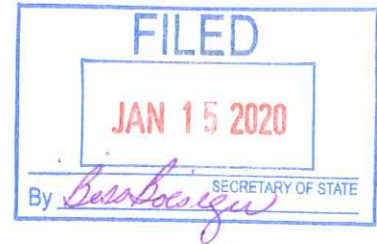


State of Nebraska

Nebraska Department of Revenue



NOTICE is given that the Nebraska Department of Revenue (Department) will hold a regulation hearing pursuant to Neb. Rev. Stat. § 84-907 on February 27, 2020, beginning at 10:00 AM, at the Nebraska State Office Building, 301 Centennial Mall South, Room Lower-level B. The purpose of this hearing is to take testimony and receive into evidence any documentation concerning the adoption, repeal, and amendment of regulations within Title 316 and Title 150 of the Nebraska Administrative Code as identified below.

The proposed changes: (1) Repeal outright Title 316, Neb. Admin. Code Ch. 13, Nameplate Capacity Tax, because the regulations largely repeat the statutory language; (2) Repeal outright Title 316, Neb. Admin. Code Ch. 48, State Board of Equalization and Assessment because the regulations are obsolete due to the transfer of the duty for intercountry equalization from the State Board of Equalization to the Tax Equalization and Review Commission; (3) Repeal outright Title 316, Neb. Admin. Code Ch. 46, Motor Vehicles because the regulations are obsolete due to replacing the property tax on motor vehicles with the motor vehicle tax; (4) Repeal outright 22 regulations in Title 316, Neb. Admin. Code Ch. 24, Business Entity Regulations – Corporate Income Tax and 7 regulations in Title 316 Neb. Admin. Code Ch. 25 Partnership Tax because these regulations were moved to a new Article within Title 316, Neb. Admin. Code, Ch. 24; (5) Creation of Title 316, Neb. Admin. Code Ch. 15, Music Licensing Agency Tax, to adhere to legislative mandate for the creation of a regulation to implement the Music Licensing Agency Act pursuant to LB 1120 (2018).

**Title 316, Ch. 13, Nameplate Capacity Tax**

*The following regulations are repealed:*

REG-13-001 PURPOSE AND DEFINITIONS  
REG-13-002 CALCULATING THE NAMEPLATE CAPACITY TAX  
REG-13-003 COLLECTING AND DISTRIBUTING THE NAMEPLATE CAPACITY TAX

**Title 316, Ch. 48, State Board of Equalization and Assessment**

*The following regulations are repealed:*

REG-48-001 SCOPE AND APPLICATION  
REG-48-002 MEMBERSHIP; OFFICER; QUORUM  
REG-48-003 ANNUAL MEETING; SPECIAL MEETING  
REG-48-004 DUTIES OF THE SECRETARY  
REG-48-005 NOTICE  
REG-48-006 EQUALIZATION  
REG-48-007 REVIEW OF ACTIONS OF THE COUNTY BOARD  
REG-48-008 SETTING THE EXCISE TAX RATE  
REG-48-009 DEMAND FOR ABSTRACT OF ASSESSMENT  
REG-48-010 APPEALS

REG-48-011 RECERTIFICATION BY THE STATE BOARD OF EQUALIZATION AND ASSESSMENT

**Title 316, Ch. 46, Motor Vehicles**

*The following regulations are repealed:*

REG-46-001 NATURE OF MOTOR VEHICLE  
REG-46-002 DEFINITIONS  
REG-46-003 SCHEDULE OF VALUES  
REG-46-004 APPLICATION OF LEVIES  
REG-46-005 COMPUTATION OF TAX  
REG-46-006 COLLECTION OF TAXES  
REG-46-007 TRANSFER OF OWNERSHIP  
REG-46-008 EXPIRED OR LATE REGISTRATION  
REG-46-009 OPTION TO REGISTER THREE OR MORE MOTOR VEHICLES ON A CALENDAR YEAR BASIS, OR AN ANNUAL BASIS BEGINNING IN A MONTH CHOSEN BY THE OWNER  
REG-46-010 DISTRIBUTION OF MOTOR VEHICLE

**Title 316, Ch. 24, Business Entity Regulations – Corporate Income Tax**

*The following regulations are repealed:*

REG-24-024 PROPERTY FACTOR: IN GENERAL  
REG-24-025 PROPERTY FACTOR: PROPERTY USED  
REG-24-026 PROPERTY FACTOR: CONSISTENCY IN REPORTING  
REG-24-027 PROPERTY FACTOR: NUMERATOR  
REG-24-028 PROPERTY FACTOR: VALUATION OF OWNED PROPERTY  
REG-24-029 PROPERTY FACTOR: VALUATION OF RENTED PROPERTY  
REG-24-030 PROPERTY FACTOR: AVERAGING PROPERTY VALUES  
REG-24-031 PAYROLL FACTOR: IN GENERAL  
REG-24-032 PAYROLL FACTOR: DENOMINATOR  
REG-24-033 PAYROLL FACTOR: NUMERATOR  
REG-24-034 PAYROLL FACTOR: COMPENSATION PAID IN THIS STATE  
REG-24-035 SALES FACTOR: IN GENERAL  
REG-24-036 SALES FACTOR: DENOMINATOR  
REG-24-037 SALES FACTOR: NUMERATOR  
REG-24-038 SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE  
REG-24-039 SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE  
REG-24-040 SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE  
REG-24-049 SPECIAL RULES: AIRLINES  
REG-24-055 INCOME NOT SUBJECT TO APPORTIONMENT

JAN 15 2020

REG-24-056 CORPORATION AS PARTNER IN A PARTNERSHIP OR JOINT VENTURE  
REG-24-059 SPECIAL RULES: TRUCKING COMPANIES  
REG-24-062 SPECIAL RULES: PIPELINE COMPANIES

**Title 316, Ch. 25, Partnership Tax**

*The following regulations are repealed:*

REG-25-001 DEFINITION OF PARTNERSHIP TERMS FOR NEBRASKA TAX PURPOSES  
REG-25-002 PARTNERS, NOT THE PARTNERSHIP, SUBJECT TO TAX  
REG-25-003 TAXATION OF NONRESIDENT PARTNERS  
REG-25-004 METHODS OF ACCOUNTING  
REG-25-005 RECORDS  
REG-25-006 APPORTIONMENT FORMULA - MULTISTATE OPERATIONS  
REG-25-007 ADJUSTMENTS OF FEDERAL OR ANOTHER STATE'S INCOME TAX

**Title 316, Ch. 15, Music Licensing Agencies**

*The following regulations are adopted:*

REG-15-001 MUSIC LICENSING AGENCIES

A complete copy of the regulations and the descriptions of fiscal impact are available in the office of the Tax Commissioner, 301 Centennial Mall South, Lincoln, NE, Second Floor, or may be viewed at the websites for the Nebraska Department of Revenue [www.revenue.nebraska.gov](http://www.revenue.nebraska.gov) or the Secretary of State ([www.sos.ne.gov](http://www.sos.ne.gov)).

The opportunity to be heard will be offered to any interested person upon written request to Tony Fulton, Tax Commissioner, Nebraska Department of Revenue, PO Box 94818, Lincoln, NE 68509. Unscheduled testimony will be heard following the scheduled testimony at the hearing. Any interested party may submit a written statement by 5:00 PM on February 27, 2020 to be made part of the record. Individuals requiring physical or sensory accommodations, please contact the Nebraska Department of Revenue at 301 Centennial Mall South, Lincoln, NE 68509 or by calling 402-471-2971 or TDD 402-471-5740, no later than February 20, 2020.

Dated this 14<sup>th</sup> day of January, 2020

For the Tax Commissioner



George Kilpatrick  
Attorney and Manager, Policy Section

JAN 15 2020



PRELIMINARY FISCAL IMPACT STATEMENT

Agency: Revenue	
Title: Title 316	Prepared by: George Kilpatrick
Chapter: 13	Date prepared: December 13, 2019
Subject: Nameplate Capacity Tax Regulations	Telephone: (402) 471-6024

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:



**NEBRASKA DEPARTMENT OF REVENUE**

**Repeal Unnecessary Regulations Governing Nameplate Capacity  
Taxes**

Title 316, Neb. Admin. Code Ch. 13 §§ 001, 002, and 003 are repealed outright.

## **~~REG 13-001 Purpose and Definitions~~**

~~001.01 The purpose of the nameplate capacity tax levied under Neb. Rev. Stat. § 77-6203 is to replace property taxes that would otherwise be imposed on wind infrastructure.~~

~~001.02 For purposes of these regulations:~~

~~001.02A Commercial operation means the wind energy generation facility is connected to the electrical grid;~~

~~001.02B Commissioned means the wind turbine of a wind energy generation facility has been in commercial operation for at least 24 hours;~~

~~001.02C Customer generator means an electricity customer that generates electricity on the customer's side of the meter from a qualified facility as defined in Neb. Rev. Stat § 70-2002.~~

~~001.02D Nameplate capacity means the manufacturer's rated capacity of a wind turbine to generate electricity as measured in megawatts, including fractions of a megawatt;~~

~~001.02E Owner means the person holding legal title to the wind energy generation facility on the date the facility is commissioned, or January 1 of the year for which the nameplate capacity tax is due, whichever is later;~~

~~001.02F Wind energy generation facility (or facility) means a facility that generates electricity using wind as the fuel source.~~

~~(Section 70-2002, R.R.S., 2009, and Sections 77-6201 and 77-6202, R.S. Supp., 2010, June 6, 2011.)~~



## **REG-13-002 Calculating the Nameplate Capacity Tax**

~~002.01 The owner of a wind energy generation facility must pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned wind energy generation facility multiplied by a tax rate of \$3,518 per megawatt.~~

~~002.02 The nameplate capacity tax is imposed annually beginning the first calendar year the facility is commissioned. A facility commissioned prior to July 15, 2010, is subject to the tax on January 1, 2010 and each year thereafter.~~

~~002.02A The nameplate capacity tax for the first calendar year the facility is commissioned is prorated based upon the number of days remaining in the calendar year after the facility is commissioned.~~

~~002.02B For the first year in which additional commissioned nameplate capacity is added to a facility, the nameplate capacity tax on the additional nameplate capacity is prorated based upon the number of days remaining in the calendar year after the additional nameplate capacity is commissioned.~~

~~002.02C When a facility is decommissioned or made nonoperational by a change in law or decertified under Neb. Rev. Stat § 70-1014.02(8) during a tax year, the nameplate capacity tax is prorated based upon the number of days during the calendar year in which the facility was commissioned or operational.~~

~~002.02D When the capacity of a facility to produce electricity is reduced but is not decommissioned, the nameplate capacity of the facility is deemed to be unchanged.~~

~~002.03 Any property tax previously paid from the date of commissioning until January 1, 2010, on a facility commissioned prior to July 15, 2010, which is greater than the amount that would have been paid under section 002.01 of these regulations, may be taken as a credit against any other tax due under Chapter 77 of the Nebraska Revised Statutes. Any amount that could be taken as a credit that is unused in any tax year may be carried forward to subsequent tax years until fully utilized.~~

~~002.04 No nameplate capacity tax may be imposed on a wind energy generation facility that is:~~

~~002.04A Owned or operated by the federal government, the state, a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric membership association, or a cooperative; or~~

~~002.04B Owned by a customer generator.~~

*(Section 77-6203, R.S. Supp., 2010. June 6, 2011.)*

## **~~REG 13-003 Collecting and Distributing the Nameplate Capacity Tax~~**

~~003.01 On March 1 of each year, the owner of a wind energy generation facility must file with the Department of Revenue (Department) a report on the nameplate capacity of the facility for the previous calendar year. The owner of a facility is responsible for the nameplate capacity tax with respect to the facility, whether or not the owner of the facility is also the owner of the land on which the facility is located.~~

~~003.02 Nameplate capacity taxes for any calendar year are due on April 1 of the following year. One fourth of the nameplate capacity taxes due for the prior year becomes delinquent on April 1, and an additional one fourth becomes delinquent on the following July 1, October 1, and January 1. Any delinquencies are assessed interest at the rate in Neb. Rev. Stat. § 45-104.02~~

~~003.03 Failure to file a report required by section 003.01 of these regulations, filing this report late, failure to pay nameplate capacity taxes that are due, or underpayment of these taxes, results in a penalty of five percent of the amount due for each calendar quarter the report is overdue or the payment is delinquent, except that the penalty may not exceed \$10,000.~~

~~003.04 The owner of a facility is subject to the same audit, assessment, deficiency, protest, and appeal provisions as a taxpayer under the Nebraska Revenue Act.~~

~~003.05 The Department will identify the proceeds from the nameplate capacity tax separately for each wind energy generation facility and pay the proceeds related to each facility over to the county treasurer of the county where that wind energy generation facility is located within 30 days after receipt.~~

~~003.05A If a facility is located in more than one county, the nameplate capacity tax collected from the facility will be divided between each county where the facility is located based on the portion of the total nameplate capacity of the facility that is located in each county.~~

~~003.05B The Department will not retain any of the proceeds from the nameplate capacity tax for administration.~~

~~003.06 The county treasurer must distribute all nameplate capacity tax revenue received to local taxing entities which, but for the personal property tax exemption, would have received personal property tax revenue from depreciable personal property located at the facility.~~

~~003.06A The distribution to each eligible local taxing entity is calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the total tax levied by all of the eligible local taxing entities during the year. Each eligible entity's resulting fraction is then multiplied by the revenue distributed to the county treasurer by the Department to determine the portion of the revenue due each local taxing entity.~~

*(Sections 77-6203 and 77-6204, R.S. Supp. 2010, June 6, 2011.)*

PRELIMINARY FISCAL IMPACT STATEMENT

Agency: Revenue	
Title: Title 316	Prepared by: Jeneé Y. Saffold
Chapter: 15	Date prepared: October 22, 2019
Subject: Music Licensing Agencies Tax Regulations	Telephone: (402) 471-5924

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Increased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indeterminable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Provide an Estimated Cost & Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:



## REG-15-001 MUSIC LICENSING AGENCIES

### 001.01 Terms

001.01A Gross receipts means the total amount of consideration received, valued in money, whether received in money or otherwise.

