

Title 316 NEBRASKA DEPARTMENT OF REVENUE
Chapter 22 INDIVIDUAL INCOME TAX REGULATIONS

REG-22-001 DEFINITION OF RESIDENT INDIVIDUAL

001.01 At any given time, every individual is either a resident or a nonresident of Nebraska.

001.01A The term resident individual means every individual who is domiciled in this state, even though absent for temporary or transitory purposes, and every individual who for an aggregate of more than six months both maintains a permanent place of abode within this state and who is present in this state.

001.01B A nonresident is every individual who is not a resident individual.

001.01C Nebraska residence will be determined by Nebraska law.

001.02 For the purpose of filing returns and computing the tax due for the taxable year, the terms resident and nonresident apply to those persons who were residents or nonresidents for the entire taxable year. Any person who is not a resident or a nonresident for the entire year is a partial-year resident. Except when the context clearly requires otherwise, the terms resident, nonresident and partial-year resident will be used in these regulations as defined in this subsection.

001.03 The question of domicile is a question of fact rather than law, frequently depending upon a variety of circumstances. The term domicile shall mean the place where an individual has his or her true, fixed, and permanent home and principal establishment, and to which whenever he or she is absent he or she has the intention of returning. Actual residence is not necessarily domicile.

001.03A Any citizen residing outside the United States (U.S.) whose last domicile within the U.S. was within Nebraska will continue to be a Nebraska resident until the person ceases to be a citizen of the U.S., establishes residence as a permanent resident alien in a foreign country, or reestablishes another domicile within the U.S.

001.03B An unemancipated minor's domicile is usually the same as that of the custodial parent.

001.04 A permanent place of abode means a dwelling place permanently maintained by the taxpayer. A dwelling place includes a house, apartment, room, or other accommodation suitable for human occupation. An individual who for an aggregate of six months both maintains a permanent place of abode in Nebraska and is present within Nebraska, is considered to be a resident of Nebraska regardless of whether or not such place of abode within Nebraska is actually used by such individual during such period. Such a person shall become a resident of this state as of the date the permanent place of abode was established, shall cease to be a resident of this state as of the date the permanent place of abode is abandoned, or shall be considered a resident for the entire year if the person has a permanent place of abode at the beginning and at the end of the year.

001.05 An individual establishes residence in Nebraska on the date he or she arrives in the state for other than temporary or transitory purposes. Residence in Nebraska is terminated on the date an individual leaves the state, abandons any intention of returning to the state, and establishes a residence in another state while present in the other state for other than temporary or transitory purposes.

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001.06

001.06A An individual who is a resident of Nebraska does not terminate residency upon entering the services of the United States. A member of the services domiciled in Nebraska at the time he or she entered such service generally retains his or her status as a domiciliary of Nebraska throughout his or her stay in the service, regardless of where he or she may be assigned to duty or how long.

001.06B For purposes of this regulation, an individual shall not be deemed to be a resident of Nebraska, nor will he or she lose his or her status as a resident of the state in which he or she formerly resided, solely because of a transfer into Nebraska under military orders. Such individual may, however, become a resident of Nebraska for purposes of this regulation by the performance of some overt acts which would constitute a termination of his or her residence in such former state and the establishment of a residence in Nebraska.

001.06C The spouse of an individual in Nebraska solely because of a transfer into Nebraska under military orders, if not a member of the services, will become a resident of Nebraska in the same manner as any other nonservice member after moving into the state.

(Section 77-2715(2), R.R.S. 1996. November 11, 1998.)

REG-22-002 COMPUTING THE NEBRASKA INDIVIDUAL INCOME TAX

002.01 **Resident individuals.** The Nebraska individual income tax is imposed for each taxable year on the entire income of every resident individual. The tax is a percentage of the taxpayer's Nebraska taxable income for the taxable year plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. Taxpayers whose federal adjusted gross income is larger than the threshold amount determined under section 68 of the Internal Revenue Code (IRC) will recalculate their tax on taxable income by multiplying the maximum tax rate by ten per cent of the excess amount above the section 68 threshold and subtracting from the result the amount of tax from the tax table. This result will be added to the tax from the tax table.

002.02 **Nonresident individuals.** The Nebraska individual income tax is imposed for each taxable year on the income of every nonresident individual which is derived from sources within Nebraska. The tax is a percentage of the tax owed by a resident individual with the same total income. The percentage is determined by dividing the taxpayer's Nebraska adjusted gross income as determined in Reg-22-003 by the taxpayer's federal adjusted gross income after the adjustments provided in Reg-22-002.04.

002.03 **Partial-year resident individuals.** The Nebraska individual income tax is imposed for each taxable year on all of the income of every partial-year resident which is earned while a resident of Nebraska and is not taxed by another state, and the income derived from sources within Nebraska while a nonresident. The tax is a percentage of the tax owed by a resident individual with the same taxable income. The percentage is determined by dividing the taxpayer's Nebraska adjusted gross income as determined in Reg-22-004 by the taxpayer's

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federal adjusted gross income after the adjustments provided in Reg-22-002.04.

002.04 Determining Nebraska taxable income. Nebraska taxable income is the taxpayer's federal adjusted gross income after Nebraska adjustments and after the deduction provided in either Reg-22-002.08 or Reg-22-002.09.

002.05 The Nebraska adjustments which are subtracted from federal adjusted gross income are as follows:

002.05A Income from federal obligations. Any interest and dividends received on United States obligations to the extent such interest and dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States shall be subtracted. The amount subtracted on account of such interest and dividends must be reduced by any interest on indebtedness incurred to carry such obligations and by any expense incurred in the production of such income to the extent such expense or interest was deducted in determining federal taxable income.

002.05A(1) United States obligations which are exempt include the following:

002.05A(1)(a) Series E, F, G, H, and I savings bonds;

002.05A(1)(b) United States Treasury bills;

002.05A(1)(c) U.S. Government notes;

002.05A(1)(d) U.S. Government bonds;

002.05A(1)(e) U.S. Government certificates;

002.05A(1)(f) Interest on debentures issued to mortgages of mortgagees foreclosed under provisions of the National Housing Act if insured after February 3, 1938;

002.05A(1)(g) Retirement bond as provided by IRC section 409;

002.05A(1)(h) Federal Farm Credit Bank consolidated systemwide bonds;

002.05A(1)(i) Federal Land Banks and Associations;

002.05A(1)(j) Federal Intermediate Credit Bank;

002.05A(1)(k) Commodity Credit Corporation;

002.05A(1)(l) Federal Farm Mortgage Corporation;

002.05A(1)(m) Federal Home Loan Banks;

002.05A(1)(n) Reconstruction Finance Corporation;

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002.05A(1)(o) General Services Administration Participation Certificates;

002.05A(1)(p) Central Bank for Cooperatives (interest only);

002.05A(1)(q) Federal Reserve Banks;

002.05A(1)(r) Federal Savings and Loan Insurance Corporation;

002.05A(1)(s) Production Credit Association (interest only);

002.05A(1)(t) Tennessee Valley Authority bonds;

002.05A(1)(u) Postal Service bonds ;

002.05A(1)(v) Federal Deposit Insurance Corporation (interest only); and

002.05A(1)(w) Student Loan Marketing Association (interest only).

002.05A(2) Income from Regulated Investment Companies investing directly in U.S. Government obligations is subtracted to the extent they represent U.S. Government obligations.

002.05A(3) Interest income from repurchase agreements involving U.S. Government obligations is not deductible.

002.05B Refund of State and Local Income Tax. Any refund of state or local income tax which was included in federal adjusted gross income shall be subtracted.

002.05C Income from S corporations and LLCs.

002.05C(1) Any income from S corporations and limited liability companies (LLCs) which was not connected with or derived from Nebraska sources shall be subtracted.

002.05D Dividends Received from a Corporation not Subject to the IRC. Any dividend which was received from a corporation which was not subject to the Internal Revenue Code shall be subtracted.

002.05E Amount Repaid for Which a Reduction in Federal Income Tax was Taken. Any amount which was repaid and for which the taxpayer received a reduction in federal tax under IRC section 1341(a)(5) shall be subtracted.

002.05F Railroad Retirement Board payments. Railroad Retirement Board payments to retired railroad employees or their families that are included in federal adjusted gross income, including Tier I and II, Supplemental Annuity, and Dual Vested Benefits as reported on Forms RRB-1099 and RRB-1099-R issued by the Federal Railroad Retirement Board, shall be subtracted.

002.05G. Special Capital Gains Exclusion. Capital gains excluded due to an election exercised under provisions of section 77-2715.08 of the Nebraska Revised Statutes shall be subtracted as provided in Reg-22-020.

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002.05H. **Nebraska Net Operating Losses.** A Nebraska net operating loss carryback or carryover shall be subtracted as provided in Reg-22-005.

