TITLE 316 CHAPTER 22
INDIVIDUAL INCOME TAX

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,

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.

(Sections 77-2715 and 77-2716.03, R.R.S., 2003, and section 77-2716.01, R.S.Supp., 2004 and section 77-2716, R.S.Supp., 2005. Nebraska Department of Revenue v. John Loewenstein, 513 U.S. 123 (1994). .)

TITLE 316 CHAPTER 22
INDIVIDUAL INCOME TAX

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

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

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

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

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

003.01C Compensation for Services.

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

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

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

When a taxpayer has performed some service in this state and the base of operations, or, if there is no base of operations, the place from which the services

are directed or controlled is in this state, the compensation paid by a business, trade, or profession for all services of the taxpayer shall be income from Nebraska sources.

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

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

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

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

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

003.01C(5) **Professional services.** Nonresident attorneys, physicians, engineers, architects, nurses, or any other professional people, even though not regularly employed in carrying on their profession in Nebraska, must include as income from sources within this state the entire amount of fees or compensation received for services performed in Nebraska as defined in Reg-21-003.01C(1) on behalf of their clients.

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

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

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

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

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

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

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

003.01C(11) **Employees of Air Carriers.** Compensation paid by an air carrier to a nonresident employee who is regularly assigned duties on aircraft in more than one state is not included in Nebraska source income if the employee's scheduled flight time in Nebraska is fifty percent or less of the total scheduled flight time of

the employee during the calendar year.

003.01D Intangible property.

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

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

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

003.01E S corporations.

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

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

003.01E(3) **Withholding by an S corporation.** In the absence of the above agreement, the S corporation must remit to the Nebraska Department of Revenue a percentage of the nonresident shareholder's Nebraska income. The percentage shall be the highest rate applicable to individuals. Upon request by any

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

003.01F Partnerships.

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

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

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

003.01G Limited Liability Companies (LLC's).

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

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

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

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

003.01H Estates and trusts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gross income after Nebraska adjustments.

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

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

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

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

(Sections 77-2724, 77-2729, 77-2733, and 77-2768, R.R.S. 2003 and sections 77-2717, 77-2727, and 77-2734.01, R.S.Supp., 2005. .)

TITLE 316 CHAPTER 22
INDIVIDUAL INCOME TAX

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

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

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

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

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

019.03 **Credit for Child and Dependent Care Expenses.** A nonrefundable credit for Child and Dependent Care Expenses can be claimed by residents and partial-year residents. The credit is twenty-five per cent of the amount allowed on the federal return under IRC section 21. Taxpayers with AGI of twenty-nine thousand dollars or less can receive the credit under Reg-22-019.11.

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

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

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

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

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

019.05A(2) A taxpayer claiming a CDAA credit must attach to his or her individual tax return a copy of the Statement of Nebraska Tax Credit, Form

1099NTC, received from DED that includes the amount of the credit granted by DED for the contribution made to the community betterment organization.

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

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

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

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

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

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

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

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

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

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

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

019.12 **Nonhighway Use Motor Vehicle Fuel Tax Credit**. For tax years through 2004, a taxpayer is entitled to the nonhighway use motor vehicle fuel credit on an individual income tax

return in an amount determined under Reg-84-001 through Reg-84-006. This credit is refundable.

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

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

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

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

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

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

019.18 ~~**Planned Gift and Contribution**~~ **Nebraska Charitable Endowment Tax Credit**. For tax years beginning on or after January 1, 2006, individuals may claim a nonrefundable credit for a percentage of planned gifts ~~and contributions~~ made to qualified endowments for charitable purposes. ~~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.

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

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

019.18A(2) Pooled income fund trust;

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

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

019.18A(5) Charitable life estate agreement; or

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

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

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

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

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

(Sections 77-2730, 77-2791, and 77-27,188.02, R.R.S 2003, sections 66-4,118, 66-4,128, 77-2716.01, 77-27,188.01, and 77-4105, R.S.Supp. 2004, and sections 13-207, 77-2715.07 77-27,188, 77-27,228 through 77-27,234 R.S.Supp 2005. .)