

TITLE 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 23 - FIDUCIARY INCOME TAX

REG-23-001 Definition of the Term Resident Estate or Trust

001.01 A resident estate or trust includes:

001.01A The estate of a decedent who at his or her death was domiciled in Nebraska,

001.01B A trust or portion of a trust which consists of property transferred by the last will and testament of a decedent, who, at his or her death, was domiciled in Nebraska,

001.01C A trust or portion of a trust which was created by or which consists of property of a person domiciled in this state at the time the trust became irrevocable.

001.02 A trust or portion of a trust becomes irrevocable when the person whose property constitutes such trust may no longer exercise the power to revest the title to such property in himself or herself.

001.03 If the settlor of a trust is domiciled in Nebraska when the trust becomes irrevocable, the trust will be considered a resident trust for the entire life of the trust. Such a trust is a resident trust even though the situs of the trust, the property held in trust, or the trustee are located in another state. (For further discussion of the term domicile, see Reg-23-002.)

001.04 If a trust is one resulting from the dissolution of a Nebraska corporation, it is a resident trust.

001.05 No trust shall be deemed to be a resident trust merely because the governing instrument or a rule of conflict of law adopts the law of Nebraska with respect to the interpretation or administration of the trust. If a trust meets the requirements of the definition of a resident trust, it shall not be deemed to be a nonresident trust only because the governing instrument or a rule of conflicts of law adopts the law of a state other than Nebraska with respect to the interpretation or administration of the trust.

(Section 77-2714.01(6), R.R.S. 1996. November 11, 1998.)

REG-23-002 Definition of the Term Nonresident Estate or Trust Domicile

002.01 A nonresident estate or trust is every estate or trust which is not a resident estate or trust and includes:

002.01A The estate of a decedent who was not domiciled in Nebraska at his or her death,

002.01B A trust which consists of property transferred by the last will and testament of a decedent who at his or her death was not domiciled

in Nebraska,

002.01C A trust which consists of property of, or was created by, a person not domiciled in Nebraska at the time the trust became irrevocable.

002.02

002.02A The term domicile shall mean the place where a person has his or her true, fixed, and permanent home and principle establishment and to which, whenever he or she is absent, he or she has the intent to return. Once a domicile is acquired, it is presumed to continue until a new domicile is acquired. A change of domicile requires an actual change of residence coupled with the intention to permanently abandon the former domicile.

002.02B It is possible for an individual to be a resident of another state for the purposes of voting, paying taxes, attending schools of higher education as a resident, or exercising other privileges of a resident of that state and still be domiciled in Nebraska if he or she did not have the intent to permanently abandon his or her former home in Nebraska.

002.02C An unemancipated minor's domicile is usually the same as his or her parents and the domicile of the parents is usually the same as the residence of their minor children.

002.02D An estate or trust, once established as a resident estate or trust, cannot be changed to a nonresident estate or trust because of the change of residence of any of the parties involved, or of the change in location of any of the property involved.

002.03 In determining whether an estate or trust is resident or nonresident, the residence of the executor or administrator or trustee shall not be considered. Neither the residence of the beneficiaries (unless one is the settlor also) nor the situs of the trust or estate shall be determinative as to the residence or nonresidence of the trust or estate.

002.04 If the governing instrument or a rule of conflicts of law adopts the law of a state other than Nebraska for purposes of interpretation or administration of a trust, the trust does not become a nonresident trust.

(Section 77-2714.01 R.R.S. 1996. November 11, 1998.)

REG-23-003 Entities which are not Included in the Taxation of Estates and Trusts

003.01 The term estate refers only to the estates of deceased persons and does not include such estates as those which are maintained for minors, persons adjudicated incompetent, or for any person who is suffering from some other legal disability. The Nebraska income tax liability for these persons shall be computed on the same form (Form 1040N or Form 1040NS) as that used for any other individual taxpayer but it may be prepared in the

name of the disabled individual and signed by the guardian or conservator. None of the particular provisions of the act which refer to trusts and estates apply to these situations.

003.02 Trusts, which are taxed as corporations under the Internal Revenue Code, shall be taxed as corporations under the Nebraska Revenue Act of 1967, as amended. A trust which, by reason of its purposes or activities, is exempt from federal income tax, is also exempt from Nebraska income tax except as to unrelated business taxable income.

