NEBRASKA ADMINISTRATIVE CODE

Title 350 - Nebraska Department of Revenue, Property Assessment Division ~~and Taxation~~

Chapter 43 - Nebraska Advantage Act Exempt Personal Property Regulations

Effective Date ~~1/3/07~~

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Title 350-Nebraska Department of Revenue ~~Property Assessment and Taxation~~
Chapter 43-Nebraska Advantage Act Exempt Personal Property Regulations

REG 43-001 PURPOSE

001.01 These regulations govern personal property tax exemptions of certain depreciable tangible personal property as authorized by the Constitution and the Nebraska Advantage Act.

(Neb. Const., Art. VIII, section 2, 1998, and Neb. Rev. Stat. Sections 77-702~~, R.R.S. 2003~~ and ~~Neb. Rev. Stat. Section~~ 77-5725, R.S. Supp., 2007. ~~2006~~)

REG-43-002 DEFINITIONS

002.01 Nebraska adjusted basis shall mean the adjusted basis of depreciable tangible personal property as determined under the Internal Revenue Code of 1986, as amended, as the code exists on the assessment date, increased by the total amount allowed under the code for depreciation or amortization or pursuant to an election to expense depreciable property under Section 179 of the Code, as amended. Generally, this is the original cost of the item of property and includes any cost incurred in purchasing and placing the item in service such as sales or excise taxes, freight charges, and installation and testing charges.

002.01A The Nebraska adjusted basis for depreciable tangible personal property leased by the taxpayer shall be the lessor's Nebraska Adjusted Basis in the property.

002.02 The exempt value of depreciable tangible personal property shall be the net book value of the property.

002.03 Net book value shall be the Nebraska adjusted basis of tangible personal property multiplied by the appropriate Nebraska depreciation factor.

002.04 The Nebraska depreciation factor is the percentage of the Nebraska adjusted basis that is exempt. The following table provides the depreciation factors, based on year acquired and recovery period:

002.04A In the table, the factor shown for year 1 shall be the percentage used for January 1 of the year following the year of acquisition of the property. The factor shown for year two shall be the percentage used January 1 of the second year following the year of acquisition of the property, etc. When

tangible personal property becomes depreciable in a year other than the year it is acquired, it shall be subject to taxation on the first assessment date following the date it became depreciable. The net book depreciation factor for such property shall be based on the year acquired.

NEBRASKA DEPRECIATION FACTORS

Year	Recovery Period (in years)					
	3	5	7	10	15	20
1	75.00	85.00	89.29	92.50	95.00	96.25
2	37.50	59.50	70.16	78.62	85.50	89.03
3	12.50	41.65	55.13	66.83	76.95	82.35
4	0.00	24.99	42.88	56.81	69.25	76.18
5		8.33	30.63	48.07	62.32	70.46
6		0.00	18.38	39.33	56.09	65.18
7			6.13	30.59	50.19	60.29
8			0.00	21.85	44.29	55.77
9				13.11	38.38	51.31
10				4.37	32.48	46.85
11				0.00	26.57	42.38
12					20.67	37.92
13					14.76	33.46
14					8.86	29.00
15					2.95	24.54
16					0.00	20.08
17						15.62
18						11.15
19						6.69
20						2.23
21						0.00

002.05 Recovery period is the period over which the Nebraska adjusted basis of tangible personal property will be depreciated for property tax purposes. The applicable recovery period shall be determined as follows:

002.05A Three-year property shall include property with a class life of four years or less;

002.05B Five-year property shall include property with a class life of more than four years and less than ten years;

002.05C Seven-year property shall include property with a class life of ten years or more but less than 16 years;

002.05D Ten-year property shall include property with a class life of 16 years or more but less than 20 years;

002.05E Fifteen-year property shall include property with a class life of 20 years or more but less than 25 years; and

002.05F Twenty-year property shall include property with a class life of 25 years or more.

002.06 Class life shall be based upon the anticipated useful life of a class of property and shall be determined by the Property Tax Administrator under the Internal Revenue Code, as the code exists on the assessment date. When necessary, the Property Tax Administrator will establish the appropriate class life for a class of property.

002.07 Purchase shall include taking by sale, discount, negotiation, or any other transaction for value creating an interest in property except liens. Purchase shall not include transfers for stock or other ownership interests upon creation, dissolution, or any other income tax-free reorganization of any corporation, partnership, trust, or other entity.

