# Title 316 NEBRASKA DEPARTMENT OF REVENUE

# PROPOSED REGULATIONS FOR CHAPTER 24, CORPORATION INCOME TAX

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# REG-24-006 ~~CORPORATE~~ CORPORATION INCOME TAX RETURNS: DUE DATE AND PAYMENT OF TAX

006.01 The due date for the Nebraska Corporation Income Tax Return, Form 1120N, is the same as the due date for the federal return, usually the 15th day of March following the close of the calendar year. If the corporate taxpayer is on a fiscal year basis, the due date is usually the 15th day of the third month following the close of the fiscal year.

006.02 The corporate taxpayer ~~shall~~ must pay the entire amount of tax on or before the prescribed due date, without regard to any extension granted for filing the return.

006.03 The Tax Commissioner may require some or all corporate taxpayers to file returns and remit payments electronically.

(Section 77-2768, R.R.S. 2009, and section 77-1784, R.S. Supp. 2010. ~~November 11, 1998~~ \_\_\_\_\_.)

## REG-24-007 CORPORATION INCOME TAX RETURNS: EXTENSIONS OF TIME FOR FILING OR PAYMENT

007.01 ~~Extensions of time for filing.~~ **Extensions of time for filing.** ~~A corporate taxpayer may obtain an automatic extension of seven months for filing it’s the~~ The Nebraska Department of Revenue (Department) may grant an extension of time to file the Nebraska corporation income tax return, ~~provided that~~ if an Application for Automatic Extension of Time to File Nebraska Corporation, Fiduciary, or Partnership Return, Form 7004N is filed ~~on or before the prescribed due date for the return~~ and ~~provided that~~ the amount of tentatively computed tax liability is paid on or before the original due date for filing the corporation income tax return. This extension~~, however, can~~ will not be granted for a period exceeding seven months from the original due date of the return and may be terminated at any time by the Tax Commissioner by ~~a~~ mailing ~~to~~ the taxpayer ~~of~~ a notice of ~~such~~ termination at least ten days prior to the termination date as fixed in the notice. This will allow the corporation taxpayer ten ~~(10)~~ days from the date of the termination notice to file the Nebraska ~~corporate~~ corporation return. If a federal extension of time has been granted, then a state extension will be granted if ~~a copy of~~ confirmation that the federal application for automatic extension of time to file ~~or the approved federal extension~~ is ~~attached to~~ submitted with the Nebraska return when filed.

007.01A ~~Form 7004N should be prepared in duplicate and the original should be filed with the Tax Commissioner.~~

~~007.01B Form 7004N must be signed by a person authorized by the corporate taxpayer to do so, and who is either,~~

~~007.01B(1) An officer of the corporate taxpayer,~~

~~007.01B(2) A person currently enrolled to practice before the Internal Revenue Service, or~~

~~007.01B(3) An attorney or certified public accountant qualified to practice before the Internal Revenue Service under 5 U.S.C. 500 (2008).~~

~~007.01C~~ When the time for filing the annual return is extended by the Department, ~~of Revenue~~ or because of a federal extension, interest will be imposed at the rate specified in ~~Section~~ Neb. Rev. Stat. § 45-104.02, from the original due date of the return to the date paid if the tax ultimately ~~assessed~~ due exceeds the tentative remittance, any estimated payments made, and any applicable credits. ~~The interest~~ Interest is due on the difference between the amount ~~by which the~~ of tax ultimately ~~assessed exceeds~~ due, and the ~~amount~~ sum of the tentative remittance, any estimated payments made, and any applicable credits.

~~007.01D~~ 007.01B Affiliated and unitary groups. A corporate taxpayer filing a combined return with ~~the State of~~ Nebraska must ~~request an extension of time listing~~ list each corporation to be included in the combined return in the request for an extension of time to file. The automatic extension (Form 7004N) ~~shall~~  must include the name, address, and federal ~~identification~~ ID number of each corporation to be included in the combined return on the applicable schedule attached to Form 7004N. ~~007.01D(1)~~ An automatic extension of time granted to the corporate taxpayer will not ~~be applicable~~ apply to any nonunitary member of an affiliated group filing a separate return with Nebraska.