002.05I. **Native American Indian Reservation Income.** The income earned within the boundaries of a recognized Indian reservation by a Native American Indian who is an enrolled member of an Indian tribe and who resides in Nebraska on an Indian reservation shall be subtracted.

002.05I(1) No income tax return is required if a reservation Indian's income is earned entirely within the boundaries of an Indian reservation in Nebraska.

002.05J **Long-Term Care Savings Plan.** Deposits into qualifying long-term care savings plan accounts at participating Nebraska banks of up to \$2,000 for married-filing-joint filers or \$1,000 for all other filers, to the extent not deducted for federal income tax purposes, shall be subtracted.

002.05J(1) Any interest or dividends earned from a qualifying long-term care savings plan account within the taxable year, to the extent not deducted for federal income tax purposes, shall be subtracted.

002.05K **Nebraska College Savings Plan.** Contributions by a participant in the Nebraska Educational Savings Plan Trust shall be subtracted to the extent not deducted for federal tax purposes.

002.05K(1) For tax years beginning on or after January 1, 2007, the deduction may not be more than \$2,500 for a married filing separate tax return and \$5,000 for single, head of household, and married joint returns. Only the participant owner may claim the subtraction.

002.05K(2) For tax years beginning on or after January 1, 2000, and before January 1, 2007, the deduction may not be more than \$500 for a married filing separate tax return and \$1,000 for single, head of household, and married joint returns. Only the participant owner may claim the subtraction.

002.05K(3) Any gift, grant, or donation made to the Nebraska Educational Savings Plan Trust for deposit in the endowment fund of the trust, to the extent not deducted for federal income tax purposes, shall be subtracted.

002.05L **Bonus Depreciation Subtraction.** A portion of the amount of bonus depreciation added for assets placed in service between September 10, 2001 and December 31, 2005 shall be subtracted.

002.05L(1) Twenty percent of the total amount of bonus depreciation added back for tax years beginning or deemed to begin before January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

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002.05L(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, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

002.05M. Enhanced Section 179 Subtraction. A portion of the amount added for capital investment expensed under IRC section 179 in excess of twenty-five thousand dollars for taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006 shall be subtracted.

002.05M(1) Twenty percent of the total amount of expensing added back for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, and twenty percent in each of the next four following tax years.

002.06 The Nebraska adjustments which are added to federal adjusted gross income are as follows:

002.06A Income from state and local obligations. Any interest and dividends received from state and local obligations, other than obligations issued by the State of Nebraska or its political subdivisions, to the extent such interest and dividends are excluded from federal gross income shall be added. The amount added on account of such interest and dividends may be reduced by any interest on indebtedness incurred to carry such obligations and by any expense incurred in the production of such income to the extent such expense or interest was not deducted in determining federal taxable income.

002.06A(1) Dividends and income received from Regulated Investment Companies which are attributable to obligations described in Reg-22-002.06A shall be added.

002.06B Losses from S corporations and LLCs. Any loss from S corporations and Limited Liability Companies (LLCs) which was not connected with or derived from Nebraska sources shall be added.

002.06C Federal Net Operating Losses. A Federal net operating loss carryback or carryover shall be added as provided in Reg-22-005.

002.06D Long-Term Care Savings Plan Nonqualified Withdrawals. Any withdrawal of deposited funds or interest or dividends from a long-term care savings plan account shall be added to the extent that the amount was previously deducted under Reg-22-002.05J or Reg-22-002.05J(1) upon cancellation or termination of the plan or if the withdrawal is:

22-002.06D(1) Not made to pay or reimburse for long-term care expenses during the taxable year, for the participant, the participant's spouse, or another person for whom the participant has an insurable interest;

22-002.06D(2) Not made by a participant who is over 50 years of age or who turned 50 years of age during the taxable year to pay or reimburse for long-term care insurance premiums during the taxable year for the participant, the

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participant's spouse, or another person for whom the participant has an insurable interest;

22-002.06D(3) Not due to the death of the participant; or

22-002.06D(4) Not made to transfer funds to a long-term care savings plan of the participant's spouse.

002.06E Financial Institution Tax of a Shareholder. A shareholder of a financial institution organized as an S corporation who claims the Nebraska credit for financial institution tax must add to income the amount of the credit taken.

002.06F Federal Bonus Depreciation. For taxable years beginning or deemed to begin before January 1, 2006, federal adjusted gross income shall be increased by eighty-five percent of the amount of any federal bonus depreciation received under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

002.06G Section 179 Expense in excess of twenty-five thousand dollars. For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, federal adjusted gross income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003.

002.06H Nebraska College Savings Plan. Any nonqualified withdrawals 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, shall be added to income, to the extent not included for federal income tax purposes.

002.07 Determining Nebraska minimum tax. The Nebraska minimum tax is computed as a percentage of the federal alternative minimum tax which is adjusted by substituting Nebraska taxable income (federal AGI less Nebraska standard or itemized deductions) for federal taxable income, and adjusting for any items which are reflected differently in the determination of federal taxable income for Nebraska purposes.

002.07A Items which are reflected differently include:

002.07A(1) Nebraska standard deduction;

002.07A(2) Substituting Nebraska itemized deductions for federal itemized deductions, including using the Nebraska itemized deductions calculated on the Nebraska Itemized Deduction Worksheet;

002.07A(3) Using only Nebraska-source private activity bond income when reporting post-August 7, 1986 private activity bond tax-exempt interest;

002.07A(4) Deducting any state or local income tax from the reported taxes;

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002.07A(5) Substituting the Nebraska net operating loss for any federal net operating loss;

002.07A(6) Substituting zero (0) for any alternative minimum tax foreign tax credit.

002.07B The federal credit for prior year minimum tax, after the recomputations noted above, is allowed as a credit against any tax calculated by the taxpayer.

002.07B(1) The rate used to calculate the current year's Nebraska minimum tax shall also be used to calculate the credit.

002.07C The Nebraska tax also includes a tax computed as a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. This includes those taxes reported on Federal Forms 5329 (Tax on Early Distributions (including an IRA)) and 4972 (Tax on Lump-Sum Distributions).

002.08 Standard Deduction. Every taxpayer who is allowed a federal standard deduction is allowed a deduction for state purposes except as provided in Reg-22-002.08A.

002.08A. For tax years beginning on or after January 1, 1993 and before January 1, 2007, the standard deduction for a taxpayer whose federal adjusted gross income is greater than the threshold amount determined under IRC section 68 for the disallowance of itemized deductions will be reduced by the following amount. The amount of federal adjusted gross income in excess of the threshold amount is multiplied by 10%, and the result is subtracted from the taxpayer's state standard deduction.

002.08B For tax years beginning on or after January 1, 2003 and before January 1, 2007, every individual who did not itemize deductions on his or her federal return is allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return as the amount is adjusted under Reg-22-002.08A. The standard deduction is the smaller of the federal standard deduction actually allowed or the Nebraska standard deduction.

002.08B(1) Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness are allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return.

002.08C For tax years beginning or deemed to begin on or after January 1, 2004 and before January 1, 2007, the state standard deduction amounts in this regulation will be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. If any amount is not a multiple of ten dollars, the amount shall be rounded to the next highest multiple of ten dollars except that the standard deduction for married filing separate taxpayers may be a multiple of five dollars.

002.08D For tax years beginning on or after January 1, 2007, every individual who did not itemize deductions on his or her federal return is allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return.

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002.08D(1) The standard deduction amounts, including the additional standard deduction amounts, shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. If any amount is not a multiple of fifty dollars, the amount shall be rounded to the next lowest multiple of fifty dollars.

002.08D(2) The standard deduction is the smaller of the federal standard deduction actually allowed or the Nebraska standard deduction.

002.09 Itemized deductions. Every taxpayer who used federal itemized deductions is allowed to deduct the greater of the standard deduction as provided in Reg-22-002.08 and Reg-22-002.08A and the itemized deductions after subtracting any state or local income taxes and as limited by Reg-22-002.09A.

002.09A Taxpayers whose federal adjusted gross income is greater than the threshold amount determined under IRC section 68 for the disallowance of itemized deductions will calculate the excess amount which is over the threshold for the purpose of determining itemized deductions. For tax years beginning on or after January 1, 1993 and before January 1, 2007, if an individual's adjusted gross income exceeds the statutory threshold amount, the amount allowable for itemized deductions must be reduced by the lesser of (1)10% of the excess of adjusted gross income over the threshold amount, or (2) 80% of the amount of the itemized deductions otherwise allowable for the taxable year. The limitation does not apply to deductions for medical expenses, casualty and theft losses, investment interest expenses, charitable contributions (after tax year 1994), or certain gambling losses. State and local income tax is not allowed as an itemized deduction under Nebraska law and is therefore not subject to further limitation.

002.09A(1) For tax years beginning on or after January 1, 2007, Nebraska itemized deductions for taxpayers whose federal adjusted gross income is greater than the threshold amount determined under IRC section 68 for the disallowance of itemized deductions, shall be the amount of the federal itemized deductions actually allowed minus the total amount of state and local income tax before any limitation.