002.08 Date acquired shall be the date the owner acquired the property, except that for property transferred as a gift or devise or as part of a transaction which is not a purchase, the date acquired shall be the acquisition date of the previous owner.

002.09 Greater portion of the calendar year shall mean 50 percent or more of the tax year for which the property is assessed.

002.10 Omitted property shall mean all depreciable tangible personal property which has not been reported to the ~~Property Tax Administrator~~ Tax Commissioner on the Claim for Personal Property Exemption, Form 5725X. Omitted property shall also mean depreciable tangible personal property which was not reported to the county assessor on the personal property return.

002.11 Failure to file shall mean that a taxpayer has failed to timely file a Claim for Personal Property Exemption, Form 5725X.

002.12 Qualified personal property shall mean:

002.12A Depreciable turbine powered aircraft purchased or leased after the application date, except when any such aircraft ~~is~~ was used for fundraising or the transportation of an elected official during the year prior to the tax year for which an exemption is sought.

002.12B Depreciable ~~mainframe business computers~~ computer systems used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user, such as the computers in a data center or consolidated processing activity center, plus certain depreciable peripheral components which require environmental controls of temperature and power connected to such computers.

002.12B(1)(a) Depreciable computer systems ~~mainframe business computers~~ shall mean the hardware and software of a ~~large~~ computer system made up of equipment that is interconnected, with the following characteristics:

002.12B(1)(a)(1) It is capable of executing many programs concurrently;

002.12B(1)(a)(2) It is capable of supporting more than one user ~~multiple users, depending upon the size of the mainframe business computer, ranging from one hundred to several thousand or more~~;

002.12B(1)(a)(3) It off loads the input/output processing to peripheral channels;

002.12B(1)(a)(4) It has multiple ports into memory devices;

002.12B(1)(a)(5) It has subsystems of the system's peripherals that can handle the transaction overhead to free up the central processing unit to do data processing, such as computing balances in customer records, or adding and subtracting amounts from inventory;

002.12B(1)(a)(6) It has additional peripherals designed to detect and correct errors through continuous monitoring for failure; and

002.12B(1)(a)(7) It is highly scalable for expansion by adding processors to systems or by adding systems in clusters.

~~002.12B(1)(b) Depreciable mainframe business computers shall include the Central Processing Unit (CPU), Random Access Memory (RAM), Input/Output (I/O), disk controllers, tape controllers.~~

~~002.12B(1)(c) Depreciable mainframe business computers shall include minicomputers or microcomputers so long as the processing capabilities are the same and the structure of the system is similar to that defined in REG-43-002.12B(1)(a).~~

~~002.12B(1)(d) Depreciable mainframe business computers shall not include personal computers, workstations or terminals.~~

002.12C Depreciable computer peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, and communication controllers. These peripherals shall directly communicate with the central processing unit of the qualifying ~~mainframe business~~ computer system and require environmental controls of temperature, and power.

002.12D Depreciable tangible personal property located in a single project and is involved directly in the manufacture or processing of agricultural products.

002.12E Depreciable tangible personal property used in a distribution facility that is used to store or move products, such as conveyors, forklifts, shelving, storage racks.

002.13 Agricultural products shall mean those products that are grown or raised in an agricultural operation and the products that are further manufactured or processed from such products that are not yet ready for use by the final consumer.

002.14 Environmental controls of temperature and power shall mean that the computer and peripheral components are located in a temperature controlled environment which is capable of being sustained within the manufacturer's specifications, independent from the ambient conditions of the surrounding work area. The power controls must be designed to maintain controlled levels of voltage within the limits prescribed by the manufacturer.

002.15 Application date shall mean the date the application was filed with the Tax Commissioner for the purpose of utilizing the tax incentives under the Nebraska Advantage Act.

002.16 Agreement date shall mean the date of the agreement between the taxpayer and the Tax Commissioner wherein the taxpayer is authorized to use the incentives contained in the Nebraska Advantage Act.

002.17 Form 5725X shall mean a form prescribed by the ~~Property Tax Administrator~~ Tax Commissioner, which is used to claim an exemption from property taxes for qualified depreciable tangible personal property defined in REG-43-002.12.

(Neb. Rev. Stat. Sections 77-104, ~~77-105,~~ 77-118 through 77-120, ~~and 77-702,~~ R.R.S. 2003, ~~and~~ Neb. Rev. Stat. Section~~s~~ 77-202, ~~77-1229 and 77-5725,~~ R.S. Supp., 2006 and Neb. Rev. Stat. Sections 77-105, 77-702, 77-1229 and 77-5725, R.S. Supp., 2007.)

