

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 296

Final Reading

Introduced by Hadley, 37; Avery, 28; Bolz, 29; Brasch, 16; Conrad, 46; Cook, 13; Davis, 43; Hansen, 42; Harms, 48; Harr, 8; Howard, 9; Kintner, 2; Lathrop, 12; Mello, 5; Nelson, 6; Nordquist, 7; Pirsch, 4; Schumacher, 22; Smith, 14.

Read first time January 16, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska educational savings plan; to
2 amend sections 77-2716, 85-1802, and 85-1809, Revised
3 Statutes Cumulative Supplement, 2012; to change
4 provisions relating to income tax reductions for
5 contributions; to redefine a term; to change provisions
6 relating to participation agreements; to provide an
7 operative date; and to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 77-2716 (1) The following adjustments to federal adjusted
4 gross income or, for corporations and fiduciaries, federal taxable
5 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 subdivision
15 (a) of this subsection as reported to the recipient by the regulated
16 investment company;

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

24 (d) There shall be added that portion of the total
25 dividends and other income received from a regulated investment

1 company which is attributable to obligations described in subdivision
2 (c) of this subsection and excluded for federal income tax purposes
3 as reported to the recipient by the regulated investment company; and

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

12 (ii) Any amount added under this subsection shall be
13 reduced by any expenses incurred in the production of such income to
14 the extent disallowed in the computation of federal taxable 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 of
19 1967, with the laws of the United States. For a resident individual,
20 estate, or trust, the net operating loss computed on the federal
21 income tax return shall be adjusted by the modifications contained in
22 this section. For a nonresident individual, estate, or trust or for a
23 partial-year resident individual, the net operating loss computed on
24 the federal return shall be adjusted by the modifications contained
25 in this section and any carryovers or carrybacks shall be limited to

1 the portion of the loss derived from or connected with Nebraska
2 sources.

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

9 (4) Federal adjusted gross income, or, for a fiduciary,
10 federal taxable income shall be modified to exclude the portion of
11 the income or loss received from a small business corporation with an
12 election in effect under subchapter S of the Internal Revenue Code or
13 from a limited liability company organized pursuant to the Limited
14 Liability Company Act or the Nebraska Uniform Limited Liability
15 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
18 income or, for corporations and fiduciaries, federal taxable income
19 dividends received or deemed to be received from corporations which
20 are not subject to the Internal Revenue Code.

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

1 the computation for each foreign country or for groups of foreign
2 countries. The portion of the taxes that may be deducted shall be
3 computed in the following manner:

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

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

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

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

21 (8)(a) Federal adjusted gross income or, for corporations
22 and fiduciaries, federal taxable income shall be reduced, to the
23 extent included, by income from interest, earnings, and state
24 contributions received from the Nebraska educational savings plan
25 trust created in sections 85-1801 to 85-1814.

1 (b) Federal adjusted gross income or, for corporations
2 and fiduciaries, federal taxable income shall be reduced by any
3 contributions as a participant in the Nebraska educational savings
4 plan trust, to the extent not deducted for federal income tax
5 purposes, but not to exceed ~~two thousand five hundred~~ five thousand
6 dollars per married filing separate return or ~~five~~ ten thousand
7 dollars for any other return. With respect to a qualified rollover
8 within the meaning of section 529 of the Internal Revenue Code from
9 another state's plan, any interest, earnings, and state contributions
10 received from the other state's educational savings plan which is
11 qualified under section 529 of the code shall qualify for the
12 reduction provided in this subdivision. For contributions by a
13 custodian of a custodial account including rollovers from another
14 custodial account, the reduction shall only apply to funds added to
15 the custodial account after the operative date of this act.

16 (c) Federal adjusted gross income or, for corporations
17 and fiduciaries, federal taxable income shall be increased by the
18 amount resulting from the cancellation of a participation agreement
19 refunded to the taxpayer as a participant in the Nebraska educational
20 savings plan trust to the extent previously deducted as a
21 contribution to the trust.