002.09B A taxpayer who itemizes deductions and elects to deduct state and local sales taxes in lieu of state income tax on his or her federal return will not add back the amount of this deduction.

002.09C A taxpayer deducting state income tax as a federal itemized deduction cannot elect to deduct sales and use taxes for state purposes.

002.10 Alternative method--nonresidents or partial-year residents. If the above provisions attribute more or less income tax to Nebraska than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for, or the State Tax Commissioner may require, the employment of any other method to attribute to Nebraska an amount of income tax which is reasonable and equitable under the circumstances.

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(Section 77-2715 R.R.S., 2003, and sections 77-2716, 77-2716.01, 77-2716.03, R.S.Supp., 2008. Nebraska Department of Revenue v. John Loewenstein, 513 U.S. 123 (1994). February 22, 2009.)

REG-22-003 INCOME OF NONRESIDENT INDIVIDUALS SUBJECT TO NEBRASKA INCOME TAX

003.01 Nebraska adjusted gross income for a nonresident individual is the nonresident's income from Nebraska sources after the adjustments provided in Reg-22-003.02. Income derived from Nebraska sources shall include, but not be limited to, items relating to real and tangible personal property, a business, trade, profession, or occupation, compensation for services, intangible property, small business corporations, partnerships, estates and trusts, and lottery and gambling winnings.

003.01A Real or tangible personal property. The ownership of any interest in real or tangible personal property located in Nebraska shall be sufficient to qualify any income, gain, or loss from such real or tangible personal property as derived from or connected with Nebraska sources. This would include rents or royalties from property located in Nebraska for any period of time during the taxable year, and any gain or loss from the sale of property located in Nebraska.

003.01B Business, trade, profession, or occupation. Income from sources in Nebraska as it relates to a business, trade, profession, or occupation carried on in Nebraska shall mean that portion of an individual's gross income that is reasonably and equitably attributable to Nebraska, irrespective of the accounting method employed.

The Nebraska source income of a business, trade, profession, or occupation shall be determined by use of the apportionment factor as provided for the taxing of corporations under the Nebraska Revenue Act and Reg-24-023. If the portion of taxable income derived from sources in Nebraska so determined does not reasonably and equitably reflect Nebraska source income, the Tax Commissioner may allow alternative methods of determining income from Nebraska sources.

003.01C Compensation for Services.

003.01C(1) Generally. Compensation received by a nonresident for services performed which are directly related to a business, trade, or profession carried on within Nebraska shall constitute income derived from Nebraska.

Compensation received by a nonresident will be considered Nebraska source income if the nonresident's services are performed entirely within Nebraska, if such services performed without Nebraska are incidental to the services performed within Nebraska, or if the services that have to be performed in Nebraska are an essential part of the services performed.

If the nonresident's service is performed without Nebraska for his or her convenience, but the service is directly related to a business, trade, or profession carried on within Nebraska and except for the nonresident's convenience, the service could have been performed within Nebraska, the compensation for such

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services shall be Nebraska source income.

When a taxpayer has performed some service in this state and the base of operations, or, if there is no base of operations, the place from which the services are directed or controlled is in this state, the compensation paid by a business, trade, or profession for all services of the taxpayer shall be income from Nebraska sources.

003.01C(2) Commissions. Income from commissions earned by a nonresident traveling salesman, agent, or other employee for services performed or sales made whose compensation depends directly on the volume of business transacted by him or her, may be allocated to Nebraska based upon specific identification of each item of income and expense. Allocation may be used only when the books and records of either the nonresident or his or her employer accurately reflect the business transacted and expenses incurred in Nebraska by the nonresident in connection therewith. If the books and records do not accurately reflect the business transacted and expenses incurred in Nebraska by the nonresident, the nonresident will include that proportion of the compensation received which the volume of business transacted by such employee within the State of Nebraska bears to the total volume of business transacted by him, or her, both within and without the state. (See Reg-21-006.01)

003.01C(3) Periodic employment in Nebraska. If a nonresident employee is employed in this state at intervals throughout the year and is paid on an hourly, daily, weekly, or monthly basis, the gross income from sources within this state must include that portion of the total compensation for personal services which the total number of working hours, days, weeks, or months employed within Nebraska compare to the total number of such working intervals both within and without the state. If the majority of the interval is spent within this state, then the entire interval is within this state. (See Reg-21-006.02 and Reg-21-006.04)

If a nonresident employee is paid on a mileage basis, the gross income from sources within Nebraska must include that portion of the total compensation for services which the number of miles traveled in Nebraska bears to the total number of miles traveled both within and without Nebraska. (See Reg-21-006.03)

If the nonresident employee is paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such manner as to attribute to Nebraska that portion of the total compensation which is reasonably attributable to personal services performed in the state.

003.01C(4) Services of fiduciary. Compensation paid by a resident trust or estate, as defined in Reg-23-001, for services by a nonresident fiduciary shall constitute income from sources within Nebraska.

003.01C(5) Professional services. Nonresident attorneys, physicians, engineers, architects, nurses, or any other professional people, even though not regularly employed in carrying on their profession in Nebraska, must include as income

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from sources within this state the entire amount of fees or compensation received for services performed in Nebraska as defined in Reg-21-003.01C(1) on behalf of their clients.

003.01C(6) **Entertainers and athletes.** Nonresident actors, singers, performers, wrestlers, boxers, professional athletes, etc., must include as income from sources within Nebraska the gross amount received from performances within the state.

003.01C(7) **Military service members.** Income derived from or connected with Nebraska sources does not include compensation paid to nonresidents for active duty service in the armed forces of the United States, even though such service is performed within Nebraska. If the service member has elected to file a joint Nebraska return with a Nebraska resident or partial-year resident, the nonresident's military income is deducted as an adjustment on the Nebraska return. (See Reg-22-013).

The term "service" means the service of an individual who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard who is on active duty, as defined in section 101(d)(1) of title 10, United States Code, and in the case of an individual who is a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds. The term also includes active service by an individual who is a commissioned officer of the federal Public Health Service or the National Oceanic and Atmospheric Administration.

The term service as used herein does not include service of a civilian in the employ of any branch of the armed forces nor does it include any individual, partnership, corporation or other association which, as an independent contractor, is performing service or supplying tangible property to any branch of the armed forces. All other nonresident federal employees who perform their services in Nebraska shall be deemed to have income derived from or connected with Nebraska sources.

003.01C(8) **Pensions.** Nonresidents who are receiving pensions, deferred compensation, or annuities based on services performed within Nebraska in an earlier tax year do not have income from Nebraska sources.

003.01C(9) **Employees of Rail Carriers.** Compensation paid by a rail carrier to a nonresident employee who performs regularly assigned duties on a railroad in more than one state is not included in Nebraska source income.

003.01C(10) **Employees of Motor Carriers or Private Carriers.** Compensation paid by a private carrier or a motor carrier providing transportation in interstate commerce subject to federal regulation to a nonresident employee who performs regularly assigned duties with respect to a motor vehicle in more than one state is not included in Nebraska source income.

003.01C(11) **Employees of Air Carriers.** Compensation paid by an air carrier to a nonresident employee who is regularly assigned duties on aircraft in more than

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one state is not included in Nebraska source income if the employee's scheduled flight time in Nebraska is fifty percent or less of the total scheduled flight time of the employee during the calendar year.

003.01D Intangible property.

003.01D(1) **Interest and dividends.** No tax is to be imposed on a nonresident receiving income which arises from annuities, interest on bank deposits, interest on bonds, notes or other interest bearing obligations, or dividends from corporations, except to the extent to which the same shall be a part of the taxable income from any business, trade, profession, or occupation carried on in Nebraska by the nonresident. Income from intangible property shall be a part of taxable income of a business, trade, profession, or occupation carried on within Nebraska when such property is acquired or used in the course of such business, trade, profession, or occupation.

003.01D(2) **Gains and losses.** Gains or losses from the sale, exchange, or other disposition of intangibles are not subject to tax by Nebraska, except to the extent to which the same shall be a part of the income from a business, trade, profession, or occupation carried on in the State of Nebraska by the nonresident taxpayer, even though the sale or disposition thereof may have been consummated within the state.

Likewise, losses sustained from the sale, exchange, or other disposition of stocks, bonds, or other intangibles under like conditions are not deductible from the Nebraska source income of the nonresident taxpayer, except to the extent that they are losses incurred in a business, trade, profession, or occupation carried on within Nebraska by the nonresident taxpayer.

003.01E S corporations.

003.01E(1) **Nebraska source income.** A nonresident stockholder of a small business corporation having an election in effect under Subchapter S of the Internal Revenue Code shall file a Nebraska income tax return and shall include as Nebraska source income that portion of the S corporation's income derived from or attributable to Nebraska. The nonresident shareholder shall file a Nebraska income tax return even though the income derived from the S corporation is the nonresident's only income derived from or attributable to Nebraska except as allowed under Reg-22-003.01E(3).

