



**SPECIAL CAPITAL GAINS/EXTRAORDINARY DIVIDEND
ELECTION AND COMPUTATION**

FORM 4797N

2010

• Attach this page to Form 1040N or Form 1041N.

Name as Shown on Form 1040N or Form 1041N	Social Security Number
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Name of person making the election or who previously made the election if different than above. (If no election has been made previously, go to Part I.)	Year the Election Was Made	Social Security Number
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Name of the corporation issuing the capital stock. If different than the name previously provided on the election, explain.

Description of the capital stock:

Name of the employee who originally acquired the capital stock if different from the name as shown on Form 1040N:	Social Security Number
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Period of time during which the employee was employed by the corporation from: _____ to: _____ Month/Day/Year Month/Day/Year	Period of time during which the capital stock was acquired by the employee from: _____ to: _____ Month/Day/Year Month/Day/Year
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If the capital stock was not acquired while employed, explain why the capital stock was acquired "on account of employment."

If you are not the employee, go to Part III.

EXCLUSION COMPUTATION

CAPITAL GAINS EXCLUSION COMPUTATION

1 Sales price of the capital stock (attach Federal Schedule D and other federal documentation)	1		
2 Cost or other basis in capital stock	2		
3 Capital gains on sales of capital stock during this year (line 1 minus line 2).	3		
4 Capital gains exclusion deferred from a prior year.	4		
5 Total capital gains available for exclusion (line 3 from all forms plus line 4)	5		
6 Limitation on capital gains exclusion (see instructions).	6		
7 Allowable capital gains (smaller of line 5 or line 6).	7		
8 Capital gains exclusion deferred to next year (line 5 minus line 7)	8		

EXTRAORDINARY DIVIDEND EXCLUSION COMPUTATION

9 Enter the fair market value of the capital stock on the date the dividend was declared.	9		
10 Enter the amount of the dividend received. Attach Federal Schedule B	10		

TOTAL EXCLUSION

11 Total extraordinary dividends available for exclusion (line 11 from all forms) Divide line 10 by line 9. If result is greater than .20, enter the amount from line 10 on line 11. If the result is equal to or less than .20, enter zero (-0-) on line 11	11		
12 Allowable exclusion (line 7 plus line 11). Enter here and on line 54, Nebraska Schedule I. Partial-year residents – do not include this amount on line 66, Schedule III, Form 1040N.	12		

• Complete this part to make the Special Capital Gains/Extraordinary Dividend Election.

Name of the Employee Who Originally Acquired the Capital Stock	Employee's Social Security Number
Name of the Person Making the Election (If not the employee, complete Part II.)	Social Security Number

1 Has a previous special capital gains/extraordinary dividend election been made either by or on behalf of the employee?

- YES **STOP.** Only one election is available for an employee (see instructions).
 NO Continue.

2 Name of the corporation issuing the capital stock:

3 Description of the capital stock:

4 Has this corporation conducted business in Nebraska for at least three years before the first sale or exchange of capital stock or declaration of extraordinary dividend?

- YES Continue.
 NO **STOP.** The corporation does not qualify for the election.

5 Was the corporation a publicly traded corporation?

- YES Skip to signature.
 NO Continue.

6 How many shareholders did the corporation have at the time of the first sale or exchange of capital stock or declaration of extraordinary dividend?

- Less than 5 **STOP.** The corporation does not qualify for the election.
 5 or More Continue.

7 Did a shareholder, or group of related shareholders, hold more than 90% of the capital stock at the time of the first sale or exchange of stock or declaration of extraordinary dividend?

- YES **STOP.** The corporation does not qualify for the election.
 NO Continue to signature.

I hereby elect to receive the special capital gains/extraordinary dividend treatment provided under [Neb. Rev. Stat. § 77-2715.09](#), and declare under penalties of perjury that to the best of my knowledge and belief, the capital stock described above qualifies for the special capital gains/extraordinary dividend election.

**sign
here** ▶

Signature of Employee, Surviving Spouse, or Descendant Making this Election

Date

To claim an exclusion in this tax year, complete page 1. If you are filing solely to make an election, attach this form to Form 1040N.

