

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 25 - PARTNERSHIP INCOME TAX REGULATIONS

REG-25-001 DEFINITION OF PARTNERSHIP TERMS FOR NEBRASKA TAX PURPOSES

001.01 In general. For the purpose of applying the Nebraska income tax to partnerships, the definition of partnership, partner, partnership agreement, and liquidation of a partner's interest as contained in the Internal Revenue Code of 1986 shall apply.

001.02 Federal classification as a partnership. A federal classification of an entity as a partnership shall be the conclusive determination for Nebraska tax purposes. This includes a limited liability company classified for federal income tax purposes as a partnership.

(Section 77-2773, R.R.S. 1996. November 11, 1998.)

REG-25-002 PARTNERS, NOT THE PARTNERSHIP, SUBJECT TO TAX

002.01 Taxation of partnerships. A partnership is not subject to income tax in Nebraska unless it is taxed as a corporation for federal income tax purposes. Persons who carry on business as partners must include in their incomes their proportionate share of the partnership income taxable in Nebraska.

002.02 Partnerships required to file Form 1065N. Every partnership having either a resident partner or income derived from sources within Nebraska, regardless of whether the partners are residents or nonresidents, shall file a Form 1065N, Nebraska Partnership Return of Income, for the taxable year. This return should set forth all items of income, gain, loss, deduction, and credit, and the names, addresses, and social security numbers of nonresident partners who are entitled to share in the income and deductions of the partnership. For Nebraska individual income tax purposes the credits include the partner's share of the nonhighway use motor fuel credit for tax years ending before January 1, 2005, the Community Development Assistance Act 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.

002.02A A limited partnership conducting business entirely outside this state which has Nebraska resident partners, none of whom are general partners charged with the management responsibility of the partnership, is not required to file Form 1065N.

002.03 Taxation of partners; in general. A partnership having income from Nebraska sources or having a resident partner must provide both resident and nonresident partners with a schedule listing the amounts and character

of the income, deductions, and credits that are to be included in each partner's Nebraska income tax return. A resident partner must include his or her entire share of the partnership income, computed under the provisions of the Internal Revenue Code, in his or her adjusted gross income. A nonresident partner is subject to the Nebraska income tax on his or her share of the partnership income derived from or connected with Nebraska sources.

002.04 Character of income, gain, loss, or deduction. Each item of partnership income, gain, loss, or deduction shall have the same character for the partner individually, for the purposes of the Nebraska income tax, as it has for the federal income tax. Unless characterized otherwise by federal law, all items shall have the same character for the partner individually as if he or she realized it directly from the source from which it was realized by the partnership.

002.05 Time and manner of filing.

002.05A The Nebraska partnership return must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership. Only one return is required to be filed for each partnership. A copy of the federal partnership return must accompany the filing of the Nebraska partnership return.

002.05B The Tax Commissioner may grant the partnership a reasonable extension of time, not to exceed seven (7) months, for the filing of the partnership return. Such an extension must be requested by the partnership prior to the prescribed due date for the filing of the return to avoid levy of penalty. Application should be made on Form 2688N and must give the reasons for the extension request.

002.05C Form 2688N should not be filed if the Internal Revenue Service has already granted the partnership 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 extension of time must be attached to the Nebraska return when it is filed.

(Sections 77-2728, 77-2729, 77-2773, and 77-4106, R.R.S. 2003 and sections 77-2715.07, 77-2717, 77-2727, and 77-27,188, R.S.Supp., 2005. March 7, 2006.)

REG-25-003 TAXATION OF NONRESIDENT PARTNERS

003.01 Partners' liability for Nebraska income tax. If a Nebraska partnership has either a resident partner or income derived from sources within Nebraska, then the partners of such partnership shall be liable for income tax on their proportionate shares of the partnership income.

003.02 Nonresident partner agreement to file return and pay tax. If any partner of such a partnership is a nonresident, he or she must file a Nebraska income tax return which includes that portion of the partnership's

Nebraska source income which is allocable to his or her interest in the partnership. The nonresident partner should execute and forward to the partnership, on or before the original due date of the Nebraska partnership return, an agreement, Form 12N, which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from sources in the State of Nebraska. Form 12N should be attached to the partnership's Nebraska return, Form 1065, for the reporting year.