001.01B Nondramatic musical work means an original work of authorship consisting of music and any accompanying lyrics not created for use in musical theater or any other work that uses the music to tell a story or as part of the story or plot.

001.01(B)(1) Examples of nondramatic musical works include, but are not limited to, songs broadcast on the radio (other than recordings of dramatic musical works), songs or background music performed as part of a movie or other television program, or live or recorded performances of musical compositions in a bar, restaurant, hotel, sports or entertainment facility, store, or other place open to the public.

001.02 Beginning January 1, 2019, a music licensing agency must register annually, on or before February 15 each year, with the Nebraska Department of Revenue (“DOR”) prior to licensing or attempting to license the use of, or collecting or attempting to collect any compensation with regard to, any sale, license, or other disposition of a performing right. The music licensing agency must register by filing a Music Licensing Agency Registration Application, Form 20M.

001.02A Music licensing agencies must submit, with the Form 20M, an electronic copy of each variation of the performing rights agreements, providing for the payment of royalties, made available from the music licensing agency to any proprietor within this state.

001.02B DOR will issue to the music licensing agency a letter evidencing receipt and acceptance of the Form 20M.

001.02C Music licensing agencies must make electronically available to proprietors the most current available list of members and affiliates represented by the music licensing agency and the most current available list of performed works that the music licensing agency licenses. This requirement can be satisfied by furnishing a copy of the lists to DOR to post on its website.

001.03 A music licensing agency is required to file a return and pay the tax specified in Neb. Rev. Stat. § 59-1403 annually on or before March 15 for each calendar year in which the music licensing agency has gross receipts from the sale, license, or other disposition of any performing rights in this state. The Music Licensing Agency Royalty Fees Tax Return, Form 65M, must be filed even if there have been no gross receipts from the sale, license or other disposition of performing rights.

001.03A Remittance payable to DOR must accompany the Form 65M and be in the form of a check, draft, money order, or other payment method as approved by the Tax Commissioner.

001.03B A properly signed Form 65M that is accompanied by remittance will be considered timely filed if actually received or if mailed, postage prepaid, on or before the fifteenth day of March each year for gross receipts of the preceding calendar year.

001.03(B)(1) When March 15 falls on a Saturday, Sunday, or an approved holiday, the Form 65M is considered timely filed if actually received or mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday or an approved holiday.

001.03(B)(2) A United States Postal Service postmark is conclusive evidence of the date of mailing for the purpose of timely filing a Form 65M.

001.03(B)(3) A private postage meter date or a date stamped by a private delivery service will be considered the date of mailing if the date of the stamp is no more than four days before the date the Form 65M is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the Form 65M is received by the Department, the return is considered filed on the date received.

001.03C Failure to remit the tax due by the due date will impose interest at the specified rate in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

001.04 Every registered music licensing agency is required to keep records in order to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessperson engaged in a similar activity, together with all documents supporting entries in the books of account. Schedules and working papers used in preparing the tax returns must be retained.

001.04A The record created at the time of a payment for royalties must take the form of a written contract.

001.04B DOR may examine the books, papers, records, and equipment of any person to ascertain or verify the accuracy of any return filed, or, if no return is filed by the person, to ascertain and determine the amount to be paid. Records must be retained for a period of not less than three years after the return is filed, unless DOR, in writing, authorizes their destruction at an earlier date.

PRELIMINARY FISCAL IMPACT STATEMENT

Agency: Revenue	
Title: Title and 316	Prepared by: George Kilpatrick
Chapter: 48	Date prepared: July 6, 2018
Subject: State Board of Equalization	Telephone: (402) 471-6024

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Increased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decreased Revenue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indeterminable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Provide an Estimated Cost & Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:





TITLE 316, NEBRASKA DEPARTMENT OF REVENUE

CHAPTER 48 STATE BOARD OF EQUALIZATION AND ASSESSMENT *Repealed outright.*

**REG-48-001 SCOPE AND APPLICATION** *Repealed*

~~These regulations govern the duties and procedures of the State Board of Equalization and Assessment authorized by the Constitution and the laws of the state of Nebraska.~~

~~(Nebraska Constitution article IV, section 28, Chapter 77, Article 5, and 66-4,144, R.S.Supp., 1992. January 24, 1993.)~~

**REG-48-002 MEMBERSHIP; OFFICER; QUORUM** *Repealed*

~~002.01 The State Board shall consist of the following members: The Governor, as chairperson of the Board; the Secretary of State; the Auditor of Public Accounts; the State Treasurer; and the Tax Commissioner, as secretary of the Board. In the absence of either the chairperson or the secretary, their places may be temporarily filled by other members of the Board.~~

~~002.02 The attendance of three members of the Board shall constitute a quorum for the transaction of business.~~

~~(Nebraska Constitution article IV, section 28, and sections 77-501 and 77-502, R.R.S. 1943. January 24, 1993.)~~

**REG-48-003 ANNUAL MEETING; SPECIAL MEETING** *Repealed.*

~~003.01 The State Board shall meet annually at the State Capitol as soon as the abstracts of assessment have been submitted by the county assessors for the purpose of equalizing the values of all real property in this state.~~

~~003.02 In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, within fifteen days after the adjournment of each regular session of the Legislature, the Board shall set the rate of the excise tax imposed by sections 66-4,140 on motor vehicle fuels and 66-605.02 on special fuels which will be effective from July 1 through June 30 of the succeeding year.~~

~~003.03 In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Governor may call a meeting of the Board at any time in advance of the issuance of such bonds.~~

~~003.04 The Tax Commissioner may call a special meeting of the Board at such times as its business may require.~~

~~(Section 66-4,144, R.S.Supp., 1991, section 77-503, R.R.S. 1943, and section 77-505, R.S.Supp., 1992, January 24, 1993.)~~

**~~REG-48-004 DUTIES OF THE SECRETARY~~ *Repealed.***

~~004.01 The Tax Commissioner, as secretary of the State Board, shall have the following duties and powers:~~

~~004.01A To administer oaths and affirmations to those testifying before the Board.~~

~~004.01B To sign and affix the seal of the Board to all orders, certificates, and processes, in the name of the Board, upon a roll call vote of the Board.~~

~~004.01C To issue notice of all meetings of the Board.~~

~~004.01D To prepare all necessary information for each Board member in preparation of all meetings.~~

~~(Section 77-503, R.R.S. 1943, January 24, 1993.)~~

**~~REG-48-005 NOTICE~~ *Repealed.***

~~005.01 For all meetings of the State Board, the Tax Commissioner shall issue reasonable advance notice to each member of the Board and to the public by: legal notice, issued pursuant to section 33-141; and, by news release.~~

~~005.01A The legal notice shall be issued in a manner which assures publication at least ten days prior to the meeting of the Board. The legal notice shall be published in at least three major newspapers with general circulation in the state.~~

~~005.01B The news release shall be issued in a manner which assures publication at least ten days prior to the meeting of the Board. The news release shall be issued to all news media whose names appear upon a list maintained by the Tax Commissioner. The list shall contain the names of the news media requesting notification of the meetings of the Board.~~

~~005.02 Reasonable advance notice shall mean at least ten days prior to the meeting of the Board.~~

~~005.03 All notices of the Board shall contain the time and place for the meeting and an agenda of the subjects to be discussed at the meeting. If an agenda of subjects is not known at the time of issuing the notice, the notice shall contain a statement that the agenda, which shall be kept continually current, shall be available for inspection to any interested person at the office of the Tax Commissioner during normal business hours.~~

~~005.04 When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes of the meeting and any formal action taken in the meeting shall pertain only to the purpose for which the emergency was called. The Board shall issue a news release in the manner prescribed in Reg 48-005.01B, except that the news release shall be issued as soon as practicable after the decision to hold the emergency meeting is made.~~

~~(Section 84-1411, R.R.S. 1943, January 24, 1993.)~~

### **REG-48-006 EQUALIZATION *Repealed.***

~~006.01 The State Board shall annually equalize the values of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property which is valued by the state for the purpose of achieving the uniform and proportionate valuation of all real property in the state.~~

~~006.02 Based upon the review of the abstracts of assessments, the Board shall have the power to increase or decrease, by a percentage, the value of a class or subclass of property of any county or tax district, or the property valued by the state.~~

~~006.02A Class or subclass of property shall mean the class or subclass of real property as defined by the Tax Commissioner by Reg 40-008, Property Classifications.~~

~~006.02B Tax district shall mean counties, townships, cities, villages, school districts, junior college districts, municipal universities, and all other subdivisions of the state and all governmental agencies having the power to levy or to provide for the levy of general or special taxes.~~

~~006.02C A property valued by the state shall mean property of the type specified in Nebraska Department of Revenue's Property Valued By The State Regulations, Chapter 43.~~

~~006.03 The Tax Commissioner shall make a recommendation to the Board at its annual meeting as to the action necessary to achieve intercounty equalization. The Tax Commissioner shall, here applicable, utilize the valuation standards set out in 77-112 and the sales assessment ratio study required by section 77-1325. In those counties where sales data is not considered sufficient to furnish conclusive evidence as to the ratio of assessed values to sales values, the Tax Commissioner may conduct an appraisal of the properties in the counties or employ comparable sales of real property from surrounding counties or any other relevant information to assist in determining the level of value in the county.~~

~~The Tax Commissioner shall use standard methods of mass appraisal in attempting to draw conclusions as to the level of value of any class or subclass of property within a county or tax district, in an attempt to achieve uniform or proportionate valuation of all real property in the state.~~

~~006.04 The Board shall consider the recommendation of the Tax Commissioner, and any other relevant evidence or testimony in determining if a just, equitable, or legal assessment of property in the state cannot be made without adjusting by a percentage the value of a class or subclass of property in a county or tax district.~~

~~If a determination is made that an adjustment is warranted, the Board shall issue notice of hearing to the affected county and set a date for hearing at least ten days following the mailing of such notice. The Board may direct the Tax Commissioner to hold such hearing to expedite the equalization process.~~

~~006.04A The notice shall be mailed to the county clerk, the county assessor, and chairperson of the county board.~~

~~006.04B Legal representatives of the county may appear at the hearing.~~

~~006.05 After the hearing has been conducted, the Board shall either (1) enter its order based on the information presented to it at the hearing; or (2) meet and consider the recommendation of the Tax Commissioner, which shall be based on the information presented at the hearing.~~

~~006.05A Notice of the Tax Commissioner's recommendation shall be issued at least five days prior to the meeting of the Board. The notice shall be mailed to the county clerk, county assessor, and the chairperson of the county board.~~

~~006.05B At the meeting, any interested person may present testimony relevant to the Tax Commissioner's recommendation.~~

~~006.06 On or before August 15th, the order of the Board shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board. The order shall specify the percentage increase or decrease and the class or subclass of property affected.~~

~~006.07 The county assessor shall implement the changes specified by the Board to each item of property so affected by the Board.~~

~~006.08 The county shall be bound by the order of the Board until such time as the Court of Appeals or the Supreme Court rules otherwise, pursuant to an appeal prosecuted pursuant to Reg 48-010.~~

~~(Section 77-508.01, R.R.S. 1943 and sections 77-505, 77-506, 77-508, and 77-509, R.S. Supp., 1992. January 24, 1993.)~~

**~~REG-48-007 REVIEW OF ACTIONS OF THE COUNTY BOARD-Repealed.~~**

~~007.01 The State Board may review, in cases brought to its attention by the Tax Commissioner, any changes made by the county board of equalization in the valuation of property in the county.~~

~~007.02 Upon an order of the Board, the Tax Commissioner shall conduct a hearing to review the action of the county board, and shall make a recommendation, based upon the testimony presented at the hearing, to the Board concerning any corrections or adjustments necessary to the class or subclass of property so as to secure the assessment of the property as required by law.~~

~~007.03 Notice of the hearing before the Tax Commissioner shall be mailed at least ten days prior to the date for hearing.~~

~~007.03A The notice shall be mailed to the county clerk, county assessor, and chairperson of the county board.~~

~~007.03B Legal representatives of the county may appear at the hearing.~~

~~007.04 After the hearing has been conducted by the Tax Commissioner, the Board shall meet to consider the recommendation of the Tax Commissioner, which shall be based upon the information presented at the hearing.~~

~~007.04A Notice of the Tax Commissioner's recommendation shall be issued at least five days prior to the meeting of the Board. The notice shall be mailed to the county clerk, county assessor, and the chairperson of the county board.~~

~~007.04B At the meeting any interested person may present testimony relevant to the Tax Commissioner's recommendation.~~

~~007.05 On or before August 15th, the order of the Board shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board. The order shall specify the correction or adjustment to be made to the class or subclass of property affected.~~

~~007.06 The county assessor shall implement the changes specified by the Board to each item of property so affected by the order of the Board.~~

~~007.07 The county shall be bound by the order of the Board until such time as the Court of Appeals or the Supreme Court rules otherwise, pursuant to an appeal prosecuted pursuant to Reg 48-010.~~

