

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 982**

Introduced by Hilkemann, 4.

Read first time January 12, 2022

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2716, Revised Statutes Supplement, 2021; to adopt the Education
- 3 Savings Account Act; to provide income tax adjustments; to provide
- 4 an operative date; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 6 of this act shall be known and may be  
2 cited as the Education Savings Account Act.

3           Sec. 2. For purposes of the Education Savings Account Act:

4           (1) Account means an education savings account established under  
5 section 3 of this act;

6           (2) Department means the Department of Revenue;

7           (3) Designated beneficiary means an individual who is:

8           (a) A resident of this state;

9           (b) A student at an eligible school; and

10          (c) Named as the beneficiary of an account;

11          (4) Eligible school means a public, private, denominational, or  
12 parochial school in this state which:

13          (a) Provides education for students in any of grades kindergarten  
14 through grade twelve; and

15          (b) Meets the requirements for legal operation prescribed in Chapter  
16 79 or elects pursuant to section 79-1601 not to meet accreditation or  
17 approval requirements;

18          (5) Financial institution means a bank, savings bank, building and  
19 loan association, savings and loan association, or credit union, whether  
20 chartered by the United States, the Department of Banking and Finance, or  
21 a foreign state agency; and

22          (6) Qualified education expenses means expenses to pay for any of  
23 the following on behalf of a designated beneficiary:

24          (a) Tuition, fees, and room and board required to attend an eligible  
25 school;

26          (b) Books, supplies, equipment, and uniforms required by an eligible  
27 school;

28          (c) Extracurricular activities offered at an eligible school;

29          (d) Computers, computer equipment, software, and Internet access if  
30 used primarily for school purposes;

31          (e) Distance education classes; and

1           (f) College entrance exams.

2           Sec. 3. (1) The parent or legal guardian of a student attending an  
3 eligible school may establish an account with a financial institution and  
4 shall designate the account as an education savings account, which shall  
5 be subject to the Education Savings Account Act. The parent or legal  
6 guardian shall be considered the owner of the account.

7           (2) Upon establishing an account, the account owner shall notify the  
8 department that an account has been established and shall include the  
9 following information:

10           (a) The financial institution where the account is established;

11           (b) The type of account established; and

12           (c) The designated beneficiary of the account.

13           (3) The account shall be used to pay the qualified education  
14 expenses of the designated beneficiary of the account in accordance with  
15 the act.

16           (4) An account owner may change the designated beneficiary of an  
17 account at any time by notifying the department of the new designated  
18 beneficiary.

19           Sec. 4. (1) Any natural person, firm, partnership, limited  
20 liability company, association, or corporation may contribute up to two  
21 thousand dollars per calendar year to an account. Contributions shall  
22 only be in the form of cash. Such contributions may be invested at the  
23 direction of the account owner in stocks, bonds, mutual funds, or  
24 certificates of deposit as offered by the financial institution where the  
25 account is established.

26           (2) The tax implications of contributions to an account and the  
27 earnings on such contributions shall be as provided in subsection (18) of  
28 section 77-2716.

29           Sec. 5. (1) Distributions from an account shall only be used to pay  
30 the qualified education expenses of the designated beneficiary of the  
31 account.

1           (2) If a distribution is made for a nonqualified expense, the tax  
2 implications shall be as provided in subsection (18) of section 77-2716  
3 and, in addition, the account owner shall be subject to a penalty of ten  
4 percent of the amount used for the nonqualified expense. All penalties  
5 collected by the department pursuant to this section shall be remitted to  
6 the State Treasurer for distribution in accordance with Article VII,  
7 section 5, of the Constitution of Nebraska.

8           (3) The balance in an account must be fully distributed before the  
9 designated beneficiary graduates from high school.

10           Sec. 6.     The department may adopt and promulgate rules and  
11 regulations to carry out the Education Savings Account Act.

12           Sec. 7. Section 77-2716, Revised Statutes Supplement, 2021, is  
13 amended to read:

14           77-2716 (1) The following adjustments to federal adjusted gross  
15 income or, for corporations and fiduciaries, federal taxable income shall  
16 be made for interest or dividends received:

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

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

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

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

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

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

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

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

1 be adjusted by the modifications contained in this section and any  
2 carryovers or carrybacks shall be limited to the portion of the loss  
3 derived from or connected with Nebraska sources.

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

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

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

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

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

1 return;

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

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

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

12 (8)(a) Federal adjusted gross income or, for corporations and  
13 fiduciaries, federal taxable income shall be reduced, to the extent  
14 included, by income from interest, earnings, and state contributions  
15 received from the Nebraska educational savings plan trust created in  
16 sections 85-1801 to 85-1817 and any account established under the  
17 achieving a better life experience program as provided in sections  
18 77-1401 to 77-1409.

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

1 by a custodian of a custodial account including rollovers from another  
2 custodial account, the reduction shall only apply to funds added to the  
3 custodial account after January 1, 2014.

4 (c) For taxable years beginning or deemed to begin on or after  
5 January 1, 2021, under the Internal Revenue Code of 1986, as amended,  
6 federal adjusted gross income shall be reduced, to the extent included in  
7 the adjusted gross income of an individual, by the amount of any  
8 contribution made by the individual's employer into an account under the  
9 Nebraska educational savings plan trust owned by the individual, not to  
10 exceed five thousand dollars per married filing separate return or ten  
11 thousand dollars for any other return.

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

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

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

22 (9)(a) For income tax returns filed after September 10, 2001, for  
23 taxable years beginning or deemed to begin before January 1, 2006, under  
24 the Internal Revenue Code of 1986, as amended, federal adjusted gross  
25 income or, for corporations and fiduciaries, federal taxable income shall  
26 be increased by eighty-five percent of any amount of any federal bonus  
27 depreciation received under the federal Job Creation and Worker  
28 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,  
29 under section 168(k) or section 1400L of the Internal Revenue Code of  
30 1986, as amended, for assets placed in service after September 10, 2001,  
31 and before December 31, 2005.

