

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 664**

Introduced by Friesen, 34.

Read first time January 23, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2701 and 77-2716, Reissue Revised Statutes of Nebraska; to
- 3 provide for certain income tax deductions as prescribed; to
- 4 harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Reissue Revised Statutes of Nebraska, is  
2 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 and section 3 of this act shall be known and may  
5 be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2716, Reissue Revised Statutes of Nebraska, is  
7 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 85-1814 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) Federal adjusted gross income or, for corporations and  
30 fiduciaries, federal taxable income shall be increased by:

31 (i) The amount resulting from the cancellation of a participation

1 agreement refunded to the taxpayer as a participant in the Nebraska  
2 educational savings plan trust to the extent previously deducted under  
3 subdivision (8)(b) of this section; and

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

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

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

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

29 (d) The amount of bonus depreciation added to federal adjusted gross  
30 income or, for corporations and fiduciaries, federal taxable income by  
31 this subsection shall be subtracted in a later taxable year. Twenty

1 percent of the total amount of bonus depreciation added back by this  
2 subsection for tax years beginning or deemed to begin before January 1,  
3 2003, under the Internal Revenue Code of 1986, as amended, may be  
4 subtracted in the first taxable year beginning or deemed to begin on or  
5 after January 1, 2005, under the Internal Revenue Code of 1986, as  
6 amended, and twenty percent in each of the next four following taxable  
7 years. Twenty percent of the total amount of bonus depreciation added  
8 back by this subsection for tax years beginning or deemed to begin on or  
9 after January 1, 2003, may be subtracted in the first taxable year  
10 beginning or deemed to begin on or after January 1, 2006, under the  
11 Internal Revenue Code of 1986, as amended, and twenty percent in each of  
12 the next four following taxable years.

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

26 (11)(a) For taxable years beginning or deemed to begin before  
27 January 1, 2018, under the Internal Revenue Code of 1986, as amended,  
28 federal adjusted gross income shall be reduced by contributions, up to  
29 two thousand dollars per married filing jointly return or one thousand  
30 dollars for any other return, and any investment earnings made as a  
31 participant in the Nebraska long-term care savings plan under the Long-

1 Term Care Savings Plan Act, to the extent not deducted for federal income  
2 tax purposes.

3 (b) For taxable years beginning or deemed to begin before January 1,  
4 2018, under the Internal Revenue Code of 1986, as amended, federal  
5 adjusted gross income shall be increased by the withdrawals made as a  
6 participant in the Nebraska long-term care savings plan under the act by  
7 a person who is not a qualified individual or for any reason other than  
8 transfer of funds to a spouse, long-term care expenses, long-term care  
9 insurance premiums, or death of the participant, including withdrawals  
10 made by reason of cancellation of the participation agreement, to the  
11 extent previously deducted as a contribution or as investment earnings.

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

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

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

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

25 (b) For taxable years beginning or deemed to begin on or after  
26 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the  
27 Tax Commissioner shall adjust the dollar amounts provided in subdivisions  
28 (13)(a)(i) and (ii) of this section by the same percentage used to adjust  
29 individual income tax brackets under subsection (3) of section  
30 77-2715.03.

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

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

16 (15) For taxable years beginning or deemed to begin on or after  
17 January 1, 2020, under the Internal Revenue Code of 1986, as amended,  
18 federal adjusted gross income shall be reduced as provided in section 3  
19 of this act.

20 Sec. 3. (1) For taxable years beginning or deemed to begin on or  
21 after January 1, 2020, under the Internal Revenue Code of 1986, as  
22 amended, federal adjusted gross income shall be reduced by an amount  
23 equal to nine percent of the lesser of:

24 (a) The qualified production activities income of the taxpayer for  
25 the taxable year; or

26 (b) Taxable income, determined without regard to this section, for  
27 the taxable year.

28 (2)(a) The amount of the deduction allowable under subsection (1) of  
29 this section for any taxable year shall not exceed fifty percent of the  
30 W-2 wages of the taxpayer for the taxable year.

31 (b) For purposes of this subsection:

1       (i) W-2 wages means, with respect to any person for any taxable year  
2 of such person, the sum of the amounts described in section 6051(a)(3)  
3 and (8) of the Internal Revenue Code of 1986, as amended, paid by such  
4 person with respect to employment of employees by such person during the  
5 calendar year ending during such taxable year;

6       (ii) W-2 wages shall not include any amount which is not properly  
7 allocable to domestic production gross receipts for purposes of  
8 subdivision (3)(a) of this section;

9       (iii) W-2 wages shall also not include any amount which is not  
10 properly included in a return filed with the Social Security  
11 Administration on or before the sixtieth day after the due date,  
12 including extensions, for such return; and

13       (iv) In the case of a qualified film, W-2 wages shall include  
14 compensation for services performed in the United States by actors,  
15 production personnel, directors, and producers.