003.03 Receivers and trustees in bankruptcy shall have the same duties with respect to Nebraska income tax as they have under the Internal Revenue Code, and they shall file the Nebraska income tax return that corresponds to the income tax return required for federal income tax purposes.

(Section 77-2717 R.R.S. 1996. November 11, 1998.)

REG-23-004 Taxation of Resident and Nonresident Estates and Trusts

004.01 Resident trusts and estates. The Nebraska income tax is imposed for each taxable year on the adjusted federal taxable income of the fiduciary. The tax is a percentage of the taxpayer's adjusted federal 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.

004.02 Nonresident trusts and estates. The Nebraska income tax is imposed for each taxable year on the income of every nonresident trust or estate which is derived from sources within Nebraska. The tax is a percentage of the tax owed by a resident estate or trust with the same adjusted federal taxable income. The percentage is determined by dividing Nebraska source income as determined in paragraph 004.04 by adjusted federal taxable income after the adjustments provided in paragraph 004.03.

004.03 Determining adjusted federal taxable income. Adjusted federal taxable income is the amount of federal taxable income of the fiduciary after the adjustments provided in paragraphs 004.03A through 004.03G.

004.03A Income from federal obligations. There shall be subtracted any interest and dividends received on United States obligations to the extent such interest and dividends are included in federal taxable income but exempt from state income taxes under the laws of the United States. 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.

004.03A(1) United States obligations which are exempt include the following:

004.03A(1)(a) Series E, F, G, and H savings bonds;

004.03A(1)(b) United States Treasury bills;

004.03A(1)(c) U.S. Government notes;

004.03A(1)(d) U.S. Government bonds;

004.03A(1)(e) U.S. Government certificates;

004.03A(1)(f) Interest on debentures issued to mortgages of mortgagees foreclosed under provisions of the National Housing Act if insured after February 3, 1938;

004.03A(1)(g) Retirement bond as provided by I.R.C. 409;

004.03A(1)(h) Federal Farm Credit Bank Consolidated System wide bonds;

004.03A(1)(i) Federal Land Banks and Associations;

004.03A(1)(j) Federal Intermediate Credit Bank;

004.03A(1)(k) Commodity Credit Corporation;

004.03A(1)(l) Federal Farm Mortgage Corporation;

004.03A(1)(m) Federal Home Loan Banks;

004.03A(1)(n) Reconstruction Finance Corporation;

004.03A(1)(o) General Services Administration Participation Certificates;

004.03A(1)(p) Central Bank for Cooperatives (interest only);

004.03A(1)(q) Federal Reserve Banks;

004.03A(1)(r) Federal Savings and Loan Insurance Corporation;

004.03A(1)(s) Production Credit Association (interest only);

004.03A(1)(t) Tennessee Valley Authority Bonds;

004.03A(1)(u) Postal Service Bonds;

004.03A(1)(v) Federal Deposit Insurance Corporation (interest only); and

004.03A(1)(w) Student Loan Marketing Association (interest only).

004.03A(2) Income from Regulated Investment Companies investing directly in U.S. Government obligations is subtracted to the extent it represents income from U.S. Government obligations.

004.03A(3) Interest income from repurchase agreements involving U.S. Government obligations shall not be subtracted.

004.03B Income from State and Local Obligations. There shall be added 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. 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.

004.03B(1) Dividends and income received from Regulated Investment Companies which are attributable to obligations described in paragraph 004.03B shall be added.

004.03C Income and Losses from S Corporations and Limited Liability Companies (LLCs). Income and losses from S Corporations and LLCs shall be treated in the following manner.

004.03C(1) There shall be subtracted any income from S Corporations and LLCs which was not connected with or derived from Nebraska sources.

004.03C(2) There shall be added any loss from S Corporations and LLCs which was not connected with or derived from Nebraska sources.

004.03D Dividends Received from a Corporation not Subject to the Internal Revenue Code (IRC). There shall be subtracted any dividend which was received from a corporation which was not subject to the IRC.

004.03E Special Capital Gains. There shall be subtracted capital gains for which an election has been exercised under Reg-22-020.

004.03F Nebraska Net Operating Losses. A net operating loss carry back or carryover shall be subtracted as provided in Reg-23-013.