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

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

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

27 (10) For taxable years beginning or deemed to begin on or after  
28 January 1, 2003, and before January 1, 2006, under the Internal Revenue  
29 Code of 1986, as amended, federal adjusted gross income or, for  
30 corporations and fiduciaries, federal taxable income shall be increased  
31 by the amount of any capital investment that is expensed under section

1 179 of the Internal Revenue Code of 1986, as amended, that is in excess  
2 of twenty-five thousand dollars that is allowed under the federal Jobs  
3 and Growth Tax Act of 2003. Twenty percent of the total amount of  
4 expensing added back by this subsection for tax years beginning or deemed  
5 to begin on or after January 1, 2003, may be subtracted in the first  
6 taxable year beginning or deemed to begin on or after January 1, 2006,  
7 under the Internal Revenue Code of 1986, as amended, and twenty percent  
8 in each of the next four following tax years.

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

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

26 (12) There shall be added to federal adjusted gross income for  
27 individuals, estates, and trusts any amount taken as a credit for  
28 franchise tax paid by a financial institution under sections 77-3801 to  
29 77-3807 as allowed by subsection (5) of section 77-2715.07.

30 (13)(a) For taxable years beginning or deemed to begin on or after  
31 January 1, 2015, under the Internal Revenue Code of 1986, as amended,

1 federal adjusted gross income shall be reduced by the amount received as  
2 benefits under the federal Social Security Act which are included in the  
3 federal adjusted gross income if:

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

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

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

14 (c) For taxable years beginning or deemed to begin on or after  
15 January 1, 2021, under the Internal Revenue Code of 1986, as amended, a  
16 taxpayer may claim the reduction to federal adjusted gross income allowed  
17 under this subsection or the reduction to federal adjusted gross income  
18 allowed under subsection (14) of this section, whichever provides the  
19 greater reduction.

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

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

28 (ii) Twenty percent for taxable years beginning or deemed to begin  
29 on or after January 1, 2022, and before January 1, 2023, under the  
30 Internal Revenue Code of 1986, as amended;

31 (iii) Thirty percent for taxable years beginning or deemed to begin

1 on or after January 1, 2023, and before January 1, 2024, under the  
2 Internal Revenue Code of 1986, as amended;

3 (iv) Forty percent for taxable years beginning or deemed to begin on  
4 or after January 1, 2024, and before January 1, 2025, under the Internal  
5 Revenue Code of 1986, as amended; and

6 (v) Fifty percent for taxable years beginning or deemed to begin on  
7 or after January 1, 2025, under the Internal Revenue Code of 1986, as  
8 amended.

9 (b) It is the intent of the Legislature to enact legislation within  
10 five years after August 28, 2021, to increase the percentage of social  
11 security benefits that are excluded under this subsection to (i) sixty  
12 percent for taxable years beginning or deemed to begin on or after  
13 January 1, 2026, and before January 1, 2027, under the Internal Revenue  
14 Code of 1986, as amended, (ii) seventy percent for taxable years  
15 beginning or deemed to begin on or after January 1, 2027, and before  
16 January 1, 2028, under the Internal Revenue Code of 1986, as amended,  
17 (iii) eighty percent for taxable years beginning or deemed to begin on or  
18 after January 1, 2028, and before January 1, 2029, under the Internal  
19 Revenue Code of 1986, as amended, (iv) ninety percent for taxable years  
20 beginning or deemed to begin on or after January 1, 2029, and before  
21 January 1, 2030, under the Internal Revenue Code of 1986, as amended, and  
22 (v) one hundred percent for taxable years beginning or deemed to begin on  
23 or after January 1, 2030, under the Internal Revenue Code of 1986, as  
24 amended.

25 (c) For purposes of this subsection, social security benefits means  
26 benefits received under the federal Social Security Act.

27 (d) For taxable years beginning or deemed to begin on or after  
28 January 1, 2021, under the Internal Revenue Code of 1986, as amended, a  
29 taxpayer may claim the reduction to federal adjusted gross income allowed  
30 under this subsection or the reduction to federal adjusted gross income  
31 allowed under subsection (13) of this section, whichever provides the

1 greater reduction.

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

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

19 (c) For purposes of this subsection, military retirement benefit  
20 means retirement benefits that are periodic payments attributable to  
21 service in the uniformed services of the United States for personal  
22 services performed by an individual prior to his or her retirement. The  
23 term includes retirement benefits described in this subdivision that are  
24 reported to the individual on either:

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

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

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

1 a Segal AmeriCorps Education Award, to the extent such amount is included  
2 in federal adjusted gross income.

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

9 (18)(a) Federal adjusted gross income or, for corporations and  
10 fiduciaries, federal taxable income shall be reduced, to the extent  
11 included, by the income from interest earned on any account established  
12 under the Education Savings Account Act.

13 (b) Federal adjusted gross income or, for corporations and  
14 fiduciaries, federal taxable income shall be reduced by contributions to  
15 an account established under the Education Savings Account Act, to the  
16 extent not deducted for federal income tax purposes.

17 (c) Federal adjusted gross income or, for corporations and  
18 fiduciaries, federal taxable income shall be increased by the amount of  
19 any withdrawals by the owner of an account established under the  
20 Education Savings Account Act for nonqualified expenses to the extent  
21 previously deducted under subdivision (18)(b) of this section.

22 Sec. 8. This act becomes operative on January 1, 2023.

23 Sec. 9. Original section 77-2716, Revised Statutes Supplement,  
24 2021, is repealed.