

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 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;

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.

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.

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 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 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;~~

~~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.

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.

(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.)