~~007.01D(2) Any reference in this regulation to the term corporate taxpayer is intended to apply to any entity which is subject to the corporate income tax.~~

~~007.01E~~ 007.01C ~~Each~~ If the application is denied, the Department will send a notice of denial to the corporate taxpayer ~~applying for an extension of time to file a return will be sent notice of any denial of such application by the Department of Revenue. The notice will be sent to~~ at the address specified by the applicant on the extension form. ~~No~~

007.01D If the application is approved, no notice will be sent ~~with respect to approved applications for the extension of time to file a return~~.

007.02 ~~Extensions of time for payment of tax.~~ **Extensions of time for payment.** There ~~will not be allowed any~~ can be no extension of time for payment of tax for a corporate taxpayer ~~or any other entity which is taxed as a corporation,~~ unless ~~such~~ a request is filed with~~,~~ the Department, and ~~specifically~~ granted~~,~~ by the Tax Commissioner. ~~Upon request of the taxpayer, the~~ The Tax Commissioner may only grant ~~a reasonable extension of time for the payment of tax on or before the prescribed due date. Such~~ an extension ~~will be granted only~~ upon a proper showing by the taxpayer that payment ~~of the tax~~ by the ~~prescribed~~ due date will result in undue hardship upon the taxpayer.

007.02A Any request for an extension of time ~~by the taxpayer~~ for payment must be made prior to the ~~prescribed~~ due date for payment of the tax. Any extension granted by the Tax Commissioner ~~for the payment of tax shall not~~ cannot exceed seven ~~(7)~~ months.

007.02B If an extension of time ~~is granted~~ for paying ~~a~~ the tax is granted, the Tax Commissioner may require the taxpayer to furnish a bond in ~~any~~ an amount not exceeding double the amount of tax due, or ~~to~~ furnish other security, approved in advance by the Tax Commissioner~~, for the payment of the tax on the date prescribed by the extension~~. If a bond is required, it must be filed with the ~~Tax Commissioner~~ Department within ten days after notice ~~by the Tax Commissioner~~ that a bond ~~will be~~ is required. The bond must comply with the terms of the extension and must be approved by the Tax Commissioner ~~in~~ with regard to form and content before it will be accepted as security by the Department ~~of Revenue for the payment of tax~~.

007.02C If an extension of time for payment ~~of a tax~~ is granted, the tax ~~shall~~ must be paid on or before the expiration of the ~~period of the~~ extension, together with interest at the rate specified in ~~Section~~ Neb. Rev. Stat. § 45-104.02. Interest ~~will be~~ is due on the tax payment from the original date ~~prescribed~~ for payment until the date the payment ~~was~~ is actually made, regardless of any extension of time.

007.02D All applications for extension of time for payment ~~of tax~~ must be made to the ~~Tax Commissioner~~ Department and must contain a complete statement ~~as to~~ of the reasons for the request.

007.03 Any reference in this regulation to the term corporate taxpayer applies to any corporation or any entity taxed as a corporation under the Internal Revenue Code.

(Section 77-2770, R.R.S. 2009. ~~February 22, 2009~~\_\_\_\_\_.)

## REG-24-008 ~~CORPORATE~~ CORPORATION INCOME TAX: RATE OF TAX

008.01 Entities which are subject to the corporation income tax are taxable upon the federal taxable income derived from or connected ~~with~~ to sources within Nebraska.

008.01A The tax rate for the entire taxable year ~~shall be~~ is the rate in effect on the first day of the corporate taxpayer’s taxable year. ~~008.01A~~ ~~corporate~~ Corporate taxpayers on a fiscal year reporting basis ~~shall~~ must use the tax rate in effect on the first day of the taxable period. ~~Proration of~~ Corporate taxpayers may not use varying tax rates in effect for different portions of a taxable year ~~calendar years is not allowed~~.

008.01B For taxable years beginning after December 31, 1974, and before January 1, 1982, any entity subject to ~~corporate~~ corporation income tax ~~shall be~~ is subject to tax, at a rate equal to ~~twenty-five percent~~ 25% of the rate imposed on individuals on the first ~~twenty-five thousand dollars~~ $25,000 of taxable income, and ~~twenty-seven and one-half percent~~ 27.5% of the rate imposed on individuals on any amount in excess of ~~twenty-five thousand dollars~~ $25,000.

