

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 384

Introduced by Wickersham, 49; Coordsen, 32; Schellpeper, 18

Read first time January 13, 1999

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2734.04, Reissue Revised Statutes of Nebraska, and
3 section 77-2716, Revised Statutes Supplement, 1998; to
4 provide an adjustment to income for capital gains; to
5 eliminate a capital gains adjustment; to harmonize
6 provisions; to repeal the original sections; and to
7 outright repeal sections 77-2715.08 and 77-2715.09,
8 Reissue Revised Statutes of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Supplement,
2 1998, is amended to read:

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

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

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

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

25 (d) There shall be added that portion of the total
26 dividends and other income received from a regulated investment
27 company which is attributable to obligations described in
28 subdivision (c) of this subsection and excluded for federal income

1 tax purposes as reported to the recipient by the regulated
2 investment company; and

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

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

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

28 (3) There shall be subtracted from federal adjusted gross

1 income for all taxable years beginning on or after January 1, 1987,
2 the amount of any state income tax refund to the extent such refund
3 was deducted under the Internal Revenue Code, was not allowed in
4 the computation of the tax due under the Nebraska Revenue Act of
5 1967, and is included in federal adjusted gross income.

6 (4) There shall be subtracted from federal adjusted gross
7 income for all taxable years beginning on or after January 1, 1999,
8 one-half of any net long-term capital gains in excess of short-term
9 capital losses claimed on the federal return.

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

17 ~~(5)~~ (6) There shall be subtracted from federal adjusted
18 gross income or, for corporations and fiduciaries, federal taxable
19 income dividends received or deemed to be received from
20 corporations which are not subject to the Internal Revenue Code.

21 ~~(6)~~ (7) There shall be subtracted from federal taxable
22 income a portion of the income earned by a corporation subject to
23 the Internal Revenue Code of 1986 that is actually taxed by a
24 foreign country or one of its political subdivisions at a rate in
25 excess of the maximum federal tax rate for corporations. The
26 taxpayer may make the computation for each foreign country or for
27 groups of foreign countries. The portion of the taxes that may be
28 deducted shall be computed in the following manner:

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

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

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

14 ~~(7)~~ (8) Federal adjusted gross income shall be modified
15 to exclude any amount repaid by the taxpayer for which a reduction
16 in federal tax is allowed under section 1341(a)(5) of the Internal
17 Revenue Code.

18 ~~(8)(a)~~ (9)(a) There shall be subtracted from federal
19 adjusted gross income an amount equal to the difference between the
20 amount qualified for calculation of a deduction as provided in
21 section 162(1) of the Internal Revenue Code and the amount actually
22 allowed pursuant to section 162(1)(1) of the Internal Revenue Code.

23 (b) For an individual who itemized deductions on his or
24 her federal return, the maximum amount subtracted under subdivision
25 ~~(8)(a)~~ (9)(a) of this section shall be seven and one-half percent
26 of federal adjusted gross income.

27 Sec. 2. Section 77-2734.04, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 77-2734.04. As used in sections 77-2734.01 to
2 77-2734.15, unless the context otherwise requires:

3 (1) Commercial domicile shall mean the principal place
4 from which the trade or business of the taxpayer is directed or
5 managed;

6 (2) Compensation shall mean wages, salaries, commissions,
7 and any other form of remuneration paid to employees for personal
8 services;

9 (3) Corporate taxpayer shall mean any corporation that is
10 not a part of a unitary business or the part of a unitary business,
11 whether it is one or more corporations, that is doing business in
12 this state. Corporate taxpayer shall not include any corporation
13 that has a valid election under subchapter S of the Internal
14 Revenue Code or any financial institution as defined in section
15 77-3801;

16 (4) Corporation shall mean all corporations and all other
17 entities that are taxed as corporations under the Internal Revenue
18 Code;

19 (5) Doing business in this state shall mean the exercise
20 of the corporation's franchise in this state or the conduct of
21 operations in this state that exceed the limitations provided in 15
22 U.S.C. 381 on a state imposing an income tax;

23 (6) Federal taxable income shall mean the corporate
24 taxpayer's federal taxable income as reported to the Internal
25 Revenue Service or as subsequently changed or amended. Except as
26 provided in subsection ~~(5)~~ ~~or~~ (6) or (7) of section 77-2716, no
27 adjustment shall be allowed for a change from any election made or
28 the method used in computing federal taxable income. An election

1 to file a federal consolidated return shall not require the
2 inclusion in any unitary group of a corporation that is not a part
3 of the unitary business;

4 (7) Sales shall mean all gross receipts of the taxpayer;

5 (8) Single economic unit shall mean a business in which
6 there is a sharing or exchange of value between the parts of the
7 unit. A sharing or exchange of value occurs when the parts of the
8 business are linked by (a) common management or (b) common
9 operational resources that produce material (i) economies of scale,
10 (ii) transfers of value, or (iii) flow of goods, capital, or
11 services between the parts of the unit.

12 (A) For the purposes of this subdivision, common
13 management shall include, but not be limited to, (I) a centralized
14 executive force or (II) review or approval authority over long-term
15 operations with or without the exercise of control over the
16 day-to-day operations.

17 (B) For the purposes of this subdivision, common
18 operational resources shall include, but not be limited to,
19 centralization of any of the following: Accounting, advertising,
20 engineering, financing, insurance, legal, personnel, pension or
21 benefit plans, purchasing, research and development, selling, or
22 union relations;

23 (9) State shall mean any state of the United States, the
24 District of Columbia, the Commonwealth of Puerto Rico, any
25 territory or possession of the United States, and any foreign
26 country or political subdivision thereof;

27 (10) Subject to the Internal Revenue Code shall mean a
28 corporation that meets the requirements of section 243 of the

1 Internal Revenue Code in order for its distributions to qualify for
2 the dividends-received deduction;

3 (11) Taxable income shall mean federal taxable income as
4 adjusted and, if appropriate, as apportioned;

5 (12) Taxable year shall mean the period the corporate
6 taxpayer used on its federal income tax return;

7 (13) Unitary business shall mean a business that is
8 conducted as a single economic unit by one or more corporations
9 with common ownership and shall include all activities in different
10 lines of business that contribute to the single economic unit.

11 For the purposes of this subdivision, common ownership
12 shall mean one or more corporations owning fifty percent or more of
13 another corporation; and

14 (14) Unitary group shall mean the group of corporations
15 that are conducting a unitary business.

16 Sec. 3. Original section 77-2734.04, Reissue Revised
17 Statutes of Nebraska, and section 77-2716, Revised Statutes
18 Supplement, 1998, are repealed.

19 Sec. 4. The following sections are outright repealed:
20 Sections 77-2715.08 and 77-2715.09, Reissue Revised Statutes of
21 Nebraska.