

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 851

Introduced by Dungan, 26.

Read first time January 08, 2026

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2716 and 77-2734.01, Revised Statutes Supplement, 2025; to change
- 3 income tax provisions relating to certain income or loss received
- 4 from S-corporations and limited liability companies; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 77-2716, Revised Statutes Supplement, 2025, is
2 amended to read:

3 77-2716 (1) The following adjustments to federal adjusted gross
4 income or, for corporations and fiduciaries, federal taxable income shall
5 be made for interest or dividends received:

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

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

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

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

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

1 the recipient by the regulated investment company; and

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

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

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

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

30 (4) For taxable years beginning or deemed to begin before January 1,
31 2026, federal ~~Federal~~ adjusted gross income, or, for a fiduciary, federal

1 taxable income shall be modified to exclude the portion of the income or
2 loss received from a small business corporation with an election in
3 effect under subchapter S of the Internal Revenue Code or from a limited
4 liability company organized pursuant to the Nebraska Uniform Limited
5 Liability Company Act that is not derived from or connected with Nebraska
6 sources as determined in section 77-2734.01.

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

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

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

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

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

30 (7) Federal adjusted gross income shall be modified to exclude any
31 amount repaid by the taxpayer for which a reduction in federal tax is

1 allowed under section 1341(a)(5) of the Internal Revenue Code.

2 (8)(a) Federal adjusted gross income or, for corporations and
3 fiduciaries, federal taxable income shall be reduced, to the extent
4 included, by income from interest, earnings, and state contributions
5 received from the Nebraska educational savings plan trust as provided in
6 sections 77-1415 to 77-1430 and any account established under the
7 achieving a better life experience program as provided in sections
8 77-1401 to 77-1409.

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

26 (c) For taxable years beginning or deemed to begin on or after
27 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
28 federal adjusted gross income shall be reduced, to the extent included in
29 the adjusted gross income of an individual, by the amount of any
30 contribution made by the individual's employer into an account under the
31 Nebraska educational savings plan trust owned by the individual, not to

1 exceed five thousand dollars per married filing separate return or ten
2 thousand dollars for any other return.

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

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

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

13 (9)(a) For income tax returns filed after September 10, 2001, for
14 taxable years beginning or deemed to begin before January 1, 2006, under
15 the Internal Revenue Code of 1986, as amended, federal adjusted gross
16 income or, for corporations and fiduciaries, federal taxable income shall
17 be increased by eighty-five percent of any amount of any federal bonus
18 depreciation received under the federal Job Creation and Worker
19 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
20 under section 168(k) or section 1400L of the Internal Revenue Code of
21 1986, as amended, for assets placed in service after September 10, 2001,
22 and before December 31, 2005.

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

30 (c) For a corporation with a unitary business having activity both
31 inside and outside the state, the increase shall be apportioned to

1 Nebraska in the same manner as income is apportioned to the state by
2 section 77-2734.05.

3 (d) The amount of bonus depreciation added to federal adjusted gross
4 income or, for corporations and fiduciaries, federal taxable income by
5 this subsection shall be subtracted in a later taxable year. Twenty
6 percent of the total amount of bonus depreciation added back by this
7 subsection for tax years beginning or deemed to begin before January 1,
8 2003, under the Internal Revenue Code of 1986, as amended, may be
9 subtracted in the first taxable year beginning or deemed to begin on or
10 after January 1, 2005, under the Internal Revenue Code of 1986, as
11 amended, and twenty percent in each of the next four following taxable
12 years. Twenty percent of the total amount of bonus depreciation added
13 back by this subsection for tax years beginning or deemed to begin on or
14 after January 1, 2003, may be subtracted in the first taxable year
15 beginning or deemed to begin on or after January 1, 2006, under the
16 Internal Revenue Code of 1986, as amended, and twenty percent in each of
17 the next four following taxable years.

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

31 (11)(a) For taxable years beginning or deemed to begin before

1 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
2 federal adjusted gross income shall be reduced by contributions, up to
3 two thousand dollars per married filing jointly return or one thousand
4 dollars for any other return, and any investment earnings made as a
5 participant in the Nebraska long-term care savings plan under the Long-
6 Term Care Savings Plan Act, to the extent not deducted for federal income
7 tax purposes.