003.01E(2) **Agreement to pay tax.** A nonresident shareholder of an S corporation which has Nebraska income, may execute and forward to the corporation a Nebraska Nonresident Income Tax Agreement, Form 12N, which states that the nonresident will file a Nebraska income tax return and pay tax on all income derived from or connected with Nebraska sources. This agreement must be forwarded to the S corporation before the filing of the original corporate return.

003.01E(3) **Withholding by an S corporation.** In the absence of the above agreement, the S corporation must remit to the Nebraska Department of Revenue

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a percentage of the nonresident shareholder's Nebraska income. The percentage shall be the highest rate applicable to individuals. Upon request by any nonresident shareholder, the S corporation must complete a Statement of Nebraska Income Tax Withheld for Nonresident Individual, Form 14N. When an S corporation has made a remittance to the Nebraska Department of Revenue on behalf of a nonresident shareholder, such nonresident may choose not to file a return, and the amount withheld shall be retained in satisfaction of the liability, or such nonresident may file a return and claim the corporation's remittance as a credit against his or her Nebraska income tax liability.

003.01F Partnerships.

003.01F(1) **Nebraska source income.** A nonresident partner of a partnership shall file a Nebraska income tax return and shall include his or her distributive share of partnership income, gain, loss, and deduction from sources within Nebraska, except as allowed under Reg-22-003.01F(3).

003.01F(2) **Agreement to pay tax.** A nonresident partner of a partnership which has Nebraska income may execute and forward to the partnership a Nebraska Nonresident Income Tax Agreement, Form 12N, which states that the nonresident will file a Nebraska income tax return and pay tax on all income derived from or connected with Nebraska sources. This agreement must be forwarded to the partnership before the filing of the original partnership return.

003.01F(3) **Withholding by partnership.** In the absence of the above agreement, the partnership must remit to the Nebraska Department of Revenue a percentage of the nonresident partner's Nebraska income. The percentage shall be the highest rate applicable to individuals. Upon request by any nonresident partner, the partnership must complete a Statement of Nebraska Income Tax Withheld for Nonresident Individual, Form 14N. When a partnership has made a remittance to the Nebraska Department of Revenue on behalf of a nonresident partner, the nonresident partner may choose not to file a return and the amount withheld shall be retained in satisfaction of the liability, or such nonresident partner may file a return and claim the partnership's remittance as a credit against his or her Nebraska income tax liability.

003.01G Limited Liability Companies (LLC's).

003.01G(1) **Nebraska source income.** A nonresident member of an LLC shall file a Nebraska income tax return and shall include as Nebraska source income that portion of the LLC's income derived from or attributed to Nebraska, except as allowed under Reg-22-003.01G(3).

003.01G(2) **Agreement to pay tax.** A nonresident member of an LLC which has Nebraska income may execute and forward to the LLC a Nebraska Nonresident Income Tax Agreement, Form 12N, which states that the nonresident will file a Nebraska income tax return and pay tax on all income derived from or connected with Nebraska sources. This agreement must be forwarded to the LLC before the filing of the original partnership return.

003.01G(3) **Withholding by LLC.** In the absence of the above agreement, the

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LLC must remit to the Nebraska Department of Revenue a percentage of the nonresident member's Nebraska income. The percentage shall be the highest rate applicable to individuals. Upon request by any nonresident member, the LLC must complete a Statement of Nebraska Income Tax Withheld for Nonresident Individual, Form 14N. When an LLC has made a remittance to the Nebraska Department of Revenue on behalf of a nonresident member, the nonresident member may choose not to file a return and the amount withheld shall be retained in satisfaction of the liability, or such nonresident member may file a return and claim the LLC's remittance as a credit against his or her Nebraska income tax liability.

003.01H Estates and trusts.

003.01H(1) **Nebraska source income.** A nonresident beneficiary of a trust or estate shall be taxed only on items of income, gain, loss, or deduction which were derived from or connected with sources within Nebraska and which were taxable to him or her for federal income tax purposes. If a trust is classified as a Grantor Trust for federal income tax purposes, the nonresident grantor thereof shall be taxed on all items of income, gain, loss, or deduction which were derived from or connected with Nebraska sources, regardless of whether or not actually received. (See Reg-23-003 and Reg-23-004.04A(1)).

The residence of the fiduciary of an estate or trust will not be determinative as to whether income from intangibles is Nebraska source income. Nor shall the classification of a trust or estate as resident or nonresident have any effect upon the taxation of a nonresident beneficiary for his or her share of trust income, gain, or loss.

The character of income, gain, or loss from intangible personal property held in a trust or estate shall be the same with regard to a nonresident beneficiary (or a nonresident grantor of a Grantor Trust) as if said beneficiary (or grantor) had received the income, gain, or loss without the trust or estate.

003.01H(2) **Agreement to pay tax.** A nonresident beneficiary deriving Nebraska income from a trust or estate may execute and forward to the trust or estate a Nebraska Nonresident Income Tax Agreement, Form 12N, which states that the nonresident will file a Nebraska income tax return and pay tax on all income derived from or connected with Nebraska sources. This agreement must be forwarded to the trust or estate before the filing of the original fiduciary return.

003.01H(3) **Withholding by fiduciary.** In the absence of the above agreement, the estate or trust must remit to the Nebraska Department of Revenue a percentage of the nonresident beneficiary's income which was derived from or attributable to Nebraska sources. The percentage shall be the highest rate applicable to individuals. Upon request by any nonresident beneficiary, the estate or trust must complete a Statement of Nebraska Income Tax Withheld for Nonresident Individual, Form 14N. When a trust or estate has made a remittance to the Nebraska Department of Revenue on behalf of a nonresident beneficiary, the nonresident beneficiary may choose to file a return and the amount withheld

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shall be retained in satisfaction of the liability, or such nonresident beneficiary may file a return and claim the remittance made by the trust or estate as a credit against his or her Nebraska income tax liability.

003.01I Lottery and gambling winnings. All lottery winnings from a lottery game conducted pursuant to a Nebraska lottery are Nebraska source income. All winnings from any game or operation licensed under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act or the State Lottery Act are Nebraska source income. All winnings from any other licensed or unlicensed operation involving any game of chance are Nebraska source income if the wager was placed in Nebraska, or any ticket, chance, or any other entry fee was purchased in Nebraska.

003.02 In determining Nebraska adjusted gross income of a nonresident individual, the following adjustments are made to the nonresident's income from Nebraska sources:

003.02A Payment as a self-employed person or partner to a (self-employed SEP, SIMPLE, or other qualified retirement plan. A nonresident who is self-employed or a partner who pays into a qualified pension, profit sharing, annuity, or bond purchasing plan shall be allowed this federal deduction only to the extent of the ratio of the Nebraska self-employed or partnership income to the total self-employed or partnership income.

003.02B Payment to an IRA. A nonresident who pays into an IRA shall be allowed the federal deduction only to the extent of the ratio of the Nebraska self-employed income and wages to total self-employed income and wages.

003.02C One-half of self-employment tax. A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska self-employed income to the total self-employed income.

003.02D Penalty on early savings withdrawal. A nonresident individual shall be allowed this deduction only to the extent that the penalty relates to interest reported as Nebraska source income.

003.02E Moving expenses. A nonresident individual may not deduct moving expenses allowed on the federal return.

003.02F Domestic production activities . A nonresident individual shall be allowed this deduction to the extent it is directly related to Nebraska source income.

003.02G Alimony paid. A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

003.02H Educator expenses. A nonresident individual shall be allowed this deduction only as it relates to educational wages reported as Nebraska source income.

003.02I Student Loan Interest. A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

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003.02J **Tuition and fees.** A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

003.02K **Health Savings Account.** A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

003.02L **Certain business expenses of reservists, performing artists, and fee-basis government officials.** A nonresident individual shall be allowed this deduction to the extent it is directly related to Nebraska source income.

003.02M **Domestic Production Activities Deduction.** A nonresident individual shall be allowed this deduction to the extent it is directly related to Nebraska source income.

(Sections 77-2724, 77-2729, 77-2733, and 77-2768, R.R.S. 2003 and sections 77-2717, 77-2727, and 77-2734.01, R.S.Supp., 2008. February 22, 2009.)

REG-22-004 INCOME OF PARTIAL-YEAR RESIDENT INDIVIDUALS SUBJECT TO
NEBRASKA INCOME TAX

004.01 Nebraska adjusted gross income for a partial-year resident individual is all income not taxed by another state which is earned while a resident and all income derived from Nebraska sources according to Reg-22-003, while a nonresident, after the adjustments provided in Reg-22-004.03.

004.02 Income taxed by another state. Income is taxed by another state if the income is subject to tax in the other state, a tax is actually imposed by the other state, and the tax is not satisfied by exemptions or credits, other than credits for estimated payments, withholding, or other taxes paid.

