

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 20 - ESTIMATED INCOME TAX REGULATIONS

REG-20-001 PAYMENT OF ESTIMATED TAX: INDIVIDUALS

001.01 Every resident and nonresident individual shall make payments of Nebraska individual estimated income tax if his or her estimated Nebraska individual income tax can reasonably be expected to be \$300 or more after allowance for Nebraska standard or itemized deductions, and deducting the total estimated credits allowable for Nebraska income tax withheld from wages, pensions and annuities, and gambling winnings, Nebraska personal exemption credit, tax paid to another state, credit for the elderly and the permanently and totally disabled, Community Development Assistance Act credit, Nebraska dependent or child care credit, the Nebraska Employment and Investment Expansion Act credit, the Nebraska Employment and Investment Growth Act credit, the Beginning Farmer Tax credit, the Nebraska Advantage Rural Development Act credit, the Nebraska Advantage Microenterprise Tax credit, the Nebraska Advantage Research and Development Act credit, and the Nebraska Advantage Act credit.

001.01A An individual filing Nebraska estimated tax will use Form 1040N-ES to make his or her estimated payments.

001.02 A husband and wife who are eligible to file joint federal payments of estimated income tax may file joint payments of Nebraska individual estimated income tax. If joint payments of estimated tax are filed, the liability with respect to the estimated tax shall be joint and several. If the husband and wife later elect to determine their Nebraska income tax liability separately, the estimated tax paid for that year may be treated as the estimated tax of either spouse or it may be divided between them in the manner they select. If the husband or wife fail to agree to a division, then the portion of the payment to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax shown on the separate return of the taxpayer bears to the sum of the taxes shown on the separate returns of the taxpayer and his or her spouse.

001.03 The payment of Nebraska individual estimated income tax for a minor or any other individual with a legal disability shall be filed by that person's guardian, conservator, agent, or fiduciary in the same manner as his or her income tax return is completed and filed.

001.04 The payment of Nebraska individual estimated income tax shall be amended if the federal payment of estimated income tax is amended. The payment of Nebraska individual estimated income tax shall also be amended if the tax rates for the current taxable year are increased during the year.

001.05 A taxpayer who is considered a farmer or fisherman by the Internal Revenue Service because his or her gross income from farming or fishing is at least two-thirds of his or her annual gross income for either the current or the past tax year does not have to make estimated tax payments if he or

she files a current return and pays his or her Nebraska income tax by March 1 of the following year.

(Sections 77-2769 and 77-4106, R.R.S. 2003, and sections 77-2715.07 and 77-27,188, R.S.Supp. 2005. March 7, 2006.)

REG-20-002 PAYMENT OF ESTIMATED TAX: CORPORATIONS AND CERTAIN BUSINESSES; OVERPAYMENT OF ESTIMATED TAX

002.01 Every corporation or business which is taxed as a corporation under the Internal Revenue Code shall make payments of Nebraska corporation estimated income tax if the Nebraska tax liability for the taxable year can reasonably be expected to be \$400 or more after deducting the total estimated allowable credits, which include the in lieu of intangible tax paid credit, the Community Development Assistance Act credit, the Nebraska Employment and Investment Expansion Act credit, the Nebraska Employment and Investment Growth Act credit, the Employment Expansion and Investment Incentive Act credit, the Invest Nebraska Act credit, the Beginning Farmer Tax credit, the Nebraska Advantage Rural Development Act credit, the Nebraska Advantage Microenterprise Tax credit, the Nebraska Advantage Research and Development Act credit, and the Nebraska Advantage Act credit.

002.02 If a unitary group is filing a combined return using the combined income approach, the group shall make its payment of Nebraska corporation estimated income tax on such basis. A statement should be attached to the Form 1120N-ES, setting forth the name, address and Nebraska identification number for each of the group members.

002.03 A corporation may, after the close of the taxable year and on or before the fifteenth day of the third month thereafter and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this section shall not constitute a claim for credit or refund. The application shall be made by filing Form 4466N.

