27 taxable income shall be modified to exclude the portion of the income or
28 loss received from a small business corporation with an election in
29 effect under subchapter S of the Internal Revenue Code or from a limited
30 liability company organized pursuant to the Nebraska Uniform Limited
31 Liability Company Act that is not derived from or connected with Nebraska

1 sources as determined in section 77-2734.01.

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

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

13 (a) The amount of federal taxable income from operations within a
14 foreign taxing jurisdiction shall be reduced by the amount of taxes
15 actually paid to the foreign jurisdiction that are not deductible solely
16 because the foreign tax credit was elected on the federal income tax
17 return;

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

20 (c) The result of the calculation in subdivision (b) of this
21 subsection shall be subtracted from the amount of federal taxable income
22 used in subdivision (a) of this subsection. The result of such
23 calculation, if greater than zero, shall be subtracted from federal
24 taxable income.

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

28 (8)(a) Federal adjusted gross income or, for corporations and
29 fiduciaries, federal taxable income shall be reduced, to the extent
30 included, by income from interest, earnings, and state contributions
31 received from the Nebraska educational savings plan trust created in

1 sections 85-1801 to 85-1814 and the achieving a better life experience
2 program as provided in sections 77-1401 to 77-1409.

3 (b) Federal adjusted gross income or, for corporations and
4 fiduciaries, federal taxable income shall be reduced by any contributions
5 as a participant in the Nebraska educational savings plan trust or in the
6 achieving a better life experience program as provided in sections
7 77-1401 to 77-1409, to the extent not deducted for federal income tax
8 purposes, but not to exceed five thousand dollars per married filing
9 separate return or ten thousand dollars for any other return. With
10 respect to a qualified rollover within the meaning of section 529 of the
11 Internal Revenue Code from another state's plan, any interest, earnings,
12 and state contributions received from the other state's educational
13 savings plan which is qualified under section 529 of the code shall
14 qualify for the reduction provided in this subdivision. For contributions
15 by a custodian of a custodial account including rollovers from another
16 custodial account, the reduction shall only apply to funds added to the
17 custodial account after January 1, 2014.

18 (c) Federal adjusted gross income or, for corporations and
19 fiduciaries, federal taxable income shall be increased by the amount
20 resulting from the cancellation of a participation agreement refunded to
21 the taxpayer as a participant in the Nebraska educational savings plan
22 trust to the extent previously deducted as a contribution to the trust or
23 in the achieving a better life experience program as provided in sections
24 77-1401 to 77-1409, if applicable.

25 (9)(a) For income tax returns filed after September 10, 2001, for
26 taxable years beginning or deemed to begin before January 1, 2006, under
27 the Internal Revenue Code of 1986, as amended, federal adjusted gross
28 income or, for corporations and fiduciaries, federal taxable income shall
29 be increased by eighty-five percent of any amount of any federal bonus
30 depreciation received under the federal Job Creation and Worker
31 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,

1 under section 168(k) or section 1400L of the Internal Revenue Code of
2 1986, as amended, for assets placed in service after September 10, 2001,
3 and before December 31, 2005.

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

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

15 (d) The amount of bonus depreciation added to federal adjusted gross
16 income or, for corporations and fiduciaries, federal taxable income by
17 this subsection shall be subtracted in a later taxable year. Twenty
18 percent of the total amount of bonus depreciation added back by this
19 subsection for tax years beginning or deemed to begin before January 1,
20 2003, under the Internal Revenue Code of 1986, as amended, may be
21 subtracted in the first taxable year beginning or deemed to begin on or
22 after January 1, 2005, under the Internal Revenue Code of 1986, as
23 amended, and twenty percent in each of the next four following taxable
24 years. Twenty percent of the total amount of bonus depreciation added
25 back by this subsection for tax years beginning or deemed to begin on or
26 after January 1, 2003, may be subtracted in the first taxable year
27 beginning or deemed to begin on or after January 1, 2006, under the
28 Internal Revenue Code of 1986, as amended, and twenty percent in each of
29 the next four following taxable years.

30 (10) For taxable years beginning or deemed to begin on or after
31 January 1, 2003, and before January 1, 2006, under the Internal Revenue

1 Code of 1986, as amended, federal adjusted gross income or, for
2 corporations and fiduciaries, federal taxable income shall be increased
3 by the amount of any capital investment that is expensed under section
4 179 of the Internal Revenue Code of 1986, as amended, that is in excess
5 of twenty-five thousand dollars that is allowed under the federal Jobs
6 and Growth Tax Act of 2003. Twenty percent of the total amount of
7 expensing added back by this subsection for tax years beginning or deemed
8 to begin on or after January 1, 2003, may be subtracted in the first
9 taxable year beginning or deemed to begin on or after January 1, 2006,
10 under the Internal Revenue Code of 1986, as amended, and twenty percent
11 in each of the next four following tax years.