008.01C For taxable years beginning on or after January 1, 1982 and before January 1, 1987, any entity subject to ~~corporate~~ corporation income tax ~~shall be~~ is subject to tax at a rate equal to ~~twenty-five percent~~ 25% of the rate imposed on individuals on the first ~~fifty thousand dollars~~ $50,000 of taxable income, and ~~thirty-five percent~~ 35% of the rate imposed on individuals on any amount in excess of ~~fifty thousand dollars~~ $50,000.

008.01D For taxable years beginning on or after January 1, 1987 and before January 1, 1990, any entity subject to ~~corporate~~ corporation income tax ~~shall be~~ is subject to tax at a rate equal to ~~one hundred fifty and eight-tenths per cent of the primary rate imposed on individuals~~ 4.75% on the first ~~fifty thousand dollars~~ $50,000 of taxable income, and at the rate of ~~two hundred eleven per cent~~ ~~of the primary rate imposed on individuals~~ 6.65% on all taxable income in excess of ~~fifty thousand dollars~~ $50,000.

008.01E For taxable years beginning on or after January 1, 1990 and before January 1, 1991, any entity subject to corporation income tax is subject to tax at a rate equal to 5.17% on the first $50,000 of taxable income, and at the rate of 7.24% on all taxable income in excess of $50,000.

008.01F For taxable years beginning on or after January 1, 1991 and before January 1, 2008, any entity subject to corporation income tax is subject to tax at a rate equal to 5.58% on the first $50,000 of taxable income, and at the rate of 7.81% on all taxable income in excess of $50,000.

008.01G For taxable years beginning on or after January 1, 2008, any entity subject to corporation income tax is subject to tax at a rate equal to 5.58% on the first $100,000 of taxable income, and at the rate of 7.81% on all taxable income in excess of $100,000.

008.02 For taxable years beginning on or after January 1, 1995, an insurance company is subject to taxation at the lesser of the rate described in subsections 008.01A through 008.01G of this section, or the rate of tax imposed by the state or country in which the insurance company is domiciled if the insurance company can establish to the satisfaction of the Tax Commissioner that it is domiciled in a state or country other than Nebraska that imposes a retaliatory tax against the corporation income tax on Nebraska domiciled insurance companies.

(Section 77-2734.02, R.R.S. 2009. ~~November 11, 1998~~\_\_\_\_\_.)

## REG-24-043 CLAIMS FOR REFUND

043.01 Any person who has overpaid any corporation income tax may file a claim for a credit or refund of the amount of tax overpaid. A claim for credit or refund of corporation income tax (claim) must be filed with the Nebraska Department of Revenue (Department) in accordance with Reg-33-002.01A.

043.01A The Department will not accept a claim for credit or refund if the amount is less than $2.

043.01B If the claimant desires a hearing, a request for hearing must be made when the claim is filed or prior to the Tax Commissioner taking action on the claim. A claim for credit or refund is not presumed to be a request for a hearing.

043.01C Only the taxpayer or an authorized representative of the taxpayer may file a claim for refund.

043.01D A claim for overpayment of corporation income tax must be filed within the time specified in Reg-33-002.01B(3).

043.02 Unless the Tax Commissioner allows the claim and sends notice to the taxpayer within six months after the claim is filed, the claim is considered disallowed. Notice may be provided by first class mail.

043.03 The amount of overpayment may be credited against any sales, use, income, or any other tax, and any fees, interest, or penalties then due and payable to the state from the claimant. Any remaining balance may be refunded to the taxpayer. All corporation income tax refunds will be paid electronically.

043.04 Interest will be allowed on the refund at the rate specified in Neb. Rev. Stat. § 45-104.02 from the original due date of the return unless an exception applies.

(Sections 77-2791, 77-2793, 77-2795, 77-2797, and 77-2799, R.R.S. 2009, section 77-2794 R.S. Supp. 2010, and section 77-2704, R.S. Supp. 2011.\_\_\_\_\_)REG-24-046 ADJUSTMENTS OF FEDERAL INCOME TAX

046.01 Any changes made by the Internal Revenue Service (IRS) ~~in~~ to the federal taxable income of a corporate taxpayer, a member of a unitary group, or the unitary group must be reported to the Nebraska Department of Revenue (Department) within ~~ninety(90)~~ 60 days ~~of~~ after the final determination of the change.