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

17 (12) There shall be added to federal adjusted gross income for
18 individuals, estates, and trusts any amount taken as a credit for
19 franchise tax paid by a financial institution under sections 77-3801 to
20 77-3807 as allowed by subsection (5) of section 77-2715.07.

21 (13)(a) For taxable years beginning or deemed to begin on or after
22 January 1, 2015, and before January 1, 2024, under the Internal Revenue
23 Code of 1986, as amended, federal adjusted gross income shall be reduced
24 by the amount received as benefits under the federal Social Security Act
25 which are included in the federal adjusted gross income if:

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

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

30 (b) For taxable years beginning or deemed to begin on or after
31 January 1, 2020, and before January 1, 2024, under the Internal Revenue

1 Code of 1986, as amended, the Tax Commissioner shall adjust the dollar
2 amounts provided in subdivisions (13)(a)(i) and (ii) of this section by
3 the same percentage used to adjust individual income tax brackets under
4 subsection (3) of section 77-2715.03.

5 (c) For taxable years beginning or deemed to begin on or after
6 January 1, 2021, and before January 1, 2024, under the Internal Revenue
7 Code of 1986, as amended, a taxpayer may claim the reduction to federal
8 adjusted gross income allowed under this subsection or the reduction to
9 federal adjusted gross income allowed under subsection (14) of this
10 section, whichever provides the greater reduction.

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

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

19 (ii) Forty percent for taxable years beginning or deemed to begin on
20 or after January 1, 2022, and before January 1, 2023, under the Internal
21 Revenue Code of 1986, as amended;

22 (iii) Sixty percent for taxable years beginning or deemed to begin
23 on or after January 1, 2023, and before January 1, 2024, under the
24 Internal Revenue Code of 1986, as amended; and

25 (iv) One hundred percent for taxable years beginning or deemed to
26 begin on or after January 1, 2024, under the Internal Revenue Code of
27 1986, as amended.

28 (b) For purposes of this subsection, social security benefits means
29 benefits received under the federal Social Security Act.

30 (c) For taxable years beginning or deemed to begin on or after
31 January 1, 2021, and before January 1, 2024, under the Internal Revenue

1 Code of 1986, as amended, a taxpayer may claim the reduction to federal
2 adjusted gross income allowed under this subsection or the reduction to
3 federal adjusted gross income allowed under subsection (13) of this
4 section, whichever provides the greater reduction.

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

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

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

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

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

1 (16) For taxable years beginning or deemed to begin on or after
2 January 1, 2021, under the Internal Revenue Code of 1986, as amended,
3 federal adjusted gross income shall be reduced by the amount received as
4 a Segal AmeriCorps Education Award, to the extent such amount is included
5 in federal adjusted gross income.

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

12 (18) There shall be subtracted from the federal adjusted gross
13 income of individuals any amount received by the individual as student
14 loan repayment assistance under the Teach in Nebraska Today Act, to the
15 extent such amount is included in federal adjusted gross income.

16 (19) For taxable years beginning or deemed to begin on or after
17 January 1, 2023, under the Internal Revenue Code of 1986, as amended, a
18 retired individual who was employed full time as a firefighter or
19 certified law enforcement officer for at least twenty years and who is at
20 least sixty years of age as of the end of the taxable year may reduce his
21 or her federal adjusted gross income by the amount of health insurance
22 premiums paid by such individual during the taxable year, to the extent
23 such premiums were not already deducted in determining the individual's
24 federal adjusted gross income.

25 (20) For taxable years beginning or deemed to begin on or after
26 January 1, 2024, under the Internal Revenue Code of 1986, as amended, an
27 individual may reduce his or her federal adjusted gross income by the
28 amounts received as annuities under the Civil Service Retirement System
29 which were earned for being employed by the federal government, to the
30 extent such amounts are included in federal adjusted gross income.