12 (11)(a) For taxable years beginning or deemed to begin before
13 January 1, 2016, under the Internal Revenue Code of 1986, as amended,
14 federal ~~Federal~~ adjusted gross income shall be reduced by contributions,
15 up to two thousand dollars per married filing jointly return or one
16 thousand dollars for any other return, and any investment earnings made
17 as a participant in the Nebraska long-term care savings plan ~~under the~~
18 ~~Long-Term Care Savings Plan Act~~, to the extent not deducted for federal
19 income tax purposes.

20 (b) For taxable years beginning or deemed to begin before January 1,
21 2016, under the Internal Revenue Code of 1986, as amended, federal
22 ~~Federal~~ adjusted gross income shall be increased by the withdrawals made
23 as a participant in the Nebraska long-term care savings plan ~~under the~~
24 ~~act~~ by a person who is not a qualified individual or for any reason other
25 than transfer of funds to a spouse, long-term care expenses, long-term
26 care insurance premiums, or death of the participant, including
27 withdrawals made by reason of cancellation of the participation agreement
28 or termination of the plan, to the extent previously deducted as a
29 contribution or as investment earnings.

30 (12) There shall be added to federal adjusted gross income for
31 individuals, estates, and trusts any amount taken as a credit for

1 franchise tax paid by a financial institution under sections 77-3801 to
2 77-3807 as allowed by subsection (5) of section 77-2715.07.

3 (13) For taxable years beginning or deemed to begin on or after
4 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
5 federal adjusted gross income shall be reduced by the amount received as
6 benefits under the federal Social Security Act which are included in the
7 federal adjusted gross income if:

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

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

12 (14) For taxable years beginning or deemed to begin on or after
13 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an
14 individual may make a one-time election within two calendar years after
15 the date of his or her retirement from the military to exclude income
16 received as a military retirement benefit by the individual to the extent
17 included in federal adjusted gross income and as provided in this
18 subsection. The individual may elect to exclude forty percent of his or
19 her military retirement benefit income for seven consecutive taxable
20 years beginning with the year in which the election is made or may elect
21 to exclude fifteen percent of his or her military retirement benefit
22 income for all taxable years beginning with the year in which he or she
23 turns sixty-seven years of age. For purposes of this subsection, military
24 retirement benefit means retirement benefits that are periodic payments
25 attributable to service in the uniformed services of the United States
26 for personal services performed by an individual prior to his or her
27 retirement.

28 Sec. 2. Section 77-6103, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 77-6103 ~~(1)~~—The Nebraska long-term care savings plan terminates on
31 the effective date of this act. Any participant in the plan on the

1 ~~termination date shall be entitled to receive the full balance of his or~~
2 ~~her account on such date is created. The State Treasurer shall select the~~
3 ~~administrator of the plan. If the State Treasurer receives no acceptable~~
4 ~~responses to a request for proposals for an administrator for the plan by~~
5 ~~November 1, 2006, the State Treasurer may enter into agreements with~~
6 ~~state-chartered or federally chartered banks, savings banks, building and~~
7 ~~loan associations, savings and loan associations, or credit unions, or a~~
8 ~~subsidiary of any such entity, to receive contributions in the form of~~
9 ~~account deposits. The State Treasurer may adopt and promulgate rules and~~
10 ~~regulations to carry out its duties under this subsection.~~

11 ~~(2) If an administrator is selected, participants shall enter into~~
12 ~~participation agreements with the State Treasurer, and if an~~
13 ~~administrator is not selected, participants may make contributions to an~~
14 ~~account with a financial institution with which the State Treasurer has~~
15 ~~an agreement under subsection (1) of this section. A lifetime maximum of~~
16 ~~one hundred sixty-five thousand dollars may be contributed by a~~
17 ~~participant. This dollar limitation shall be adjusted for inflation by~~
18 ~~the method provided in section 151 of the Internal Revenue Code of 1986,~~
19 ~~as amended.~~

20 ~~(3) Each participation agreement shall provide that the agreement~~
21 ~~may be canceled or transferred to a spouse upon the terms and conditions~~
22 ~~set by the State Treasurer. If the participation agreement is canceled or~~
23 ~~the Nebraska long term care savings plan is terminated, a participant may~~
24 ~~receive the principal amount of all contributions made by the participant~~
25 ~~or on behalf of the participant plus the actual investment earnings on~~
26 ~~the contributions, less any losses incurred on the contributions. A~~
27 ~~participant shall not receive more than the fair market value of his or~~
28 ~~her account under the participation agreement on the applicable~~
29 ~~liquidation date.~~

30 ~~(4) A participant retains ownership of all contributions up to the~~
31 ~~date of utilization.~~

1 ~~(5) State income tax treatment of contributions and investment~~
2 ~~earnings shall be as provided in section 77-2716.~~

3 Sec. 3. Original section 77-6103, Reissue Revised Statutes of
4 Nebraska, and section 77-2716, Revised Statutes Supplement, 2015, are
5 repealed.

6 Sec. 4. The following sections are outright repealed: Sections
7 77-6101, 77-6102, 77-6104, and 77-6105, Reissue Revised Statutes of
8 Nebraska.

9 Sec. 5. Since an emergency exists, this act takes effect when
10 passed and approved according to law.