004.03 In determining Nebraska adjusted gross income of a partial-year resident, the following adjustments are made to the partial-year resident's income from Nebraska sources:

004.03A **Payment as a self-employed person or partner to a (self-employed SEP, SIMPLE, or other qualified retirement plan.** A partial-year resident who is self-employed or a partner who pays into a qualified pension, profit sharing, annuity, or bond purchasing plan shall be allowed this federal deduction only to the extent of the ratio of the Nebraska self-employed or partnership income to the total self-employed or partnership income.

004.03B **Payment to an IRA.** A partial-year resident who pays into an IRA shall be allowed this federal deduction only to the extent of the ratio of the Nebraska self-employed income and wages to total self-employed income and wages.

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004.03C **One-half of self-employment tax.** A partial-year resident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska self-employed income to the total self-employed income.

004.03D **Penalty on early savings withdrawal.** A partial-year resident individual shall be allowed this deduction only to the extent that the penalty relates to interest reported as Nebraska source income.

004.03E **Moving expenses.** A partial-year resident individual may only deduct moving expenses for a move into Nebraska.

004.03F **Domestic production activities.** A partial-year resident individual shall be allowed this deduction to the extent it is directly related to Nebraska source income.

004.03G **Alimony paid.** A partial-year resident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

004.03H **Educator expenses.** A nonresident individual shall be allowed this deduction only as it relates to educational wages reported as Nebraska source income.

004.03I **Student Loan Interest.** A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

004.03J **Tuition and fees.** A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

004.03K **Health Savings Account.** A nonresident individual shall be allowed this deduction only to the extent of the ratio of the Nebraska adjusted gross income to federal adjusted gross income after Nebraska adjustments.

004.03L **Certain business expenses of reservists, performing artists, and fee-basis government officials.** A nonresident individual shall be allowed this deduction to the extent it is directly related to Nebraska source income.

(Sections 77-2715, 77-2733.01, and 77-2772, R.R.S.2003. March 7, 2006.)

REG-22-005 LOSS CARRYOVER AND CARRYBACK

005.01 **Nebraska Net Operating Losses.** Losses realized on or after January 1, 1968, by an individual may be included for purposes of computing the Nebraska income tax. The appropriate federal rules will be used, except that no loss shall be carried back to income earned before January 1, 1968.

005.02 **Federal Net Operating Losses and Capital Losses.** Individual taxpayers who have deducted a federal net operating loss or a federal capital loss in computing their federal adjusted

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gross income shall add such deduction to their federal adjusted gross income in order to determine Nebraska taxable income.

005.03 Net Operating Loss Carryback and Carryover. An individual, who has incurred a Nebraska net operating loss, shall be allowed to carry back such loss for the period allowed by the Internal Revenue Code as an adjustment decreasing federal adjusted gross income in the prior year. If the taxable income for this period is not sufficient to absorb the entire loss, the individual is then entitled to a carryover of the remaining amount of the loss to the taxable years allowed by the Internal Revenue Code following the loss year. The loss will be absorbed in the earliest year of the above period that has taxable income. The provisions of the Internal Revenue Code shall be used in computing the amount of the loss available for carryover.

005.03A If an individual elects to forego the entire carryback period for a federal net operating loss and only deduct the losses during the carryover period, the election for federal purposes will be followed for Nebraska purposes with regard to a Nebraska net operating loss.

005.03B When an individual has incurred a Nebraska net operating loss, but has no federal net operating loss, the individual may elect to relinquish the carryback period for Nebraska purposes when the Internal Revenue Code provides for a similar election for federal purposes. The election must be made by attaching a statement to the Nebraska return and filing the return by the due date, including extensions, for the tax year of the net operating loss. Failure to timely file the election with the original return for the loss year will require the use of the carryback period. The election cannot be changed once it has been made.

005.04 Computation of Nebraska Net Operating Loss. In order to be deducted from income subject to Nebraska income tax under Reg-22-002, the net operating loss must be a Nebraska net operating loss which has been reported on a return filed for the loss year.

005.04A For a resident during the loss year, the Nebraska net operating loss is the reported federal net operating loss as adjusted within this paragraph.

005.04A(1) The loss will be increased by the amount of allowable adjustments to federal adjusted gross income, such as deductions for interest or dividend income from U.S. government bonds or other U.S. obligations and decreased by the amount of adjustments to federal adjusted gross income, such as additions for interest or dividends from obligations issued by states other than Nebraska.

005.04A(2) A loss may be created when the allowable adjustments exceed the federal adjusted gross income.

005.04B For tax years beginning before January 1, 1987, for a nonresident during the loss year, the Nebraska net operating loss is the loss that was derived from activities which would have generated Nebraska source income under Reg-22-003.

005.04C For tax years beginning before January 1, 1987, for a partial-year resident individual during the loss year, the Nebraska net operating loss is the loss that was derived from activities which would have generated Nebraska source income under Reg-22-004.

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005.04D For tax years beginning on or after January 1, 1987, the net operating loss of a nonresident is the lesser of his or her federal net operating loss as adjusted pursuant to paragraph 005.04A(1) and his loss derived from Nebraska sources.

005.04E For tax years beginning on or after January 1, 1987, the net operating loss of a partial-year resident is the lesser of his or her federal net operating loss as adjusted pursuant to paragraph 005.04A(1) and the loss derived from Nebraska sources.

005.05 Nebraska Capital Losses. Individual taxpayers who have incurred, after December 31, 1967, a capital loss, may carry over the loss until the loss has been exhausted. Nonresident individuals and partial-year resident individuals who move out of the state will be allowed the same carryover period except that only net capital losses attributable to Nebraska sources may be carried forward and used to offset Nebraska source income. The appropriate federal capital loss carryover rules apply in reducing long term capital gains, short term capital gains, and ordinary income in the carryover year.

005.06 Any unused loss carryover or other deductions, which, under federal rules, may be passed on to beneficiaries because of the termination of an estate or trust, shall be recognized for Nebraska income tax purposes only if they were realized in the estate or trust on or after January 1, 1968. The termination date of the estate or trust shall not determine whether such losses or deductions were realized on or after January 1, 1968.

(Section 77-2716(2), R.S.Supp., 1998, and section 77-2714, R.R.S. 1996, and Altsuler v. Peters, 190 Neb. 113, 206 N.W.2nd 570 (1973). November 11, 1998.)

REG-22-006 Repealed.
REG-22-007 Repealed.
REG-22-008 Repealed.
REG-22-009 Repealed.
REG-22-010 Repealed.

REG-22-011 CREDIT FOR INCOME TAXES PAID BY A RESIDENT TO ANOTHER STATE, POLITICAL SUBDIVISION OF ANOTHER STATE, OR THE DISTRICT OF COLUMBIA

011.01 Residents are allowed a credit against the Nebraska individual income tax for income taxes paid to another state of the United States, or local subdivision. The amount of the credit allowable cannot exceed the Nebraska individual income tax due on the income subject to tax in the other state. The portion of the Nebraska tax that is due on the income subject to tax in the other state is calculated by multiplying the Nebraska individual income tax liability by a fraction, the numerator of which is the adjusted gross income subject to tax in both states and the denominator of which is the entire federal adjusted gross income as modified by the adjustments in Reg-22-002.04.

011.02 The credit is limited to income taxes actually paid to the other state. The credit may not be claimed on account of interest or penalties paid or for any nonrefundable credits used to satisfy the liability to another state. The credit may not be applied against any interest or

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penalties due. The credit may be applied against the Nebraska individual income taxes due for the same year.

011.03 The credit may be taken either at the time of filing the Nebraska returns or later and may be applied against the entire tax until the credit is exhausted. However, no credit will be allowed on account of income taxes imposed by another state until those taxes are actually paid.

011.03A A copy of the return or returns, upon which the taxes are assessed must be filed with the Nebraska Department of Revenue at the time the credit is claimed.

011.03B A statement showing the taxes withheld may be used for any jurisdiction that does not require a return.

011.03C If credit is claimed on account of a deficiency assessment made by another state, a certified copy of the notice assessing or proposing to assess a deficiency, a receipt showing the payment of the deficiency, and a statement conceding the accuracy of the deficiency, must be filed.

011.04 If, for any reason, the Nebraska taxes due have been paid before the credit is claimed, a refund claim accompanied by a copy of the return or returns upon which the taxes were assessed must be filed. If the refund claim is approved, the amount of the claim will either be allowed as a credit against the taxes due or refunded to the taxpayer.

011.05 If the taxpayer's return is changed, corrected, or amended, the taxpayer must file an amended return with the Nebraska Department of Revenue. See Reg-22-018.

011.06 A credit is only allowable for taxes that are properly paid to another state. If a taxpayer voluntarily files and pays a tax when not required to do so by the laws of the other state, the taxpayer has not properly paid a tax in another state.