Name as Shown on Form 1040N or Form 1041N

Social Security Number

PART II — NON-EMPLOYEE SPECIAL CAPITAL GAINS QUALIFICATION

DETERMINE IF YOU QUALIFY TO MAKE THE ELECTION

1 What is your relationship to the employee?

- Spouse Descendant (Oldest child or grandchild) Other **STOP.** You do not qualify to make the election.

2 Is the employee still living?

- YES **STOP.** Only the employee can make the election.
 NO Continue.

3 Was the employee married on the date of the employee's death AND is the spouse still living?

- YES If you are the Spouse, go to Part I to make the election. All others **STOP.**
 NO Continue.

4 Are you the **oldest** surviving descendant, e.g., child, grandchild?

- YES You may make the election (**Go to Part I to make the election.**)
 NO **STOP.** You do not qualify to make the election.

PART III — DETERMINE IF THE CAPITAL STOCK QUALIFIES

1 What is your relationship to the employee?

- Spouse Descendant Trust

2 Was the capital stock a gift from the employee? (Note: Inherited stock is not a gift and does not qualify.)

- YES **If you are the Spouse, go to the next question. If you represent the trust, skip to Question 4.** If you are a descendant, complete the EXCLUSION COMPUTATION on page 1.
 NO **STOP.** The capital stock does not qualify.

3 If you are a qualified spouse, were you married to the employee on the date of the sale of the capital stock or the date the dividend was declared?

- YES **Complete the EXCLUSION COMPUTATION on page 1.**
 NO **STOP.** The capital stock does not qualify.

4 If a trust is claiming the exclusion, are all the beneficiaries either the spouse or descendant of the employee?

- YES **Complete the EXCLUSION COMPUTATION on page 1.**
 NO **STOP.** The capital stock does not qualify.

GENERAL INSTRUCTIONS

HOW TO COMPLETE THIS FORM

To exclude income if an election has previously been made:

Employee, complete Page 1.

If you are not the employee, complete Part III and also Page 1.

To make an election and exclude income:

Employee, complete Part I and Page 1.

If you are not the employee, complete Parts I, II, III, and also Page 1.

To make an election without excluding any income:

Employee, complete Part I.

If you are not the employee, complete Parts I and II.

TERMS

CAPITAL STOCK is common or preferred stock and may be either voting or nonvoting. Capital stock does not include stock rights, stock warrants, stock options, debt securities, or cash distributions from employee stock ownership plans.

DESCENDANT is a direct descendant of the employee, e.g., child or grandchild.

EMPLOYEE is the individual who is or was employed by a qualified corporation and who obtained the capital stock either: (1) because of employment by the qualified corporation; or (2) while employed by the qualified corporation.

EXTRAORDINARY DIVIDEND is any dividend that is more than 20% of the fair market value of the related stock on the date the dividend is declared.

NON-QUALIFIED STOCK is stock that does not qualify for the exclusion because it was received:

1. Through the creation or purchase of a corporation by an investor who is not an employee,
2. For services performed for a corporation by a non-employee, or
3. Stock that was inherited or transferred through a testamentary trust.

QUALIFIED CORPORATION is any corporation which (at the time of the first sale or exchange of capital stock or declaration of extraordinary dividend on capital stock for which the election is made):

1. Has been in existence and actively doing business in Nebraska for at least three years;
2. Has at least five shareholders; and
3. Has at least two shareholders or groups of shareholders who are not related to each other and each own at least 10% of the stock.

THE EXCLUSION

Once the election is made, the following transactions by a **resident**, or by a **partial-year resident** while a resident, qualify for the income exclusion:

1. Future sales and exchanges of the qualifying stock in any taxable year.
2. Sales and exchanges of stock owned by a spouse or descendant received as a gift, including a gift in trust from the employee during his or her lifetime.

QUALIFYING CAPITAL STOCK. To exclude income from the sale or exchange of capital stock of a corporation, it is necessary to determine if the specific shares that were sold or exchanged qualify for the exclusion. To qualify, the shares must have been acquired either while the employee was employed by the corporation, or on account of employment.