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

1 January 1, 2025, under the Internal Revenue Code of 1986, as amended, an
2 individual who is a member of the Nebraska National Guard may exclude one
3 hundred percent of the income received from any of the following sources
4 to the extent such income is included in the individual's federal
5 adjusted gross income:

6 (a) Serving in a 32 U.S.C. duty status such as members attending
7 drills, annual training, and military schools and members who are serving
8 in a 32 U.S.C. active guard reserve or active duty for operational
9 support duty status;

10 (b) Employment as a 32 U.S.C. federal dual-status technician with
11 the Nebraska National Guard; or

12 (c) Serving in a state active duty status.

13 (22)(a) For taxable years beginning or deemed to begin on or after
14 January 1, 2024, under the Internal Revenue Code of 1986, as amended, an
15 individual may reduce his or her federal adjusted gross income by the
16 amount of interest and principal balance of medical debt discharged under
17 the Medical Debt Relief Act, to the extent included in such individual's
18 federal adjusted gross income.

19 (b) For taxable years beginning or deemed to begin on or after
20 January 1, 2024, under the Internal Revenue Code of 1986, as amended,
21 federal adjusted gross income or, for corporations and fiduciaries,
22 federal taxable income shall be reduced by the amount of contributions
23 made to the Medical Debt Relief Fund, to the extent not deducted for
24 federal income tax purposes.

25 (23) For taxable years beginning or deemed to begin on or after
26 January 1, 2025, under the Internal Revenue Code of 1986, as amended, an
27 individual who is a qualifying employee as defined in section 77-3108 may
28 reduce his or her federal adjusted gross income by the amount allowed
29 under section 77-3111.

30 (24) For taxable years beginning or deemed to begin on or after
31 January 1, 2026, under the Internal Revenue Code of 1986, as amended,

1 federal adjusted gross income or, for corporations and fiduciaries,
2 federal taxable income shall be reduced by the amounts allowed to be
3 deducted pursuant to section 77-27,242.

4 (25) There shall be added to federal adjusted gross income or, for
5 corporations and fiduciaries, federal taxable income for all taxable
6 years beginning on or after January 1, 2025, the amount of any net
7 capital loss that is derived from the sale or exchange of gold or silver
8 bullion to the extent such loss is included in federal adjusted gross
9 income except that such loss shall not be added if the loss is derived
10 from the sale of bullion as a taxable distribution from any retirement
11 plan account that holds gold or silver bullion. For the purposes of this
12 subsection, bullion has the same meaning as in section 77-2704.66.

13 (26) There shall be subtracted from federal adjusted gross income
14 or, for corporations and fiduciaries, federal taxable income for all
15 taxable years beginning on or after January 1, 2025, the amount of any
16 net capital gain that is derived from the sale or exchange of gold or
17 silver bullion to the extent such gain is included in federal adjusted
18 gross income except that such gain shall not be subtracted if the gain is
19 derived from the sale of bullion as a taxable distribution from any
20 retirement plan account that holds gold or silver bullion. For the
21 purposes of this subsection, bullion has the same meaning as in section
22 77-2704.66.

23 **Sec. 2.** Section 77-2734.01, Revised Statutes Supplement, 2025, is
24 amended to read:

25 77-2734.01 (1)(a) For taxable years beginning or deemed to begin
26 before January 1, 2026, residents ~~(1) Residents~~ of Nebraska who are
27 shareholders of a small business corporation having an election in effect
28 under subchapter S of the Internal Revenue Code or who are members of a
29 limited liability company organized pursuant to the Nebraska Uniform
30 Limited Liability Company Act shall include in their Nebraska taxable
31 income, to the extent includable in federal gross income, their

1 proportionate share of such corporation's or limited liability company's
2 federal income adjusted pursuant to this section. Income or loss from
3 such corporation or limited liability company conducting a business,
4 trade, profession, or occupation shall be included in the Nebraska
5 taxable income of a shareholder or member who is a resident of this state
6 to the extent of such shareholder's or member's proportionate share of
7 the net income or loss from the conduct of such business, trade,
8 profession, or occupation within this state, determined under subsection
9 (2) of this section. A resident of Nebraska shall include in Nebraska
10 taxable income fair compensation for services rendered to such
11 corporation or limited liability company. Compensation actually paid
12 shall be presumed to be fair unless it is apparent to the Tax
13 Commissioner that such compensation is materially different from fair
14 value for the services rendered or has been manipulated for tax avoidance
15 purposes.

