

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 118

Introduced by Hilkemann, 4.

Read first time January 06, 2017

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2716, Revised Statutes Cumulative Supplement, 2016; to adopt the
- 3 Education Savings Account Act; to provide income tax adjustments; to
- 4 provide an operative date; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Education Savings Account Act.

3 Sec. 2. For purposes of the Education Savings Account Act:

4 (1) Account means an education savings account established under
5 section 3 of this act;

6 (2) Department means the Department of Revenue;

7 (3) Designated beneficiary means an individual who is:

8 (a) A resident of this state;

9 (b) A student at an eligible school; and

10 (c) Named as the beneficiary of an account;

11 (4) Eligible school means a public, private, denominational, or
12 parochial school in this state which:

13 (a) Provides education for students in any of grades kindergarten
14 through grade twelve; and

15 (b) Meets the requirements for legal operation prescribed in Chapter
16 79 or elects pursuant to section 79-1601 not to meet accreditation or
17 approval requirements;

18 (5) Financial institution means a bank, savings bank, building and
19 loan association, savings and loan association, or credit union, whether
20 chartered by the United States, the Department of Banking and Finance, or
21 a foreign state agency; and

22 (6) Qualified education expenses means expenses to pay for any of
23 the following on behalf of a designated beneficiary:

24 (a) Tuition, fees, and room and board required to attend an eligible
25 school;

26 (b) Books, supplies, equipment, and uniforms required by an eligible
27 school;

28 (c) Extracurricular activities offered at an eligible school;

29 (d) Computers, computer equipment, software, and Internet access if
30 used primarily for school purposes;

31 (e) Distance education classes; and

1 (f) College entrance exams.

2 Sec. 3. (1) The parent or legal guardian of a student attending an
3 eligible school may establish an account with a financial institution and
4 shall designate the account as an education savings account which shall
5 be subject to the Education Savings Account Act. The parent or legal
6 guardian shall be considered the owner of the account.

7 (2) Upon establishing an account, the account owner shall notify the
8 department that an account has been established and shall include the
9 following information:

10 (a) The financial institution where the account is established;

11 (b) The type of account established; and

12 (c) The designated beneficiary of the account.

13 (3) The account shall be used to pay the qualified education
14 expenses of the designated beneficiary of the account in accordance with
15 the act.

16 (4) An account owner may change the designated beneficiary of an
17 account at any time by notifying the department of the new designated
18 beneficiary.

19 Sec. 4. (1) Any natural person, firm, partnership, limited
20 liability company, association, or corporation may contribute up to two
21 thousand dollars per calendar year to an account. Contributions shall
22 only be in the form of cash. Such contributions may be invested at the
23 direction of the account owner in stocks, bonds, mutual funds, or
24 certificates of deposit as offered by the financial institution where the
25 account is established.

26 (2) The tax implications of contributions to an account and the
27 earnings on such contributions shall be as provided in subsection (15) of
28 section 77-2716.

29 Sec. 5. (1) Distributions from an account shall only be used to pay
30 the qualified education expenses of the designated beneficiary of the
31 account.

1 (2) If a distribution is made for a nonqualified expense, the tax
2 implications shall be as provided in subsection (15) of section 77-2716
3 and, in addition, the account owner shall be subject to a penalty of ten
4 percent of the amount used for the nonqualified expense. All penalties
5 collected by the department pursuant to this section shall be remitted to
6 the State Treasurer for distribution in accordance with Article VII,
7 section 5, of the Constitution of Nebraska.

8 (3) The balance in an account must be fully distributed before the
9 designated beneficiary graduates from high school.

10 Sec. 6. The department may adopt and promulgate rules and
11 regulations to carry out the Education Savings Account Act.

12 Sec. 7. Section 77-2716, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 77-2716 (1) The following adjustments to federal adjusted gross
15 income or, for corporations and fiduciaries, federal taxable income shall
16 be made for interest or dividends received:

17 (a)(i) There shall be subtracted interest or dividends received by
18 the owner of obligations of the United States and its territories and
19 possessions or of any authority, commission, or instrumentality of the
20 United States to the extent includable in gross income for federal income
21 tax purposes but exempt from state income taxes under the laws of the
22 United States; and

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

27 (b) There shall be subtracted that portion of the total dividends
28 and other income received from a regulated investment company which is
29 attributable to obligations described in subdivision (a) of this
30 subsection as reported to the recipient by the regulated investment
31 company;

1 (c) There shall be added interest or dividends received by the owner
2 of obligations of the District of Columbia, other states of the United
3 States, or their political subdivisions, authorities, commissions, or
4 instrumentalities to the extent excluded in the computation of gross
5 income for federal income tax purposes except that such interest or
6 dividends shall not be added if received by a corporation which is a
7 regulated investment company;

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

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

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

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

1 be adjusted by the modifications contained in this section and any
2 carryovers or carrybacks shall be limited to the portion of the loss
3 derived from or connected with Nebraska sources.

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

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

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

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

1 return;

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

4 (c) The result of the calculation in subdivision (b) of this
5 subsection shall be subtracted from the amount of federal taxable income
6 used in subdivision (a) of this subsection. The result of such
7 calculation, if greater than zero, shall be subtracted from federal
8 taxable income.

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

12 (8)(a) Federal adjusted gross income or, for corporations and
13 fiduciaries, federal taxable income shall be reduced, to the extent
14 included, by income from interest, earnings, and state contributions
15 received from the Nebraska educational savings plan trust created in
16 sections 85-1801 to 85-1814 and any account established under the
17 achieving a better life experience program as provided in sections
18 77-1401 to 77-1409.

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

1 by a custodian of a custodial account including rollovers from another
2 custodial account, the reduction shall only apply to funds added to the
3 custodial account after January 1, 2014.

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

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

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

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

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

31 (c) For a corporation with a unitary business having activity both

1 inside and outside the state, the increase shall be apportioned to
2 Nebraska in the same manner as income is apportioned to the state by
3 section 77-2734.05.

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

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

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

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

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

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

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

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

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

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

16 (15)(a) Federal adjusted gross income or, for corporations and
17 fiduciaries, federal taxable income shall be reduced, to the extent
18 included, by income from interest earned on any account established under
19 the Education Savings Account Act.

20 (b) Federal adjusted gross income or, for corporations and
21 fiduciaries, federal taxable income shall be reduced by contributions to
22 an account established under the Education Savings Account Act, to the
23 extent not deducted for federal income tax purposes.

24 (c) Federal adjusted gross income or, for corporations and
25 fiduciaries, federal taxable income shall be increased by the amount of
26 any withdrawals by the owner of an account established under the
27 Education Savings Account Act for nonqualified expenses to the extent
28 previously deducted under subdivision (15)(b) of this section.

29 Sec. 8. This act becomes operative on January 1, 2018.

30 Sec. 9. Original section 77-2716, Revised Statutes Cumulative
31 Supplement, 2016, is repealed.