046.01A Reportable changes include changes made to the federal return by either the ~~Internal Revenue Service~~ IRS Processing Center or any other ~~Internal Revenue Service~~ IRS office.

046.01~~A In~~ B When reporting any change to federal taxable income, the ~~Tax Commissioner~~ taxpayer must ~~be furnished~~ furnish the Department complete information regarding the amount of income reported and taxes paid to the United States. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors ~~of~~ in the final determination.

046.02 Any adjustments made on federal amended returns which do not result in a federal ~~refund or~~ credit or refund must be reported to the ~~Nebraska~~ Department ~~of Revenue~~ within ~~ninety(90)~~ 60 days ~~of the~~ after filing ~~of~~ the federal amended return. Any adjustments made on federal amended returns which result in a federal credit or refund must be reported to the ~~Nebraska~~ Department ~~of Revenue~~ within ~~ninety(90)~~ 60 days ~~of~~ after the taxpayer's receipt of proof that the federal credit or refund was accepted by the ~~Internal Revenue Service~~ IRS, or within any other applicable period provided by law, whichever is later.

~~046.02A~~ 046.03 Adjustments made on a federal amended return or by the ~~Internal Revenue Service~~ IRS ~~shall~~ must be reported to the ~~Tax Commissioner~~ Department by filing an Amended Nebraska Corporation Income Tax Return, Form 1120XN, for the taxable year involved.

046.03A The amended return for Nebraska must include copies of the federal amended return, ~~Internal Revenue Service~~ IRS report, or any other document which substantiates the adjustments claimed.

046.03B Each amended return for Nebraska must be filed separately and ~~should not~~ cannot be attached to a return for another taxable year. ~~Payment of any~~ Any additional tax that is due must ~~accompany~~ be paid when the amended return is filed.

046.04 ~~For the purpose of determining when adjustments in federal income tax constitute a final determination, the~~ The following acts ~~will be~~ are considered ~~to be~~ a final determination:

046.04A A decision by the tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final;

046.04B A closing agreement authorized by ~~Section 7121 of the Internal Revenue Code~~ IRC § 7121 which relates either to the total tax liability, ~~for a particular taxable year or years~~ or to one or more separate items affecting the Nebraska tax liability. A closing agreement becomes final for purposes of this regulation on the date ~~of its approval~~ it is approved by the ~~Internal Revenue Service~~ IRS;

046.04C ~~The~~ A final disposition by the ~~Internal Revenue Service~~ IRS of a claim for ~~a~~ refund;

046.04D Any informal agreement between the corporate taxpayer or a member of a unitary group and the ~~Internal Revenue Service~~ IRS made for the express purpose of ~~serving as a determination in respect to~~ determining the tax liability of the taxpayer. ~~Such an~~ To be considered a final determination, the agreement must include a waiver of restrictions on assessment and ~~the~~ collection of any deficiencies resulting from the agreement;

046.04E ~~The acceptance~~ Acceptance of an examining officer's findings ~~in~~ with regard to the income of a partnership, a fiduciary, or a limited liability company;

046.04F ~~The payment~~ Payment of any additional tax by the corporate taxpayer or unitary group; or

046.04G Any other final judgment ~~effecting~~ causing changes in reported federal taxable income.

046.05 If a taxpayer fails to report any change or correction which increases its federal tax liability, ~~or~~ fails to report any change or correction which is treated as a deficiency for federal income tax purposes, or fails to file an amended Nebraska return as required by this regulation, the Tax Commissioner may ~~mail to~~ issue the taxpayer a notice of deficiency at any time. If a taxpayer properly reports any change in its federal tax liability, the Tax Commissioner ~~may~~ must make an assessment relating to the change ~~at any time~~ within two ~~(2)~~ years after the report or amended return was filed.

046.06 ~~The~~ An amended return reporting a change that results in an overpayment of tax for Nebraska is considered a claim for credit or refund.

046.06A The amount of the credit or refund ~~shall not~~ cannot exceed the amount of the Nebraska tax attributable to ~~such~~ the federal change, correction, or the items amended on the federal return.