004.03G Federal Net Operating Loss Deduction. A federal net operating loss carry back or carry forward used to compute federal taxable income shall be added.

004.04 Income attributable to Nebraska Sources Nonresident Trusts and Estates. The income attributable to Nebraska sources includes those items directly associated with:

004.04A Real or tangible personal property located within the state,

004.04B A business, trade, profession, or occupation carried on within the state,

004.04C Services performed within the state,

004.04D Intangible personal property, including annuities, dividends, interest, and gains from the sale or exchange of intangible personal property, to the extent that such income is from property employed in a business, trade, profession, or occupation carried on within the state.

004.05 IRC Section 443. The annualization of tax for short period returns is not required for computing regular tax liability.

004.05A The method used for computing federal alternative minimum tax, including annualization as provided under IRC Section 443, must also be used to recompute the federal tax for Nebraska purposes.

(Sections 77-2717, 77-2724, and 77-2725, R.R.S. 1996. Nebraska Department of Revenue v. John Loewenstein, 513 U.S. 123 (1994). November 11, 1998.)

REG-23-006 Fiduciaries for Nonresident Alien Beneficiaries

006.01 A fiduciary or other person charged with the care of the personal property of a nonresident alien individual shall make a Nebraska income tax return for that individual and pay any tax due unless:

006.01A The nonresident alien individual files a Nebraska income tax return and pays the income tax on income derived from the personal property,

006.01B A responsible representative or agent in the United States of the nonresident alien individual files a Nebraska income tax return and pays the Nebraska income tax on the income of the nonresident alien individual, or

006.01C The nonresident alien individual has appointed a person in the United States to act as his or her agent for the purpose of making a return of income and, if such fiduciary is required to file a Form 1041N for an estate or trust of which such alien individual is a beneficiary, such fiduciary attaches a copy of the agency appointment to his or her return on Form 1041N.

006.02 The tax reported pursuant to paragraph 006.01 shall be computed in the same manner as is the tax for any other Nebraska nonresident individual.

006.03 In general, the federal rules and regulations shall apply for Nebraska purposes.

(Section 77-2724, R.R.S. 1996. November 11, 1998.)

REG-23-007 Nonresident Beneficiaries - Agreements to Pay - Withholding from Beneficiary

007.01 Nebraska Nonresident Income Tax Agreement. A nonresident beneficiary deriving Nebraska taxable income from a trust or estate is required to 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 should be forwarded to the trust or estate before the original due date of the fiduciary return which is the 15th day of the fourth month following the close of its taxable year. The fiduciary shall attach the completed Form 12N to the fiduciary return. Any nonresident who files Form 12N to avoid withholding must file a Nebraska income tax return.

007.02 Nonresident Withholding. In the absence of the above agreement, the estate or trust shall withhold and remit to the Nebraska Department of Revenue an amount equal to the highest individual income tax rate multiplied by the nonresident beneficiary's share of distributable income which was derived from or attributable to Nebraska sources. The fiduciary must report the amount withheld from each beneficiary on a Statement of Nebraska Income Tax Withheld for Nonresident Individual, Form 14N, with one copy attached to the fiduciary return. The full amount of the withholding is, at the taxpayer's option, retained in lieu of the filing of an income tax return. Any nonresident who so desires can still file a return and claim a refund if there is one due. When a trust or estate has made a remittance to the Nebraska Department of Revenue on behalf of a nonresident beneficiary, the nonresident beneficiary will be allowed his or her share of the remittance made by the trust or estate as a credit against his or her Nebraska income tax liability.

(Section 77-2717, R.R.S. 1996. November 11, 1998.)

REG-23-008 Credits Against the Nebraska Tax

008.01 Credit for tax paid to another state. Only resident estates or trusts can claim credit for income tax paid to another state, political subdivision of another state, or the District of Columbia.

008.01A The maximum credit allowed for taxes paid to another state is the lesser of the computed tax credit or the actual tax paid, not to exceed the Nebraska income tax. The computed tax credit is calculated by dividing the taxable income from the other state by the Nebraska adjusted federal taxable income of the fiduciary, and multiplying the quotient by the Nebraska income tax.

008.01B The only acceptable supporting document for the credit claimed for income tax paid to another state is a signed copy of the income tax return filed with the state for which the credit is claimed. If

the estate or trust is claiming credit for income tax paid to a political subdivision of another state in which no annual income tax return is required, then a W-2 statement supporting the credit claim should be attached to the return.

