

AMENDMENTS TO LB 197

(Amendments to AM464)

Introduced by Gay, 14.

1 1. Insert the following new sections:

2 Section 1. Section 77-2716, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

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

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

18 (c) There shall be added interest or dividends received
19 by the owner of obligations of the District of Columbia, other
20 states of the United States, or their political subdivisions,
21 authorities, commissions, or instrumentalities to the extent
22 excluded in the computation of gross income for federal income

1 tax purposes except that such interest or dividends shall not be
2 added if received by a corporation which is a regulated investment
3 company;

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

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

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

22 (2) There shall be allowed a net operating loss derived
23 from or connected with Nebraska sources computed under rules
24 and regulations adopted and promulgated by the Tax Commissioner
25 consistent, to the extent possible under the Nebraska Revenue
26 Act of 1967, with the laws of the United States. For a resident
27 individual, estate, or trust, the net operating loss computed

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

8 (3) There shall be subtracted from federal adjusted gross
9 income for all taxable years beginning on or after January 1, 1987,
10 the amount of any state income tax refund to the extent such refund
11 was deducted under the Internal Revenue Code, was not allowed in
12 the computation of the tax due under the Nebraska Revenue Act of
13 1967, and is included in federal adjusted gross income.

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

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

25 (6) There shall be subtracted from federal taxable income
26 a portion of the income earned by a corporation subject to the
27 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
26 contributions received from the Nebraska educational savings plan
27 trust created in sections 85-1801 to 85-1814.

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

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

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

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

1 for assets placed in service after September 10, 2001, and before
2 December 31, 2005.

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

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

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

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

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

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

24 (b) Federal adjusted gross income shall be increased by
25 the withdrawals made as a participant in the Nebraska long-term
26 care savings plan under the act by a person who is not a qualified
27 individual or for any reason other than transfer of funds to a

1 spouse, long-term care expenses, long-term care insurance premiums,
2 or death of the participant, including withdrawals made by reason
3 of cancellation of the participation agreement or termination of
4 the plan, to the extent previously deducted as a contribution or as
5 investment earnings.

6 (12) There shall be added to federal adjusted gross
7 income for individuals, estates, and trusts any amount taken as
8 a credit for franchise tax paid by a financial institution under
9 sections 77-3801 to 77-3807 as allowed by subsection (5) of section
10 77-2715.07.

11 Sec. 2. Section 85-1801, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 85-1801 The Legislature finds that the general welfare
14 and well-being of the state are directly related to educational
15 levels and skills of the citizens of the state and that a vital and
16 valid public purpose is served by the creation and implementation
17 of programs which encourage and make possible the attainment of
18 higher education by the greatest number of citizens of the state.
19 The state has limited resources to provide additional programs
20 for higher education funding and the continued operation and
21 maintenance of the state's public institutions of higher education,
22 and the general welfare of the citizens of the state will be
23 enhanced by establishing a program which allows parents and others
24 interested in the higher education of our youth to invest money
25 in a public trust for future application to the payment of higher
26 education costs. The creation of the means of encouragement for
27 persons to invest in such a program represents the carrying out

1 of a vital and valid public purpose. In order to make available
2 to parents and others interested in the higher education of our
3 youth an opportunity to fund future higher education needs, it is
4 necessary that a public trust be established in which money may
5 be invested for future educational use. It is also necessary to
6 establish an endowment fund which may not be funded with public
7 funds but may receive gifts, grants, and donations from private
8 parties, which will be made available to participants in the trust
9 to enhance their savings invested for the payment of future higher
10 education costs.

11 Sec. 4. Section 85-1804, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 85-1804 The Nebraska educational savings plan trust is
14 created. The State Treasurer is the trustee of the trust and
15 as such is responsible for the administration, operation, and
16 maintenance of the program and has all powers necessary to carry
17 out and effectuate the purposes, objectives, and provisions of
18 sections 85-1801 to 85-1814 pertaining to the administration,
19 operation, and maintenance of the trust and program, except that
20 the state investment officer shall have fiduciary responsibility
21 to make all decisions regarding the investment of the money in
22 the administrative fund, ~~endowment fund~~, expense fund, and program
23 fund, including the selection of all investment options and the
24 approval of all fees and other costs charged to trust assets except
25 costs for administration, operation, and maintenance of the trust
26 as appropriated by the Legislature, pursuant to the directions,
27 guidelines, and policies established by the Nebraska Investment

1 Council. The State Treasurer may adopt and promulgate rules and
2 regulations to provide for the efficient administration, operation,
3 and maintenance of the trust and program. The State Treasurer shall
4 not adopt and promulgate rules and regulations that in any way
5 interfere with the fiduciary responsibility of the state investment
6 officer to make all decisions regarding the investment of money in
7 the administrative fund, ~~endowment fund,~~ expense fund, and program
8 fund. The State Treasurer or his or her designee shall have the
9 power to:

10 (1) Enter into agreements with any institution of higher
11 education, the state, any federal or other state agency, or any
12 other entity to implement sections 85-1801 to 85-1814, except
13 agreements which pertain to the investment of money in the
14 administrative fund, ~~endowment fund,~~ expense fund, or program
15 fund;

16 (2) Carry out the duties and obligations of the trust;

17 ~~(3) Accept any grants or gifts which shall be deposited~~
18 ~~into the endowment fund;~~