~~(Sections 77-507.01 and 77-509, R.S.Supp., 1992. January 24, 1993.)~~

**~~REG-48-008 SETTING THE EXCISE TAX RATE Repealed.~~**

~~008.01 At the meeting set out in Reg 48-003.02, the rate of excise tax for a given July 1 through June 30 period shall be in addition to and independent of the rate or rates of excise tax set pursuant to Reg 48-003.03 for such period.~~

~~008.02 The Department of Roads, with assistance from the Department of Revenue, shall prepare and provide the necessary information to each member of the State Board at least five days before each meeting. Such information shall include, but not be limited to, the unobligated balance in the Highway Cash Fund anticipated on the subsequent June 30, monthly estimates of anticipated receipts to the Highway Cash Fund for the subsequent fiscal year, and the appropriations made from the Highway Cash Fund for the subsequent fiscal year.~~

~~008.03 The Board shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The Board shall then fix the rate of excise tax in an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.~~

~~008.04 At the meeting set out in Reg 48-003.03, the Board shall set the rate of the excise tax imposed by sections 66-4,140 and 66-605.02 for each year during which such bonds are outstanding to provide in each such year money equal in amount to not less than one hundred twenty five percent of such year's bond principal and interest payment requirements. Such rate shall be in addition to the rate of excise tax set pursuant to Reg 48-003.02.~~

~~008.05 Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the Board determines to be consistent with the principal and interest requirements of such bonds.~~

~~008.05A Such excise tax rates set pursuant to Reg 48-008.04 may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the Board has received from the Nebraska Highway Bond Commission notice of reduced principal and interest requirements for such bonds, in which event the Governor may call a meeting of the Board to determine whether the rate or rates shall be changed.~~

~~008.05B The new rate or rates, if any, set by the Board shall become effective on the first day of the following calendar quarter.~~

~~(Section 66-4,144, R.S.Supp., 1992. January 24, 1992.)~~

**~~REG-48-009 DEMAND FOR ABSTRACT OF ASSESSMENT~~ *Repealed.***

~~The State Board shall have the power to send for the abstract of assessments of any county when the county assessor has failed to transmit the same. The expense thereof, if any, shall be charged to the proper county and collected at the next settlement with the county. Any county so charged shall deduct the amount from the salary of such delinquent county assessor.~~

~~(Section 77-511, R.R.S. 1943. January 24, 1993.)~~

**~~REG-48-010 APPEALS~~ *Repealed.***

~~The exclusive method for appealing a final action of the State Board with respect to the equalization of any property, any person, county, or municipality affected thereby shall prosecute an appeal to the Court of Appeals. Upon demand therefore, the Board shall prepare and certify a transcript of its recordings and proceedings involved in such action. Notice of intention to obtain a review shall be filed within ten days from the date of the action by the Board and when docketed the case shall be given precedence by the Court of Appeals over all civil cases.~~

~~(Section 77-510, R.S.Supp., 1992. January 24, 1993.)~~

**~~REG-48-011 RECERTIFICATION BY THE STATE BOARD OF EQUALIZATION AND ASSESSMENT~~ *Repealed.***

~~On or before August 15, the State Board shall recertify the county abstracts of assessments, together with the taxable value of the property valued by the state, to each county assessor. The recertification shall be mailed by regular mail.~~

~~(Section 77-509.01, R.S.Supp., 1992. January 24, 1993.)~~





PRELIMINARY FISCAL IMPACT STATEMENT

Agency: Revenue	
Title: Title 316	Prepared by: George Kilpatrick
Chapter: 46	Date prepared: July 6, 2018
Subject: Motor Vehicles	Telephone: (402) 471-6024

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:



**NEBRASKA DEPARTMENT OF REVENUE  
REGULATIONS REPEAL – TITLE 316, CHAPTER 20  
MOTOR VEHICLES**

**REG-46-001 NATURE OF MOTOR VEHICLE TAX *Repealed***\_\_\_\_\_.

~~001.01 The motor vehicle tax is levied in lieu of ad valorem taxes to which motor vehicles would otherwise be subject. Motor vehicle tax does not apply to dealers' vehicles on hand or to those exempt from taxation by virtue of section 77-202, R.S.Supp., 1980.~~

~~001.02 Computation and collection of motor vehicle taxes are made in conjunction with the system of staggered registration of motor vehicles. Taxes must be paid before registration or renewal of registration can be made.~~

~~(Sections 60-303, 77-1238, and 77-1240.01, R.R.S. 1943, and sections 77-202 and 77-1240, R.S.Supp., 1980. November 24, 1980.)~~

**REG-46-002 DEFINITIONS *Repealed***\_\_\_\_\_.

~~002.01 Motor vehicle shall mean every motor vehicle including trailers and cabin trailers, subject to the payment of ad valorem taxes or subject to the payment of taxes in lieu of ad valorem taxes as a condition of registration or licensing.~~

~~002.02 Taxing unit shall mean counties, townships, cities, villages, school districts, and all other subdivisions of the state and all governmental agencies having the power to levy or to provide for the levy of general or special taxes.~~

~~002.03 Registration date shall mean the first day of the month in which the vehicle was acquired unless a properly executed affidavit of storage or nonuse is filed with the county treasurer, in which case, registration date shall mean the first day of the month in which the taxpayer is seeking to register his vehicle.~~

~~002.04 Registration period shall mean a period of one year from the date of registration. Renewals shall become due on such date and shall become delinquent on the first day of the following month.~~

~~002.05 Motor vehicle tax shall mean the tax imposed in lieu of ad valorem tax upon licensable motor vehicles for which registration is sought.~~

~~002.06 Ad valorem tax shall mean the tax imposed on the value of intangible property as that tax applies to motor vehicles which are not subject to motor vehicle taxes and not registered for operation on the highways.~~

~~002.07 Dealers' vehicles on hand shall mean motor vehicles owned and held for resale by motor vehicle dealers.~~

~~002.08 Schedule of values shall mean the certified volumes prepared by the Nebraska Department of Revenue, which list the values to be used in the computation of taxes upon various types of motor vehicles subject to taxation.~~

~~002.09 Staggered registration shall mean the system of motor vehicle registration whereby the expiration date of an annual registration occurs 12 months following registration or renewal, regardless of its relationship to the calendar year.~~

~~002.10 Cabin trailer shall mean every vehicle without motive power designed for living quarters and for being drawn by a motor vehicle, and not exceeding eight feet in width, or forty feet in length, or thirteen and one half feet in height.~~

~~002.11 Trailer shall mean every vehicle without motor power carrying persons or property and being pulled by a motor vehicle and being so constructed that no substantial part of its weight rests upon the towing vehicle.~~

~~002.12 Calendar year shall mean the period from January 1 through the following December 31.~~

~~(Sections 60-301 and 77-1238, R.R.S. 1943, March 23, 1985.)~~

### ~~REG-46-003 SCHEDULE OF VALUES *Repealed* \_\_\_\_\_.~~

~~003.01 On or before August 1 of each year, the Nebraska Department of Revenue will certify to each county assessor a schedule of values upon the several types of motor vehicles already manufactured or being manufactured, except dealers' vehicles on hand.~~

~~003.01A This schedule of values shall be used in computing the amount of any motor vehicle tax to be paid during the calendar year beginning on January 1 following the date of certification.~~

~~003.01B The Nebraska Department of Revenue will prepare and certify to each county assessor, supplemental schedules of value for new makes and models which become available during the calendar year.~~

~~003.02 Values certified for cabin trailers and motor homes will not take into account the value of any household goods which are part of such vehicles and which are exempt from taxation pursuant to section 77-202(1)(d), R.S.Supp., 1984.~~

~~003.03 When no valuation is provided in the schedule of values for a motor vehicle which is to be registered, the county assessor shall place a value on the motor vehicle by using whatever information is available, including reference to values provided to any similar motor vehicles in the schedule of values certified by the Nebraska Department of Revenue. Such value shall be determined so as to be uniform and proportionate with the values placed~~

~~upon other motor vehicles. Motor vehicles in this category include vehicles which are older than those included in the schedule of values, homemade or assembled vehicles, and specialty vehicles.~~

~~(Sections 77-1239, 77-1239.02, and 77-1240.04, R.R.S. 1943, and section 77-202, R.S.Supp., 1984, March 23, 1985.)~~

**~~REG-46-004 APPLICATION OF LEVIES Repealed \_\_\_\_\_.~~**

~~004.01 Levies for the taxing units are set September 15 of each year and will be used for purposes of motor vehicle taxation during the following calendar year beginning January 1 and ending December 31.~~

~~004.02 In the event a taxpayer purchases a vehicle during one calendar year and delays registration until the following calendar year, the tax will be computed from the date of acquisition based on the levy in effect for the calendar year on the date the vehicle was acquired. The registration period will begin on the first day of the month in which the vehicle was acquired.~~

~~In situations where the taxpayer furnishes an affidavit of storage or nonuse, the motor vehicle tax will be computed in the following manner:~~

~~004.02A For the period of storage or nonuse, beginning with the date of acquisition and ending with the registration date, the motor vehicle tax will be based on the levy and value in effect for the calendar year on the date of acquisition;~~

~~004.02B For the registration period, the motor vehicle tax shall be based on the levy and value in effect for the calendar year on the registration date.~~

~~004.03 Ad valorem taxes levied against motor vehicles which are not subject to motor vehicle tax or not registered for use on the highways shall be computed from levies set for the calendar year on September 15 of that year. These taxes will be computed in the same manner as taxes on other items of personal property.~~

~~(Sections 77-1240.01, R.R.S. 1943, and Section 77-1601, R.S.Supp., 1980, November 24, 1980.)~~

**~~REG-46-005 COMPUTATION OF TAX Repealed \_\_\_\_\_.~~**

~~005.01 The county assessor of each county will compute the motor vehicle tax upon all motor vehicles sought to be registered in each taxing unit within the county. This provision does not apply to dealers' vehicles on hand.~~

~~The motor vehicle tax will be computed by applying the appropriate levy to the actual value of each motor vehicle for which taxes are to be paid.~~

~~005.02 Motor vehicles which are not subject to motor vehicle taxes and not registered for operation on the highways shall be subject to ad valorem taxes computed in the same manner as ad valorem taxes on other items of tangible property. The schedule of values used to compute ad valorem taxes will be the same as that used to compute motor vehicle taxes.~~

~~005.03 Notice of the amount of motor vehicle taxes due and payable will be sent through the United States mails to the registrant at the address shown upon the registration certificate. Such notice must be mailed no later than the first day of the registration period.~~

~~005.04 For purposes of determining the correct levies to be used in computing motor vehicle taxes, the situs of each motor vehicle used and owned for any purposes shall be the taxing unit wherein such vehicle is principally stored and kept. The tax situs for any motor vehicle used or owned by a student shall be the place of residence of the student if that is different from the place where he attends school.~~

~~(Sections 77-1240, and 77-1240.01, R.R.S. 1943, and section 77-201, R.S.Supp., 1984. March 23, 1985.)~~

#### **REG-46-006 ~~COLLECTION OF TAXES~~ *Repealed* \_\_\_\_\_.**

~~006.01 All motor vehicle taxes shall be due and payable in a single payment at the time the vehicle is originally registered, or, in cases of registration renewals, at the expiration of the preceding registration period.~~

~~006.01A Upon payment of the motor vehicle taxes, the registrant will be issued a tax receipt showing that he has paid all applicable taxes upon the vehicle.~~

~~006.01B No registration fee shall be collected nor shall a registration certificate be issued unless the registrant holds a properly executed tax receipt.~~

~~006.02 Motor vehicles not subject to motor vehicle tax, and not registered for operation on the highways, except dealers' vehicles on hand, are subject to the ad valorem tax on tangible property. This tax is computed in accordance with the schedule of values certified by the Nebraska Department of Revenue. Collection of this tax shall be in the same manner as collection of taxes on other tangible personal property.~~

~~(Section 77-1240.01, R.R.S. 1943, and Sections 60-1605 and 77-1240, R.S.Supp., 1980. November 24, 1980.)~~

**REG-46-007 TRANSFER OF OWNERSHIP *Repealed* \_\_\_\_\_.**

~~007.01 Upon the transfer of ownership of any registered motor vehicle, the registration on that vehicle shall expire.~~

~~007.02 In those situations in which a taxpayer transfers ownership of his vehicle and does not concurrently replace it with another vehicle, a refund of motor vehicle tax shall be granted, based on the unused full months remaining in the registration period.~~

~~007.03 In those situations in which the taxpayer acquires another vehicle at the time of termination of possession of a vehicle previously registered, the taxpayer shall be refunded that portion of unexpired motor vehicle taxes, including the tax attributable to the month in which the transfer is being made. This refund may be applied as a credit toward payment of motor vehicle taxes due on the newly acquired vehicle. Taxes on the newly acquired vehicle shall be computed from the beginning of the calendar month during which the transfer is made and shall run for a consecutive 12-month period. In the event that a motor vehicle is transferred and replaced with another vehicle during the same calendar month in which it was acquired, no refund shall be allowed for such month.~~

~~007.04 The county assessor will certify to the county treasurer the amount of any tax refund or credit and the taxing unit wherein that motor vehicle is registered. The amount of the refund or credit will be charged to the taxing unit in which the tax money was originally distributed.~~

~~007.05 No refunds of less than two dollars will be made; however, credits of less than two dollars can be made toward the total payment of motor vehicle tax.~~

~~(Sections 60-315, and 77-1240.03, R.S. Supp., 1980, November 24, 1980.)~~

**REG-46-008 EXPIRED OR LATE REGISTRATION *Repealed* \_\_\_\_\_.**

~~008.01 In the event application for renewal is made after the registration period has expired, motor vehicle taxes will be computed from the date the prior registration expired.~~

~~008.02 In situations in which an applicant seeks to register a newly purchased motor vehicle, motor vehicle taxes will be computed from the date of acquisition regardless of the use which was made of the vehicle prior to registration.~~

