

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1279

Introduced by Halloran, 33; Erdman, 47; Wayne, 13.

Read first time January 16, 2024

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2716, Revised Statutes Supplement, 2023; to provide an income tax
- 3 adjustment for unrealized capital gains; and to repeal the original
- 4 section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Supplement, 2023, 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)(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 85-1817 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) For taxable years beginning or deemed to begin on or after
25 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
26 federal adjusted gross income shall be reduced, to the extent included in
27 the adjusted gross income of an individual, by the amount of any
28 contribution made by the individual's employer into an account under the
29 Nebraska educational savings plan trust owned by the individual, not to
30 exceed five thousand dollars per married filing separate return or ten
31 thousand dollars for any other return.

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

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

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

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

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

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

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

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

29 (11)(a) For taxable years beginning or deemed to begin before
30 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
31 federal adjusted gross income shall be reduced by contributions, up to

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

6 (b) For taxable years beginning or deemed to begin before January 1,
7 2018, under the Internal Revenue Code of 1986, as amended, federal
8 adjusted gross income shall be increased by the withdrawals made as a
9 participant in the Nebraska long-term care savings plan under the act by
10 a person who is not a qualified individual or for any reason other than
11 transfer of funds to a spouse, long-term care expenses, long-term care
12 insurance premiums, or death of the participant, including withdrawals
13 made by reason of cancellation of the participation agreement, to the
14 extent previously deducted as a contribution or as investment earnings.

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

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

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

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

28 (b) For taxable years beginning or deemed to begin on or after
29 January 1, 2020, and before January 1, 2024, under the Internal Revenue
30 Code of 1986, as amended, the Tax Commissioner shall adjust the dollar
31 amounts provided in subdivisions (13)(a)(i) and (ii) of this section by

1 the same percentage used to adjust individual income tax brackets under
2 subsection (3) of section 77-2715.03.

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

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

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

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

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

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

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

28 (c) For taxable years beginning or deemed to begin on or after
29 January 1, 2021, and before January 1, 2024, under the Internal Revenue
30 Code of 1986, as amended, a taxpayer may claim the reduction to federal
31 adjusted gross income allowed under this subsection or the reduction to

1 federal adjusted gross income allowed under subsection (13) of this
2 section, whichever provides the greater reduction.

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

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

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

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

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

30 (16) For taxable years beginning or deemed to begin on or after
31 January 1, 2021, under the Internal Revenue Code of 1986, as amended,

1 federal adjusted gross income shall be reduced by the amount received as
2 a Segal AmeriCorps Education Award, to the extent such amount is included
3 in federal adjusted gross income.

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

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

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

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

30 (21) For taxable years beginning or deemed to begin on or after
31 January 1, 2024, 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 increased by an amount equal to twelve
3 percent of the unrealized capital gains of a corporation, fiduciary, or
4 individual in a taxable year.

5 Sec. 2. Original section 77-2716, Revised Statutes Supplement,
6 2023, is repealed.