16       (c) The Tax Commissioner shall provide for the application of this  
17 subsection in cases of a short taxable year or where the taxpayer  
18 acquires, or disposes of, the major portion of a trade or business or the  
19 major portion of a separate unit of a trade or business during the  
20 taxable year.

21       (3)(a) For purposes of this section, qualified production activities  
22 income for any taxable year means an amount equal to the excess, if any,  
23 of:

24       (i) The taxpayer's domestic production gross receipts for such  
25 taxable year, over;

26       (ii) The sum of:

27       (A) The cost of goods sold that are allocable to such receipts; and

28       (B) Other expenses, losses, or deductions, other than the deduction  
29 allowed under this section, which are properly allocable to such  
30 receipts.

31       (b) The Tax Commissioner shall prescribe rules for the proper

1 allocation of items described in subdivision (3)(a) of this section for  
2 purposes of determining qualified production activities income. Such  
3 rules shall provide for the proper allocation of items whether or not  
4 such items are directly allocable to domestic production gross receipts.

5 (c)(i) For purposes of determining costs under subdivision (3)(a)  
6 (ii)(A) of this section, any item or service brought into the United  
7 States shall be treated as acquired by purchase, and its cost shall be  
8 treated as not less than its value immediately after it entered the  
9 United States. A similar rule shall apply in determining the adjusted  
10 basis of leased or rented property where the lease or rental gives rise  
11 to domestic production gross receipts.

12 (ii) In the case of any property described in subdivision (3)(c)(i)  
13 of this section that had been exported by the taxpayer for further  
14 manufacture, the increase in cost or adjusted basis under such  
15 subdivision shall not exceed the difference between the value of the  
16 property when exported and the value of the property when brought back  
17 into the United States after the further manufacture.

18 (iii)(A) In the case of any taxpayer who is in the trade or business  
19 of refining crude oil and who is not a major integrated oil company as  
20 defined in section 167(h)(5)(B) of the Internal Revenue Code of 1986, as  
21 amended, determined without regard to section 167(h)(5)(B)(iii) of the  
22 code, for the taxable year, in computing oil related qualified production  
23 activities income under subdivision (9)(b) of this section, the amount  
24 allocated to domestic production gross receipts under subdivision (3)(a)  
25 (ii) of this section for costs related to the transportation of oil shall  
26 be twenty-five percent of the amount properly allocable under subdivision  
27 (3)(a)(ii) of this section, determined without regard to this  
28 subdivision.

29 (B) Subdivision (3)(c)(iii)(A) of this section shall not apply to  
30 any taxable year beginning after December 31, 2021.

31 (d)(i) For purposes of this section, domestic production gross

1 receipts means the gross receipts of the taxpayer which are derived from:

2 (A) Any lease, rental, license, sale, exchange, or other disposition  
3 of:

4 (I) Qualifying production property which was manufactured, produced,  
5 grown, or extracted by the taxpayer in whole or in significant part  
6 within the United States;

7 (II) Any qualified film produced by the taxpayer; or

8 (III) Electricity, natural gas, or potable water produced by the  
9 taxpayer in the United States;

10 (B) In the case of a taxpayer engaged in the active conduct of a  
11 construction trade or business, construction of real property performed  
12 in the United States by the taxpayer in the ordinary course of such trade  
13 or business; or

14 (C) In the case of a taxpayer engaged in the active conduct of an  
15 engineering or architectural services trade or business, engineering or  
16 architectural services performed in the United States by the taxpayer in  
17 the ordinary course of such trade or business with respect to the  
18 construction of real property in the United States.

19 (ii) Domestic production gross receipts shall not include gross  
20 receipts of the taxpayer which are derived from:

21 (A) The sale of food and beverages prepared by the taxpayer at a  
22 retail establishment;

23 (B) The transmission or distribution of electricity, natural gas, or  
24 potable water; or

25 (C) The lease, rental, license, sale, exchange, or other disposition  
26 of land.