Shares acquired while an employee can be either shares received from the corporation as compensation, for retirement purposes, or acquired on the open market. If the shares were not acquired while employed, they must have been acquired on account of employment. For the shares to have been acquired on account of employment, the employee must have received a vested right to the shares from the corporation while employed. An option from the employer that is considered to be compensation that can be exercised without any additional payment would be on account of employment.

Income from the sale or exchange of capital stock owned by the spouse or descendant will only qualify for the exclusion if the employee could have taken the exclusion for the same shares if the employee still owned them. To qualify, shares owned by the spouse or descendant must have been received as a gift from the employee while the employee was alive. Any shares that are inherited or received because of the death of the employee, such as a testamentary trust, do not qualify for the exclusion.

OTHER CORPORATIONS. The election will also apply to the capital stock of other corporations that are related to the elected corporation, such as a parent or subsidiary. Brother-sister corporations do not qualify under the same election. The election will also apply to the capital stock of a corporation that was a party to a tax-free reorganization with the elected corporation that occurred during or after the employee was employed by the elected corporation. If the name of the corporation is not the same as the name on the election, include an explanation of how the named corporation is a qualified corporation.

PAGE I — GENERAL INSTRUCTIONS

MULTIPLE SALES OF CAPITAL STOCK FROM ONE EMPLOYEE. When multiple sales of capital stock from one employee were made during the tax year, combine all sales onto a single Page 1 to determine the exclusion.

SALES OF CAPITAL STOCK FROM MORE THAN ONE EMPLOYEE. When multiple sales of capital stock from more than one employee were made during the tax year, whether capital stock is from a spouse filing a joint return or the capital stock was gifted, complete a separate Page 1 for each employee's capital stock. The separate Page 1s must be completed through line 3. Then, consolidate the amounts on lines 4 through 8 on a single Page 1.

MULTIPLE EXTRAORDINARY DIVIDENDS. One extraordinary dividend may be included on the same Page 1 if it is from capital stock from the same employee. A separate Page 1 is required for each additional extraordinary dividend declared during the year.

SPECIFIC INSTRUCTIONS

NAME OF PERSON MAKING ELECTION. If the election is being made on this return, enter the phrase "See Part I." If an election was previously made, attach a copy of the Form 4797N where the election was previously made either by you or the qualified person.

NAME OF THE CORPORATION ISSUING THE CAPITAL STOCK. Enter the name of the corporation that issued the capital stock. If capital stock issued by more than one corporation is included under the same election, list the names of all corporations.

If the name of the corporation which issued the stock is different than the corporation name appearing on line 4 of the Part I election, attach an explanation as to how the corporations are related, and why the gain or dividend being excluded qualifies for the income exclusion.

DESCRIPTION OF THE CAPITAL STOCK. Enter the description of the capital stock. For example, "100 shares of seven percent preferred voting stock."

IF THE CAPITAL STOCK WAS NOT ACQUIRED WHILE EMPLOYED. If the date the capital stock was acquired is not during employment dates, attach an explanation of how the capital stock was acquired because of either employment or while employed by the corporation.

LINE 1, Sales Price of the Stock. Enter the sales price of the capital stock as shown on the Federal Schedule D. If a broker advised that the gross proceeds (gross sales price) less commission and option premium were reported to the Internal Revenue Service, enter the net amount on line 1. Do not include the commission and option premium on line 2.

LINE 2, Cost or Other Basis in Stock. In general, the "cost or other basis" is the cost of the capital stock as shown on the Federal Schedule D. If cash cost was not used as a basis, attach an explanation of your basis.

When selling capital stock, adjust your basis by subtracting all the nontaxable distributions received before the sale. Also, adjust the basis for any stock splits.

Increase the basis by any expenses of sale such as broker's fees, commissions, and option premiums before making an entry on line 2, unless net sales price was reported on line 1.

LINE 3 Enter the amount of the capital gains on qualifying capital stock transactions this year.

1. Distributions considered ordinary income or reported on Form W-2, and not on Schedule D, do not qualify.
2. Losses on the qualifying capital stock must be netted against gains on the qualifying capital stock to determine the amount to enter on line 3.

