REG-24-007 CORPORATION INCOME TAX RETURNS: EXTENSIONS OF TIME FOR FILING OR PAYMENT

007.01 Extensions of time for filing. A corporate taxpayer may obtain an automatic extension of seven months for filing its return, provided that Form 7004N is filed on or before the prescribed due date for the return and provided that the amount of tentatively computed tax liability is paid on or before the original due date for filing the corporation income tax return. This extension, however, can be terminated at any time by the Tax Commissioner by a mailing to the taxpayer of a notice of such termination at least ten days prior to the termination date as fixed in the notice. This will allow the corporation taxpayer ten (10) days from the date of the termination notice to file the Nebraska corporate return. If a federal extension of time has been granted, then a state extension will be granted if a copy of the federal application for automatic extension of time to file or the approved federal extension is attached to the Nebraska return when filed.

007.01A Form 7004N should be prepared in duplicate and the original should be filed with the Tax Commissioner.

007.01B Form 7004N must be signed by a person authorized by the corporate taxpayer to do so, and who is either,

007.01B(1) An officer of the corporate taxpayer,

007.01B(2) A person currently enrolled to practice before the Internal Revenue Service, or

007.01B(3) An attorney or certified public accountant qualified to practice before the Internal Revenue Service under 5 U.S.C. 500 ~~(1980)~~ (2008).

007.01C When the time for filing the annual return is extended by the Department of Revenue or because of a federal extension, interest will be imposed at the rate specified in Section 45-104.02, from the due date of the return to the date paid if the tax ultimately assessed exceeds the tentative remittance. The interest is due on the amount by which the tax ultimately assessed exceeds the amount of tentative remittance.

007.01D Affiliated and unitary groups. A corporate taxpayer filing a combined return with the State of Nebraska must request an extension of time listing each corporation to be included in the combined return. The automatic extension (Form 7004N) shall include the name, address, and federal identification number of each corporation to be included in the combined return on the applicable schedule attached to Form 7004N.

007.01D(1) An automatic extension of time granted to the corporate taxpayer will not be applicable to any nonunitary member of an affiliated group filing a separate return with Nebraska.

007.01D(2) Any reference in this regulation to the term corporate taxpayer is intended to apply to any entity which is subject to the corporate income tax.

007.01E Each corporate taxpayer applying for an extension of time to file a return will be sent notice of any denial of such application by the Department of Revenue. ~~the action taken by the Department of Revenue with respect to the application.~~ The notice will be sent to the address specified by the applicant on the extension form. No notice will be sent with respect to approved applications for the extension of time to file a return.

007.02 Extensions of time for payment of tax. There will not be allowed any extension of time for payment of tax for a corporate taxpayer or any other entity which is taxed as a corporation, unless such a request is filed with, and specifically granted, by the Tax Commissioner. Upon request of the taxpayer, the Tax Commissioner may grant a reasonable extension of time for the payment of tax on or before the prescribed due date. Such an extension will be granted only upon a proper showing by the taxpayer that payment of the tax by the prescribed due date will result in undue hardship upon the taxpayer.

007.02A Any request for an extension of time by the taxpayer must be made prior to the prescribed due date for payment of the tax. Any extension granted by the Tax Commissioner for the payment of tax shall not exceed seven (7) months.

007.02B If an extension of time is granted for paying a tax, the Tax Commissioner may require the taxpayer to furnish a bond in any amount not exceeding double the amount of tax due or to furnish other security, approved in advance by the Tax Commissioner, for the payment of the tax on the date prescribed by the extension. If a bond is required, it must be filed with the Tax Commissioner within ten days after notice by the Tax Commissioner that a bond will be required. The bond must comply with the terms of the extension and must be approved by the Tax Commissioner in regard to form and content before it will be accepted as security by the Department of Revenue for the payment of tax.

007.02C If an extension of time for payment of a tax is granted, the tax shall be paid on or before the expiration of the period of the extension, together with interest at the rate specified in Section 45-104.02. Interest will be due on the tax payment from the original date prescribed for payment until the date the payment was actually made, regardless of any extension of time.

007.02D All applications for extension of time for payment of tax must be made to the Tax Commissioner and must contain a complete statement as to the reasons for the request.

(Section 77-2770, R.R.S. 1996. .)

TITLE 316 CHAPTER 24
CORPORATE INCOME TAX

REG-24-055 INCOME NOT SUBJECT TO APPORTIONMENT

055.01 The entire federal taxable income of a unitary business operating both within and without this state is presumed to be subject to apportionment.

055.01A Other than for adjustments required to be made under the Nebraska Revenue Act of 1967, for any income that is claimed to be not subject to apportionment, a corporate taxpayer needs to show by a preponderance of the evidence that the income is not part of the unitary business and that the taxpayer has not claimed that the same income is part of the unitary business and subject to apportionment in another state with substantially the same law on apportionability of income.

055.01B The amount subtracted under this section must not include any amount deducted from federal taxable income under any other section of the Nebraska Revenue Act of 1967. For example: Interest, rents, royalties, and license fees taxed by a foreign country in excess of the maximum federal corporate rates cannot be deducted as allocable nonapportionable income when the same amounts are included in the calculation of the special foreign tax credit deduction.

055.02 There shall be subtracted from federal taxable income any income that the taxpayer has shown is not subject to apportionment under this regulation. The amount subtracted under this paragraph shall be reduced, but not below zero, by a portion of the interest expense as determined under paragraph 055.03 and any expense incurred in the production of the income described in this regulation.

055.03 The interest expense for the reduction required in paragraph 055.02 shall be determined by dividing the taxpayer's average investment in the activities producing the income by the taxpayer's average total assets and multiplying such ratio by the total interest deduction allowed in the computation of federal taxable income.

055.04 For the purposes of this regulation, investment in activities producing the income described in paragraph 055.03 shall mean the tax basis of the assets, both tangible and intangible, that are used in the activities or are the basis of the receipt of the described income.

055.05 Whenever it is necessary to properly reflect the ratio of the average investment in activities producing the income not subject to apportionment to the average total assets, the State Tax Commissioner may permit or require the computation of the averages provided for in this paragraph using amounts from interim balance sheets.

055.06 The taxpayer may use, in lieu of the tax basis for the computation in paragraph 055.04, the amounts from an income statement included with the federal return or as required to be reported to federal or state regulatory agencies if (a) such amounts are not materially different from tax basis, (b) the amount are prepared consistently from year to year, and (c) absent a change in circumstances, the amounts are consistently used by the corporation from year to year. The State Tax Commissioner may require a corporate taxpayer to use the alternative amounts in order to maintain consistency or may require the corporate taxpayer to show that the amounts used do not materially differ from the tax basis.

(Section ~~77-2416(5) and (6),~~ 77-2716(5) and (6), R.S. Supp., 1998, and section 77-2734.06, R.R.S. 1996. .)