008.02 Nonhighway use motor fuel credit. For tax years ending before January 1, 2005, an estate or trust may claim a refundable credit for nonhighway use motor fuel pursuant to the provisions of Reg-84-001 through Reg-84-006. For tax years ending after December 31, 2004, estates and trusts may obtain a direct refund of the fuels tax paid by filing a refund claim with the Department of Revenue's Motor Fuels Division.

008.03 Community Development Assistance Act (CDAA) Credit. A nonrefundable credit may be claimed by a fiduciary for an estate which operates a business firm with contributions to approved projects of community betterment organizations under Chapter 13 of the Nebraska Revised Statutes .

008.03A The credit is allowed where a 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. DED may authorize a tax credit not to exceed forty percent of the total amount contributed by the business during its taxable year.

008.03A(1) The contribution by the business must qualify as a charitable contribution under the Internal Revenue Code.

008.03A(2) A taxpayer claiming a CDAA credit must attach to its fiduciary income 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.

008.03A(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.

008.04 Nebraska Advantage Rural Development Act Credit. Fiduciaries may claim a refundable credit if their business has a signed agreement with the Department of Revenue and 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 that Act.

008.04A 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.

008.05 Employment and Investment Growth Act Credit. Fiduciaries may claim a nonrefundable credit if their business has a signed agreement with the Department of Revenue and qualifies for such credit. Applications under this Act will be accepted through December 31, 2005. Agreements pending, approved, or entered into before January 1, 2006 will remain in full force and effect.

008.05A Any income tax credit may be recaptured if the taxpayer fails to meet the required levels of employment or investment.

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

008.07 Income tax withholding. Fiduciaries may claim a refundable credit for withholding.

008.08 Nebraska Advantage Act Credit. Fiduciaries may claim a nonrefundable credit if their business has a signed agreement with the Department of Revenue and qualifies for such credit. Applications will be accepted beginning January 1, 2006. Taxpayers who fail to meet the terms of the agreement shall be subject to recapture or disallowance of the Nebraska Advantage Act incentives.

008.09 Nebraska Advantage Microenterprise Tax Credit Act. Fiduciaries which are actively engaged in the creation or operation of a microbusiness in a distressed area may claim a refundable credit if their business has a signed agreement with the Department of Revenue and qualifies for such credit. Applications may be filed under this Act beginning January 1, 2006. Tax credits will not be allowed for taxpayers receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, or the Nebraska Advantage Rural Development Act.

008.10 Nebraska Advantage Research and Development Act Credit. Fiduciaries operating a business which is subject to Nebraska sales tax may claim a refundable credit for expenditures in research and experimental activities defined in section 174 of the Internal Revenue Code. Fiduciaries which are exempt from income tax under section 501(a) of the Internal Revenue Code do not qualify for this credit.

008.10A The credit may be claimed for a maximum of five consecutive tax years. The fiduciary may make its first claim for tax years beginning on and after January 1, 2006 through tax years beginning prior to January 1, 2011. The credit may also be claimed in the four tax years immediately following the year in which the credit was first claimed.

008.11 Planned Gift and Contribution Credit. For tax years beginning on or after January 1, 2006, fiduciaries may claim a nonrefundable credit for planned gifts and contributions to qualified endowments. The credit cannot include any contribution claimed as a deduction on the state tax return. The credit may only be applied to the tax year in which the contribution is made.

008.12 Beginning Farmer Tax Credit Act. A resident trust may claim a refundable credit on the Nebraska Fiduciary Income Tax Return, if it qualifies for such credit.

(Section 77-2725, and 77-2730, R.R.S. 2003, sections 66-4,124, and 66-726, R.S.Supp., 2004, and sections 77-2715.07, 77-2717, 77-27,188, 77-27,233, and 77-5726, R.S.Supp., 2005. March 7, 2006.)

REG-23-009 Filing of Returns and Payment of Tax

009.01 Filing Date. The Nebraska Fiduciary Income Tax Return, Form 1041N, must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the estate or trust.

009.01A Simple trusts do not have to file a fiduciary return if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources within Nebraska, and the trust has no federal tax liability.

