AMENDMENTS TO LB409

(Amendments to Standing Committee amendments, AM955)

Introduced by Friesen, 34.

1. Insert the following new sections:

   1. Section 1. Section 77-2716, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

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

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

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

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

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

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

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

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

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

(4) For taxable years beginning or deemed to begin before January 1,
2018, federal adjusted gross income, or, for a fiduciary, federal
taxable income shall be modified to exclude the portion of the income or
loss received from a small business corporation with an election in
effect under subchapter S of the Internal Revenue Code or from a limited
liability company organized pursuant to the Nebraska Uniform Limited
Liability Company Act that is not derived from or connected with Nebraska
sources as determined in section 77-2734.01.

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

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

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

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

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

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

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814 and any account established under the achieving a better life experience program as provided in sections 77-1401 to 77-1409.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. Section 77-2734.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-2734.01 (1)(a) For taxable years beginning or deemed to begin before January 1, 2018, residents (1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid
shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(b) For taxable years beginning or deemed to begin on or after January 1, 2018, residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income without any adjustments pursuant to this section.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company
is not subject to tax in another state, all of its income is derived from 
or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such 
corporations or members of such limited liability companies shall file a 
Nebraska income tax return and shall include in Nebraska adjusted gross 
income their proportionate share of the corporation's or limited 
liability company's Nebraska income as determined under subsection (2) of 
this section.

(4) The nonresident shareholder or member shall execute and forward 
to the corporation or limited liability company before the filing of the 
corporation's or limited liability company's return an agreement which 
states he or she will file a Nebraska income tax return and pay the tax 
on the income derived from or connected with sources in this state, and 
such agreement shall be attached to the corporation's or limited 
liability company's Nebraska return for such taxable year.

(5) For taxable years beginning or deemed to begin before January 1, 
2013, in the absence of the nonresident shareholder's or member's 
executed agreement being attached to the Nebraska return, the corporation 
or limited liability company shall remit with the return an amount equal 
to the highest individual income tax rate determined under section 
77-2715.02 multiplied by the nonresident shareholder's or member's share 
of the corporation's or limited liability company's income which was 
derived from or attributable to this state. For taxable years beginning 
or deemed to begin on or after January 1, 2013, in the absence of the 
nonresident shareholder's or member's executed agreement being attached 
to the Nebraska return, the corporation or limited liability company 
shall remit with the return an amount equal to the highest individual 
income tax rate determined under section 77-2715.03 multiplied by the 
nonresident shareholder's or member's share of the corporation's or 
limited liability company's income which was derived from or attributable 
to this state. The amount remitted shall be allowed as a credit against
the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Sec. 4. Section 79-1005.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

79-1005.01 (1) Not later than November 15 of each year, the Tax Commissioner shall certify to the department for the preceding tax year the income tax liability of resident individuals for each local system.

(2) For school fiscal years prior to 2017-18, one hundred two million two hundred eighty-nine thousand eight hundred seventeen dollars which is equal to the amount appropriated to the School District Income Tax Fund for distribution in school fiscal year 1992-93 shall be
disbursed as option payments as determined under section 79-1009 and as
allocated income tax funds as determined in this section and sections
79-1008.01, 79-1015.01, 79-1017.01, and 79-1018.01, except as provided in
section 79-1008.02 for school fiscal years prior to school fiscal year
2017-18. For school fiscal years prior to school fiscal year 2017-18,
funds not distributed as allocated income tax funds due to minimum levy
adjustments shall not increase the amount available to local systems for
distribution as allocated income tax funds.

(3) Using the data certified by the Tax Commissioner pursuant to
subsection (1) of this section, the department shall calculate the
allocation percentage and each local system's allocated income tax funds.
The allocation percentage shall be the amount stated in subsection (2) of
this section minus the total amount paid for option students pursuant to
section 79-1009, with the difference divided by the aggregate statewide
income tax liability of all resident individuals certified pursuant to
subsection (1) of this section. For school fiscal years prior to 2017-18,
each local system's allocated income tax funds shall be calculated
by multiplying the allocation percentage times the local system's income
tax liability certified pursuant to subsection (1) of this section.

(4) For school fiscal year 2017-18 and each school fiscal year
thereafter, each local system’s allocated income tax funds shall be
calculated by multiplying the local system’s income tax liability
certified pursuant to subsection (1) of this section by two and twenty-
three hundredths percent.

(5) For school fiscal year 2018-19 and each school fiscal year
thereafter, each local system's allocated income tax funds shall be
calculated by multiplying the local system's income tax liability
certified pursuant to subsection (1) of this section by twenty percent.

Sec. 9. The following sections are outright repealed: Sections
77-2715.09, Reissue Revised Statutes of Nebraska, and section 77-2715.08,
Revised Statutes Cumulative Supplement, 2016.
1. 2. Renumber the remaining sections and correct the repealer accordingly.