002.04 The Nebraska Department of Revenue will make a limited examination of the application to discover omissions and errors within forty-five days from the date on which an application for adjustment is filed. The Department of Revenue will determine the amount of the adjustment upon the basis of the application and the examination and may disallow, without further action, any application which it finds to contain material omissions or errors which it deems cannot be corrected within such forty-five days. The decision made by the Department of Revenue will be final and not subject to further review.

002.04A Upon approving the application, the Department of Revenue, within the forty-five day period, may credit the amount of the adjustment against any existing tax liability on the part of the corporation and will refund the remainder to the corporation. No application will be allowed unless the amount of the adjustment equals or exceeds (a) ten percent of the amount estimated by the corporation

on its application as its income tax liability for the taxable year and (b) five hundred dollars.

002.05 Any adjustment shall be treated as a reduction in the estimated income tax paid, computed on the day the credit is allowed or the refund is paid. Any credit or refund of an adjustment shall be treated as if not made when determining whether there has been any underpayment of estimated income tax under Reg-20-008 and if there is an underpayment, the period during which the underpayment existed.

002.06 Income tax liability shall mean the excess of the income tax imposed under the Nebraska Revenue Act, as amended, reduced by the credits against the tax provided by state law. The amount of an adjustment authorized under this regulation shall be equal to the excess of the estimated income tax paid by the corporation during the taxable year reduced by the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year.

002.07 If members of a unitary group paid their estimated income tax on a consolidated basis, the common parent corporation must file the Form 4466N. If members of the group paid estimated income tax separately, each member who claims an overpayment must file Form 4466N separately.

002.08 If any adjustment made by the Nebraska Department of Revenue is later found to be excessive, interest at the statutory rate will be due on the amount of the excessive adjustment, calculated from the date the adjustment was made until the original due date of the corporation's return.

002.09 The excessive amount is the lesser of:

002.09A The amount of the adjustment, or

002.09B The excess of the corporation's income tax liability as shown on its return over the estimated tax paid less the adjustment allowed.

(Sections 77-2769, 77-2769.01, 77-27,188, and 77-4106, R.R.S., 2003, and section 77-2734.03, R.S.Supp.,2005. March 7, 2006.)

REG-20-003 PAYMENT OF ESTIMATED TAX: EXEMPT ENTITIES

003.01 Partnerships, limited liability companies taxed as partnerships, estates, trusts, and small business corporations with an election in effect under subchapter S of the Internal Revenue Code are not required to make payments of Nebraska estimated income tax. A small business corporation will not be considered to have an election in effect under subchapter S as to an estimated tax installment date if such election is terminated before the end of the taxable year.

003.02 The partners, members, beneficiaries, and shareholders must file estimated tax payments in their separate capacity if they meet the requirements of Reg-20-001 or Reg-20-002.

003.03 Residents must combine their estimated income from all sources to determine their estimated Nebraska income tax. Nonresidents must combine their estimated income from the partnership, limited liability company, estate, trust, or electing small business corporation that is derived from or attributable to Nebraska sources with all other estimated income derived from or attributable to Nebraska sources to determine their estimated Nebraska income tax.

(Section 21-2633, R.R.S. 1997, and sections 77-2734.01, and 77-2769, R.R.S. 1996. November 11, 1998.)

REG-20-004 PAYMENT OF ESTIMATED TAX: SHORT TAXABLE YEARS

004.01 No payment of estimated tax is required if the short taxable year is:

004.01A A period of less than four months,

004.01B A period of at least four months but less than six months and the basic tax requirements (\$300 for individuals, \$400 for corporations) are met after the first day of the fourth month,

004.01C A period of at least six months, but less than nine months and the basic tax requirements (\$300 for individuals, \$400 for corporations) are met after the first day of the sixth month.

004.01D A period of nine months or more and the basic tax requirements (\$300 for individuals, \$400 for corporations) are met after the first day of the ninth month.

(Section 77-2769, R.R.S. 1996. November 11, 1998.)

REG-20-005 PAYMENT OF ESTIMATED TAX: TIME FOR FILING AND PAYMENT

005.01 The times for making payments of Nebraska estimated income tax shall be the same as those times prescribed by the laws of the United States for making payments of estimated federal income tax.