~~008.03 If the period that the vehicle is not registered exceeds a 12-month period or spreads into 2 calendar years, motor vehicle taxes shall be computed in accordance with Reg 46-004.02A and 004.02B.~~

~~(Section 77-342, R.R.S. 1943, November 24, 1980.)~~

**~~REG-46-009 OPTION TO REGISTER THREE OR MORE MOTOR VEHICLES ON A CALENDAR YEAR BASIS, OR AN ANNUAL BASIS BEGINNING IN A MONTH CHOSEN BY THE OWNER Repealed \_\_\_\_\_.~~**

~~An owner of three or more motor vehicles which are required to be registered has the option of registering those vehicles on a calendar year basis or on an annual basis beginning in a month chosen by the owner, rather than staggering the registration throughout the year.~~

~~009.01 For taxpayers who choose to register three or more newly acquired vehicles on a calendar year basis, a partial year's tax statement must be issued for the remaining full months in the calendar year and the registration will expire the following December 31. As a result, each vehicle will be taxed and registered on a calendar year basis beginning the following January 1.~~

~~009.02 For taxpayers who choose to register three or more vehicles on an annual basis in a month chosen by the owner, a partial year's tax statement must be issued for the remaining full months up to and including the last day of the month immediately preceding the month chosen by the owner. As a result, each vehicle will be taxed and registered on an annual basis beginning the following month chosen by the owner.~~

~~009.03 When a taxpayer acquires a third, or a second and third vehicle while one or more of his vehicles are already registered on a staggered basis, it will be necessary to "adjust" the taxing and registration period for one or more of these vehicles. In order that all of the vehicles can be taxed and registered on a calendar year basis, or on an annual basis beginning in a month chosen by the owner, the following steps are necessary:~~

~~009.03A For the newly or lastly acquired vehicle or vehicles, a partial year's tax statement must be issued based on the remaining full months in the calendar year or annual period. The expiration date will be the following December 31, or the following last day of the month immediately preceding the month chosen by the owner.~~

~~009.03B As the registration period(s) expire(s) on the vehicle(s) already registered on a staggered basis, it will be necessary to issue a partial year's tax statement on each vehicle as it becomes due, for the remaining full months in the calendar year expiring on December 31, or the remaining full months in the annual period expiring on the last day of the month immediately preceding the month chosen by the owner.~~

~~009.04 The registration period for each of the vehicles previously registered on a staggered basis must be made to expire on December 31, or the last day of the month immediately preceding the month chosen by the owner. The vehicles must then be registered and taxed on a calendar year basis, or on an annual basis beginning in a month chosen by the owner. In some situations, a time necessary to change the staggered registration to a calendar year basis may span over a two-year period.~~



~~(Section 60-310, R.S. Supp., 1980. November 24, 1980.)~~

**REG-46-010 DISTRIBUTION OF MOTOR VEHICLE TAX *Repealed* \_\_\_\_\_.**

~~010.01 The proceeds from taxes on a motor vehicle will be allocated to each taxing unit in the same proportion as the levy on tangible personal property in that unit bears to the total levy on tangible personal property of all the taxing units for which the motor vehicle is taxed.~~

~~(Section 77-1240.01, R.R.S. 1943. December 24, 1975.)~~



PRELIMINARY FISCAL IMPACT STATEMENT

Agency: Revenue	
Title: Title 316	Prepared by: George Kilpatrick
Chapter: 24	Date prepared: November 21, 2018
Subject: Business Entity Income Tax	Telephone: (402) 471-6024

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:



**BUSINESS ENTITY INCOME TAX REGULATIONS  
TITLE 316, CHAPTER 24**

**Title 316 Neb. Admin. Code, Ch. 24 §§ 004 through, 007, 023, 043 through 048, 050 through 058, 060, and 063 are repealed.**

**Title 316 Neb. Admin Code, Ch. 25 §§ 001 through 007 are repealed.**

**THE FOLLOWING SECTIONS OF TITLE 316 NEB. ADMIN. CODE, CH. 24 ARE REPEALED AND REPLACED:**

REG-24-004 S CORPORATIONS *(11/11/1998)*  
REG-24-005 COOPERATIVE ORGANIZATIONS *(12/04/1984)*  
REG-24-006 CORPORATE INCOME TAX RETURNS: DUE DATE AND PAYMENT OF TAX *(07/03/2013)*  
REG-24-007 CORPORATION INCOME TAX RETURNS: EXTENSION OF TIME FOR FILING OR PAYMENT *(07/03/2013)*  
REG-24-023 APPORTIONMENT FORMULA *(03/07/2006)*  
REG-24-043 CLAIMS FOR REFUND *(07/03/2013)*  
REG-24-044 METHODS OF ACCOUNTING *(12/04/1984)*  
REG-24-045 PARTIAL-YEAR RETURNS *(11/11/1998)*  
REG-24-046 ADJUSTMENTS OF FEDERAL INCOME TAX *(07/03/2013)*  
REG-24-047 RECORDS *(11/11/1998)*  
REG-24-048 INCOME FROM UNITED STATES GOVERNMENT OBLIGATIONS *(11/11/1998)*  
REG-24-050 INCOME FROM U.S. GOVERNMENT OBLIGATIONS - TAX YEARS BEGINNING PRIOR TO JANUARY 1, 1983 *(07/21/1984)*  
REG-24-051 DOMESTIC INTERNATIONAL SALES CORPORATIONS *(07/07/1985)*  
REG-24-052 FOREIGN DIVIDEND DEDUCTION *(11/11/1998)*  
REG-24-053 COMBINED INCOME APPROACH *(11/11/1998)*  
REG-24-054 SINGLE RETURN FILING REQUIREMENT *(07/07/1985)*  
REG-24-057 TAXABLE IN ANOTHER STATE *(07/07/1985)*  
REG-24-058 DEFINITIONS *(07/07/1985)*  
REG-24-060 NET OPERATING LOSSES AND CAPITAL LOSSES *(11/11/1998)*  
REG-24-063 ADJUSTMENTS OF INCOME TAXABLE IN ANOTHER STATE *(07/03/2013)*

**THE FOLLOWING SECTIONS OF TITLE 316 NEB. ADMIN. CODE, CH. 25 ARE REPEALED AND REPLACED:**

REG-25-001 DEFINITION OF PARTNERSHIP TERMS FOR NEBRASKA TAX PURPOSES *(11/11/1998)*  
REG-25-002 PARTNERS, NOT THE PARTNERSHIP, SUBJECT TO TAX *(03/07/2006)*  
REG-25-003 TAXATION OF NONRESIDENT PARTNERS *(03/07/2006)*  
REG-25-004 METHODS OF ACCOUNTING *(09/15/1975)*  
REG-25-005 RECORDS *(09/15/1986)*  
REG-25-006 APPORTIONMENT FORMULA - MULTISTATE OPERATIONS *(07/16/2005)*  
REG-25-007 ADJUSTMENTS OF FEDERAL OR ANOTHER STATE'S INCOME TAX *(03/07/2006)*

## **REG-24-101 DEFINITIONS**

101.01 The definitions in Reg-24-101 through 24-185 and Neb. Rev. Stat. § 77-2734.04 apply throughout Chapter 24 of these regulations.

## **REG-24-105 APPORTIONMENT**

105.01 Apportionment means dividing the apportionable income of a business entity that is subject to tax in more than one taxing jurisdiction using one or more factors.

## **REG-24-110 BUSINESS ENTITY**

110.01 Business entity means an arrangement to operate a commercial enterprise, regardless of the form of organization. Business entities include corporations, partnerships, limited liability companies (LLCs), joint ventures, cooperatives, and syndicates. Business entity does not include a sole proprietorship.

## **REG-24-115 BUYER**

115.01 Buyer has the meaning provided in Neb. Rev. Stat. § 77-2734.04(5). Buyer and customer have the same meaning.

## **REG-24-125 COMPENSATION**

125.01 Compensation has the meaning provided in Neb. Rev. Stat. § 77-2734.04(8). Compensation includes the value of the board, rent, housing, lodging, or other benefits or services furnished to employees by the taxpayer in return for personal services, if the value received constitutes income to the recipient under the IRC.

## **REG-24-130 DEPARTMENT**

130.01 Department means the Nebraska Department of Revenue.

## **REG-24-135 DOING BUSINESS IN NEBRASKA**

135.01 Doing business in Nebraska has the meaning provided in Neb. Rev. Stat. § 77-2734.04(12). Any business entity that has nexus in Nebraska is doing business in Nebraska.

## **REG-24-140 FEDERAL TAXABLE INCOME**

140.01 Federal taxable income for corporate taxpayers means the taxpayer's federal taxable income as determined under the IRC. For pass-through entities, federal taxable income means total income minus total deductions as determined under the IRC. Except for the adjustment to

income related to foreign taxes paid in excess of federal rates, or the deduction for dividends deemed to be received from corporations which are not subject to the IRC, no adjustment is allowed for a change from any election made or the method used in computing federal taxable income.

#### **REG-24-145 FINANCIAL INSTITUTION**

145.01 Financial institution has the meaning provided in Neb. Rev. Stat. § 77-3801

#### **REG-24-150 IRC**

150.01 IRC means the Internal Revenue Code of 1986, as amended.

#### **REG-24-155 NEXUS**

155.01 Nexus means the amount or degree of activity conducted by the business entity within Nebraska that confers jurisdiction to Nebraska to tax the income of the business entity.

#### **REG-24-160 PASS-THROUGH ENTITY**

160.01 Pass-through entity means a business entity that distributes its income, loss, deductions, or credits to its owners. Pass-through entities include, but are not limited to: partnerships; S corporations; LLCs that are taxed as S corporations or partnerships; and joint ventures.

160.02 Owners of a pass-through entity include partners, shareholders, members, beneficiaries, or investors.

#### **REG-24-165 PARTNERSHIP**

165.01 Partnership, partner, partnership agreement, and liquidation of a partner's interest have the same meaning as those terms are used in the IRC.

165.02 A federal classification of an entity as a partnership for tax purposes is the conclusive determination for Nebraska tax purposes, including an LLC classified for federal income tax purposes as a partnership.

#### **REG-24-170 S CORPORATION**

170.01 S corporation means a corporation that has a valid current election under subchapter S of the IRC.

#### **REG-24-175 TAXABLE IN ANOTHER STATE**

175.01 Taxable in another state means that another state has jurisdiction to subject the taxpayer to a net income tax.



175.02 Failure to provide a copy of the return filed in another state, together with proof of payment of a net income tax imposed by the other state upon request of the Tax Commissioner, creates a rebuttable presumption that the taxpayer is not subject to tax in the other state.

### **REG-24-180 TAXPAYER**

180.01 Taxpayer means any corporate taxpayer or unitary group subject to the Nebraska income tax, any pass-through entity that has owners who are subject to Nebraska income tax on the taxable income of the pass-through entity, or any owners of a pass-through entity earning income subject to Nebraska income tax.

### **REG-24-185 UNITARY BUSINESS**

185.01 Unitary business has the meaning provided in Neb. Rev. Stat. § 77-2734.04.

185.02 Common Ownership. Common ownership means one or more corporations owning 50% or more of another corporation.

185.03 Single Economic Unit. Single economic unit means a business where there is a sharing or exchange of value between the parts of the unit. Evidence of a sharing or exchange of value includes: common management or common operational resources; functional integration; economies of scale; transfers of value; or flows of goods, capital, or services between the parts of the unit.

185.03A Common management includes, but is not limited to, a centralized executive force or review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations.

185.03B Common operational resources include, but are not limited to, centralized: accounting; advertising; engineering; financing; insurance; legal; personnel; pension or benefit plans; purchasing; research and development; selling; or union relations.

185.04 Unitary Group. Unitary group has the same meaning as provided in Neb. Rev. Stat. § 77-2734.04. A unitary group does not include:

185.04A Any foreign corporation that does not meet the requirements of IRC § 243 in order for its distribution to qualify for the federal dividends received deduction;

185.04B Any financial institution as defined in Neb. Rev. Stat. § 77-3801; and

185.04C Any Real Estate Investment Trust that does not meet the requirements of IRC § 243 in order for its distribution to qualify for the federal dividends received deduction.

## REG-24-205 DOING BUSINESS IN NEBRASKA

205.01 A business entity is doing business in Nebraska if its activities within the state exceed soliciting sales of tangible personal property within Nebraska as protected by 15 U.S.C. § 381.

205.01A Soliciting Sales. Soliciting sales of tangible property includes any activities that serve no business purpose apart from soliciting sales, but does not include activities that the business entity would have a business reason to perform anyway, even if the activities are conducted by sales personnel.

205.01B Activities that constitute doing business in Nebraska include, but are not limited to:

205.01B(1) Maintaining an office, warehouse, or inventory in Nebraska;

205.01B(2) Owning or leasing property in Nebraska;

205.01B(3) Providing or arranging for repair, service, or training in Nebraska in connection with sales of property or services, including, but not limited to, repairs conducted under a warranty sold or provided by the business entity;

205.01B(4) Accepting orders in Nebraska;

205.01B(5) Organizing or incorporating the business entity in Nebraska;

205.01B(6) Maintaining a commercial domicile in Nebraska;

205.01B(7) Any ownership interest in a pass-through entity that has nexus in Nebraska; or

205.01B(8) Any other activity conducted in Nebraska that is not soliciting sales of tangible personal property and is not de minimis. Examples include:

205.01B(8)(a) Transactions involving intangibles, like copyrights, trademarks, trade names, and service marks;

205.01B(8)(b) Entering into franchising or licensing agreements; or

205.01B(8)(c) Selling or leasing real or intangible property.