LINE 4. Enter the amount of the qualified capital gain on transactions in prior years that was carried forward.

LINE 6. If line 13, Federal Form 1040, or line 4, Federal Form 1041, is a capital gain, add that amount to \$3,000 (\$1,500 if married, filing separately). Enter the result on line 6 of this form. If the amount is a capital loss, enter \$3,000 (\$1,500 if married, filing separately) less the amount of the loss.

CAUTION – The amount on line 6 of this form cannot be:

1. Less than zero; or
2. Greater than Tax Table Income, line 14 from Form 1040N, without the exclusion.

LINE 8. If line 5 is greater than line 7 on this form, subtract line 7 from line 5. This is the qualified gain that may be carried over and excluded in future years. If line 5 is less than line 7, enter zero (-0-).

LINE 9. Enter the fair market value of the capital stock on the dividend declaration date.

LINE 10. Enter the amount of the dividend received. Do not include any distribution or the portion of a distribution that is not treated as a dividend on the federal return, such as a return of capital.

LINE 11. For the extraordinary dividend exclusion to be eligible, the dividend must be greater than 20% of the fair market value of the capital stock on the dividend declaration date. If more than one extraordinary dividend was received, complete a separate Page 1 for each dividend. Compute the percentage separately for each dividend and add all of the line 11 amounts on a single Page 1.

PART I – INSTRUCTIONS

Part I is only to be completed if an election has never been made for the employee who originally received the stock. If a previous election has been made for the employee, that is the only election allowed.

THE ELECTION

This election may be made for the capital stock of one corporation. The election may only be made once for an individual and once made, the election may not be changed. The election may be made even if there is no sale or exchange of stock, or no extraordinary dividend is received. Each spouse may make their own election and it may be for a different corporation.

If you are not the employee, use Part II to determine if you qualify to make the election.

Once the election is made for an employee, that election will apply to sales or exchanges of capital stock of the selected corporation for the employee, the spouse, or descendants. The spouse or descendant must attach a copy of the completed election for the exclusion to apply.

LINE 5. Publicly-traded corporations meet the ownership requirements and lines 6 and 7 do not have to be completed.

LINE 6. The corporation must have at least five shareholders in order to be a qualified corporation.

LINE 7. The qualified corporation must have some unrelated shareholders. If a group of shareholders who are related to each other directly or by marriage, hold more than 90% of the shares of the stock, the company is too closely held to qualify.

Two persons will be considered to be related when they are direct ancestors or direct descendants of each other, or are married to the direct ancestor or direct descendant, or when the other person is the brother, sister, aunt, uncle, cousin, niece, or nephew of the other person.

In determining the amount of stock owned by an individual or a member of the group, a person is considered to own the capital stock they directly own, and the stock that is considered to be owned by a related person.

PART II –INSTRUCTIONS

Part II is only to be completed when an election has not been previously made, and a person other than the employee needs to make the election. If the employee is alive, then only the employee can make the election. If the employee died without making the election, the surviving spouse may make the election provided the election could have been made by the employee.

A surviving spouse is a spouse who was married to the employee on the date of the employee's death.

If there is no surviving spouse, then the oldest living descendant may make the election.

PART III –INSTRUCTIONS

Part III is only completed when a person other than the employee wants to exclude income from the sale or exchange of qualifying capital stock, or an extraordinary dividend. The election applies to sales or exchanges of qualifying capital stock when made by the spouse or descendants of the employee.

LINE 2. All capital stock owned by the spouse or descendants must have been received from the employee by gift. Any shares that are inherited, or that were transferred as a result of the death of the employee are ineligible for the exclusion.

LINE 3. The spouse must have been married to the employee at the time of the sale of the capital stock, whether or not married at the time the return is filed, or the date of death of the employee, if deceased.

LINE 4. Shares held by a trust for the benefit of the spouse or descendants qualify for the exclusion if the exclusion would have applied to shares owned directly by the spouse or descendants at the time of the sale, and if the rights to the shares in the trust were not changed by the death of the employee. When a trust is claiming the exclusion, please contact the Department for specific instructions.