003.03 Nonresident partner withholding. If such an agreement, Form 12N, is not attached to the partnership's return, then Form 14N should be completed and attached to the partnership's Nebraska return, Form 1065N, and the partnership should remit with its Nebraska return a portion of the nonresident partner's income which was derived from Nebraska sources. The amount of this remittance shall be a percentage equal to the highest individual income tax rate of the nonresident partner's share in the partnership income which was attributable to Nebraska sources. The nonresident partner can also be provided with a copy of Form 14N in order that he or she may properly take credit for the tax withheld on his or her Nebraska Individual Income Tax Return, Form 1040N, but no form need be provided unless requested by the partner.

003.03A Publicly traded partnerships (as defined by section 7704 (b) of the Internal Revenue Code and which do not file as corporations) are not required to withhold and remit tax on nonresident individuals provided such partnerships file an annual information return with the Department of Revenue. The information return must report the name, address, taxpayer identification number, and other information requested by the Department of Revenue for each individual nonresident partner with Nebraska income in excess of five hundred dollars.

003.04 Nonresident individual partners do not have to file an individual income tax return if their only connection with the state is conduct of the business activities of the partnership, and the partnership has remitted tax from all the Nebraska income attributable to the nonresident's share of the partnership's income pursuant to Reg-25-003.03. The full amount of the withholding is, at the taxpayer's option, retained in lieu of the filing of an individual income tax return. Any nonresident who so desires can still file a return and claim a refund if there is one due. Any nonresident who files Form 12N to avoid withholding or who has income from a publicly traded partnership which did not withhold and remit tax for such nonresident, must file a Nebraska income tax return.

003.05 Nonresident partner; Nebraska source income. In determining the taxable income of a nonresident partner of a Nebraska partnership, there must be included only that portion of the partnership income which was derived from sources within Nebraska. This would include a nonresident partner's distributive share of all items of partnership income, gain, loss, and deduction entering into his or her federal taxable income as determined under the general rules in section 77-2733 of the Nebraska Revised Statutes, and Reg-22-003.

003.05A This amount will be modified by a deduction for interest and dividend income received on any United States savings bonds or other federal obligations. Any modification for United States bond interest shall be determined in accordance with the nonresident partner's distributive share, for federal purposes, of the partnership income. The partnership income shall be adjusted by applying the amount of U.S. bond interest in the same manner as though the partnership were an individual. It should be noted that any modification for U.S. bond interest shall be limited to the proportion of such interest as is derived from Nebraska sources pursuant to section 77-2733 of the Nebraska Revised Statutes.

003.05B In determining the sources of a nonresident partner's income, no effect shall be given to any provision of a partnership agreement which characterizes payments to the partner as being compensation for services or as being a return on capital. Similarly, no effect shall be given to any provision in a partnership agreement which allocates to the nonresident partner a greater share of the income or gain from sources outside Nebraska than would be the nonresident partner's share in respect to income from all sources. In addition, any partnership agreement provision which allocates to a nonresident partner a greater proportion of any loss or deduction connected with Nebraska sources than his or her proportionate share for federal purposes shall be disregarded in determining the Nebraska tax liability.

003.05C If the Nebraska partnership has income from business activities that is taxable both within and without Nebraska, it will determine its Nebraska income by use of the formula apportionment method set forth in Reg-24-023 and Reg-24-056. A partnership engaged in business in Nebraska which is not subject to tax in another state does not apportion its income, but reports its entire taxable income to Nebraska.

003.05C(1) If the apportionment provisions do not fairly represent the taxable income reasonably attributed to Nebraska business operations, the partnership may, in unique and nonrecurring factual circumstances, request, or the Tax Commissioner may require, alternative methods of income attribution to produce an equitable apportionment of the partnership's income.

003.05D The Tax Commissioner may authorize the use of other methods of determining a nonresident partner's share of partnership income derived from Nebraska sources if such a method is requested by a taxpayer and if it more clearly and fairly reflects the amount of income of the nonresident partner which is derived from the State of Nebraska.

(Sections 77-2728, 77-2729, and 77-2733, R.R.S. 2003 and sections 77-2727 and 77-2734.01, R.S.Supp., 2005. March 7, 2006.)