205.02 Special Rules; Trucking Companies. Trucking companies that transport goods using Nebraska roads are doing business in Nebraska.

205.02A In addition to the activities described in Reg-24-205.01, a trucking company is doing business in Nebraska if, during the taxable year, the trucking company:

205.02A(1) Owns or rents any real or personal property in Nebraska, except mobile property;

205.02A(2) Makes any pick-ups or deliveries within Nebraska;

205.02A(3) Travels more than 25,000 mobile property miles within Nebraska;

205.02A(4) Travels in Nebraska for more than 3% of the total mobile property miles traveled in all states during that taxable year; or

205.02A(5) Makes more than 12 trips into Nebraska.

**REG-24-211 METHODS OF ACCOUNTING**

211.01 When computing the Nebraska income tax or providing an information return, the method of accounting must be the same as the method used for federal income tax purposes.

## **REG-24-215 RECORDS**

**215.01 In General.** Any business entity doing business in Nebraska must keep permanent books of account or records that are sufficient to establish the amount of gross income, deductions, credits, or other matters which may be required to support the Nebraska corporation income tax return or information return. If any business entity or person fails to keep books of account or records, the Department may issue a notice of deficiency determination based on the best information available, including, but not limited to, records from the IRS, financial institutions, employers, payors, vendors, or others.

**215.02 Retention of Records.** Each business entity must retain all records relating to a tax year for as long as the records may be material in administering the Nebraska income tax; while any refund claim or redetermination of a deficiency determination is pending; or while any federal audit, assessment, or any other action is pending, unless the Department authorizes their destruction in writing at an earlier date.

**215.02A** If the Department issues a balance due notice or a notice of deficiency determination for a tax year, the business entity must retain all records relating to that tax year until the balance due or deficiency determination has been satisfied, abated, settled, or disallowed, and has become final.

**215.02B** If the business entity is participating in a tax incentive program, for example the Nebraska Advantage Act, records must be retained throughout the carryover period.

**215.02C** If the business entity incurs a net operating loss or capital loss, the records substantiating the loss must be retained until the statute of limitations for issuing a notice of deficiency determination expires for the last year the loss is claimed.

**215.03 Books and Records Reconstruction.** Books and records that are destroyed should be reconstructed by the business entity to the greatest extent possible from records kept by financial institutions, customers, vendors, and others.

**215.04 Availability of Books and Records.** These books or records must be kept available at all times for inspection by the Tax Commissioner or any agent or representative designated by the Tax Commissioner for the purpose of ascertaining the correctness of any return or other document required to be filed under the Nebraska Revenue Act, or for the purpose of ascertaining whether the income of a business entity is subject to Nebraska income tax.

**215.04A Right to Examine Records.** The Department, or its agents, has the right to examine, inspect, make, request, and retain paper or electronic copies of any books, papers, records, electronic media, and equipment of any person to audit or review the accuracy of any return filed; or if no return is filed by the person, to ascertain and determine the amount that must be paid. A taxpayer must provide records electronically upon request of the Department if the taxpayer maintains the records electronically.

215.04B Administrative Subpoena. The Tax Commissioner may require taxpayers undergoing an audit or other review to provide records that are necessary to make a proper determination of the taxpayer's compliance with and the liability under the laws of this state. If a reasonable request to produce records is refused, the Tax Commissioner may issue an administrative subpoena.

215.04B(1) An administrative subpoena must clearly state the scope of the demand for records and any other requirements, and state when, where, and how to comply with the administrative subpoena.

215.04B(2) An administrative subpoena may be enforced by the Attorney General, acting on behalf of the Tax Commissioner, in an action filed in the district court for Lancaster County.

215.04B(3) The Tax Commissioner may also apply to the district court for an order directing the person to comply with the request for records. If the person refuses an order from the district court, he or she may be found in contempt of court.

215.05 Criminal Penalty. Willful failure to keep, retain, or make available any records as required under this regulation is a Class II misdemeanor. If a natural disaster destroys records that does not, by itself, constitute willful failure to keep or retain records.

## **REG-24-221 INCOME OF A BUSINESS ENTITY SUBJECT TO NEBRASKA TAX**

**221.01 Pass-through Entities.** A pass-through entity is not subject to the Nebraska income tax. Each owner of a pass-through entity doing business in Nebraska is subject to Nebraska income tax on his or her portion of the income, expense, loss, or other item of the pass-through entity as shown on the federal return of the pass-through entity; as adjusted and limited under Reg-24-235 through Reg-24-259; and, if appropriate, as apportioned under Reg-24-301 through Reg-24-381.

221.01A An owner of a pass-through entity doing business in Nebraska who is a Nebraska resident, as defined in Reg-22-001, must report the owner's proportionate share of all of the income, expense, loss, or other item of the pass-through entity.

221.01B An owner of a pass-through entity doing business in Nebraska who is not a Nebraska resident, as defined in Reg-22-001, must report the owner's proportionate share of the Nebraska-source income, expense, loss, or other item of the pass-through entity. See Reg-22-004.06.

**221.02 Character of Income, Gain, Loss, or Deductions to Owners.** Each item of pass-through entity income, gain, loss, or deduction will retain the same character for the owner individually, for the purposes of the Nebraska income tax, as it has for the federal income tax. Each owner's proportionate share of the pass-through entity's income and deductions, as apportioned, if appropriate, will retain the same character and classification as allowed for federal income tax purposes. Unless characterized otherwise by federal law, all items have the same character for the owner individually as if the owner realized them directly from the source from which they were realized by the pass-through entity.

**221.03 Corporate Taxpayers.** A corporate taxpayer having nexus in Nebraska is subject to the Nebraska corporation income tax on its federal taxable income, as adjusted and limited under Reg-24-235 through Reg-24-245, and, if appropriate, as apportioned under Reg-24-301 through Reg-24-381.

221.03A Cooperative Organizations. The cooperative taxable income base for Nebraska purposes is the federal taxable income as adjusted and limited under Reg-24-235 through Reg-24-245, and, if appropriate, as apportioned under Reg-24-301 through Reg-24-381.

221.03B Exempt Organizations. An organization that is exempt from federal income tax, but is required to report unrelated business income, must report its unrelated business income as adjusted and limited under Reg-24-235 through Reg-24-245, and, if appropriate, as apportioned under Reg-24-301 through Reg-24-381.

**REG-24-223 INCOME TAX RETURNS; FILING REQUIREMENTS; DUE DATES; AND PAYMENT OF TAX**

**223.01 Corporate Taxpayers; Filing Requirements.** Every corporate taxpayer having nexus in Nebraska, including a cooperative organization and an organization that is exempt from federal income tax that is required to report its unrelated business income, must file a Nebraska Corporation Income Tax Return, Form 1120N, for the tax year.

**223.02 Corporate Taxpayers; Due Date.** The due date for the Nebraska Corporation Income Tax Return, Form 1120N, is the same as the due date for the corresponding federal return.

**223.03 Corporate Taxpayers; Payment of Tax.** A corporate taxpayer must pay the entire amount of tax on or before the prescribed due date, without regard to any extension granted for filing the return. The Tax Commissioner may require some or all corporate taxpayers to file returns electronically and may require some corporate taxpayers to remit payments electronically.

**223.04 Pass-through Entities; Filing Requirement.** Except as provided in Reg-24-223.04A, every pass-through entity having income derived from Nebraska sources must file a Nebraska Return of Partnership Income, Form 1065N, or a Nebraska S Corporation Income Tax Return, Form 1120-SN, for the tax year. The Form 1065N or Form 1120-SN must show all items of income, gain, loss, deduction, and credit, and the names, addresses, and Social Security numbers or federal ID numbers of each owner who is entitled to share in the income and deductions of the pass-through entity.

**223.04A** A pass-through entity which has only Nebraska resident owners, and derives 100% of its income from Nebraska sources, is not required to file a Form 1065N or Form 1120-SN, but the owners must report their proportionate share of the income, gain, loss, or deduction from the pass-through entity.

**223.04B** A limited partnership deriving income from sources entirely outside Nebraska is not required to file Form 1065N.

**223.05 Pass-through Entities; Due Dates.**

**223.05A** The due date for the Nebraska S Corporation Income Tax Return, Form 1120-SN, is the same as the due date for the corresponding federal return.

**223.05B** The due date for the Nebraska Return of Partnership Income, Form 1065N, is the same as the due date for the corresponding federal return.

**223.05C** If the return was filed by mail, postage prepaid, and properly addressed to the Department, the date of a U.S. Postal Service postmark stamped on the envelope is the date of filing. If there is no U.S. Postal Service postmark, the return must be received by the Department on or before the prescribed due date to be timely filed.



223.05D A private postage meter date or a date stamped by a private delivery service will be considered the date of receipt if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or legal holidays.

**REG-24-225 INCOME TAX RETURNS; PASS-THROUGH ENTITIES; INCOME TAX WITHHOLDING FROM NONRESIDENT INDIVIDUAL OWNERS**

225.01 Nonresident Individual Owner Income Tax Returns and Withholding. Nonresident individual owners of a pass-through entity must file a Nebraska income tax return and include in Nebraska adjusted gross income that portion of the pass-through entity's Nebraska source income, as adjusted and as apportioned, if appropriate, that is proportionate to his or her interest in the pass-through entity, with any other Nebraska source income.

225.01A Each nonresident individual owner must execute a Nebraska Nonresident Income Tax Agreement, Form 12N, which must be attached to the Form 1120-SN or Form 1065N. By executing a Form 12N, the owner promises to file a Nebraska income tax return and pay income tax on the owner's share of the income, gain, loss, or deduction of the pass-through entity.

225.01B If a nonresident individual owner's executed Form 12N is not attached to the Form 1120-SN or Form 1065N, the pass-through entity must withhold and remit an amount equal to the highest individual income tax rate on each nonresident owner's share of the pass-through entity's taxable income which was derived from or attributable to sources within this state.

225.01B(1) The amount withheld from each nonresident individual owner must be reported on each appropriate Nebraska Schedule K-1N; and

225.01B(2) The total amount withheld from all nonresident individual owners must be reported on Form 1120-SN or Form 1065N and remitted to the Department.

225.01C Nonresident individual owners do not have to file a Nebraska income tax return if their only connection with the state is the conduct of the business activities of the pass-through entity, and the pass-through entity has withheld Nebraska income tax from all the Nebraska income attributable to the nonresident's share of the pass-through entity's income. The full amount of the income tax withholding is, at the taxpayer's option, retained in lieu of filing an individual income tax return. Any nonresident individual may still file a return and claim a refund if there is one due. Any nonresident individual who files a Form 12N to avoid income tax withholding must file a Nebraska Individual Income Tax Return, Form 1040N.

225.02 Publicly traded partnerships, as defined by IRC § 7704 (b), which do not file as corporations, are not required to withhold and remit income tax for nonresident individual partners if these partnerships file an annual information return with the Department. The information return must report the name, address, taxpayer ID number, and other information requested by the Department for each nonresident individual partner with Nebraska source income in excess of \$500.

225.03 Nonresident individual includes a nonresident grantor of a grantor trust.

**REG-24-227 INCOME TAX RETURNS; EXTENSIONS OF TIME FOR FILING OR PAYMENT**

227.01 Extensions of Time for Filing. The Department may grant an extension of time to file the Nebraska Corporation Income Tax Return, Form 1120N, the Nebraska S Corporation Income Tax Return, Form 1120-SN, or the Nebraska Return of Partnership Income, Form 1065N, if the taxpayer files an Application for Automatic Extension of Time to File Nebraska Corporation, Fiduciary, or Partnership Return, Form 7004N. To be granted an extension, a corporate taxpayer must also pay the amount of tentatively computed tax liability on or before the original due date for filing the Form 1120N.

227.01A If the taxpayer has been granted a federal extension of time, a state extension will be granted if confirmation that the federal application for automatic extension of time to file is submitted with the Form 1120N, 1120-SN, or 1065N when filed.

227.01B Affiliated and Unitary Groups. A corporate taxpayer filing a combined return with Nebraska must list each corporation to be included in the combined return in the request for an extension of time to file. The Form 7004N must include the name, address, and federal ID number of each corporation to be included in the combined return on the applicable schedule attached to Form 7004N. An automatic extension of time granted to the corporate taxpayer will not apply to any nonunitary member of an affiliated group filing a separate return with Nebraska.

227.01C Length of Extension. The Department may authorize a Nebraska extension up to, but not exceeding, seven months from the original due date of the Form 1120N, 1120-SN, or 1065N.

227.01D Interest. When the time for filing the return is extended, interest will be imposed from the original due date of the return to the date the tax is paid, at the rate specified in Neb. Rev. Stat. § 45-104.02, on the difference, if any, between the amount of tax ultimately due, and the sum of the tentative remittance, any estimated payments made, and any applicable credits. The amount ultimately due includes both income tax required to be withheld from nonresident individual owners under Reg-24-225 and remitted on Form 1120-SN or Form 1065N, and corporation income tax due from a corporate taxpayer on Form 1120N.

227.01E Approval or Denial. If an application for extension to file is denied, the Department will send a notice of denial to the taxpayer at the address specified by the applicant on the extension form. If the application is approved, no notice will be sent.

227.01F Termination of Extension. The Tax Commissioner may terminate a corporate taxpayer's extension at any time by a mailing the taxpayer a notice of termination at least 10 days prior to the termination date as fixed in the notice. This will allow the taxpayer 10 days after the date of the termination notice to file the Form 1120N.

227.02 Extensions of Time for Payment. A corporate taxpayer may make a request to the Department for an extension of time for paying the tax due. Any request for an extension of time for payment must be made prior to the original due date for payment. All applications for extension of time for payment must contain a complete statement of the reasons for the request.