009.02 Extension of Filing Date. The fiduciary return may be filed at a later date if the fiduciary has obtained an extension of time.

009.02A The Tax Commissioner may grant a reasonable extension of time, not to exceed seven (7) months, for the filing of the return. Such an extension must be requested prior to the prescribed due date for the filing of the return or during the period of a federal extension to avoid levy of penalty. Application should be made on the Application for Automatic Extension of Time to File a Nebraska Corporation, Fiduciary, or Partnership Return, Form 7004N.

009.02B Form 7004N is not required to be filed if the Internal Revenue Service has already granted an extension of time for filing the return. In this instance the due date for filing the comparable Nebraska return is automatically extended for the same period as the federal extension. However, a copy of the federal application for automatic extension of time or other documentation showing the Internal Revenue Service granted an extension of time to file must be attached to the Nebraska return when filed.

009.03 Effect of Extension on Payment of Tax. An extension of time granted for filing a fiduciary return also extends the time for payment of the tax. However, interest will be imposed at the rate specified in section 45-104.02, from the due date of the return until the date payment is received.

(Sections 77-2768, 77-2770, and 77-2788(1) and (2), R.R.S. 2003, and section 77-2717(2), R.S.Supp., 2008. February 22, 2009.)

REG-23-010 Adjustments of Federal Income Tax

010.01 Requirements as to reporting changes made by the Internal Revenue Service. Any changes made by the Internal Revenue Service in the estate's

or trust's federal income tax return must be reported by filing the appropriate amended Nebraska fiduciary income tax return for the taxable year involved. The amended return for Nebraska must be filed within ninety (90) 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.

010.02 Method of reporting changes. Any adjustments made on a federal amended return 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 a federal amended return 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.

010.02A Adjustments made on a federal amended return or by the Internal Revenue Service shall be reported to the Tax Commissioner by filing an amended Nebraska Fiduciary Income Tax Return for the taxable year involved.

010.02A(1) The amended return for Nebraska must be filed separately and should not be attached to 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 include copies of the federal amended return, Internal Revenue Service report, or other document which substantiates the adjustments claimed and concede the accuracy of any final determination or give a statement outlining the specific errors of the final determination.

010.03 Final determination. 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:

010.03A A decision by the tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final;

010.03B 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;

010.03C The final disposition by the Internal Revenue Service of a taxpayer's claim for a refund;

010.03D 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 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;

010.03E The acceptance of an examining officer's findings in regard to the income of a partnership or a fiduciary;

010.03F 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 the 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; or

010.03G Any other final judgment effecting changes in reported federal taxable income.

010.04 Failure to report changes. If the fiduciary fails to file an amended Nebraska return, the Tax Commissioner may mail to the taxpayer a notice of deficiency at any time. If the fiduciary properly files an amended Nebraska return and reports any change in federal taxable income or federal tax liability, the Tax Commissioner may make an assessment relating only to the change at any time within two (2) years after the report or amended return was filed.

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

010.05A 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.

010.05B 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.

010.05C 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.

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

REG-23-011 Methods of Accounting

011.01 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 method used for federal income tax purposes.

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

REG-23-012 Records

012.01 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.

012.02 Availability of books and records. Such books or records shall be kept available at all times for inspection by the Tax Commissioner or any agent or representative designated by him for the purpose of ascertaining the correctness of any return or other document required to be filed under the Nebraska Revenue Act.

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

(Sections 77-2772, R.R.S. 1943 and Section 77-27,119(3), R.S.Supp., 1974. September 15, 1975.)

REG-23-013 Loss Carryover and Carryback

013.01 Deduction of Net Operating Losses. Losses realized on or after January 1, 1968, by an estate or trust 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.

013.02 Period of Carryback or Carryover. An estate or trust, which has incurred a Nebraska net operating loss, shall be allowed to carry back such loss for the period allowed by the Internal Revenue Code (IRC) as an adjustment decreasing federal taxable in the prior year. If the taxable income for this period is not sufficient to absorb the entire loss, the estate or trust is then entitled to a carryover of the remaining amount of the loss to the taxable years allowed by the IRC following the loss year. The loss will be absorbed in the earliest year of the above period that the estate or trust has taxable income. The provisions of the IRC shall be used in computing the amount of the loss available for carryover.

013.02A If an estate or trust 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.