011.07 If a husband and wife file separate Nebraska returns and also file separate returns in another state, neither may claim a credit on account of taxes paid by the other spouse to such state. If a husband and wife file a joint Nebraska return, the entire amount of taxes, subject to the limitations in this regulation, paid by either or both to another state may be claimed as a credit, regardless of whether the husband and wife file a joint return or separate return in such other state. If husband and wife file separate Nebraska returns but file a joint return in another state, each is entitled to credit for that portion of the total tax paid to such other state as the net income of each spouse that is taxed by such other state bears to the total net income taxed by such other state.

(Sections 77-2730, and 77-2788(8), R.R.S. 1996. November 11, 1998.)

REG-22-012 INDIVIDUAL INCOME TAX RETURNS; DUE DATE, PAYMENT OF TAX,
AND SCHOOL DISTRICT INFORMATION

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012.01 The due date for the Nebraska Individual Income Tax Return, and the date for payment of the Nebraska individual income tax is the 15th day of the fourth month following the close of the taxable year, or April 15 for calendar year taxpayers. If such due date falls on a Saturday, Sunday, or legal holiday, the filing of the return on the next day that is not a Saturday, Sunday, or legal holiday will be considered timely filed.

012.02 The date of a United States Postal Service postmark stamped on the envelope is the date of filing if the return was deposited in the mail, postage prepaid, and properly addressed to the Nebraska Department of Revenue. If there is no United States Postal Service postmark, the return must be received by the prescribed date to be timely filed. A postmark from a private postage meter is not a United States Postal Service postmark.

012.03 A taxpayer with a permanent place of abode or a domicile in Nebraska on the last day of the taxable year must enter the county in which the district is located, and the school identification number in the space provided on the return.

(Section 77-27,119(2)(a), R.S.Supp., 1998, and section 77-2768, R.R.S. 1996. November 11, 1998.)

REG-22-013 JOINT OR SEPARATE RETURNS

013.01 When a husband and wife, both of whom are either residents or nonresidents for the entire taxable year, have elected to file a joint federal return, they must file a joint Nebraska return; or if they have elected to file separate federal returns, they must file separate Nebraska returns.

013.01A If a military service member has elected to file a joint Nebraska return with a Nebraska resident or partial-year resident, the nonresident's military income for active duty service is deducted as an adjustment on the Nebraska return. (See Regulation 22-003)

013.02 If for some part of the year one spouse is a resident and the other is a nonresident and they have elected to file a joint federal return, they may either file separate Nebraska returns or they may elect to file a joint Nebraska return, in which case all income must be included as if both were residents during those parts of the year when either spouse was a resident. Where the resident and the nonresident spouses elect to file separate Nebraska returns, all amounts on the separate Nebraska returns must be computed as if they had filed separate federal returns.

013.03 When a husband and wife have elected to file a joint Nebraska return, they may revoke the election and file separate returns in the following manner:

013.03A Both spouses must file a separate Nebraska return with a "married, filing separate" status. The spouse whose social security number was listed first on the original Nebraska return must file an Amended Nebraska Individual Income Tax Return. The spouse whose social security number was listed as the "spouse's social security number" on the original return will file a Nebraska Individual Income Tax Return;

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013.03B A copy of the actual federal joint return and copies of federal returns recomputed on a married filing separate basis must be attached to each of the spouses' returns;

013.03C Each Nebraska return as required in Reg-22-013.03A above must include the full name and social security number of the other spouse; and

013.03D Both spouses must sign each Nebraska return required in Reg-22-013.03A.

(Section 77-2732, R.R.S. 2003. March 7, 2006.)

REG-22-014 INDIVIDUAL INCOME TAX; EXTENSION OF TIME FOR FILING RETURN AND PAYMENT OF TAX

014.01 An extension of time granted by the Internal Revenue Service (IRS) to file a federal individual income tax return automatically extends the time for filing a Nebraska individual income tax return. An individual who has been granted an extension from the IRS is required to attach a copy of the federal application for automatic extension of time or the approved application for additional extension of time to the Nebraska return when filed.

014.02 The Nebraska Department of Revenue may grant an extension of time to file the Nebraska return even though an extension has not been granted to file the federal return. The Nebraska Application for Extension of Time to File a Nebraska Individual, Fiduciary, or Partnership Return, Form 2688N, must be filed on or before the original due date of the return.

014.02A The Nebraska Department of Revenue may grant additional extensions of time for filing a Nebraska return when the conditions warrant. However, no such additional extension will be granted for a period exceeding seven months from the original due date of the return.

014.02B U.S. citizens or residents, including military personnel, living outside the U.S. and Puerto Rico are granted an automatic extension up to and including the 15th day of the sixth month following the close of their tax year. A statement must be attached to the return noting entitlement to this automatic extension.

014.02C Members of the Armed Forces and civilians serving in support of the Armed Forces who serve in a designated combat zone or who are hospitalized outside the United States as a result of an injury received while in a combat zone can receive an extension of time to file and pay tax for the period of the combat service or hospitalization plus 180 days. This extension also applies to a taxpayer's spouse who wishes to file a joint return. A statement must be attached to the return noting entitlement to this extension.

014.02D Federal disaster areas. Any extension of time granted by the IRS to a taxpayer affected by a disaster may receive an extension of time to file a state individual income tax return.

014.03 An extension of time granted for filing an individual return also extends the time for payment of the tax, except as noted in Reg-22-014.02C above. However, interest will be imposed

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at the rate specified in section 45-104.02 of the Nebraska Revised Statutes, from the due date of the return until the date payment is received.

(Sections 77-2770, and 77-2788(1) and (2), R.R.S. 2003. March 7, 2006.)

REG-22-015 ADJUSTMENTS OF FEDERAL INDIVIDUAL INCOME TAX

015.01 Any changes made by the Internal Revenue Service in the taxpayer's federal income tax return must be reported to the Nebraska Department of Revenue by filing the appropriate Amended Nebraska Individual Income Tax Return for the taxable year involved. The amended return for Nebraska must be filed within ninety days of the final determination of the change. Reportable changes include all changes made to the federal return by the Internal Revenue Service Processing Center or any other Internal Revenue Service office.

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

015.02A Adjustments made on federal amended returns or by the Internal Revenue Service shall be reported to the Tax Commissioner by filing an Amended Nebraska Individual Income Tax Return, Form 1040XN, for the taxable year involved. The amended return for Nebraska must include copies of the federal amended return, Internal Revenue Service report, or other document which substantiates the adjustments claimed.

015.02B A taxpayer who files an amended return with the Internal Revenue Service as a protective claim is not required to file an amended return with Nebraska. The acceptance of the claim, or the payment of the refund, constitutes a federal change that must be reported. A protective claim is a claim filed to protect the taxpayer from the expiration of the statute of limitations while a separate action challenging a position of the Internal Revenue Service is pending.

015.03 The amended return for Nebraska must be filed separately and should not be attached to or filed with a return for another taxable year. Payment of any additional tax must accompany the amended return. In reporting any change to or amendment of the federal income tax return, the taxpayer must furnish the Nebraska Department of Revenue complete information regarding the amount of income reported and taxes paid to the United States. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

015.04 For the purpose of determining when adjustments in federal income tax constitute a final determination, the following acts will be considered to be a final determination even though the taxpayer and the Internal Revenue Service may still be contesting the amount due:

015.04A A decision by the tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final.

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015.04B A closing agreement authorized by Section 7121 of the Internal Revenue Code which relates either to the total tax liability of the taxpayer for a particular taxable year or years or to one or more separate items affecting tax liability. A closing agreement becomes final for purposes of this regulation on the date of its approval by the Internal Revenue Service.

015.04C The final disposition by the Internal Revenue Service of a taxpayer's claim for a refund.

015.04D Any informal agreement between the taxpayer and the Internal Revenue Service made for the express purpose of serving as a determination in respect to the adjusted gross income, taxable income, or tax liability of the taxpayer. Such an agreement must include a waiver by the taxpayer of restrictions on assessment and the collection of any deficiencies resulting from the agreement.

015.04E The acceptance of an examining officer's findings in regard to the income of a partnership or a fiduciary.

015.04F The payment of any additional tax by the taxpayer. Any deposit made with the IRS that can be returned at the request of the taxpayer is not considered a payment of the tax by the taxpayer until the deposited amount is applied. The additional tax will be considered paid when the IRS applies the deposit.

015.04G Any other final judgment effecting changes in reported federal taxable income.

015.05 If a taxpayer fails to file an amended Nebraska return, the Nebraska Department of Revenue may mail to the taxpayer a notice of deficiency at any time. If a taxpayer properly files an amended return and reports any change in his or her federal adjusted gross income, taxable income, or tax liability, the Nebraska Department of Revenue may make an assessment relating only to the change at any time within two years after the report or amended return was filed.

015.06 Any change in the federal adjusted gross income, taxable income, or tax liability which has not been reported to the Internal Revenue Service cannot be used as the basis for a reduction in the Nebraska liability.