227.02A The Tax Commissioner may grant an extension of time for payment upon a proper showing that payment by the due date will result in undue hardship upon the corporate taxpayer.

227.02B An extension of time for payment granted by the Tax Commissioner cannot exceed seven months.

227.02C If an extension of time for payment is granted, the Tax Commissioner may require the corporate taxpayer to furnish a bond in an amount not exceeding double the amount of tax due, or to furnish other security that is approved in advance by the Tax Commissioner. If a bond is required, it must be filed with the Department within 10 days after the notice that a bond is required is received. The bond must comply with the terms of the extension of time for payment and must be approved by the Tax Commissioner with regard to form and content before it will be accepted as security by the Department.

227.02D If an extension of time for payment is granted, the tax must be paid on or before the expiration of the extension, together with interest at the rate specified in Neb. Rev. Stat. § 45-104.02. Interest is due on the tax payment from the original due date for payment until the date the payment is actually made, regardless of any extension of time.

227.02E Termination of Extension. The Tax Commissioner may terminate an extension of time for payment at any time by mailing the taxpayer a notice of termination at least 10 days prior to the termination date as fixed in the notice. This will allow the taxpayer 10 days after the date of the termination notice to make payment. If payment is not made within the 10 days, any bond or other security required under Reg-24-227.02C will be executed.

## **REG-24-229 SHORT TAX YEAR RETURNS**

229.01 A short tax year is a period of less than 12 months. A short tax year return is required whenever it is required by IRC § 443. The regulations under IRC § 443 must be followed in filing a short period return.

229.02 If the method of computing income under IRC § 443 does not fairly represent the short period income, and the business entity has records of income, deductions, or credits which are sufficient to establish the short period tax liability more fairly, the business entity may petition the Tax Commissioner to use a special method of reporting income. However, any special method of reporting income must have prior written approval from the Tax Commissioner.

## REG-24-235 NEBRASKA ADJUSTMENTS TO FEDERAL TAXABLE INCOME

235.01 The income of a business entity begins with federal taxable income. Federal taxable income is adjusted as provided in this regulation, prior to any apportionment, if applicable.

### 235.02 Adjustments Subtracted from Federal Taxable Income.

#### 235.02A Interest and dividends from federal obligations.

235.02A(1) Any interest and dividends received on U.S. obligations cannot be taxed by any state under U.S. law. Federal corporations that are performing a federal function are instrumentalities of the U.S. government, and interest from their obligations cannot be taxed by any state under U.S. law.

235.02A(1)(i) Interest from repurchase agreements involving federal securities is not exempt and is subject to Nebraska income tax.

235.02A(1)(ii) Gains and losses from the sale or other disposition of federal securities, as distinguished from interest income, are taxable for state income tax purposes.

235.02A(2) Some or all of the income from regulated investment companies (for example, mutual funds) investing directly in U.S. government or federal instrumentality obligations is subtracted. The amount subtracted is the percent of the income which represents exempt U.S. government or federal instrumentality obligations.

235.02A(3) Interest from U.S. obligations described in 235.02A(1) and part of the interest earned from regulated investment companies described in 235.02A(2) must be subtracted to the extent it is included in federal taxable income.

235.02A(3)(a) The amount subtracted must be reduced by any: (a) interest on indebtedness incurred to carry the obligations described above; and (b) expenses incurred in the production of the interest or dividend income derived from the obligations, to the extent that the expenses are deductible in determining federal taxable income.

235.02A(3)(b) Interest on indebtedness is determined by (a) dividing the taxpayer's average investment in exempt securities by the taxpayer's average total assets, and multiplying this ratio by the taxpayer's total interest on indebtedness and (b) subtracting any interest disallowed under IRC §§ 265 and 291.

235.02A(4) The Tax Commissioner may permit or require the use of amounts from interim balance sheets to compute the ratio of investment in exempt securities to total assets whenever it is necessary to properly reflect the ratio.

235.02A(5) When determining the computation in Reg-24-235.02A(3), the business entity may use, in lieu of tax basis, the amounts from a balance sheet included with the federal return or as required to be reported to federal or state regulatory agencies if (a) the amounts are not materially different from tax basis, (b) the amounts are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the taxpayer from year to year. The Tax Commissioner may require a taxpayer to use these alternative amounts when necessary to maintain consistency and may also require the taxpayer to show that the amounts used do not materially differ from the tax basis.

235.02A(6) As used in this regulation, unless the context requires otherwise:

235.02A(6)(a) Exempt securities means the obligations that earn income exempt from taxation under Reg-24-235.02A or under IRC § 103;

235.02A(6)(b) Average investment in exempt securities means the average of the aggregate tax bases in exempt securities at the beginning and at the end of the tax year;

235.02A(6)(c) Average total assets means the average of the aggregate tax bases in total assets at the beginning and at the end of the tax year; and

235.02A(6)(d) Total interest on indebtedness means the total interest expense allowed as a deduction in computing federal taxable income plus any interest disallowed under IRC §§ 265 and 291.

235.02B Dividends Received from a Corporation not Subject to the IRC. Any dividend which was received or deemed received from a corporation which was not subject to the IRC is subtracted.

235.02C Excess Foreign Tax Rate. If a portion of the federal taxable income earned by a corporation subject to the IRC 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 corporation may subtract a portion of the income on which foreign taxes were paid, including foreign taxes deemed paid by the corporation. The taxpayer may make the computation for each foreign country or for groups of foreign countries if each foreign country in the group meets the requirements of Neb. Rev. Stat. § 77-2716(6). The portion of the income that may be deducted is computed in the following manner:

235.02C(1) The amount of federal taxable income from operations within a foreign taxing jurisdiction is 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;

235.02C(2) The amount calculated in Reg-24-235.02C(1) is divided by one minus the maximum tax rate for corporations in the IRC; and

235.02C(3) The result of the calculation in Reg-24-235.02C(2) is subtracted from the federal taxable income from operations within a foreign taxing jurisdiction used in Reg-24-235.02C(1). The result, if greater than zero, is subtracted.

235.02C(4) The amount subtracted under this subdivision cannot include any amount related to a dividend subtracted under Reg-24-235.02B because it was received from a corporation not subject to the IRC.

235.02D Nebraska Educational Savings Plan Trust (TRUST). Contributions by a participant in the TRUST are subtracted to the extent not deducted for federal tax purposes. The account owner, or beginning January 1, 2014, the custodian of the account, who is a participant as defined in Neb. Rev. Stat. § 85-1802 may claim the subtraction.

235.02D(1) For tax years beginning on or after January 1, 2000, and before January 1, 2007, the deduction cannot be more than \$1,000.

235.02D(2) For tax years beginning on or after January 1, 2007, and before January 1, 2014, the deduction cannot be more than \$5,000.

235.02D(3) Beginning January 1, 2014, the deduction cannot be more than \$10,000.

235.02D(4) Any interest or dividends earned from a TRUST account within the tax year, are subtracted to the extent not deducted for federal income tax purposes.

235.02D(5) Any interest, earnings, or state contributions received in a rollover from another state's educational savings plan which is qualified under IRC § 529, are subtracted to the extent not deducted for federal income tax purposes. If the account is a custodial account, the deduction is limited to contributions made in the other state's educational savings plan after January 1, 2014, and any interest or dividends that were earned on those contributions.

235.02D(6) Any gifts, grants, or donations made to the TRUST before July 1, 2010, for deposit in the endowment fund of the TRUST, are subtracted to the extent not deducted for federal income tax purposes.

235.02E Bonus Depreciation Subtraction. A portion of the amount of bonus depreciation required to be added back for assets placed in service between September 10, 2001, and December 31, 2005, is subtracted in the following years.

235.02E(1) Twenty percent of the total amount of bonus depreciation added back for tax years beginning or deemed to begin before January 1, 2003, is subtracted



in the first tax year beginning or deemed to begin on or after January 1, 2005, under the IRC, and 20% in each of the next four tax years.

235.02E(2) Twenty percent of the total amount of bonus depreciation added back for tax years beginning or deemed to begin on or after January 1, 2003, is subtracted in the first tax year beginning or deemed to begin on or after January 1, 2006, under the IRC, as amended, and 20% in each of the next four tax years.

235.02F Enhanced IRC § 179 Subtraction. Twenty percent of the amount required to be added back for capital investment expensed under IRC § 179 in excess of \$25,000 for tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, is subtracted for tax years beginning or deemed to begin on or after January 1, 2006, and 20% in each of the next four tax years.

235.02G Federally-Taxable Build America Bonds Issued by Nebraska Governmental Units. Income from federally-taxable bonds established under the America Recovery and Revitalization Act of 2009 issued by Nebraska governmental units is exempt under Nebraska law. The amount subtracted must be reduced by any interest or expense incurred to carry the obligations that was deducted in determining federal taxable income.

235.02H Nonapportionable Income. Nonapportionable income of a business entity or unitary group that is allocated to another state is subtracted (Reg-24-301, Apportionable and Nonapportionable Income).

235.02I Income from Pass-Through Entities. Income directly received by the taxpayer from an S corporation, or a limited liability company (LLC), that is not derived from Nebraska sources is subtracted.

235.03 Adjustments Added to Federal Taxable Income. The Nebraska adjustments which must be added to federal taxable income are contained in the following subsections.

235.03A Income from State and Local Obligations. Any interest and dividends received from state and local obligations, other than obligations issued by Nebraska or its political subdivisions, must be added to federal taxable income to the extent the interest and dividends are excluded from federal gross income. The amount added must be reduced by any interest or expense incurred to carry the obligations that was not deducted in determining federal taxable income.

235.03B Income from Regulated Investment Companies. Some or all of the dividends and income received from regulated investment companies which are attributable to obligations described in Reg-24-235.03A must be added to federal taxable income. The amount added is the percent of the income which represents income from state and local obligations, other than obligations issued by Nebraska or its political subdivisions.

235.03C Federal Net Operating Losses. A federal net operating loss that is carried forward or back must be added to federal taxable income to the extent it was used to reduce federal taxable income.

235.03D Federal Capital Losses. A federal capital loss that is carried forward or back must be added back to federal taxable income to the extent it was used to reduce federal taxable income.

235.03E Nebraska Educational Savings Plan Trust. Any nonqualified withdrawals from the TRUST or any amounts withdrawn because of cancellation of a participation agreement, including a withdrawal for the purpose of a rollover to an IRC § 529 plan in another state, must be added to federal taxable income, to the extent not included in federal taxable income.

235.03F Bonus Depreciation. For tax years beginning or deemed to begin before January 1, 2006, 85% of the amount of any federal bonus depreciation received under IRC §§ 168(k) or 1400L, for assets placed in service after September 10, 2001, and before December 31, 2005, must be added to federal taxable income.

235.03G IRC § 179 Expense in Excess of \$25,000. For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, the amount of any capital investment that is expensed under IRC § 179 and allowed under the Jobs and Growth Tax Act of 2003, that is in excess of \$25,000 must be added to federal taxable income.

235.03H Expenses Relating to Nonapportionable Income. Any expenses related to nonapportionable income must be added to federal taxable income. Related expenses include both direct and indirect expenses attributable to the activities producing the nonapportionable income.

235.03I Nonapportionable Losses. Any losses that are nonapportionable and any expense related to the nonapportionable losses must be added to federal taxable income.

**REG-24-241 CORPORATE TAXPAYER; NEBRASKA NET OPERATING LOSSES; COMPUTATION; NEBRASKA NET OPERATING LOSS CARRYOVER; LIMITATIONS**

241.01 Calculating the Loss. A Nebraska net operating loss is computed on the basis of this regulation.

241.01A For a corporate taxpayer that is not subject to apportionment, the Nebraska net operating loss is the federal taxable income or loss of the corporate taxpayer adjusted as provided in Reg-24-235.

241.01B For a corporate taxpayer that is required to apportion its income to Nebraska, its Nebraska net operating loss must be computed in the following manner:

241.01B(1) The Nebraska adjustments in Reg-24-235 are made to the federal taxable income or net operating loss of the unitary group prior to apportionment; and

241.01B(2) The federal net operating loss as adjusted is then apportioned to Nebraska based on the apportionment factor of the corporate taxpayer.

241.02 Nebraska Net Operating Loss Carryover. For tax years beginning on or after January 1, 1987, a Nebraska net operating loss carryover may be allowed as a deduction in computing Nebraska taxable income.

241.03 Charitable Contribution Carryover. A Nebraska net operating loss carryforward must be adjusted for the amount of Nebraska charitable contribution carryover as apportioned, if appropriate, that increased the related federal net operating loss carryforward.

241.04 Limitations on Using a Nebraska Net Operating Loss Carryover.

241.04A Number of years.

241.04A(1) For tax years beginning before January 1, 2014, the net operating loss deduction will be allowed for each of the five tax years following the year of the loss.

241.04A(2) For Nebraska net operating losses incurred in tax years beginning on or after January 1, 2014, the net operating loss deduction will be allowed for each of the 20 tax years following the year of the loss.

241.04B Reorganizations or Mergers. The carryforward of Nebraska net operating losses after reorganizations or mergers is limited to the same extent as the carryover of a net operating loss is limited under the provisions of the IRC. If the taxpayer files as a part of a consolidated return for federal purposes, and files a separate return for Nebraska

purposes, the limitation on a Nebraska net operating loss carryforward must be determined as though a separate return was filed for federal purposes.

241.04C Changes in Unitary Group. When a corporate taxpayer that has a Nebraska net operating loss carryforward becomes a member of a unitary group in a year in which the carryforward is still available, the net operating loss carryforward deduction cannot exceed the apportionable income of the unitary group times a fraction. The numerator of the fraction is the Nebraska gross receipts of the corporation that generated the loss, and the denominator is the gross receipts of the unitary group.