REG-43-003 PROCEDURES

003.01 Taxpayer Filing Responsibilities.

003.01A Any taxpayer who has signed an agreement with the Tax Commissioner under the Nebraska Advantage Act, upon qualifying for the exemption from certain personal property taxes, shall file a Claim for Nebraska Personal Property Exemption, Form 5725X, and any applicable schedules with the ~~Property Tax Administrator~~ Tax Commissioner.

003.01A(1) The taxpayer shall file the Form 5725X and Nebraska Schedule I in order to receive the exemption from personal property tax on turbine powered aircraft. The Form 5725X and supporting schedule may be filed after the agreement date and before meeting the required levels of investment and employment pursuant to the agreement. All turbine powered aircraft used in connection with the project and purchased after the application date may be claimed for exemption in the year following the date of acquisition.

003.01A(2) The taxpayer shall file the Form 5725X and the applicable Nebraska Schedules II, III or IV in order to receive the exemption from personal property tax on depreciable ~~mainframe business computers,~~ computer systems, certain depreciable peripheral components connected to such computer systems ~~computers,~~ depreciable personal property involved directly

with the manufacturing or processing of agricultural products and depreciable personal property in a distribution facility. The Form 5725X and supporting schedules may be filed after meeting the required levels of investment and employment pursuant to the agreement. Such depreciable tangible personal property purchased after the application date may be claimed for exemption in the year following of the year in which the required levels of investment and employment were met.

003.01A(2)(a) Depreciable turbine powered aircraft shall be eligible for exemption for ten years beginning with the next January 1 following the date of acquisition.

003.01A(2)(b) Depreciable ~~mainframe business computers,~~ computer systems, certain depreciable peripheral components connected to such computer systems, ~~computers,~~ depreciable personal property involved directly with the manufacturing or processing of agricultural products and depreciable personal property used to store or move products in a distribution facility shall be eligible for exemption for ten years beginning with the next January 1 following the year the required levels of investment and employment were met.

003.01B In order to receive the property tax exemption allowed pursuant to REG-43-003.01A(2)(a) and 43-003.01A(2)(b), the taxpayer shall annually file a claim for exemption on prescribed forms, with the ~~Property Tax Administrator~~ Property Tax Administrator on or before May 1. Copies of the forms shall also be filed on or before May 1 with the county assessor of each county in which a project is located. Failure to timely file such forms with the ~~Property Tax Administrator~~ Tax Commissioner, shall constitute a waiver of the exemption for that year.

003.01B(1) A separate claim for exemption must be filed for each project and in each county in which the property is claimed to be exempt.

003.01B(2) Each item of personal property for which an exemption is sought shall be listed on the appropriate forms.

003.01B(3) Each item of personal property acquired for a particular project shall be listed on the Form 5725X and supporting schedules for that project.

003.01B(4) All supporting schedules shall be completed using the information and table provided in REG-43-002.

003.01C No extension in time shall be granted for filing the Form 5725X and supporting schedules. The Form 5725X and supporting schedules shall be considered filed on time if correctly completed, signed, and postmarked by the U.S. Post Office on or before May 1. If May 1 falls on a Saturday, Sunday, or legal holiday, the next business day shall be the final filing date.

003.01D No amendments to the Form 5725X and supporting schedules shall be allowed for omitted property not reported by May 1. All amendments to the Form 5725X and supporting schedules shall be filed on or before May 1.

003.01E There shall be no changes made in the prescribed forms issued by the ~~Property Tax Administrator~~ Tax Commissioner without first obtaining written permission for such changes from the ~~Property Tax Administrator~~ Tax Commissioner. Changes include, but are not limited to, copy arrangements, spacing, color of ink and order or sort of date. The foregoing does not apply to typeface unless the alteration of the typeface alters the spacing.

003.01F The taxpayer shall on or before May 1, file a personal property return with the assessor for all taxable tangible personal property in a project. See, Personal Property Regulations, Chapter 20. The taxpayer shall on or before May 1, also file the Form 5725X and supporting schedules with the county assessor showing the items of tangible personal property for which an exemption is being claimed. The tangible personal property claimed for exemption shall not be listed or commingled with the taxable tangible personal property on the personal property return.

003.02 ~~Property Tax Administrator's~~ Tax Commissioner's Powers and Duties.

003.02A The contents of any application for benefits filed with the Department of Revenue and all supporting information shall be confidential, except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by Neb. Rev. Stat. Sections 77-5731 and 77-5734.