22 (9)(a) For income tax returns filed after September 10,
23 2001, for taxable years beginning or deemed to begin before January
24 1, 2006, under the Internal Revenue Code of 1986, as amended, federal
25 adjusted gross income or, for corporations and fiduciaries, federal

1 taxable income shall be increased by eighty-five percent of any
2 amount of any federal bonus depreciation received under the federal
3 Job Creation and Worker Assistance Act of 2002 or the federal Jobs
4 and Growth Tax Act of 2003, under section 168(k) or section 1400L of
5 the Internal Revenue Code of 1986, as amended, for assets placed in
6 service after September 10, 2001, and before December 31, 2005.

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

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

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

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

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

23 (11)(a) Federal adjusted gross income shall be reduced by
24 contributions, up to two thousand dollars per married filing jointly
25 return or one thousand dollars for any other return, and any

1 investment earnings made as a participant in the Nebraska long-term
2 care savings plan under the Long-Term Care Savings Plan Act, to the
3 extent not deducted for federal income tax purposes.

4 (b) Federal adjusted gross income shall be increased by
5 the withdrawals made as a participant in the Nebraska long-term care
6 savings plan under the act by a person who is not a qualified
7 individual or for any reason other than transfer of funds to a
8 spouse, long-term care expenses, long-term care insurance premiums,
9 or death of the participant, including withdrawals made by reason of
10 cancellation of the participation agreement or termination of the
11 plan, to the extent previously deducted as a contribution or as
12 investment earnings.

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

18 Sec. 2. Section 85-1802, Revised Statutes Cumulative
19 Supplement, 2012, is amended to read:

20 85-1802 For purposes of sections 85-1801 to 85-1814:

21 (1) Administrative fund means the College Savings Plan
22 Administrative Fund created in section 85-1807;

23 (2) Beneficiary means the individual designated by a
24 participation agreement to benefit from advance payments of qualified
25 higher education expenses on behalf of the beneficiary;

1 (3) Benefits means the payment of qualified higher
2 education expenses on behalf of a beneficiary by the Nebraska
3 educational savings plan trust during the beneficiary's attendance at
4 an eligible educational institution;

5 (4) Eligible educational institution means an institution
6 described in 20 U.S.C. 1088 which is eligible to participate in a
7 program under Title IV of the federal Higher Education Act of 1965;

8 (5) Expense fund means the College Savings Plan Expense
9 Fund created in section 85-1807;

10 (6) Nebraska educational savings plan trust means the
11 trust created in section 85-1804;

12 (7) Nonqualified withdrawal refers to (a) a distribution
13 from an account to the extent it is not used to pay the qualified
14 higher education expenses of the beneficiary or (b) a qualified
15 rollover permitted by section 529 of the Internal Revenue Code where
16 the funds are transferred to a qualified tuition program sponsored by
17 another state or entity;

18 (8) Participant or account owner means an individual, an
19 individual's legal representative, or any other legal entity
20 authorized to establish a savings account under section 529 of the
21 Internal Revenue Code who has entered into a participation agreement
22 for the advance payment of qualified higher education expenses on
23 behalf of a beneficiary. For purposes of section 77-2716, as to
24 contributions by a custodian to a custodial account established
25 pursuant to the Nebraska Uniform Transfers to Minors Act or similar

1 law in another state, which account has been established under a
2 participation agreement, participant includes the parent or guardian
3 of a minor, which parent or guardian is also the custodian of the
4 account;

5 (9) Participation agreement means an agreement between a
6 participant and the Nebraska educational savings plan trust entered
7 into under sections 85-1801 to 85-1814;

8 (10) Program fund means the College Savings Plan Program
9 Fund created in section 85-1807;