005.02 Payment of the estimated income tax, or any installment thereof, shall be considered a payment on account of the income tax imposed for the taxable year by the State of Nebraska. All payments shall be made to the Nebraska Department of Revenue.

(Section 77-2769, R.S.Supp., 1984. December 4, 1984.)

REG-20-006 CREDIT FOR ESTIMATED TAXES PAID

006.01 The amount of the current taxable year's estimated Nebraska income tax payments shall be allowed as a credit on the current taxable year's Nebraska income tax return. All payments of estimated income tax

are deemed to be payments on account of the tax due.

006.02 If the current year's estimated tax payments plus the allowable credits exceed the amount of tax due, the taxpayer may have the overpayment refunded or he or she may apply it against the estimated income tax for the succeeding taxable year. If the taxpayer elects to have the overpayment credited to the succeeding year's estimated Nebraska income tax, then the overpayment shall not later be refunded or adjusted unless the taxpayer submits a written request to the Nebraska Department of Revenue. If such a request is approved, then the taxpayer must amend his or her succeeding year's payments of estimated Nebraska income tax accordingly. In any event, the amount of the overpayment that can be refunded or adjusted is limited to that part of the overpayment that has not already been credited on a Nebraska estimated income tax payment voucher for the succeeding year.

(Section 77-2791(4), R.R.S. 1943, and Section 77-2769, R.S.Supp., 1984. December 4, 1984.)

REG-20-007 PENALTY: UNDERPAYMENT OF ESTIMATED TAX-- INDIVIDUALS

007.01 A penalty is due on any underpayment of estimated tax. For individuals, the amount of the underpayment for any installment date is the excess of 90% (66-2/3% in the case of farmers and fishermen) of the tax shown on the return for the taxable year or, if no return was filed, 90% (66-2/3% in the case of farmers and fishermen) of the tax for such year, or 100 % of the tax shown on the return for the preceding taxable year, whichever amount is lesser, divided by the number of installment dates prescribed for such year, over the amount, if any, of the installment paid on or before the last day prescribed for such payment. If federal adjusted gross income is more than \$150,000, (\$75,000 for married filing separately), then the applicable federal percentage of the tax for the preceding year must be used.

007.02 The term tax as used in Reg-20-007.01 of this regulation shall mean the individual income tax imposed under the provisions of the Nebraska Revenue Act of 1967, as amended, reduced by the allowable credits: elderly and disabled credit, Community Development Assistance Act credit, dependent or child care credit, personal exemption credit, credit for tax paid to another state, Nebraska Employment and Investment Expansion Act credit, Nebraska Employment and Investment Growth Act credit , Employment Expansion and Investment Incentive Act credit, Invest Nebraska Act credit, Beginning Farmer Tax credit, Nebraska Advantage Rural Development Act credit, Nebraska Advantage Microenterprise Tax credit, Nebraska Advantage Research and Development Act credit, and Nebraska Advantage Act credit.

007.03 The penalty is imposed at the same rate specified for interest in section 45-104.02 of the Nebraska Revised Statutes upon the underpayment of any installment from the date such installment is required to be paid to the due date of the return without regard to any extensions of time, or the

date such underpayment is paid, whichever is earlier. The penalty is imposed in all circumstances except in the case of casualty, disaster, or other unusual circumstances, where imposition of a penalty would be inequitable or where the taxpayer retired after age 62 or became disabled and the underpayment was due to reasonable cause.

007.04 In determining the amount of the installment paid on or before the last day prescribed for payment thereof, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his or her credit under section 77-2753 of the Nebraska Revised Statutes, (relating to tax withheld at the source on wages). The amount of such credit shall be deemed a payment of estimated tax. An equal part of the amount of such credit shall be deemed paid on each installment date for the taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld.

007.05 For nonresident individuals, in determining the amount of the installment paid on or before the last day prescribed for payment thereof, the estimated tax shall be computed without any reduction for the amount which the taxpayer estimates as his or her credit under sections 77-2717, 77-2727, or 77-2734.01 of the Nebraska Revised Statutes, (relating to tax withheld by small business corporations, partnerships, or fiduciaries). The amount of such credit shall be deemed a payment of estimated tax on the last day of the organization's taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld.

