

AMENDMENTS TO LB409

(Amendments to Standing Committee amendments, AM955)

Introduced by Friesen, 34.

1 1. Insert the following new sections:

2 Section 1. Section 77-2716, Revised Statutes Cumulative Supplement,
3 2016, is amended to read:

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

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

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

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

22 (c) There shall be added interest or dividends received by the owner
23 of obligations of the District of Columbia, other states of the United
24 States, or their political subdivisions, authorities, commissions, or
25 instrumentalities to the extent excluded in the computation of gross
26 income for federal income tax purposes except that such interest or

1 dividends shall not be added if received by a corporation which is a
2 regulated investment company;

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

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

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

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

30 (3) There shall be subtracted from federal adjusted gross income for
31 all taxable years beginning on or after January 1, 1987, the amount of

1 any state income tax refund to the extent such refund was deducted under
2 the Internal Revenue Code, was not allowed in the computation of the tax
3 due under the Nebraska Revenue Act of 1967, and is included in federal
4 adjusted gross income.

5 (4) For taxable years beginning or deemed to begin before January 1,
6 2018, federal ~~Federal~~ adjusted gross income, or, for a fiduciary, federal
7 taxable income shall be modified to exclude the portion of the income or
8 loss received from a small business corporation with an election in
9 effect under subchapter S of the Internal Revenue Code or from a limited
10 liability company organized pursuant to the Nebraska Uniform Limited
11 Liability Company Act that is not derived from or connected with Nebraska
12 sources as determined in section 77-2734.01.

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

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

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

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

31 (c) The result of the calculation in subdivision (b) of this

1 subsection shall be subtracted from the amount of federal taxable income
2 used in subdivision (a) of this subsection. The result of such
3 calculation, if greater than zero, shall be subtracted from federal
4 taxable income.

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

8 (8)(a) Federal adjusted gross income or, for corporations and
9 fiduciaries, federal taxable income shall be reduced, to the extent
10 included, by income from interest, earnings, and state contributions
11 received from the Nebraska educational savings plan trust created in
12 sections 85-1801 to 85-1814 and any account established under the
13 achieving a better life experience program as provided in sections
14 77-1401 to 77-1409.

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

31 (c) Federal adjusted gross income or, for corporations and

1 fiduciaries, federal taxable income shall be increased by:

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

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

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

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

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

31 (d) The amount of bonus depreciation added to federal adjusted gross

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

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

28 (11)(a) For taxable years beginning or deemed to begin before
29 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
30 federal adjusted gross income shall be reduced by contributions, up to
31 two thousand dollars per married filing jointly return or one thousand

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

5 (b) For taxable years beginning or deemed to begin before January 1,
6 2018, under the Internal Revenue Code of 1986, as amended, federal
7 adjusted gross income shall be increased by the withdrawals made as a
8 participant in the Nebraska long-term care savings plan under the act by
9 a person who is not a qualified individual or for any reason other than
10 transfer of funds to a spouse, long-term care expenses, long-term care
11 insurance premiums, or death of the participant, including withdrawals
12 made by reason of cancellation of the participation agreement, to the
13 extent previously deducted as a contribution or as investment earnings.

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

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

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

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

27 (14) For taxable years beginning or deemed to begin on or after
28 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an
29 individual may make a one-time election within two calendar years after
30 the date of his or her retirement from the military to exclude income
31 received as a military retirement benefit by the individual to the extent

1 included in federal adjusted gross income and as provided in this
2 subsection. The individual may elect to exclude forty percent of his or
3 her military retirement benefit income for seven consecutive taxable
4 years beginning with the year in which the election is made or may elect
5 to exclude fifteen percent of his or her military retirement benefit
6 income for all taxable years beginning with the year in which he or she
7 turns sixty-seven years of age. For purposes of this subsection, military
8 retirement benefit means retirement benefits that are periodic payments
9 attributable to service in the uniformed services of the United States
10 for personal services performed by an individual prior to his or her
11 retirement.