16 (b) For taxable years beginning or deemed to begin on or after
17 January 1, 2026, residents of Nebraska who are shareholders of a small
18 business corporation having an election in effect under subchapter S of
19 the Internal Revenue Code or who are members of a limited liability
20 company organized pursuant to the Nebraska Uniform Limited Liability
21 Company Act shall include in their Nebraska taxable income, to the extent
22 includable in federal gross income, their proportionate share of such
23 corporation's or limited liability company's federal income. A resident
24 of Nebraska shall include in Nebraska taxable income fair compensation
25 for services rendered to such corporation or limited liability company.
26 Compensation actually paid shall be presumed to be fair unless it is
27 apparent to the Tax Commissioner that such compensation is materially
28 different from fair value for the services rendered or has been
29 manipulated for tax avoidance purposes.

30 (2) The income of any small business corporation having an election
31 in effect under subchapter S of the Internal Revenue Code or limited

1 liability company organized pursuant to the Nebraska Uniform Limited
2 Liability Company Act that is derived from or connected with Nebraska
3 sources shall be determined in the following manner:

4 (a) If the small business corporation is a member of a unitary
5 group, the small business corporation shall be deemed to be doing
6 business within this state if any part of its income is derived from
7 transactions with other members of the unitary group doing business
8 within this state, and such corporation shall apportion its income by
9 using the apportionment factor determined for the entire unitary group,
10 including the small business corporation, under sections 77-2734.05 to
11 77-2734.15;

12 (b) If the small business corporation or limited liability company
13 is not a member of a unitary group and is subject to tax in another
14 state, it shall apportion its income under sections 77-2734.05 to
15 77-2734.15; and

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

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

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

1 (5) For taxable years beginning or deemed to begin before January 1,
2 2013, in the absence of the nonresident shareholder's or member's
3 executed agreement being attached to the Nebraska return, the corporation
4 or limited liability company shall remit with the return an amount equal
5 to the highest individual income tax rate determined under section
6 77-2715.02 multiplied by the nonresident shareholder's or member's share
7 of the corporation's or limited liability company's income which was
8 derived from or attributable to this state. For taxable years beginning
9 or deemed to begin on or after January 1, 2013, in the absence of the
10 nonresident shareholder's or member's executed agreement being attached
11 to the Nebraska return, the corporation or limited liability company
12 shall remit with the return an amount equal to the highest individual
13 income tax rate determined under section 77-2715.03 multiplied by the
14 nonresident shareholder's or member's share of the corporation's or
15 limited liability company's income which was derived from or attributable
16 to this state. The amount remitted shall be allowed as a credit against
17 the Nebraska income tax liability of the shareholder or member.

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

30 (7) A small business corporation or limited liability company return
31 shall be filed if the small business corporation or limited liability

1 company has income derived from Nebraska sources.

2 (8) Notwithstanding any provision of this section to the contrary:

3 (a) For tax years beginning or deemed to begin on or after January
4 1, 2018, a small business corporation may annually make an irrevocable
5 election to pay the taxes, interest, or penalties levied by the Nebraska
6 Revenue Act of 1967 at the entity level for the taxable period covered by
7 such return. For tax years beginning on or after January 1, 2023, such
8 election may be made on the applicable income tax return and shall be
9 made on or before the due date for filing the applicable income tax
10 return, including any extensions that have been granted;

11 (b) An electing small business corporation with respect to a taxable
12 period shall pay an income tax equivalent to the highest individual
13 income tax rate provided in section 77-2715.03 multiplied by the electing
14 small business corporation's net income as apportioned or allocated to
15 this state in accordance with the Nebraska Revenue Act of 1967, for such
16 taxable period;

17 (c) An electing small business corporation shall be treated as a
18 corporation with respect to the requirements of section 77-2769 for
19 payments of estimated tax. The requirement for payment of estimated tax
20 under section 77-2769 shall not apply for tax years beginning prior to
21 January 1, 2024. Payments of estimated tax made by an eligible small
22 business corporation that does not make an election under this subsection
23 shall be treated as income tax withholding on behalf of the shareholders;