27 (iii) Gross receipts derived from the manufacture or production of  
28 any property described in subdivision (3)(d)(i)(A)(I) of this section  
29 shall be treated as meeting the requirements of subdivision (3)(d)(i)(A)  
30 of this section if:

31 (A) Such property is manufactured or produced by the taxpayer

1 pursuant to a contract with the federal government; and

2 (B) The Federal Acquisition Regulation requires that title or risk  
3 of loss with respect to such property be transferred to the federal  
4 government before the manufacture or production of such property is  
5 complete.

6 (iv) For purposes of subdivision (3)(d) of this section, if all of  
7 the interests in the capital and profits of a partnership are owned by  
8 members of a single expanded affiliated group at all times during the  
9 taxable year of such partnership, the partnership and all members of such  
10 group shall be treated as a single taxpayer during such period.

11 (e) For purposes of this section, qualifying production property  
12 means:

13 (i) Tangible personal property;

14 (ii) Any computer software; and

15 (iii) Any property described in section 168(f)(4) of the Internal  
16 Revenue Code of 1986, as amended.

17 (f) For purposes of this section, qualified film means any property  
18 described in section 168(f)(3) of the Internal Revenue Code of 1986, as  
19 amended, if not less than fifty percent of the total compensation  
20 relating to the production of such property is compensation for services  
21 performed in the United States by actors, production personnel,  
22 directors, and producers. Such term does not include property with  
23 respect to which records are required to be maintained under 18 U.S.C.  
24 2257. A qualified film shall include any copyrights, trademarks, or other  
25 intangibles with respect to such film. The methods and means of  
26 distributing a qualified film shall not affect the availability of the  
27 deduction under this section.

28 (g)(i) For purposes of this section, domestic production gross  
29 receipts shall not include any gross receipts of the taxpayer derived  
30 from property leased, licensed, or rented by the taxpayer for use by any  
31 related person.

1       (ii) For purposes of subdivision (3)(g)(i) of this section, a person  
2 shall be treated as related to another person if such persons are treated  
3 as a single employer under section 52(a) or (b) of the Internal Revenue  
4 Code of 1986, as amended, or section 414(m) or (o) of the code, except  
5 that determinations under section 52(a) and (b) of the code shall be made  
6 without regard to section 1563(b) of the code.

7       (4)(a) In the case of a partnership or S corporation:

8       (i) This section shall be applied at the partner or shareholder  
9 level;

10       (ii) Each partner or shareholder shall take into account such  
11 person's allocable share of each item described in subdivision (3)(a)(i)  
12 or (ii) of this section, determined without regard to whether the items  
13 described in subdivision (3)(a)(i) of this section exceed the items  
14 described in subdivision (3)(a)(ii) of this section;

15       (iii) Each partner or shareholder shall be treated for purposes of  
16 subsection (2) of this section as having W-2 wages for the taxable year  
17 in an amount equal to such person's allocable share of the W-2 wages of  
18 the partnership or S corporation for the taxable year; and

19       (iv) In the case of each partner of a partnership, or shareholder of  
20 an S corporation, who owns directly or indirectly at least twenty percent  
21 of the capital interests in such partnership or of the stock of such S  
22 corporation:

23       (A) Such partner or shareholder shall be treated as having engaged  
24 directly in any film produced by such partnership or S corporation; and

25       (B) Such partnership or S corporation shall be treated as having  
26 engaged directly in any film produced by such partner or shareholder.

27       (b) In the case of a trust or estate:

28       (i) The items referred to in subdivision (4)(a)(ii) of this section,  
29 as determined therein, and the W-2 wages of the trust or estate for the  
30 taxable year, shall be apportioned between the beneficiaries and the  
31 fiduciary, and among the beneficiaries, under regulations adopted and

1 promulgated by the Tax Commissioner; and

2 (ii) For purposes of subsection (5) of this section, adjusted gross  
3 income of the trust or estate shall be determined as provided in section  
4 67(e) in the Internal Revenue Code of 1986, as amended, with the  
5 adjustments described in such subsection.

6 (c) The Tax Commission may adopt and promulgate rules and  
7 regulations requiring or restricting the allocation of items and wages  
8 under this subsection and may prescribe such reporting requirements as  
9 the Tax Commissioner determines appropriate.

10 (5) In the case of an individual, subdivisions (1)(b) and (9)(a)  
11 (iii) of this section shall be applied by substituting adjusted gross  
12 income for taxable income. For purposes of the preceding sentence,  
13 adjusted gross income shall be determined:

14 (a) After application of sections 86, 135, 137, 219, 221, 222, and  
15 469 of the Internal Revenue Code of 1986, as amended; and

16 (b) Without regard to this section.

