

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 267

Introduced by Crawford, 45.

Read first time January 14, 2015

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2716, Revised Statutes Cumulative Supplement, 2014; to change the
- 3 income tax exemption for military retirement income as prescribed;
- 4 and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2716, Revised Statutes Cumulative Supplement,
2 2014, is 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) There shall be subtracted interest or dividends received by the
7 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;

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

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

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

29 (e)(i) Any amount subtracted under this subsection shall be reduced
30 by any interest on indebtedness incurred to carry the obligations or
31 securities described in this subsection or the investment in the

1 regulated investment company and by any expenses incurred in the
2 production of interest or dividend income described in this subsection to
3 the extent that such expenses, including amortizable bond premiums, are
4 deductible in determining federal taxable income.

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

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

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

26 (4) Federal adjusted gross income, or, for a fiduciary, federal
27 taxable income shall be modified to exclude the portion of the income or
28 loss received from a small business corporation with an election in
29 effect under subchapter S of the Internal Revenue Code or from a limited
30 liability company organized pursuant to the Nebraska Uniform Limited
31 Liability Company Act that is not derived from or connected with Nebraska

1 sources as determined in section 77-2734.01.

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

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

13 (a) The amount of federal taxable income from operations within a
14 foreign taxing jurisdiction shall be reduced by the amount of taxes
15 actually paid to the foreign jurisdiction that are not deductible solely
16 because the foreign tax credit was elected on the federal income tax
17 return;

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

20 (c) The result of the calculation in subdivision (b) of this
21 subsection shall be subtracted from the amount of federal taxable income
22 used in subdivision (a) of this subsection. The result of such
23 calculation, if greater than zero, shall be subtracted from federal
24 taxable income.

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

28 (8)(a) Federal adjusted gross income or, for corporations and
29 fiduciaries, federal taxable income shall be reduced, to the extent
30 included, by income from interest, earnings, and state contributions
31 received from the Nebraska educational savings plan trust created in

1 sections 85-1801 to 85-1814.

2 (b) Federal adjusted gross income or, for corporations and
3 fiduciaries, federal taxable income shall be reduced by any contributions
4 as a participant in the Nebraska educational savings plan trust, to the
5 extent not deducted for federal income tax purposes, but not to exceed
6 five thousand dollars per married filing separate return or ten thousand
7 dollars for any other return. With respect to a qualified rollover within
8 the meaning of section 529 of the Internal Revenue Code from another
9 state's plan, any interest, earnings, and state contributions received
10 from the other state's educational savings plan which is qualified under
11 section 529 of the code shall qualify for the reduction provided in this
12 subdivision. For contributions by a custodian of a custodial account
13 including rollovers from another custodial account, the reduction shall
14 only apply to funds added to the custodial account after January 1, 2014.

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

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

30 (b) For a partnership, limited liability company, cooperative,
31 including any cooperative exempt from income taxes under section 521 of

1 the Internal Revenue Code of 1986, as amended, limited cooperative
2 association, subchapter S corporation, or joint venture, the increase
3 shall be distributed to the partners, members, shareholders, patrons, or
4 beneficiaries in the same manner as income is distributed for use against
5 their income tax liabilities.

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

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

25 (10) For taxable years beginning or deemed to begin on or after
26 January 1, 2003, and before January 1, 2006, under the Internal Revenue
27 Code of 1986, as amended, federal adjusted gross income or, for
28 corporations and fiduciaries, federal taxable income shall be increased
29 by the amount of any capital investment that is expensed under section
30 179 of the Internal Revenue Code of 1986, as amended, that is in excess
31 of twenty-five thousand dollars that is allowed under the federal Jobs

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

7 (11)(a) Federal adjusted gross income shall be reduced by
8 contributions, up to two thousand dollars per married filing jointly
9 return or one thousand dollars for any other return, and any investment
10 earnings made as a participant in the Nebraska long-term care savings
11 plan under the Long-Term Care Savings Plan Act, to the extent not
12 deducted for federal income tax purposes.

13 (b) Federal adjusted gross income shall be increased by the
14 withdrawals made as a participant in the Nebraska long-term care savings
15 plan under the act by a person who is not a qualified individual or for
16 any reason other than transfer of funds to a spouse, long-term care
17 expenses, long-term care insurance premiums, or death of the participant,
18 including withdrawals made by reason of cancellation of the participation
19 agreement or termination of the plan, to the extent previously deducted
20 as a contribution or as investment earnings.