013.02B When an estate or trust has incurred a Nebraska net operating loss, but has no federal net operating loss, the estate or trust may elect to relinquish the carryback period for Nebraska purposes when the IRC 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.

013.03 Computation of a Net Operating Loss. In order to be deducted from income subject to Nebraska income tax under Reg-23-004, the net operating loss must be a Nebraska net operating loss which has been reported on a return filed for the loss year.

013.03A For a resident estate or trust, the Nebraska net operating loss is the reported federal net operating loss as adjusted within this paragraph.

013.03A(1) The loss will be increased by the amount of allowable adjustments decreasing federal taxable 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 increasing federal taxable income, such as increases for interest or dividends from obligations issued by states other than Nebraska.

013.03A(2) A loss may be created when the allowable adjustments decreasing federal taxable income exceed the adjusted federal taxable income.

013.03B For tax years beginning before January 1, 1987, for a nonresident estate or trust 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-23-004.04.

013.03C For tax years beginning on or after January 1, 1987, the net operating loss of a nonresident estate or trust is the lesser of its federal net operating loss as adjusted pursuant to Reg-23-004.03 and its loss derived from Nebraska sources.

013.04 Capital Losses. Estates or trusts who have incurred, after December 31, 1967, a capital loss, may carry over the loss until the loss has been exhausted. 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.

013.05 Federal Net Operating Losses and Capital Losses. Estates or trusts which have deducted a federal net operating loss or a federal capital loss in computing their adjusted federal taxable income shall add such deduction to their adjusted federal taxable income in order to determine Nebraska taxable income.

(Section 77-2716(2), R.S.Supp., 1998, and section 77-2714, R.R.S. 1996. November 11, 1998.)

REG-23-014 Adjustments of Another State's Fiduciary Income Tax

014.01 Reporting Changes from Other States. Any fiduciary who is required to file an income tax return in another state, and who receives changes made by such state in the fiduciary's state income tax return which are material to the tax liability owed to this state or to the amount of distributable income attributable to Nebraska 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 states return by any competent authority of the state. In reporting any change to the other states tax return, the fiduciary must furnish the department complete information regarding the amount of income reported and taxes paid to the other state. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

014.02 Amended Returns Used to Report Changes. Any adjustments made by the other states amended returns or by the other states revenue service must be reported to the department by filing an amended Nebraska Fiduciary 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 fiduciary 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.

014.03 Each Amended Return is Filed Separately. 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.

014.04 Final Determination. 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:

014.04A A decision by a state tax court or a judgment, decree, or other order by a court of competent jurisdiction which has become final.

014.04B A closing agreement authorized by state law which relates either to the total tax liability of the fiduciary 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.

014.04C The final disposition by the other state of a fiduciary's claim for a refund.

014.04D Any informal agreement between the fiduciary and the other state made for the express purpose of serving as a determination in respect to the taxable income or tax liability of the taxpayer. Such an agreement must include a waiver by the fiduciary of restrictions on assessment and the collection of any deficiencies resulting from the agreement.

014.04E The acceptance of an examining officer's findings in regard to the income of a partnership or fiduciary.

014.04F The payment of any additional tax by the fiduciary. Any deposit made with the other state that can be returned at the request of the fiduciary 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.

014.04G Any other final judgment effecting changes in the reported taxable income or distributable income in the other state.

014.05 Notice of Deficiency Determination after State Change. If a fiduciary fails to file an amended return reporting any change or correction which increases its Nebraska taxable income, tax liability, or distributable income, the department may mail a notice of deficiency to the fiduciary at any time. If a fiduciary properly reports any change in the other states taxable income, tax liability, or distributable income, the department may make an assessment relating to the change at any time within two years after the amended return was filed.

014.06 Failure to Report Change to Other State. Any change in the other states adjusted taxable income, tax liability, or distributable income which has not been reported to the other state cannot be used as the basis for a change or reduction in the Nebraska liability.

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

014.07A The amount of the credit or refund shall not exceed the amount of the Nebraska tax attributable to such states change, correction, or the items amended on the other states return.

014.07B 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.

014.07C If the amended return is not filed within two years and ninety days from the final determination of the change, or within ten (10) 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 section 77-2786(4) and (5), and 77-2793(5), R.R.S. 1996. November 11, 1998.)