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

015.07A The amount of the credit or refund shall not exceed the amount of the Nebraska tax attributable to such federal change, correction, or the items amended on the federal return.

015.07B If the amended return is not filed within ninety days of the final determination of the change, interest shall not accrue after the ninetieth day.

015.07C If the amended return is not filed within two years and ninety days from the final determination of the change, no credit or refund shall be granted.

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(Section 77-2793(4), R.R.S. 2003, and sections 77-2775(1), (3), and (4), and 77-2786(4), and (5), R.S.Supp., 2005. March 7, 2006.)

REG-22-016 METHODS OF ACCOUNTING

016.01 In computing income tax imposed under the Nebraska Revenue Act of 1967, as amended, the taxpayer's method of accounting must be the same as his or her method of accounting used for federal income tax purposes.

(Sections 77-2760, and 77-2772, R.R.S. 1943. September 15, 1975.)

REG-22-017 RECORDS

017.01 **In general.** Any person subject to tax under the Nebraska Revenue Act of 1967, as amended, or any person required to file an information return for the taxable year, shall keep such permanent books of account or records, including inventories and all supporting documents, as are sufficient to establish the amount of gross income, deductions, credits, or other matters which may be required to support any income tax or information return. Records of all fuel purchases must be retained if a credit for nonhighway use motor vehicle fuels was claimed.

017.02 **Availability of books and records.** Such books or records shall be kept available at all times for inspection by the Nebraska Department of Revenue or its agents for the purpose of ascertaining the correctness of any return or other document required to be filed under the Nebraska Revenue Act.

017.03 **Retention of records.** Each taxpayer shall retain all of his or her records relating to a taxable year as long as their contents may become material in the administration of any Nebraska tax laws. If the Nebraska Department of Revenue serves a notice of deficiency for a taxable year, the taxpayer shall retain all of his or her records relating to that taxable year until the deficiency has been satisfied, abated, settled, or disallowed.

(Section 77-2772, R.R.S. 1943, and section 77-27,119(3), R.S. Supp., 1980. February 14, 1981.)

REG-22-018 ADJUSTMENTS OF ANOTHER STATE'S INDIVIDUAL INCOME TAX

018.01 Any taxpayer who has claimed credit for tax paid to another state, and who receives changes made by another state in the taxpayer's state income tax return must report the changes to the Nebraska Department of Revenue within ninety days of the final determination of the change. Reportable changes include changes made to the state's return by any competent authority of the state. In reporting any change to the other state's tax return, the taxpayer must furnish the Nebraska Department of Revenue complete information regarding the amount of income reported and taxes paid to the other state. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

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018.02 Any adjustments made by filing the other state's amended returns or by the other state's revenue service must be reported to the Nebraska Department of Revenue by filing an Amended Nebraska Individual Income Tax Return, for the taxable year involved. The amended return for Nebraska must be filed within ninety days of the filing of the amended return for the other state, and must include copies of any reports issued by state authorities. A taxpayer who files an amended return with the other state as a protective claim is not required to file an amended return with Nebraska. The acceptance of the claim, or the payment of the refund, constitutes a state change that must be reported. A protective claim is a claim filed to protect the taxpayer from the expiration of the statute of limitations while a separate action challenging a position of the other state is pending.

018.03 The amended return for Nebraska must be filed separately and should not be attached to or filed with a return for another taxable year. Payment of any additional tax must accompany the amended return.

018.04 For the purpose of determining when adjustments in state income tax constitute a final determination, the following acts will be considered to be a final determination even though the taxpayer and the other state may still be contesting the amount due:

018.04A A decision by a state tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final.

018.04B A closing agreement authorized by state law which relates either to the total tax liability of the taxpayer for a particular taxable year or years or to one or more separate items affecting tax liability. A closing agreement becomes final for purposes of this regulation on the date of its approval by the other state.

018.04C The final disposition by the other state of a taxpayer's claim for a refund.

018.04D Any informal agreement between the taxpayer and the other state made for the express purpose of serving as a determination in respect to the adjusted gross income, taxable income, or tax liability of the taxpayer. Such an agreement must include a waiver by the taxpayer of restrictions on assessment and the collection of any deficiencies resulting from the agreement.

018.04E The acceptance of an examining officer's findings in regard to the income of a partnership or a fiduciary.

018.04F The payment of any additional tax by the taxpayer. Any deposit made with the other state that can be returned at the request of the taxpayer is not considered the payment of the tax by the taxpayer. The additional tax will be considered paid when the other state applies the deposit.

018.04G Any other final judgment effecting changes in the reported taxable income in the other state.

018.05 If a taxpayer fails to report any change or correction which increases his or her federal adjusted gross income from the other state, taxable income, or tax liability, or fails to report any change or correction which is treated as a deficiency for the other state's income tax purposes, or fails to file an amended Nebraska return, the Nebraska Department of Revenue may mail to the

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taxpayer a notice of deficiency at any time. If a taxpayer properly reports any change in his or her other state's adjusted gross income, taxable income, or tax liability, the Nebraska Department of Revenue may make an assessment relating to the change at any time within two years after the report or amended return was filed.

018.06 Any change in the other state's adjusted gross income, taxable income, or tax liability which has not been reported to the other state cannot be used as the basis for a reduction in the Nebraska liability.

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

018.07A The amount of the credit or refund shall not exceed the amount of the Nebraska tax attributable to such state's change, correction, or the items amended on the other state's return.

018.07B If the amended return is not filed within ninety days of the final determination of the change, interest shall not accrue after the ninetieth day.

018.07C If the amended return is not filed within two years and ninety days from the final determination of the change, or within then years of the original due date of the return, whichever is earlier, no credit or refund shall be granted.

(Section 77-2775(2), R.S.Supp., 1998, and sections 77-2786(4), and (5), and 77-2793(5), R.R.S. 1996. November 11, 1998.)

REG-22-019 CREDITS AGAINST THE NEBRASKA INDIVIDUAL INCOME TAX

019.01 **Personal Exemption Credit.** Beginning with the 1993 tax year, individuals are allowed a nonrefundable credit for each federal personal exemption allowed on the taxpayer's federal income tax return.

019.01A Indexing. The credit will be indexed by the method provided in Internal Revenue Code section 151 (IRC 151).

019.01B Higher income taxpayers. The credit will be reduced by five dollars, but not below zero, for every five thousand dollar increment of federal adjusted gross income (AGI) which exceeds a threshold. The threshold amounts will be adjusted for inflation by the method provided in IRC section 151. The Tax Commissioner shall provide a table for calculating the phase out of the credit.

019.02 **Tax Paid to Another State.** Nebraska resident individuals are allowed a nonrefundable credit for income tax they paid to another state or a local subdivision within another state. (See Reg-22-011).

019.03 **Credit for Child and Dependent Care Expenses.** A nonrefundable credit for Child and Dependent Care Expenses can be claimed by residents and partial-year residents. The credit is twenty-five per cent of the amount allowed on the federal return under IRC section 21.

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Taxpayers with AGI of twenty-nine thousand dollars or less can receive the credit under Reg-22-019.11.

019.03A A taxpayer whose federal credit is limited to his or her federal tax liability shall use the lesser amount when computing the Nebraska credit.

019.04 Credit for the Elderly or Disabled. Residents or partial-year residents may claim a nonrefundable credit for the elderly or disabled equal to one hundred per cent of the federal credit claimed under IRC section 22.

019.05 Community Development Assistance Act (CDAA) Credit. A nonrefundable credit may be claimed by individuals for contributions to approved projects of community betterment organizations under Chapter 13 of the Nebraska Revised Statutes.

019.05A The credit is allowed to any individual who or whose business firm has applied to the Department of Economic Development (DED) for authorization for a tax credit for a contribution to a certified program of a community betterment organization. This includes sole proprietors, partners of partnerships, members of limited liability companies, and shareholders of S corporations whose business has made the qualified contribution. DED may authorize a tax credit not to exceed forty percent of the total amount contributed by the business during its taxable year.

019.05A(1) The contribution must qualify as a charitable contribution under the Internal Revenue Code.

019.05A(2) A taxpayer claiming a CDAA credit must attach to his or her individual tax return a copy of the Statement of Nebraska Tax Credit, Form 1099NTC, received from DED that includes the amount of the credit granted by DED for the contribution made to the community betterment organization.

019.05A(3) Any tax credit may be carried over to the next five tax years immediately following the tax year in which the credit was first allowed.

019.06 . Nebraska Advantage Rural Development Act Credit. Individuals may claim a refundable credit if their business qualifies for such credit. Applications will be accepted for this credit on and after January 1, 2006. Taxpayers who submitted applications before January 1, 2006 under the Employment Expansion and Investment Incentive Act will receive any applicable credits under the rules and regulations of such Act.