17 (6)(a) Any person who receives a qualified payment from a specified  
18 agricultural or horticultural cooperative shall be allowed for the  
19 taxable year in which such payment is received a deduction under  
20 subsection (1) of this section equal to the portion of the deduction  
21 allowed under subsection (1) of this section to such cooperative which  
22 is:

23 (i) Allowed with respect to the portion of the qualified production  
24 activities income to which such payment is attributable; and

25 (ii) Identified by such cooperative in a written notice mailed to  
26 such person during the payment period described in section 1382(d) of the  
27 Internal Revenue Code of 1986, as amended.

28 (b) The taxable income of a specified agricultural or horticultural  
29 cooperative shall not be reduced under section 1382 of the Internal  
30 Revenue Code of 1986, as amended, by reason of that portion of any  
31 qualified payment as does not exceed the deduction allowable under

1 subdivision (6)(a) of this section with respect to such payment.

2 (c) For purposes of this section, the taxable income of a specified  
3 agricultural or horticultural cooperative shall be computed without  
4 regard to any deduction allowable under section 1382(b) or (c) of the  
5 Internal Revenue Code of 1986, as amended, relating to patronage  
6 dividends, per-unit retain allocations, and nonpatronage distributions.

7 (d) For purposes of this section, a specified agricultural or  
8 horticultural cooperative described in subdivision (6)(f)(ii) of this  
9 section shall be treated as having manufactured, produced, grown, or  
10 extracted in whole or significant part any qualifying production property  
11 marketed by the organization which its patrons have so manufactured,  
12 produced, grown, or extracted.

13 (e) For purposes of this subsection, the term qualified payment  
14 means, with respect to any person, any amount which:

15 (i) Is described in section 1385(a)(1) or (3) of the Internal  
16 Revenue Code of 1986, as amended;

17 (ii) Is received by such person from a specified agricultural or  
18 horticultural cooperative; and

19 (iii) Is attributable to qualified production activities income with  
20 respect to which a deduction is allowed to such cooperative under  
21 subsection (1) of this section.

22 (f) For purposes of this subsection, the term specified agricultural  
23 or horticultural cooperative means an organization to which part I of  
24 subchapter T of the Internal Revenue Code of 1986, as amended, applies  
25 which is engaged:

26 (i) In the manufacturing, production, growth, or extraction in whole  
27 or significant part of any agricultural or horticultural product; or

28 (ii) In the marketing of agricultural or horticultural products.

29 (7)(a) All members of an expanded affiliated group shall be treated  
30 as a single corporation for purposes of this section.

31 (b) For purposes of this section, the term expanded affiliated group

1 means an affiliated group as defined in section 1504(a) of the Internal  
2 Revenue Code of 1986, as amended, determined:

3 (i) By substituting "more than 50 percent" for "at least 80 percent"  
4 each place it appears; and

5 (ii) Without regard to section 1504(b)(2) and (4) of the Internal  
6 Revenue Code of 1986, as amended.

7 (c) The deduction under subsection (1) of this section shall be  
8 allocated among the members of the expanded affiliated group in  
9 proportion to each member's respective amount, if any, of qualified  
10 production activities income.

11 (8) This section shall be applied by only taking into account items  
12 which are attributable to the actual conduct of a trade or business.

13 (9)(a) If a taxpayer has oil related qualified production activities  
14 income for any taxable year, the amount otherwise allowable as a  
15 deduction under subsection (1) of this section shall be reduced by three  
16 percent of the least of:

17 (i) The oil related qualified production activities income of the  
18 taxpayer for the taxable year;

19 (ii) The qualified production activities income of the taxpayer for  
20 the taxable year; or

21 (iii) Taxable income, determined without regard to this section.

22 (b) For purposes of this subsection, the term oil related qualified  
23 production activities income means for any taxable year the qualified  
24 production activities income which is attributable to the production,  
25 refining, processing, transportation, or distribution of oil, gas, or any  
26 primary product thereof during such taxable year.

27 (c) For purposes of this subsection, the term primary product has  
28 the same meaning as when used in section 927(a)(2)(C) of the Internal  
29 Revenue Code of 1986, as amended, as in effect before its repeal.

30 (10) The Tax Commissioner may adopt and promulgate such rules and  
31 regulations as are necessary to carry out the purposes of this section,

1 including rules and regulations which prevent more than one taxpayer from  
2 being allowed a deduction under this section with respect to any activity  
3 described in subdivision (3)(d)(i)(A) of this section.

4       Sec. 4.   Original sections 77-2701 and 77-2716, Reissue Revised  
5 Statutes of Nebraska, are repealed.