007.06 Exceptions. The penalty will not be imposed for any underpayment of any installment of estimated tax if:

007.06A The tax liability for the preceding taxable year was zero, provided that the preceding tax return was, or would have been, had the taxpayer been required to file, for a full twelve month period, or

007.06B The total tax for the current year less any income tax withholding is less than \$300.

007.07 If there has been an underpayment of estimated tax as of any installment date, the taxpayer shall complete and attach an Individual Underpayment of Estimated Tax, Form 2210N, to the Nebraska Individual Income Tax Return, Form 1040N, to determine the applicability of any of the exceptions described in Reg-20-007.06. The Department may request proof of federal acceptance of the waiver request or other documentation such as police reports, insurance company reports or documentation relating to retirement or disability status.

(Sections, 77-2769, 77-2788, 77-2790, and 77-4106, R.R.S., 2003, and sections 77-2715.07 and 77-27,188, R.S.Supp.,2005. March 7, 2006.)

REG-20-008 PENALTY: UNDERPAYMENT OF ESTIMATED TAX-CORPORATIONS

008.01 A penalty is due on any underpayment of estimated tax. For corporations, the amount of the underpayment for any installment date is the excess of the tax shown on the return for the taxable year or, if no return was filed, the tax for such year, divided by the number of installment dates prescribed for such year, over the amount, if any, of the installment paid on or before the last day prescribed for such payment.

008.02 The term tax as used in Reg-20-008.01 of this regulation shall mean the corporation income tax imposed under the provisions of the Nebraska Revenue Act of 1967, as amended, reduced by the credits allowable under section 77-2734.03 of the Nebraska Revised Statutes (in lieu of intangible tax paid credit), Community Development Assistance Act credit, Nebraska Employment and Investment Expansion Act credit, Nebraska Employment and Investment Growth Act credit, Employment Expansion and Investment Incentive Act credit, Invest Nebraska Act credit, Beginning Farmer Tax credit, Nebraska Advantage Rural Development Act credit, Nebraska Advantage Microenterprise Tax credit, Nebraska Advantage Research and Development Act credit, and Nebraska Advantage Act credit .

008.03 The penalty is imposed at the same rate specified for interest in section 45-104.02 of the Nebraska Revised Statutes upon the underpayment of any installment from the date such installment is required to be paid to the due date of the return without regard to any extensions of time, or the date such underpayment is paid, whichever is earlier. The penalty is imposed even if there was a reasonable cause for underpayment.

008.04 Exceptions. The penalty will not be imposed for any underpayment of any installments of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

008.04A The tax shown on the return for the preceding taxable year, provided that the preceding taxable year was a year of 12 months and a Nebraska return showing a liability for tax was filed for such year,

008.04B An amount equal to a tax determined on the basis of the tax rate for the current taxable year but otherwise on the basis of the facts and law applicable to the return for the preceding taxable year,

008.04C An amount equal to 100% of a tax determined by placing on an annual basis the taxable income for the months preceding the month of an installment date, or

008.04D An amount equal to 100% of the amount determined under the adjusted seasonal installment rules set forth under Internal Revenue Service Code Section 6655(e)(3).

008.04E The exceptions in Reg-20-008.04A and Reg-20-008.04B are not available to those corporations deemed to be large corporations for

federal estimated tax purposes other than for the first installment of its tax year. A large corporation is one which had, or its predecessor had, federal taxable income of at least one million dollars for any of the three taxable years immediately preceding the taxable year involved.

008.05 If there has been an underpayment of estimated tax as of any installment date, a Corporation Underpayment of Estimated Tax, Form 2220N, must be completed and attached to the Nebraska Corporation Income Tax Return, Form 1120N, to determine the applicability of any of the exceptions described in Reg-20-008.04.

(Sections 77-2769, 77-2769.01, 77-2788, 77-2790, and ,77-4106, R.R.S., 2003, and section 77-27,188, R.S.Supp.,2005. March 7, 2006.)