21 (12) There shall be added to federal adjusted gross income for
22 individuals, estates, and trusts any amount taken as a credit for
23 franchise tax paid by a financial institution under sections 77-3801 to
24 77-3807 as allowed by subsection (5) of section 77-2715.07.

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

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

1 (b) For taxpayers filing any other return, federal adjusted gross
2 income is forty-three thousand dollars or less.

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

19 (14)(a) For taxable years beginning or deemed to begin on or after
20 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
21 federal adjusted gross income shall be modified to exclude one dollar of
22 military retirement income for every one dollar of nonretirement income.
23 Except as provided in subdivision (14)(b) of this section, the maximum
24 exclusion provided by this subsection shall be:

25 (i) Sixty thousand dollars for taxpayers filing a married filing
26 joint return; or

27 (ii) Thirty thousand dollars for taxpayers filing any other return.

28 (b) If federal adjusted gross income for taxpayers filing a married
29 filing joint return exceeds one hundred twenty thousand dollars, the
30 maximum exclusion provided in subdivision (14)(a)(i) of this section
31 shall be reduced by the amount by which federal adjusted gross income

1 exceeds one hundred twenty thousand dollars. If federal adjusted gross
2 income for taxpayers filing any other return exceeds sixty thousand
3 dollars, the maximum exclusion provided in subdivision (14)(a)(ii) of
4 this section shall be reduced by the amount by which federal adjusted
5 gross income exceeds sixty thousand dollars.

6 (c) The exclusion provided by this subsection shall only be
7 available for a period of fifteen consecutive taxable years beginning
8 with the taxable year in which the taxpayer first excludes income under
9 this subsection.

10 (d) Any taxpayer who excludes income under this subsection shall be
11 ineligible to exclude income under subsection (15) of this section for
12 the same taxable year.

13 (e) For purposes of this subsection:

14 (i) Military retirement income means retirement benefits that are
15 periodic payments attributable to service in the uniformed services of
16 the United States for personal services performed by an individual prior
17 to his or her retirement and that are included in the taxpayer's federal
18 adjusted gross income; and

19 (ii) Nonretirement income means wage, salary, or tip income that is
20 included in the taxpayer's federal adjusted gross income and is earned in
21 Nebraska. Nonretirement income does not include investment income,
22 military retirement income, any amount received as benefits under the
23 federal Social Security Act, or any other type of retirement benefit
24 received by the taxpayer.

25 (f) The Tax Commissioner shall submit electronically a report to the
26 Legislature on or before July 15, 2016, and on or before July 15 of each
27 year thereafter. The report shall list the following information for the
28 most recently completed taxable year:

29 (i) The number of taxpayers who excluded military retirement income
30 under this subsection;

31 (ii) The total amount of military retirement income excluded under

1 this subsection; and

2 (iii) An estimate of the total reduction in state tax revenue that
3 occurred as a result of this subsection.

4 (15)(a) For taxable years beginning or deemed to begin on or after
5 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
6 federal adjusted gross income shall be modified to exclude the lesser of
7 (i) the total amount of military retirement income received by the
8 taxpayer during the taxable year or (ii) ten thousand dollars per
9 taxpayer included in the tax return who received military retirement
10 income.

11 (b) A taxpayer shall be eligible to receive the exclusion provided
12 in this subsection beginning with the taxable year in which he or she
13 turns sixty-two years of age and continuing until such taxpayer's death.

14 (c) A taxpayer shall not be eligible to receive the exclusion
15 provided in this subsection for any taxable year in which the taxpayer's
16 federal adjusted gross income exceeds:

17 (i) Fifty-eight thousand dollars for taxpayers filing a married
18 filing joint return; or

19 (ii) Forty-three thousand dollars for taxpayers filing any other
20 return.

21 (d) Any taxpayer who excludes income under this subsection shall be
22 ineligible to exclude income under subsection (14) of this section for
23 the same taxable year.

24 (e) For purposes of this subsection, military retirement income
25 means retirement benefits that are periodic payments attributable to
26 service in the uniformed services of the United States for personal
27 services performed by an individual prior to his or her retirement and
28 that are included in the taxpayer's federal adjusted gross income.

29 Sec. 2. Original section 77-2716, Revised Statutes Cumulative
30 Supplement, 2014, is repealed.