12 Sec. 2. Section 77-2734.01, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 77-2734.01 (1)(a) For taxable years beginning or deemed to begin
15 before January 1, 2018, residents ~~(1) Residents~~ of Nebraska who are
16 shareholders of a small business corporation having an election in effect
17 under subchapter S of the Internal Revenue Code or who are members of a
18 limited liability company organized pursuant to the Nebraska Uniform
19 Limited Liability Company Act shall include in their Nebraska taxable
20 income, to the extent includable in federal gross income, their
21 proportionate share of such corporation's or limited liability company's
22 federal income adjusted pursuant to this section. Income or loss from
23 such corporation or limited liability company conducting a business,
24 trade, profession, or occupation shall be included in the Nebraska
25 taxable income of a shareholder or member who is a resident of this state
26 to the extent of such shareholder's or member's proportionate share of
27 the net income or loss from the conduct of such business, trade,
28 profession, or occupation within this state, determined under subsection
29 (2) of this section. A resident of Nebraska shall include in Nebraska
30 taxable income fair compensation for services rendered to such
31 corporation or limited liability company. Compensation actually paid

1 shall be presumed to be fair unless it is apparent to the Tax
2 Commissioner that such compensation is materially different from fair
3 value for the services rendered or has been manipulated for tax avoidance
4 purposes.

5 (b) For taxable years beginning or deemed to begin on or after
6 January 1, 2018, residents of Nebraska who are shareholders of a small
7 business corporation having an election in effect under subchapter S of
8 the Internal Revenue Code or who are members of a limited liability
9 company organized pursuant to the Nebraska Uniform Limited Liability
10 Company Act shall include in their Nebraska taxable income, to the extent
11 includable in federal gross income, their proportionate share of such
12 corporation's or limited liability company's federal income without any
13 adjustments pursuant to this section.

14 (2) The income of any small business corporation having an election
15 in effect under subchapter S of the Internal Revenue Code or limited
16 liability company organized pursuant to the Nebraska Uniform Limited
17 Liability Company Act that is derived from or connected with Nebraska
18 sources shall be determined in the following manner:

19 (a) If the small business corporation is a member of a unitary
20 group, the small business corporation shall be deemed to be doing
21 business within this state if any part of its income is derived from
22 transactions with other members of the unitary group doing business
23 within this state, and such corporation shall apportion its income by
24 using the apportionment factor determined for the entire unitary group,
25 including the small business corporation, under sections 77-2734.05 to
26 77-2734.15;

27 (b) If the small business corporation or limited liability company
28 is not a member of a unitary group and is subject to tax in another
29 state, it shall apportion its income under sections 77-2734.05 to
30 77-2734.15; and

31 (c) If the small business corporation or limited liability company

1 is not subject to tax in another state, all of its income is derived from
2 or connected with Nebraska sources.

3 (3) Nonresidents of Nebraska who are shareholders of such
4 corporations or members of such limited liability companies shall file a
5 Nebraska income tax return and shall include in Nebraska adjusted gross
6 income their proportionate share of the corporation's or limited
7 liability company's Nebraska income as determined under subsection (2) of
8 this section.

9 (4) The nonresident shareholder or member shall execute and forward
10 to the corporation or limited liability company before the filing of the
11 corporation's or limited liability company's return an agreement which
12 states he or she will file a Nebraska income tax return and pay the tax
13 on the income derived from or connected with sources in this state, and
14 such agreement shall be attached to the corporation's or limited
15 liability company's Nebraska return for such taxable year.

16 (5) For taxable years beginning or deemed to begin before January 1,
17 2013, in the absence of the nonresident shareholder's or member's
18 executed agreement being attached to the Nebraska return, the corporation
19 or limited liability company shall remit with the return an amount equal
20 to the highest individual income tax rate determined under section
21 77-2715.02 multiplied by the nonresident shareholder's or member's share
22 of the corporation's or limited liability company's income which was
23 derived from or attributable to this state. For taxable years beginning
24 or deemed to begin on or after January 1, 2013, in the absence of the
25 nonresident shareholder's or member's executed agreement being attached
26 to the Nebraska return, the corporation or limited liability company
27 shall remit with the return an amount equal to the highest individual
28 income tax rate determined under section 77-2715.03 multiplied by the
29 nonresident shareholder's or member's share of the corporation's or
30 limited liability company's income which was derived from or attributable
31 to this state. The amount remitted shall be allowed as a credit against

1 the Nebraska income tax liability of the shareholder or member.

