

LEGISLATIVE BILL 596

Approved by the Governor May 30, 2003

Introduced by Revenue Committee: Landis, 46, Chairperson; Baker, 44; Bourne, 8; Connealy, 16; Hartnett, 45; Janssen, 15; Raikes, 25; Redfield, 12; and Wehrbein, 2

AN ACT relating to revenue and taxation; to amend sections 77-2716 and 77-2716.01, Revised Statutes Supplement, 2002; to change income tax calculation; and to repeal the original sections.

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

Section 1. Section 77-2716, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

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

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

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

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

from or connected with Nebraska sources as determined in section 77-2734.01.

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

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

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

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

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

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

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

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

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

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, not to exceed five hundred dollars per married filing separate return or one thousand dollars for any other return.

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

(10) (a) For income tax returns filed after September 10, 2001, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before ~~September 11, 2004~~ December 31, 2005.

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

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

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this

subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

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

Sec. 2. Section 77-2716.01, Revised Statutes Supplement, 2002, is amended to read:

77-2716.01. (1) Every individual shall be allowed to subtract from his or her income tax liability an amount for personal exemptions. The amount allowed to be subtracted shall be the credit amount for the year as provided in this section multiplied by the number of exemptions allowed on the federal return. For tax year 1993, the credit amount shall be sixty-five dollars; for tax year 1994, the credit amount shall be sixty-nine dollars; for tax year 1995, the credit amount shall be sixty-nine dollars; for tax year 1996, the credit amount shall be seventy-two dollars; for tax year 1997, the credit amount shall be eighty-six dollars; for tax year 1998, the credit amount shall be eighty-eight dollars; for tax year 1999, and each year thereafter, the credit amount shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. The eighty-eight-dollar credit amount shall be adjusted for cumulative inflation since 1998. If any credit amount is not an even dollar amount, the amount shall be rounded to the nearest dollar. The amount allowed for each personal exemption shall be reduced, but not below zero, by five dollars for each five thousand dollars, or portion thereof, that federal adjusted gross income exceeds ninety thousand dollars for married filing joint returns, fifty-four thousand dollars for single returns, seventy-five thousand dollars for head-of-household returns, and for married filing separate returns, one-half the amount stated in this subsection for married filing joint returns. For nonresident individuals and partial-year resident individuals, the personal exemption credit shall be subtracted as specified in subsection (3) of section 77-2715. For tax year 1994 and each tax year thereafter, the income levels stated in this subsection shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. If any income level in this subsection is not a multiple of one thousand dollars, the amount shall be rounded to the next highest multiple of one thousand dollars.

(2) (a) For tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, every ~~Every~~ individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction equal to the federal standard deduction for the filing status used on the federal return except as the amount is adjusted under section 77-2716.03.

(b) For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return except as the amount is adjusted under section 77-2716.03. The standard deduction shall be (i) for single taxpayers four thousand seven hundred fifty dollars, (ii) for head of household taxpayers seven thousand dollars, (iii) for married filing jointly taxpayers seven thousand nine hundred fifty dollars, and (iv) for married filing separately taxpayers three thousand nine hundred seventy-five dollars.

(c) For tax years beginning or deemed to begin on or after January 1, 2004, the standard deduction amounts in subdivision (2)(b) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. If any amount is not a multiple of ten dollars, the amount shall be rounded to the next highest multiple of ten dollars except that the standard deduction for the married filing separately taxpayers may be a multiple of five dollars.

(3) Every individual who itemized deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the standard deduction allowed in subsection (2) of this section or the amount before the federal disallowance of his or her federal itemized deductions, except for the amount deducted on the federal return for state or local income taxes paid and the amount of any adjustment required under section 77-2716.03.

Sec. 3. Original sections 77-2716 and 77-2716.01, Revised Statutes Supplement, 2002, are repealed.