REG-25-004 METHODS OF ACCOUNTING

004.01 In computing income tax imposed under the Nebraska Revenue Act of 1967, as amended, the partnership's method of accounting must be the same as its method of accounting used for federal income tax purposes.

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

REG-25-005 RECORDS

005.01 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.

005.02 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 or her for the purpose of ascertaining the correctness of any return or other document required to be filed under the Nebraska Revenue Act.

005.03 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 Tax Commissioner 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, and 77-27,119(3), R.R.S. 1943. September 15, 1986.)

REG-25-006 CORPORATION AS PARTNER IN A PARTNERSHIP OR JOINT VENTURE

006.01 When a partnership has sufficient contacts with a corporate partner such that it would be considered unitary if it was a corporation, then the corporate partner shall use Reg-24-056 to determine the income from the partnership attributable to Nebraska.

006.02 If the partnership is not unitary with the corporation and is operating entirely within Nebraska, then the partnership income of the corporation will be allocated entirely to Nebraska and will be added to any other income of the corporation attributable to Nebraska.

006.03 If the partnership is not unitary with the corporation and is operating within and without Nebraska, then the partnership will use the apportionment formula as referenced in Reg-24-023 and Reg-24-056 to determine the income of the partnership attributable to Nebraska. The corporation's share of the partnership's Nebraska income will then be added to any other income of the corporation attributable to Nebraska in order to determine the corporation's Nebraska taxable income.

006.04 If the partnership is not unitary with the corporation and is operating totally outside Nebraska, then the partnership income will be neither allocated nor apportioned to Nebraska.

(Sections 77-2727(2), R.R.S. 1996. November 11, 1998.)

REG-25-007 ADJUSTMENTS OF FEDERAL OR ANOTHER STATE'S INCOME TAX

007.01 Any changes or corrections made by the Internal Revenue Service or through renegotiation of a contract with the United States in a partnership's reported income or deductions must be reported to the Nebraska Department of Revenue within ninety (90) days of the final determination of the change.

007.01A In reporting any change, the partnership must furnish complete information regarding the amount of income and deductions reported to the Internal Revenue Service after the change or correction. The report must also concede the accuracy of the final determination or give a statement outlining the specific errors of the final determination.

007.02 Any adjustments made on a federal amended return shall be reported to the Department of Revenue within ninety (90) days of the filing of the amended federal return.

007.02A Adjustments made on a federal amended return or by the Internal Revenue Service shall be reported to the Department of Revenue by filing a Nebraska Partnership Return of Income, Form 1065N, and marking the box "Amended Return". The amended return for Nebraska must include copies of the federal amended return, Internal Revenue Service report, or other documentation which substantiates the adjustments claimed.

007.03 Any changes or corrections in a partnership's reported income, deductions, or allowed tax credits in another state in a way material to the Nebraska tax liability made by filing an amended return, by the other state, or by any other competent authority, shall be reported to the Department of Revenue by filing a Nebraska Partnership Return of Income, Form 1065N, and marking the box "Amended Return". The amended return must be filed within ninety (90) days of the filing of the amended or corrected state return or the date of the changes, and must include copies of any reports issued by the other state or other competent authority.

007.04 A partnership filing an amended return reporting an increase in its income reported to Nebraska will make a revised calculation of Nebraska income tax to withhold from any nonresident partners. Revised statements of income tax withheld from such partners will be issued by the partnership to nonresident partners for use by the partners in filing their amended Nebraska individual income tax returns. A publicly traded partnership which did not withhold under Reg-25-003 will not calculate revised withholding statements for its nonresident individual partners.

007.05 If a nonresident partner fails to report any change or correction which increases his or her tax liability, fails to report any change or correction which is treated as a deficiency for federal income tax purposes, or fails to file an amended Nebraska return, the Tax Commissioner may mail the partner a notice of deficiency at any time. If a partner properly reports any change in his or her federal tax liability, the Tax Commissioner may make an assessment relating to the change at any time within two (2) years after the report or amended return was filed.

(Sections 77-2727, 77-2775, and 77-2786(4), and (5), R.S.Supp., 2005. March 7, 2006.)