2 (6) The Tax Commissioner may allow a nonresident individual
3 shareholder or member to not file a Nebraska income tax return if the
4 nonresident individual shareholder's or member's only source of Nebraska
5 income was his or her share of the small business corporation's or
6 limited liability company's income which was derived from or attributable
7 to sources within this state, the nonresident did not file an agreement
8 to file a Nebraska income tax return, and the small business corporation
9 or limited liability company has remitted the amount required by
10 subsection (5) of this section on behalf of such nonresident individual
11 shareholder or member. The amount remitted shall be retained in
12 satisfaction of the Nebraska income tax liability of the nonresident
13 individual shareholder or member.

14 (7) A small business corporation or limited liability company return
15 shall be filed only if one or more of the shareholders of the corporation
16 or members of the limited liability company are not residents of the
17 State of Nebraska or if such corporation or limited liability company has
18 income derived from sources outside this state.

19 (8) For purposes of this section, any shareholder or member of the
20 corporation or limited liability company that is a grantor trust of a
21 nonresident shall be disregarded and this section shall apply as though
22 the nonresident grantor was the shareholder or member.

23 Sec. 4. Section 79-1005.01, Revised Statutes Cumulative Supplement,
24 2016, is amended to read:

25 79-1005.01 (1) Not later than November 15 of each year, the Tax
26 Commissioner shall certify to the department for the preceding tax year
27 the income tax liability of resident individuals for each local system.

28 (2) For school fiscal years prior to 2017-18, one hundred two
29 million two hundred eighty-nine thousand eight hundred seventeen dollars
30 which is equal to the amount appropriated to the School District Income
31 Tax Fund for distribution in school fiscal year 1992-93 shall be

1 disbursed as option payments as determined under section 79-1009 and as
2 allocated income tax funds as determined in this section and sections
3 79-1008.01, 79-1015.01, 79-1017.01, and 79-1018.01, except as provided in
4 section 79-1008.02 for school fiscal years prior to school fiscal year
5 2017-18. For school fiscal years prior to school fiscal year 2017-18,
6 funds not distributed as allocated income tax funds due to minimum levy
7 adjustments shall not increase the amount available to local systems for
8 distribution as allocated income tax funds.

9 (3) Using the data certified by the Tax Commissioner pursuant to
10 subsection (1) of this section, the department shall calculate the
11 allocation percentage and each local system's allocated income tax funds.
12 The allocation percentage shall be the amount stated in subsection (2) of
13 this section minus the total amount paid for option students pursuant to
14 section 79-1009, with the difference divided by the aggregate statewide
15 income tax liability of all resident individuals certified pursuant to
16 subsection (1) of this section. For school fiscal years prior to 2017-18,
17 each ~~Each~~ local system's allocated income tax funds shall be calculated
18 by multiplying the allocation percentage times the local system's income
19 tax liability certified pursuant to subsection (1) of this section.

20 (4) For school fiscal year 2017-18 ~~and each school fiscal year~~
21 ~~thereafter~~, each local system's allocated income tax funds shall be
22 calculated by multiplying the local system's income tax liability
23 certified pursuant to subsection (1) of this section by two and twenty-
24 three hundredths percent.

25 (5) For school fiscal year 2018-19 and each school fiscal year
26 thereafter, each local system's allocated income tax funds shall be
27 calculated by multiplying the local system's income tax liability
28 certified pursuant to subsection (1) of this section by twenty percent.

29 Sec. 9. The following sections are outright repealed: Sections
30 77-2715.09, Reissue Revised Statutes of Nebraska, and section 77-2715.08,
31 Revised Statutes Cumulative Supplement, 2016.

- 1
2. Renumber the remaining sections and correct the repealer
- 2 accordingly.