

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 492

Introduced by von Gillern, 4.

Read first time January 17, 2023

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2701 and 77-2716, Revised Statutes Cumulative Supplement, 2022;
- 3 to allow income tax deductions for the cost of certain property and
- 4 for certain research or experimental expenditures as prescribed; to
- 5 harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
4 77-27,236, and 77-27,238 to 77-27,240 and section 3 of this act shall be
5 known and may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2716, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 77-2716 (1) The following adjustments to federal adjusted gross
9 income or, for corporations and fiduciaries, federal taxable income shall
10 be made for interest or dividends received:

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

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

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

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

1 regulated investment company;

2 (d) There shall be added that portion of the total dividends and
3 other income received from a regulated investment company which is
4 attributable to obligations described in subdivision (c) of this
5 subsection and excluded for federal income tax purposes as reported to
6 the recipient by the regulated investment company; and

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

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

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

29 (3) There shall be subtracted from federal adjusted gross income for
30 all taxable years beginning on or after January 1, 1987, the amount of
31 any state income tax refund to the extent such refund was deducted under

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

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

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

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

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

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

29 (c) The result of the calculation in subdivision (b) of this
30 subsection shall be subtracted from the amount of federal taxable income
31 used in subdivision (a) of this subsection. The result of such

1 calculation, if greater than zero, shall be subtracted from federal
2 taxable income.

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

6 (8)(a) Federal adjusted gross income or, for corporations and
7 fiduciaries, federal taxable income shall be reduced, to the extent
8 included, by income from interest, earnings, and state contributions
9 received from the Nebraska educational savings plan trust created in
10 sections 85-1801 to 85-1817 and any account established under the
11 achieving a better life experience program as provided in sections
12 77-1401 to 77-1409.

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

29 (c) For taxable years beginning or deemed to begin on or after
30 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
31 federal adjusted gross income shall be reduced, to the extent included in

1 the adjusted gross income of an individual, by the amount of any
2 contribution made by the individual's employer into an account under the
3 Nebraska educational savings plan trust owned by the individual, not to
4 exceed five thousand dollars per married filing separate return or ten
5 thousand dollars for any other return.

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

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

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

16 (9)(a) For income tax returns filed after September 10, 2001, for
17 taxable years beginning or deemed to begin before January 1, 2006, under
18 the Internal Revenue Code of 1986, as amended, federal adjusted gross
19 income or, for corporations and fiduciaries, federal taxable income shall
20 be increased by eighty-five percent of any amount of any federal bonus
21 depreciation received under the federal Job Creation and Worker
22 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
23 under section 168(k) or section 1400L of the Internal Revenue Code of
24 1986, as amended, for assets placed in service after September 10, 2001,
25 and before December 31, 2005.

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

1 their income tax liabilities.

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

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

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

1 under the Internal Revenue Code of 1986, as amended, and twenty percent
2 in each of the next four following tax years.

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

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

20 (12) There shall be added to federal adjusted gross income for
21 individuals, estates, and trusts any amount taken as a credit for
22 franchise tax paid by a financial institution under sections 77-3801 to
23 77-3807 as allowed by subsection (5) of section 77-2715.07.

24 (13)(a) For taxable years beginning or deemed to begin on or after
25 January 1, 2015, and before January 1, 2025, under the Internal Revenue
26 Code of 1986, as amended, federal adjusted gross income shall be reduced
27 by the amount received as benefits under the federal Social Security Act
28 which are included in the federal adjusted gross income if:

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

31 (ii) For taxpayers filing any other return, federal adjusted gross

1 income is forty-three thousand dollars or less.

2 (b) For taxable years beginning or deemed to begin on or after
3 January 1, 2020, and before January 1, 2025, under the Internal Revenue
4 Code of 1986, as amended, the Tax Commissioner shall adjust the dollar
5 amounts provided in subdivisions (13)(a)(i) and (ii) of this section by
6 the same percentage used to adjust individual income tax brackets under
7 subsection (3) of section 77-2715.03.

8 (c) For taxable years beginning or deemed to begin on or after
9 January 1, 2021, and before January 1, 2025, under the Internal Revenue
10 Code of 1986, as amended, a taxpayer may claim the reduction to federal
11 adjusted gross income allowed under this subsection or the reduction to
12 federal adjusted gross income allowed under subsection (14) of this
13 section, whichever provides the greater reduction.

