

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 309

Introduced by Schilz, 47; Carlson, 38; Christensen, 44; Harms, 48;
Wightman, 36.

Read first time January 15, 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 provide a reduction to taxable income for certain capital
4 gains from the sale of real property or business assets;
5 and to 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 or deemed to begin on
20 or after January 1, 2010, under the Internal Revenue Code of 1986,
21 as amended, there shall be subtracted from federal adjusted gross
22 income or, for corporations and fiduciaries, federal taxable income
23 any net long-term capital gain included in the calculation of such
24 income from the sale of real property used in a business in which
25 the taxpayer has materially participated for ten years, which has

1 been held for a minimum of ten years, or from the sale of business
2 assets, which business the taxpayer has owned for a minimum of ten
3 years, to a beginning farmer or small business person.

4 (b) For purposes of this subsection:

5 (i) Beginning farmer means an individual who: (A) Has a
6 net worth of not more than five hundred thousand dollars, including
7 any holdings by a spouse or dependent, based on fair market
8 value; (B) provides the majority of the day-to-day physical labor
9 and management of his or her farming or livestock production
10 operations; (C) has adequate farming or livestock production
11 experience or demonstrates knowledge in the type of farming or
12 livestock production for which he or she seeks assistance; (D)
13 demonstrates a profit potential by submitting projected earnings
14 statements and agrees that farming or livestock production is
15 intended to become his or her principal source of income; and (E)
16 demonstrates a need for assistance;

17 (ii) Sale of business assets means the sale of all or
18 substantially all of the tangible personal property of a business;
19 and

20 (iii) Small business person means an individual,
21 partnership, limited liability company, or corporation
22 headquartered in Nebraska that will employ fewer than ten
23 employees and that will do business in a municipality, county,
24 unincorporated area within a county, or census tract in Nebraska
25 that has (A) an unemployment rate which exceeds the statewide

1 average unemployment rate, (B) a per capita income below the
2 statewide average per capita income, or (C) had a population
3 decrease between the two most recent federal decennial censuses.

4 Sec. 2. Original section 77-2716, Revised Statutes
5 Cumulative Supplement, 2008, is repealed.