24 (d) Except as provided in subdivision (e) of this subsection, the
25 shareholders of an electing small business corporation shall file a
26 Nebraska return to report their pro rata or distributive share of the
27 income of the electing small business corporation in accordance with the
28 Nebraska Revenue Act of 1967, as applicable. In determining the sum of
29 its pro rata or distributive share and computing the tax under this
30 subsection, an electing small business corporation shall add back any
31 amount of Nebraska income tax imposed under the Nebraska Revenue Act of

1 1967 and deducted by the electing small business corporation for federal
2 income tax purposes under section 164 of the Internal Revenue Code;

3 (e) A nonresident individual who is a shareholder of an electing
4 small business corporation shall not be required to file a Nebraska tax
5 return for a taxable year if, for such taxable year, the only source of
6 income derived from or connected with sources within this state for such
7 shareholder, or for the shareholder and the shareholder's spouse if a
8 joint federal income tax return is filed, is from one or more electing
9 small business corporations or electing partnerships as defined in
10 subdivision (7)(a) of section 77-2727 for such taxable year and such
11 nonresident individual shareholder's tax under the Nebraska Revenue Act
12 of 1967 would be fully satisfied by the credit allowed to such
13 shareholder under subdivision (g) of this subsection;

14 (f) If the amount calculated under subdivision (a) of this
15 subsection results in a net operating loss, such net operating loss may
16 not be carried forward to succeeding taxable years;

17 (g) A refundable credit shall be available to the shareholders in an
18 amount equal to their pro rata or distributive share of the Nebraska
19 income tax paid by the electing small business corporation. For tax
20 returns filed for taxable years beginning or deemed to begin on or after
21 January 1, 2022, such credit shall be allowed for the same taxable year
22 for which the election is made, without regard to the year in which the
23 tax is paid to Nebraska or deducted on a federal income tax return; and

24 (h)(i) For tax years beginning or deemed to begin on or after
25 January 1, 2018, but prior to January 1, 2023, the electing small
26 business corporation shall make the election under this subsection on or
27 after January 1, 2023, but before December 31, 2025, in the form and
28 manner prescribed by the Tax Commissioner for all years for which the
29 election under this subsection is made on behalf of the electing small
30 business corporation. The Tax Commissioner shall establish the form and
31 manner, which shall not include any changes to the past returns other

1 than those that are directly related to the election under this
2 subsection.

3 (ii) Notwithstanding any other provision of law, if an electing
4 small business corporation files in the form and manner as specified in
5 subdivision (h)(i) of this subsection, the deadline for filing a claim
6 for credit or refund prescribed in section 77-2793 shall be extended for
7 affected shareholders of the electing small business corporation until
8 the timeframe specified in section 77-2793 or January 31, 2026, whichever
9 is later. The resulting claim of refund for tax years beginning prior to
10 January 1, 2023, shall be submitted in the form and manner as prescribed
11 by the Tax Commissioner. Neither the electing small business corporation
12 nor its shareholders shall incur any penalties for late filing nor owe
13 interest on such amounts. The Tax Commissioner shall not be required to
14 pay interest on any amounts owed to the shareholders resulting from such
15 refund claims.

16 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
17 this subsection, the Tax Commissioner shall have one year from the date
18 an electing small business corporation files in the form and manner as
19 specified in subdivision (h)(i) of this subsection to review and make a
20 written proposed deficiency determination in accordance with section
21 77-2786. Any notice of deficiency determination made as specified in this
22 subdivision may be enforced at any time within six years from the date of
23 the notice of deficiency determination.

24 (9) For purposes of this section:

25 (a) Electing small business corporation means, with respect to a
26 taxable period, an eligible small business corporation having an election
27 in effect under subchapter S of the Internal Revenue Code that has made
28 an election pursuant to subsection (8) of this section with respect to
29 such taxable period; and

30 (b) Eligible small business corporation means an entity subject to
31 taxation under subchapter S of the Internal Revenue Code and the

1 regulations thereunder.

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

6 **Sec. 3.** Original sections 77-2716 and 77-2734.01, Revised Statutes
7 Supplement, 2025, are repealed.