019.06A. A taxpayer creating less than seventy-five percent of the jobs in the project agreement must repay one hundred percent of the job creation credits. In addition, a taxpayer creating less than seventy-five percent of the investment in the project agreement must repay one hundred percent of the investment tax credits.

019.07 Employment and Investment Growth Act Credit. Individuals may claim a nonrefundable credit if their business has a signed agreement with the Department of Revenue and qualifies for such credit.

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019.07A Any income tax credit may be recaptured if the taxpayer fails to meet the required levels of employment or investment.

019.08 **Wage Benefit Credit.** Individuals may claim a nonrefundable credit for any wage benefit credit to which they are entitled under the Quality Jobs Act.

019.09 **Income Tax Withholding.** Individuals may claim a refundable credit for withholding.

019.10 **Estimated Taxes.** Individuals may claim a refundable credit for estimated taxes paid.

019.11 **Refundable Credit for Child and Dependent Care Expenses.** If federal adjusted gross income is twenty-nine thousand dollars or less, Nebraska residents or partial-year residents may claim a refundable credit for child and dependent care expenses equal to a percentage of the federal credit allowable under IRC section 21, whether or not the credit was limited by the federal tax liability.

019.11A The percentage of the federal credit allowed will be one hundred per cent if the taxpayer's federal adjusted gross income is not more than twenty-two thousand dollars. The percentage will be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported AGI exceeds twenty-two thousand dollars.

019.11B Taxpayers filing for a refundable credit under Reg-22-019.11 may be required to attach a copy of the Child and Dependent Care Expenses, Form 2441 (Form 1040), or Child and Dependent Care Expenses, Schedule 2 (Form 1040A) filed with the Internal Revenue Service in order to document the credit that the taxpayer has claimed.

019.12 **Nonhighway Use Motor Vehicle Fuel Tax Credit.** For tax years through 2004, a taxpayer is entitled to the nonhighway use motor vehicle fuel credit on an individual income tax return in an amount determined under Reg-84-001 through Reg-84-006. This credit is refundable.

019.13 **Refunds of Overpayment.** Any overpayment of tax as a result of the refundable credits found in Reg-22-019.09 through Reg-22-019.12 will be refunded to the taxpayer upon filing a return and claiming the overpayment.

019.13A An overpayment of tax may be credited to the taxpayer's estimated tax for the following year if requested by the taxpayer on a timely filed return.

019.14 **Nebraska Advantage Microenterprise Tax Credit.** Individuals may claim a refundable credit if their business qualifies for such credit. Applications will be accepted for this credit on and after January 1, 2006.

019.15 **Nebraska Advantage Act Credit.** Individuals may claim a nonrefundable credit if their business has a signed agreement with the Department of Revenue and qualifies for such credit.

019.16 **Nebraska Advantage Research and Development Act Credit.** Individuals may claim a refundable credit if their business qualifies for such credit. Applications will be accepted for this credit on and after January 1, 2006.

019.17 **Beginning Farmer Tax Credit.** Individuals may claim a refundable credit on the Nebraska Individual Income Tax Return, if they qualify for such credit.

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019.18 Nebraska Charitable Endowment Tax Credit. For tax years beginning on or after January 1, 2006, individuals may claim a nonrefundable credit for a percentage of planned gifts made to qualified endowments for charitable purposes. The credit may only be applied to the tax year in which the contribution is made.

019.18A A planned gift is an irrevocable contribution to a permanent qualified endowment using one of the following techniques authorized under the Internal Revenue Code of 1986, as amended:

019.18A(1) Charitable remainder trust (unitrust or annuity trust) that does not terminate or the beneficiaries interest in the trust is not assigned or contributed to the qualified endowment before the date of death of the beneficiaries or five years after the date of the contribution, whichever is earlier;

019.18A(2) Pooled income fund trust;

019.18A(3) Charitable lead trust (unitrust or annuity trust);

019.18A(4) Charitable gift annuity (current or deferred) contribution where the interest of the annuitants in the gift annuity cannot be assigned to the qualified endowment before the date of death of the annuitants, or five years after the date of the contribution; whichever is earlier;

019.18A(5) Charitable life estate agreement; or

019.18A(6) Paid-up life insurance policy.

019.18B A qualified endowment is a permanent, irrevocable endowment fund used for Nebraska charitable purposes and held by a Nebraska incorporated or established organization which is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, or held by a Nebraska incorporated or established bank or trust company holding the fund on behalf of a Nebraska tax-exempt organization.

019.19 Financial Institution Shareholder Credit. A shareholder of a financial institution organized as an S corporation may claim a credit for the financial institution tax paid by the corporation. The credit must be distributed by the corporation to the shareholders in the same manner as the income of the corporation is distributed.

019.20 Biodiesel Credit. A taxpayer who invests after January 1, 2008 and before January 1, 2015, in a biodiesel facility that manufactures B100 will receive a nonrefundable credit. The credit is thirty percent of the investment. The investment must be at risk in the form of an ownership interest or right to receive dividends and must remain invested for at least three years. The credit is limited to ten percent of the allowable credit in the first two years of production, and fifty percent of the allowable credit in the third year. The credit cannot exceed more than fifty percent of the taxpayer's liability and may be carried over for up to fifteen years after the investment was made.

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019.21 Earned Income Credit. For the tax year beginning on or after January 1, 2006, qualified resident individuals may claim a refundable credit of 8% of the federal credit allowed under section 32 of the Internal Revenue Code. For tax years beginning on or after January 1, 2007, qualified resident individuals may claim a refundable credit of 10% of the federal credit allowed under section 32 of the Internal Revenue Code.

(Sections 77-2730 and 77-2791, R.R.S 2003, section 13-207, R.R.S. 2007, and sections , 77-2715.07, 77-2716.01, 77-27,188, 77-27,188.01, 77-27,188.02 77-27,228 through 77-27,234, and 77-4105, R.S.Supp 2008. February 22, 2009.)

REG-22-020 SPECIAL CAPITAL GAINS

020.01 Any resident individual may make an election to subtract from federal adjusted gross income the capital gain from the sale of stock which meets the following conditions:

020.01A The stock must be the stock of a qualified corporation;

020.01B The stock must have been acquired by the individual while employed or on account of employment by the qualified corporation; and

020.01C The individual has not previously made an election for stock of a different qualified corporation.

20.02 A qualified corporation is a corporation which, at the time of the first sale or exchange for which the election was made, was in existence and actively doing business in Nebraska for at least three years and had at least five shareholders and at least two groups of unrelated shareholders, with not more than ninety percent of the stock being held by a single related group of shareholders.

020.02A A qualified corporation includes a predecessor or successor corporation which was a party to a reorganization during or after the employment of the person making the election and which reorganization was entirely or substantially tax free.

020.02B A qualified corporation includes a member of a unitary group of corporations if any member of the unitary group meets the conditions listed in Reg-020.02 above.

020.02C Two shareholders are considered to be related when one shareholder owns stock, either directly or indirectly, which if owned directly would be attributed to the other person under Internal Revenue Code section 318. In addition, the shareholders are related if one is the brother, sister, aunt, uncle, cousin, niece, or nephew of the other person who owns capital stock either directly or indirectly.

020.02C(1) Two shareholders who are otherwise unrelated are considered related if they are each related to the same person.

020.03 An employee of a corporation is a person who is paid wages or other payments which are subject to withholding under the Internal Revenue Code and are payments made by employers to employees.

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020.04 If a person who has acquired stock of a qualified corporation while an employee of the corporation has died without making an election, the surviving spouse or the oldest surviving issue, if there is no surviving spouse, may make an election for such stock.

020.05 After an election has been made, the following persons and entities may subtract the capital gains from the sale of qualifying stock from federal adjusted gross income:

020.05A The employee,

020.05B The spouse and issue of the employee to the extent the capital gain is from the sale or exchange of stock received from the employee through an *intervivos* gift, and

020.05C A trust which received the stock from the employee in an *intervivos* transfer for the benefit of the employee's spouse or issue.

020.06 Capital gains from the sale of stock which has been received by the spouse or issue of the employee through inheritance or which was sold by a testamentary trust does not qualify.

020.07 The amount of capital gain subtracted from federal adjusted gross income cannot exceed the amount of capital gain reported on the taxpayer's income tax return by more than three thousand dollars (\$3,000.00) or one thousand five hundred dollars (\$1,500.00) if a married filing separate return is filed. On a joint return, if both spouses have capital gains which qualify as special capital gains, the total amount of capital gains subtracted by both spouses cannot exceed the total capital gains reported on their joint return by more than three thousand dollars (\$3,000.00).

020.07A To the extent that the capital gain attributable to the sale of qualified stock cannot be subtracted because of the limitation provided in Reg-22-020.07, the excess can be carried forward to the next succeeding year and used to the extent that it does not exceed the limitation found in Reg-22-020.07. Any remaining excess can be carried forward until it has been used.

(Sections 77-2715.08 and 77-2715.09, R.R.S. 2003. March 7, 2006.)