19 ~~(4)~~ (3) Carry out studies and projections to advise
20 participants regarding present and estimated future higher
21 education costs and levels of financial participation in the
22 trust required in order to enable participants to achieve their
23 educational funding objectives;

24 ~~(5)~~ (4) Participate in any federal, state, or local
25 governmental program for the benefit of the trust;

26 ~~(6)~~ (5) Procure insurance against any loss in connection
27 with the property, assets, or activities of the trust as provided

1 in section 81-8,239.01;

2 ~~(7) Solicit and accept for the benefit of the endowment~~
3 ~~fund gifts, grants, and donations from private parties;~~

4 ~~(8)~~ (6) Enter into participation agreements with
5 participants;

6 ~~(9)~~ (7) Make payments to institutions of higher education
7 pursuant to participation agreements on behalf of beneficiaries;

8 ~~(10)~~ (8) Make refunds to participants upon the
9 termination of participation agreements pursuant to the provisions,
10 limitations, and restrictions set forth in sections 85-1801 to
11 85-1814;

12 ~~(11)~~ (9) Contract for goods and services and engage
13 personnel as necessary, including consultants, actuaries, managers,
14 legal counsels, and auditors for the purpose of rendering
15 professional, managerial, and technical assistance and advice
16 regarding trust administration and operation, except contracts
17 which pertain to the investment of the administrative, ~~endowment,~~
18 expense, or program funds; and

19 ~~(12)~~ (10) Establish, impose, and collect administrative
20 fees and charges in connection with transactions of the trust,
21 and provide for reasonable service charges, including penalties for
22 cancellations, refund penalties, and late payments with respect to
23 participation agreements.

24 The Nebraska Investment Council may adopt and promulgate
25 rules and regulations to provide for the prudent investment of
26 the assets of the trust. The council or its designee also has the
27 authority to select and enter into agreements with individuals and

1 entities to provide investment advice and management of the assets
2 held by the trust, establish investment guidelines, objectives, and
3 performance standards with respect to the assets held by the trust,
4 and approve any fees, commissions, and expenses, which directly or
5 indirectly affect the return on assets.

6 Sec. 6. Section 85-1808, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 85-1808 (1) A participant may cancel a participation
9 agreement at will. The trustee shall determine and collect a refund
10 penalty by deducting the refund penalty from the returned funds.
11 Collected refund penalties shall be deposited in the ~~endowment~~
12 expense fund. ~~Endowment fund money credited to the program account~~
13 ~~shall be forfeited and returned to the endowment fund.~~

14 (2) Upon the occurrence of any of the following
15 circumstances, no refund penalty shall be levied by the trust in
16 the event of a refund or termination of a participation agreement:

17 (a) Death of the beneficiary;

18 (b) Permanent disability or mental incapacity of the
19 beneficiary;

20 (c) The beneficiary is awarded a scholarship as defined
21 in section 529 of the Internal Revenue Code, but only to the extent
22 the refund of earnings does not exceed the scholarship amount; or

23 (d) A qualified rollover is made as permitted by section
24 529 of the Internal Revenue Code, except that if a qualified
25 rollover is made into a plan sponsored by another state or entity,
26 the participation agreement shall be deemed to have been canceled
27 for purposes of subdivision ~~(8)-(d)~~ (8)(c) of section 77-2716 and

1 federal adjusted gross income shall be increased to the extent
2 previously deducted as a contribution to the trust.

3 (3) In the event of cancellation of a participation
4 agreement for any of the causes listed in subsection (2) of this
5 section, the participant shall be entitled to receive the principal
6 amount of all contributions made by the participant under the
7 participation agreement plus the actual program fund investment
8 income earned on the contributions, less any losses incurred on
9 the investment. ~~but not endowment fund money.~~ Notwithstanding any
10 other provisions of this section, under no circumstances shall a
11 participant or beneficiary receive a refund or distribution that
12 is more than the fair market value of the specific account on the
13 applicable liquidation date.

14 Sec. 7. Section 85-1813, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 85-1813 The assets of the Nebraska educational savings
17 plan trust, including the program fund, ~~and endowment fund,~~ shall
18 at all times be preserved, invested, and expended solely and only
19 for the purposes of the trust and shall be held in trust for the
20 participants and beneficiaries. No property rights in the trust
21 shall exist in favor of the state. ~~The~~ Such assets of the trust
22 shall not be transferred or used by the state for any purposes
23 other than the purposes of the trust.

24 2. On page 1, strike lines 15 and 16, show the old matter
25 as stricken, and renumber the remaining subdivisions accordingly.

26 3. On page 3, line 14, reinstate the stricken "three" and
27 strike "four"; in lines 16 and 17 strike "the College Savings Plan

1 Endowment Fund,"; in line 25 after the second comma insert "and";
2 and in lines 25 and 26 strike ", and the endowment fund".

3 4. Strike beginning on page 5, line 9, through page 6,
4 line 11, and show the old matter as stricken.

5 5. On page 6, line 12, strike "(5)" and insert "(4)"; and
6 strike beginning with "The" in line 25 through line 27.

7 6. On page 7, strike beginning with line 1 through the
8 period in line 4 and insert "The State Treasurer shall transfer any
9 money in the endowment fund on the effective date of this act to
10 the expense fund on such date.".

11 7. Renumber the remaining sections and correct the
12 repealer accordingly.