046.06B If the amended return is not filed within ~~ninety~~ 60 days ~~of~~ after the final determination of the change, interest ~~shall~~ does not accrue after the ~~ninetieth~~ 60th day.

046.06C If the amended return is not filed within two years and ~~ninety~~ 60 days ~~from~~ after the final determination of the change, no credit or refund ~~shall~~ will be granted.

(Sections 77-2774, 77-2775, 77-2786, and 77-2793, R.R.S. 2009. ~~March 7, 2006~~\_\_\_\_\_.)

## REG-24-063 ADJUSTMENTS OF INCOME TAXABLE IN ANOTHER STATE

063.01 Whenever the income of a corporate taxpayer, a member of a unitary group, or the unitary group which is taxable in another state for any taxable year, is changed or corrected in a way material to the tax liability owed to this state, ~~such~~ the change must be reported to the Nebraska Department of Revenue (Department) within ~~ninety (90)~~ 60 days ~~of~~ after the final determination of the change.

063.01A Reportable changes include changes made by any competent taxing authority of the other state.

063.01~~A In~~ B When reporting any change, the ~~Tax Commissioner~~ taxpayer must ~~be furnished~~ furnish the Department complete information regarding the amount of income reported and taxes paid to the other state. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

063.02 Any adjustments made by amended returns filed with another state or by another state’s taxing authority ~~shall~~ must be reported to the ~~Tax Commissioner~~ Department by filing an Amended Nebraska Corporation Income Tax Return, Form 1120XN, for the taxable year involved. The amended return for Nebraska must be filed within ~~ninety (90)~~ 60 days ~~of the~~ after filing ~~of~~ the amended ~~state~~ return for the other state, and ~~should~~ must include copies of any report issued by the taxing authority of the other state.

063.03 Each amended return for Nebraska must be filed separately and ~~should not~~ cannot be attached to a return for another taxable year. ~~Payment of any~~ Any additional tax that is due must ~~accompany~~ be paid when the amended return is filed.

063.04 ~~For the purpose of determining when adjustments in another state’s taxable income constitute a final determination, the~~ The following acts ~~will be~~ are considered ~~to be~~ a final determination~~.~~:

063.04A A decision by a tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final~~,~~;

063.04B A closing agreement or settlement agreement which relates either to the total tax liability, ~~for a particular taxable year or years~~ or to one or more separate items affecting Nebraska tax liability~~.~~;

063.04C ~~The~~ A final disposition of a claim for a refund by the other state’s taxing authority~~.~~;

063.04D Any informal agreement between the corporate taxpayer, or a member of a unitary group, and the taxing authority of the other state made for the express purpose of ~~serving as a determination in respect to~~ determining the tax liability of the taxpayer. To be considered a final determination, the agreement must include a waiver of restrictions on assessment and the collection of any deficiencies resulting from the agreement; or

063.04E Any other final judgment ~~effecting~~ causing changes in reported taxable income.

063.05 If a taxpayer fails to report any change or correction which would increase its Nebraska income tax liability, or fails to file an amended Nebraska return as required by this regulation, the Tax Commissioner may mail ~~to~~ the taxpayer a notice of deficiency at any time. If a taxpayer properly reports any change ~~in~~ to its taxable income ~~to~~ by another state, the Tax Commissioner ~~may~~ must make an assessment relating to the change ~~at any time~~ within two ~~(2)~~ years after the report or amended return was filed.

063.06 The amended return reporting a change that results in an overpayment of tax for Nebraska is a claim for credit or refund.

063.06A The amount of the credit or refund ~~shall not~~ cannot exceed the amount of the Nebraska tax attributable to the change or correction in the taxable income for the other state, or the items amended on the other state’s return.

063.06B If the amended return is not filed within ~~ninety~~ 60 days ~~of~~ after the final determination of the change, interest ~~shall~~ will not accrue after the ~~ninetieth~~ 60th day.

063.06C If the amended return is not filed within two years and ~~ninety~~ 60 days ~~from~~ after the final determination of the change, or within ten years after the due date of the original return, whichever is earlier, no credit or refund ~~shall~~ will be granted.

 (Sections 77-2774, 77-2775, 77-2786, and 77-2793, R.R.S. 2009.  ~~November 11, 1998~~\_\_\_\_\_.)