241.04D Taxable Income. For a corporate taxpayer, for losses incurred in taxable years beginning or deemed to begin on or after January 1, 2018, the carryback or carryforward of the loss in any tax year cannot exceed 80% of the taxable income on the Nebraska return without regard to the carryforward.

**REG-24-245 CORPORATE TAXPAYER; CAPITAL LOSSES; COMPUTATION; LIMITATIONS**

**245.01 Calculating a Nebraska Capital Loss.** For a corporate taxpayer, a Nebraska capital loss is computed on the basis of this regulation.

245.01A For a corporate taxpayer that is not subject to apportionment, the Nebraska capital loss is the amount of federal capital loss.

245.01B A corporate taxpayer who is required to apportion its income to Nebraska must compute its Nebraska capital loss as follows:

245.01B(1) The federal capital loss is multiplied by the apportionment factor of the corporate taxpayer for the year of the capital loss; and

245.01B(2) If the capital loss is reported on corporate stock or other assets, the income from which was not previously treated as apportionable to Nebraska or taxable to Nebraska, the loss cannot be included in the federal capital loss computed in Reg-24-245.01B(1).

**245.02 Limitations on Using a Nebraska Capital Loss Carryover.**

245.02A For any Nebraska capital loss incurred in tax years beginning on or after January 1, 1987, the Nebraska capital loss may be carried forward and applied against any Nebraska capital gain for each of the five tax years following the year of the capital loss.

245.02B A corporate taxpayer who is required to apportion its income to Nebraska may only apply the Nebraska capital loss carryover against a Nebraska capital gain.

245.02C A Nebraska capital gain is the federal capital gain multiplied by the apportionment factor of the corporate taxpayer for the year of the capital gain.

245.02D If the capital gain is reported on corporate stock or other assets, the income from which was not treated as apportionable to Nebraska or taxable to Nebraska, the gain cannot be included in the federal capital gain computed in Reg-24-245.02C.

**REG-24-251 PASS-THROUGH ENTITIES; SCHEDULE REQUIRED; NEBRASKA SCHEDULE K-1N**

251.01 Schedule Required. A pass-through entity having income from Nebraska sources or having a resident owner must provide the Department and each owner a schedule listing the amounts and character of the income, guaranteed payments, deductions, adjustments, modifications, and credits that are to be included in each owner's Nebraska income tax return.

251.01A For tax years beginning before January 1, 2012, and for pass-through entities that are not required to file a Nebraska return, the schedule must include specific Nebraska information and adjustments. The Federal Schedule K-1 is acceptable if it has been modified to reflect the Nebraska information and adjustments.

251.01B For all tax years beginning on or after January 1, 2012, the pass-through entity required to file a Nebraska return must use a Nebraska Schedule K-1N (K-1N).

251.01C The K-1N must be included with the Nebraska Return of Partnership Income, Form 1065N, or the Nebraska S Corporation Income Tax Return, Form 1120-SN.

251.02 Preparing the K-1N. The K-1N must include the owner's entire share of the pass-through entity's income, deductions, modifications, and credits derived from Nebraska sources. (See Reg-22-003, Income of Nonresident Individual Subject to Nebraska Income Tax.)

251.02A Character of income, gain, loss, or deduction. Each item of a pass-through entity's income, gain, loss, or deduction has the same character for the owner individually, for the purposes of the Nebraska income tax, as it has for federal income tax purposes. If the item is not characterized for federal income tax purposes, it has the same character for the owner individually as if the owner realized it directly from the source from which it was realized by the pass-through entity.

251.02A(1) In determining a nonresident owner's income, an agreement which characterizes payments to the owner as compensation for services or as a return on capital cannot be considered.

251.02A(2) Similarly, an agreement which allocates to a nonresident owner a greater share of the income or gain from sources outside Nebraska than would be the nonresident owner's share of income from all sources cannot be considered. In addition, any agreement which allocates to a nonresident owner a greater share of any loss or deduction connected with Nebraska sources than the owner's share for federal purposes cannot be considered.

251.02A(3) If a pass-through entity has income from business activities that is taxable both in Nebraska and in another state, it will determine its Nebraska income by apportioning its entire income as provided in Reg-24-301 through Reg-24-381. A pass-through entity engaged in business in Nebraska which is not

subject to tax in any other state cannot apportion its income, but must report its entire taxable income to Nebraska.

251.02B Adjustments.

251.02B(1) The adjustments provided in Reg-24-235, Nebraska Adjustments to Taxable Income, must be reported as modifications on the K-1N.

251.02B(2) The non-Nebraska sourced income of an S corporation or LLC must be reported on the K-1N. Business entities organized as partnerships do not report this adjustment.

251.02C Credits. A pass-through entity must report each owner's share of credits that are distributed by the pass-through entity on the K-1N or another appropriate form.

## REG-24-255 REPORTING ADJUSTMENTS TO FEDERAL INCOME TAX

255.01 Any change made by the IRS, the U.S. Tax Court, or any other court of competent jurisdiction to the federal taxable income or tax liability of a business entity, a unitary group, or a member of a unitary group, must be reported to the Department within 60 days after the final determination of the change.

255.01A Reportable changes include, but are not limited to, changes made to the federal return by either the IRS Processing Center or any other IRS office.

255.01B When reporting any change to federal taxable income, the taxpayer must furnish the Department complete information regarding the amount of income reported and taxes paid to the U.S. The information furnished must also concede the accuracy of the final determination or give a statement outlining the specific errors in the final determination.

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

255.03 Adjustments made on a federal amended return, by the IRS, by order of the U.S. Tax Court, or other order by a court of competent jurisdiction must be reported to the Department by filing:

255.03A An Amended Nebraska Corporation Income Tax Return, Form 1120XN, for the tax year involved if the taxpayer is a corporate taxpayer;

255.03B A Nebraska S Corporation Income Tax Return, Form 1120-SN, with the "Amended Return" box checked if the taxpayer is an S corporation; or

255.03C A Nebraska Return of Partnership Income, Form 1065N, with the "Amended Return" box checked if the taxpayer is taxed as a partnership.

255.04 Each amended return for Nebraska must be filed separately and cannot be attached to a return for another tax year. Any additional tax that is due must be paid when the amended return is filed.

255.05 The amended return for Nebraska must include copies of the federal amended return, the IRS report, or the order of the U.S. Tax Court or other order by a court of competent jurisdiction, whichever is applicable; and any other document that is sufficient to substantiate the adjustments claimed.

255.06 Final Determination. The following acts are considered a final determination:



255.06A A decision by the U.S. Tax Court or a judgment, decree, or other order by a court of competent jurisdiction which has become final;

255.06B A closing agreement authorized by IRC § 7121 which relates either to the total tax liability, 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 it is approved by the IRS;

255.06C A final disposition by the IRS of a claim for refund;

255.06D Any agreement between the taxpayer or a member of a unitary group and the IRS made for the express purpose of determining the tax liability of the taxpayer. To be considered a final determination, the agreement must include a waiver of restrictions on assessment and collection of any deficiencies resulting from the agreement;

255.06E Acceptance of an examining officer's findings with regard to the income of a partnership, a fiduciary, or a limited liability company;

255.06F Proper payment of any additional tax by the corporate taxpayer or unitary group;  
or

255.06G Any other final determination causing changes in reported federal taxable income.

#### **255.07 Deficiency; Statute of Limitations.**

255.07A The Tax Commissioner may issue the taxpayer a notice of deficiency determination at any time if a business entity or an owner of a pass-through entity fails to file an amended return as required by this regulation, or fails to file an amended return to report any change or correction that:

255.07A(1) Increases federal taxable income or tax liability;

255.07A(2) Is treated as a deficiency for federal income tax purposes; or

255.07A(3) Affects any of these items with respect to any owner.

255.07B The notice of deficiency determination issued under Reg-24-255.07A of this section may include any issues exposed by a complete examination of the tax liability for the tax years involved.

255.07C The Tax Commissioner may issue the taxpayer a notice of deficiency determination within two years after the report or amended return was filed if:

255.07C(1) A business entity reports any change or correction in its federal taxable income or tax liability, or reports a change or correction which is treated in the same manner as a deficiency for federal income tax purposes; or

255.07C(2) An owner of a pass-through entity reports any change or correction in its federal taxable income or tax liability, or reports a change or correction which is treated in the same manner as a deficiency for federal income tax purposes.

255.07D The notice of deficiency determination issued under Reg-24-255.07C of this section is limited to the change or correction made by the IRS, the U.S. Tax Court, or any other court of competent jurisdiction.

255.07E The Tax Commissioner may issue the business entity or its owners a notice of deficiency determination with respect to any item of entity income during the period covered by any federal or Nebraska extension of the period for issuing a notice of deficiency determination that is signed on behalf of the entity.

255.07E(1) Taxpayers are required to provide the Department with a copy of every executed Federal Form 872, Consent to Extend the Time to Assess Tax; Form 872-A, Special Consent to Extend the Time to Assess Tax; or any other federal form used to extend the time to assess income taxes.

255.07E(2) If copies of these federal forms are not provided to the Department within 30 days after they are executed, the Tax Commissioner may issue a notice of deficiency determination within one year after these forms are discovered by the Department. For purposes of this subdivision, discovered means the Department has received either the executed federal Form 872, Consent to Extend Time to Assess Tax, or a Federal Audit Status Report that shows the waiver.

255.07F The Tax Commissioner may, at any time within the period otherwise applicable, issue a supplemental notice of deficiency determination whenever any prior notice is imperfect or incomplete in any material aspect.

**255.08 Amended Return; Credit or Refund.** An amended return reporting a change that results in an overpayment of tax for Nebraska is considered a claim for credit or refund.

255.08A The amount of the credit or refund cannot exceed the amount of the Nebraska tax attributable to the federal change, correction, or the items amended on the federal return.

255.08B If the amended return is not filed within 60 days after the final determination of the change, interest on the credit or refund does not accrue after the 60th day.

255.08C If the amended return is not filed within two years and 60 days after the final determination of the change, no credit or refund will be granted.

255.09 Pass-through Entity; Amended Return; Income Tax Withholding. A pass-through entity filing an amended return reporting an increase in its income reported to Nebraska must make a revised calculation of Nebraska income tax to withhold from any nonresident individual owners.

255.09A Revised statements of income tax withheld must be issued by the pass-through entity to nonresident individual owners for use by the owners for filing the appropriate Nebraska individual income tax returns.

255.09B When a pass-through entity files an amended return reporting a decrease in its income reported to Nebraska, it may not revise the calculation of Nebraska income tax to withhold from its nonresident individual owners. However, the pass-through entity must provide revised income, deduction, and credit computations to its owners to use to file the appropriate Nebraska individual income tax returns. The pass-through entity will not receive a credit or refund of any amount previously withheld and remitted on behalf of its nonresident individual owners.

255.09C A publicly traded partnership which did not withhold income tax under Reg-24-225.02 will not calculate or issue revised income tax withholding statements for its nonresident individual owners.

## REG-24-258 REPORTING ADJUSTMENTS MADE BY ANOTHER STATE

258.01 Whenever the income or any tax credits of a business entity, a member of a unitary group, or the unitary group for which income is taxable in another state for any tax year, is changed or corrected in a way material to taxable income or tax liability owed to Nebraska, the change must be reported to the Department within 60 days after the final determination of the change.

258.01A Reportable changes include changes made by any competent taxing agency or a court of competent jurisdiction of the other state.

258.01B When reporting any change, the taxpayer must furnish the Department complete information regarding the amount of income reported, credits allowed, and taxes paid to the other state. The information furnished must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

258.02 Any adjustments made by amended returns filed with another state that are material to tax liability owed to Nebraska must be reported to the Department. These adjustments must be reported within 60 days after the amended return is filed in the other state.

258.03 These adjustments are reported by filing:

258.03A An Amended Nebraska Corporation Income Tax Return, Form 1120XN, for the tax year involved if the taxpayer is a corporate taxpayer;

258.03B A Nebraska S Corporation Income Tax Return, Form 1120-SN, with the "Amended Return" box checked if the taxpayer is an S corporation; or

258.03C A Nebraska Return of Partnership Income, Form 1065N, with the "Amended Return" box checked if the taxpayer is taxed as a partnership.

258.04 Each amended return for Nebraska must be filed separately and cannot be attached to a return for another tax year. Any additional tax that is due must be paid when the amended return is filed.

258.05 The amended return for Nebraska must include copies of the amended return from the other state, report of the other state's taxing agency, or order from the court of competent jurisdiction, whichever is applicable; and any other documents that are sufficient to substantiate the adjustments claimed.

258.06 Final Determination. The following acts are considered a final determination:

258.06A A decision by a tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final;

258.06B A closing agreement or settlement agreement which relates either to the total tax liability, or to one or more separate items affecting Nebraska tax liability;

258.06C A final disposition of a claim for a refund by the other state's taxing authority;

258.06D Any agreement between the taxpayer, or a member of a unitary group, and the taxing authority of the other state made for the express purpose of 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

258.06E Any other final determination causing changes in reported taxable income.

### **258.07 Deficiencies; Statute of Limitations.**

258.07A The Tax Commissioner may issue the taxpayer a notice of deficiency determination at any time if a business entity or an owner of a pass-through entity fails to file an amended return as required by this regulation, or fails to file an amended return to report any change or correction that:

258.07A(1) Changes taxable income, tax liability, or tax credits; or

258.07A(2) Affects any of these items with respect to any owner.