~~003.02A(1) The Property Tax Administrator and his or her designee shall have access to the applications and such other records of the Department of Revenue as necessary in order to determine the qualification of property for exemption. The confidentiality of the applications and~~

~~supporting information shall be preserved by the Property Tax Administrator and his or her designee.~~

003.02B The ~~Property Tax Administrator~~ Tax Commissioner shall determine the qualification of each item claimed for exemption on the Form 5725X and supporting schedules. For purposes of determining the eligibility of items of depreciable tangible personal property for exemption, the ~~Property Tax Administrator~~ Tax Commissioner is limited to the question of whether the personal property claimed on the Form 5725X and supporting schedules falls within the classes of qualified property pursuant to REG-43-002.12.

003.02B(1) The determination of whether a taxpayer is eligible to obtain exemption for personal property based upon meeting the required levels of investment and employment is the responsibility of the Tax Commissioner.

003.02C The ~~Property Tax Administrator~~ Tax Commissioner shall, on or before August 10, certify to the taxpayer and to the affected assessor his or her determination as to the approval or denial of the exemption for the various items of personal property submitted by the taxpayer on the Form 5725X and supporting schedules. The notice of determination shall be sent to the taxpayer and assessor by certified mail with a return receipt.

003.02D In determining the qualification of property for exemption, the ~~Property Tax Administrator~~ Tax Commissioner or his or her duly authorized representative may administer oaths, compel the attendance of witnesses, and require the production of records as may be necessary for the performance of his or her responsibilities.

003.02E In order to determine the qualification of property for exemption, the ~~Property Tax Administrator~~ Tax Commissioner or his or her duly authorized representative may make an investigation, examination, and inspection of the property at the location of the project as set out in the taxpayer's claim.

~~003.02F The Property Tax Administrator may request the Attorney General or any county attorney to institute proceedings against the officers or agents of a corporation for failure to comply with or for neglect to comply with the provisions of any property tax law administered by or subject to the administrative jurisdiction of the Department of Property Assessment and Taxation.~~

003.03 Assessor's Responsibilities

003.03A Upon receiving the notice of determination from the Tax Commissioner ~~Property Tax Administrator~~ the assessor shall immediately adjust the taxable value on the personal property tax return filed pursuant to REG-43-003.01F, to reflect each item of tangible personal property disapproved for exemption.

003.03A(1) If it is discovered that personal property which was reported on the Form 5725X and supporting schedules was denied an exemption by the Tax Commissioner ~~Property Tax Administrator~~, such property shall be treated as reported personal property and not subject to the applicable penalties pursuant to REG 20-003.05

003.03B If after May 1, it is discovered that personal property was not reported on either the personal property return of the taxpayer or the Form 5725X and supporting schedules, such property shall then be treated as unreported taxable tangible personal property and subject to the applicable penalties pursuant to REG-20-003.05.

003.04 Appeals

003.04A The taxpayer, assessor, or any affected person may appeal the action taken by the ~~Property Tax Administrator~~ Tax Commissioner in the approval or denial of the exemption of personal property pursuant to REG-43-003.02B.

003.04A(1) All appeals shall be filed with the Tax Commissioner ~~Property Tax Administrator~~ within 30 days after the date of the notice of determination and pursuant to the Practice and Procedure Regulation, Chapter 90.

003.04A(2) Upon ten days notice to the taxpayer, assessor, or affected person, the ~~Property Tax Administrator~~ Tax Commissioner shall set a date for hearing the appeal. The ~~Property Tax Administrator~~ Tax Commissioner shall make his or her determination on the appeal within 30 days after the hearing date. The ~~Property Tax Administrator~~ Tax Commissioner shall within seven days after the date of his or her determination of the appeal, send written notice of such determination to the taxpayer, assessor, or affected person.

003.04A(3) Appeal of the ~~Property Tax Administrator's~~ Tax Commissioner's determination may be taken within 30 days after the mailing date of the notice, to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. Section 77-5013.

(Neb. Rev. Stat. Sections ~~77-702, 77-706 through 77-708,~~ 77-707, R.R.S. 2003 ~~and~~ Neb. Rev. Stat. Sections ~~77-5007,~~ 77-5013, ~~77-5725 and 84-712.05,~~ R.S. Supp., 2006 and Neb. Rev. Stat. Sections ,77-702, 77-706, 77-708, 77-5007, 77-5725 and 84, 712.05, R.S. Supp., 2007.)