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

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

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

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

28 (iv) Eighty percent for taxable years beginning or deemed to begin
29 on or after January 1, 2024, and before January 1, 2025, under the
30 Internal Revenue Code of 1986, as amended; and

31 (v) One hundred percent for taxable years beginning or deemed to

1 begin on or after January 1, 2025, under the Internal Revenue Code of
2 1986, as amended.

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

5 (c) For taxable years beginning or deemed to begin on or after
6 January 1, 2021, and before January 1, 2025, 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 (13) of this
10 section, whichever provides the greater reduction.

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

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

28 (c) For purposes of this subsection, military retirement benefit
29 means retirement benefits that are periodic payments attributable to
30 service in the uniformed services of the United States for personal
31 services performed by an individual prior to his or her retirement. The

1 term includes retirement benefits described in this subdivision that are
2 reported to the individual on either:

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

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

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

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

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

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

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

1 January 1, 2023, under the Internal Revenue Code of 1986, as amended,
2 federal adjusted gross income or, for corporations and fiduciaries,
3 federal taxable income shall be reduced by the amounts allowed to be
4 deducted pursuant to section 3 of this act.

5 Sec. 3. (1) For purposes of this section:

6 (a) Full expensing means a method for taxpayers to recover their
7 costs for certain expenditures in depreciable business assets by
8 immediately deducting the full cost of such expenditures in the tax year
9 in which the property is placed in service;

10 (b) Internal Revenue Code means the Internal Revenue Code of 1986,
11 as amended;

12 (c) Qualified improvement property has the same meaning as in
13 section 168(e)(6) of the Internal Revenue Code and shall apply to
14 property placed in service after December 31, 2022;

15 (d) Qualified property has the same meaning as in section 168(k) of
16 the Internal Revenue Code and shall apply to property placed in service
17 after December 31, 2022; and

18 (e) Research or experimental expenditures has the same meaning as in
19 26 C.F.R. 1.174-2.

20 (2)(a) For taxable years beginning or deemed to begin on or after
21 January 1, 2023, the cost of expenditures for business assets that are
22 qualified property or qualified improvement property covered under
23 section 168 of the Internal Revenue Code shall be eligible for full
24 expensing and may be deducted as an expense incurred by the taxpayer
25 during the taxable year during which the property is placed in service,
26 notwithstanding any changes to federal law related to depreciation of
27 property beginning January 1, 2023, or on any other date. Such deduction
28 shall be allowed only to the extent that such cost has not already been
29 deducted in determining federal adjusted gross income or, for
30 corporations and fiduciaries, federal taxable income.

31 (b) If the taxpayer does not fully expense the costs described in

1 this subsection in the taxable year in which the property is placed in
2 service, the taxpayer may elect to depreciate the costs over a five-year
3 irrevocable term.

4 (3)(a) For taxable years beginning or deemed to begin on or after
5 January 1, 2023, a taxpayer may elect to treat research or experimental
6 expenditures which are paid or incurred by the taxpayer during the
7 taxable year in connection with the taxpayer's trade or business as
8 expenses which are not chargeable to the capital account. The
9 expenditures so treated shall be allowed as a deduction, notwithstanding
10 any changes to the Internal Revenue Code related to the amortization of
11 such research or experimental expenditures. Such deduction shall be
12 allowed only to the extent that such research or experimental
13 expenditures have not already been deducted in determining federal
14 adjusted gross income or, for corporations and fiduciaries, federal
15 taxable income.

16 (b) If the taxpayer does not fully deduct the research or
17 experimental expenditures in the taxable year in which the expenditures
18 are paid or incurred, the taxpayer may elect to amortize the expenditures
19 over a five-year irrevocable term.

20 (4) If a deduction under this section is for a corporation having an
21 election in effect under subchapter S of the Internal Revenue Code, a
22 partnership, a limited liability company, an estate, or a trust, the
23 deduction may be claimed by the shareholders, partners, members, or
24 beneficiaries in the same manner as those shareholders, partners,
25 members, or beneficiaries account for their proportionate shares of the
26 income or losses of the corporation, partnership, limited liability
27 company, estate, or trust.

28 (5) The Department of Revenue may adopt and promulgate rules and
29 regulations to implement this section.

30 Sec. 4. Original sections 77-2701 and 77-2716, Revised Statutes
31 Cumulative Supplement, 2022, are repealed.