258.07B The notice of deficiency determination issued under Reg-24-258.07A of this section may include any issues exposed by a complete examination of the tax liability for the tax years involved.

258.07C The Tax Commissioner may issue the taxpayer a notice of deficiency determination within two years after the report or amended return was filed if:

258.07C(1) A business entity reports any change or correction in its taxable income, tax liability, or credits; or

258.07C(2) An owner of a pass-through entity reports any change or correction in the owner's taxable income, tax liability, or credits.

258.07D The notice of deficiency determination issued under Reg-24-258.07C of this section is limited to the changes in the report or amended return, or the change or correction made by the other state's taxing authority, or a court of competent jurisdiction.

258.07E The Tax Commissioner may issue the owners of a business entity a notice of deficiency determination with respect to any item of entity income during the period covered by any extension that is signed on behalf of the entity.

258.08 Amended Return; Credit or Refund. An amended return reporting a change that results in an overpayment of tax for Nebraska is considered a claim for credit or refund.

258.08A The amount of the credit or refund cannot exceed the amount of the Nebraska tax attributable to the change, correction, or the items amended on the other state's return.

258.08B If the amended return is not filed within 60 days after the final determination of the change, interest on the credit or refund does not accrue after the 60th day.

258.08C If the amended return is not filed within the earlier of two years and 60 days after the final determination of the change, or 10 years after the original due date of the other state's return, no credit or refund will be granted.

258.09 Pass-through Entity; Amended Return; Income Tax Withholding. When a pass-through entity files an amended return reporting an increase in its income reported to Nebraska, it must make a revised calculation of Nebraska income tax to withhold from any nonresident owners.

258.09A Revised statements of income tax withheld from the owners must be issued by the pass-through entity to nonresident owners for use by the owners when filing the appropriate Nebraska individual income tax returns.

258.09B When a pass-through entity files an amended return reporting a decrease in its income reported to Nebraska, it may not revise the calculation of Nebraska income tax to withhold from its nonresident owners. However, the pass-through entity must provide revised income, deduction, and credit computations to its owners to use when filing the appropriate Nebraska individual income tax returns. The pass-through entity will not receive a credit or refund of any amount previously withheld and remitted on behalf of its nonresident owners.

258.09C A publicly traded partnership which did not withhold income tax under Reg-24-225.02 will not calculate or issue revised income tax withholding statements for its nonresident owners.

## **REG-24-261 EXAMINATION FOR MATHEMATICAL OR CLERICAL ERRORS AND DEFICIENCIES**

**261.01 Department Power to Examine Returns.** The Department may examine any income tax return, the related federal return, any supporting schedules and worksheets, and other information to determine the correct amount of income tax liability or the correct amount of credit or loss to be carried over. The Department may adjust the amounts the taxpayer reported as federal taxable income, deductions, credit calculations, or any other item, so that the amounts reported are consistent with the IRC and Nebraska law. If the calculated amount of Nebraska income tax liability or the amount of credit or loss to be carried over is incorrect for any reason, the Department will correct the amount and notify the taxpayer.

**261.02 Mathematical of Clerical Errors.** The Department may correct mathematical errors made on the return and notify the taxpayer. A notice that additional Nebraska income tax is due because of a mathematical error is not a notice of deficiency determination and there is no right to protest or appeal the correction. Mathematical or clerical error includes information on the taxpayer's return that is different from information reported to the Internal Revenue Service or the Tax Commissioner, for example, information reported on a federal Form W-2 or Form 1099.

### **261.03 Deficiencies.**

261.03A If the amount of tax liability shown on any income tax return is less than the correct amount, or the amount of credit or loss to be carried over is incorrect, for any reason other than a mathematical error, the Department will issue a notice of deficiency determination to the taxpayer.

261.03B If the taxpayer fails to file a return, the Department will estimate the taxpayer's income tax liability or income based on the best information available and issue a notice of deficiency determination to the taxpayer or its owners.

### **261.04 Statute of Limitations.**

261.04A The Department may issue a notice of deficiency determination within three years after the original due date for the return, or the date the return is filed, whichever is later.

261.04B If the taxpayer omits an amount which is in excess of 25% of the Nebraska taxable income of the taxpayer, or improperly omits a member of the unitary group, the Department may issue a notice of deficiency determination within six years after the date the return was filed.

261.04C If the taxpayer files an amended return to report a change as required by Neb. Rev. Stat. § 77-2775, the statute of limitations provided in Reg-24-255 or Reg-24-258 applies.

261.04D If a return has not been filed, or a false and fraudulent return is filed, the Department may issue a notice of deficiency determination at any time.

261.04E If a taxpayer fails to file an amended return or report a change as required by Neb. Rev. Stat. § 77-2775, the Department may issue a notice of deficiency determination at any time.

261.05 **Using Tax Preparers.** Taxpayers are responsible for the accuracy of any information contained on any return, schedule, or worksheet that affects the calculation of income tax liability or any credit. Using a tax preparer does not relieve any taxpayer of responsibility to accurately report and satisfy any income tax liability.



## REG-24-265 PENALTIES

### 265.01 Civil Penalties.

265.01A If any person fails to file a return by the due date, including extensions, absent a showing of reasonable cause, a penalty of 5% of the amount of tax due, reduced by any credits and payments made before the original due date of the return, may be assessed for each month, or portion of a month, of failure; not to exceed 25%.

265.01B If any part of a proposed deficiency or overstatement of a requested refund is the result of negligence, material misstatement, or intentional disregard of law, but without intent to defraud, a penalty of 5% of the amount of the proposed deficiency may be assessed.

265.01C If any part of a proposed deficiency or overstatement of a requested refund is the result of fraud, a penalty of 50% of the proposed deficiency may be assessed, in lieu of the penalty described in Reg-24-265.01B.

265.01D A penalty of not more than \$1,000 may be assessed if any person with fraudulent intent fails to:

265.01D(1) Pay any income tax;

265.01D(2) Make, file, sign, or certify any return of estimated income tax; or

265.01D(3) Supply any information to the Department within the time required.

265.01D(4) This penalty is in addition to any other penalties that may be imposed.

265.01E A penalty of \$500 for each occurrence may be assessed if any person, for frivolous or groundless reasons, or with intent to delay or impede the administration of the Nebraska income tax:

265.01E(1) Fails to file a return or to pay any income tax due; or

265.01E(2) Files what purports to be a return which does not contain sufficient information to calculate the liability or indicates that the self-assessed liability is substantially incorrect.

265.01E(3) This penalty is in addition to any other penalties that may be imposed.

265.01F If any person fails to file a return, fails to file an amended return as required in Reg-24-255 or 24-258, or otherwise fails to comply with any of the reporting or filing requirements imposed by the Revenue Act or these regulations, a penalty of 25% of the tax due may be assessed, in addition to any other penalty.

265.01G If any person aids, procures, advises, or assists in the preparation of any return, affidavit, refund claim, or other document with knowledge that its use will result in the material understatement of the tax liability of another person, or the material overstatement of the amount of a refund of another person, a penalty of \$1,000 may be assessed for each separate return or other document.

## **265.02 Criminal Penalties.**

265.02A Any person required to pay any income tax or estimated income tax or file a return, except for a return of estimated income tax, who willfully fails to pay the tax or estimated income tax or file the return, at the time or times required by law, may be found guilty of a Class II misdemeanor in addition to any other penalties.

265.02B Any person who, with intent to evade or defeat any income tax or its payment, claims an excessive number of exemptions, or in any other manner overstates the amount of income tax withholding, may be found guilty of a Class II misdemeanor in addition to any other penalties.

265.02C Any person required to keep any records or supply any information, who willfully fails to keep records or supply information, at the time or times required by law, may be found guilty of a Class II misdemeanor in addition to any other penalties.

265.02D Any person who willfully attempts in any manner to evade the Nebraska income tax or the payment of Nebraska income tax may be found guilty of a Class IV felony, in addition to any other penalties.

265.02E Any person who willfully makes and signs any return, statement, or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and who does not believe the return, statement, or document to be true and correct as to every material matter, may be found guilty of a Class IV felony.

265.02F Any person who willfully aids or procures the preparation or presentation of a return, affidavit, claim, or other document which is fraudulent or which is false as to any material matter, may be found guilty of a Class IV felony.

265.02G Statute of Limitations. The statute of limitations for criminal prosecution for the offenses in Reg-24-265.02A of this section is three years after the commission of the offense. The statute of limitation for criminal prosecution for all other penalties in this section is four years after the commission of the offense.

Current Reg-24-305 is amended to read:

## **REG-24-305 APPORTIONMENT FORMULA**

**305.01 Corporations or Partnerships; Apportionment Formula.** The federal taxable income, as adjusted under Reg-24-155, Nebraska Adjustments to Taxable Income, of a corporation or partnership operating both within and outside Nebraska is apportioned to Nebraska by using the sales factor of the corporation or partnership. The income of the taxpayer apportioned to Nebraska is determined by calculating the ratio of the taxpayer's sales in Nebraska compared to the total sales of the taxpayer and applying the computed ratio to the federal taxable income, as adjusted, of the taxpayer.

**305.02 Unitary Group.** The federal taxable income, as adjusted under Reg-24-155, Nebraska Adjustments to Taxable Income, of a unitary group operating both within and outside Nebraska is apportioned to Nebraska by using the sales factor of the unitary business.

**305.03 Unitary Group; Apportionment Formula.** When part of a unitary business is conducted in Nebraska by one or more members of the unitary group, the income of the taxpayer apportioned to Nebraska is determined by calculating the ratio of the unitary group's sales in Nebraska compared to the total sales of the entire unitary group and applying the computed ratio to the federal taxable income, as adjusted, of the unitary group.

305.03A In computing the factor, only those business entities that are subject to the IRC are included in the calculation and in the taxpayer's filing.

305.03B ~~Sales of only~~ Only sales made by those business entities with nexus in Nebraska are included in the numerator of the computed apportionment factor.

**305.04 Unitary Group; Combined Return.** Each unitary group must file only one income tax return for the group for each tax year, even if more than one member of the unitary group is taxable in Nebraska.

**305.05 Unitary Group; S Corp Corporation Included in Apportionment.** If a unitary group includes an ~~S Corp~~ S Corp Corporation, the apportionment formula in Reg-24-305.03 will be calculated for the entire unitary group and applied to the federal taxable income of the corporate taxpayer and separately to the federal taxable income of the ~~S Corp~~ S Corp Corporation which is taxable to its owners.

**305.06 Unitary Group; Business Entities Excluded.** Inactive business entities may not be included in the unitary group. Any business entity that is required or has received permission to use a special apportionment formula under Reg-24-381, Special Apportionment, cannot be included in the unitary group. If more than one affiliated or related company of a unitary group is properly using the same special apportionment formula, these business entities must use the combined income approach and must file a single return.

Current Reg-24-347 is amended to read:

**REG-24-347 SPECIAL APPORTIONMENT RULES; ALL TAX YEARS; INSURANCE COMPANIES**

**347.01 Unitary Group.** An insurance company, ~~including a captive insurance company,~~ cannot be included in a unitary group when the other members of the unitary group are not insurance companies. A unitary group of insurance companies cannot include a corporation that is not an insurance company.

**347.02 In General.** Reg-24-347.04 governs the apportionment of income of an insurance company that has income from insuring property or risks both within and outside Nebraska.

**347.03 Definitions.** The following definitions apply to the terms used in the apportionment factor descriptions in this regulation.

347.03A Direct premiums are all premiums received for insurance other than reinsurance premiums.

347.03B Insurance company is a company engaged in the business of insurance as defined in Neb. Rev. Stat. § 44-102 which has a certificate of authority to do business in Nebraska under Neb. Rev. Stat. § 44-105. A company that insures risks but is not required to have a certificate of authority to sell insurance in Nebraska is not an insurance company under this regulation and must be included in a unitary group with other companies that are not insurance companies.

347.03C Premiums are the consideration paid to insurance companies for insurance and includes policy fees, assessments, dues, or other similar payments, except premiums on all annuity contracts and pension, profit-sharing, individually sponsored retirement plans, and other pension plan contracts which are described in IRC § 818(a).

347.03D Quota-share reinsurance is reinsurance of a certain percentage of all or certain parts of the business being reinsured.

347.03E Reinsurance premiums means premiums which are paid by an insurer to a third party to insure it against loss or liability by reason of the original insurance.

347.03F Schedule T is part of the annual statement prescribed by the National Association of Insurance Commissioners, which is required to be filed annually with the various state insurance departments.

**347.04 Sales Factor.** The numerator of the sales factor of an insurance company or a unitary group of insurance companies is direct premiums received on property or risks in Nebraska. The denominator is direct premiums received on property or risks everywhere.

347.04A Reinsurance premiums are included in the numerator and denominator only when more than one-third of the premiums received by an insurance company or a unitary group of insurance companies consist of premiums received for reinsurance accepted. If more than one-third of the premiums received by an insurance company or a unitary group of insurance companies consist of premiums received for reinsurance accepted, all premiums for reinsurance are included in the denominator.

347.04A(1) Premiums received for reinsurance accepted will be included in the numerator if it can be established or reasonably assumed that the underlying risks are in Nebraska.

347.04A(2) In the case of reinsurance accepted for which the location of the underlying risk can neither be established nor reasonably assumed, premiums received will be included in the numerator if Nebraska is the state of commercial domicile of the ceding company, except:

347.04A(2)(a) If more than half of the ceding company's premiums written are direct premiums, reinsurance premiums received with respect to quota-share will be sourced in proportion to the ceding company's Annual Statement -- Schedule T allocation of its direct premiums written.

347.04B All transactions between corporate members of the same unitary group are eliminated prior to making the determinations outlined in this regulation.