10 (11) Qualified higher education expenses means the
11 certified costs of tuition and fees, books, supplies, and equipment
12 required for enrollment or attendance at an eligible educational
13 institution. Reasonable room and board expenses, based on the minimum
14 amount applicable for the eligible educational institution during the
15 period of enrollment, shall be included as qualified higher education
16 expenses for those students enrolled on at least a half-time basis.
17 In the case of a special needs beneficiary, expenses for special
18 needs services incurred in connection with enrollment or attendance
19 at an eligible educational institution shall be included as qualified
20 higher education expenses. Expenses paid or incurred in 2009 or 2010
21 for the purchase of computer technology or equipment or Internet
22 access and related services, subject to the limitations set forth in
23 section 529 of the Internal Revenue Code, shall be included as
24 qualified higher education expenses. Qualified higher education
25 expenses does not include any amounts in excess of those allowed by

1 section 529 of the Internal Revenue Code;

2 (12) Section 529 of the Internal Revenue Code means such
3 section of the code and the regulations interpreting such section;
4 and

5 (13) Tuition and fees means the quarter or semester
6 charges imposed to attend an eligible educational institution.

7 Sec. 3. Section 85-1809, Revised Statutes Cumulative
8 Supplement, 2012, is amended to read:

9 85-1809 (1) A participant retains ownership of all
10 contributions made under a participation agreement up to the date of
11 utilization for payment of qualified higher education expenses for
12 the beneficiary. Notwithstanding any other provision of law, any
13 amount credited to any account is not susceptible to any levy,
14 execution, judgment, or other operation of law, garnishment, or other
15 judicial enforcement, and the amount is not an asset or property of
16 either the participant or the beneficiary for the purposes of any
17 state insolvency or inheritance tax laws. All income derived from the
18 investment of the contributions made by the participant shall be
19 considered to be held in trust for the benefit of the beneficiary.

20 (2) If the program created by sections 85-1801 to 85-1814
21 is terminated prior to payment of qualified higher education expenses
22 for the beneficiary, the participant is entitled to receive the fair
23 market value of the account established in the program.

24 (3) If the beneficiary graduates from an eligible
25 educational institution and a balance remains in the participant's

1 account, any remaining funds may be transferred as allowed by rule or
2 regulation, subject to the provisions of section 529 of the Internal
3 Revenue Code, as well as any other applicable state or federal laws
4 or regulations.

5 (4) The eligible educational institution shall obtain
6 ownership of the payments made for the qualified higher education
7 expenses paid to the institution at the time each payment is made to
8 the institution.

9 (5) Any amounts which may be paid to any person or
10 persons pursuant to the Nebraska educational savings plan trust but
11 which are not listed in this section are owned by the trust.

12 (6) A participant may transfer ownership rights to
13 another eligible participant, including a gift of the ownership
14 rights to a minor beneficiary. The transfer shall be made and the
15 property distributed in accordance with the rules and regulations or
16 with the terms of the participation agreement.

17 (7) A participant shall not be entitled to utilize any
18 interest in the Nebraska educational savings plan trust as security
19 for a loan.

20 (8) The Nebraska educational savings plan trust may
21 accept transfers of cash investments from a custodian under the
22 Nebraska Uniform Transfers to Minors Act or any other similar laws
23 under the terms and conditions established by the trustee.

24 (9) A participant may designate a successor account owner
25 to succeed to all of the participant's rights, title, and interest in

1 an account, including the right to change the account beneficiary,
2 upon the death or legal incapacity of the participant. If a
3 participant dies or becomes legally incapacitated and has failed to
4 name a successor account owner, the ~~participant's estate, acting~~
5 ~~through the participant's personal representative, shall be named the~~
6 ~~successor participant.~~ account beneficiary shall become the account
7 owner.

8 (10) Upon the death of a beneficiary, the participant may
9 change the beneficiary on the account, transfer assets to another
10 beneficiary who is a member of the family of the former beneficiary,
11 or request a nonqualified withdrawal.

12 Sec. 4. This act becomes operative on January 1, 2014.

13 Sec. 5. Original sections 77-2716, 85-1802, and 85-1809,
14 Revised Statutes Cumulative Supplement, 2012, are repealed.