



# Special Capital Gains Election and Computation

FORM 4797N **43**

**1997**

- Attach a copy of Federal Schedule D or other appropriate federal documentation
- Attach this page to Form 1040N or 1041N

Your Name as Shown on Form 1040N

Social Security Number

### READ THIS BEFORE YOU BEGIN:

Complete PART I if an election has not been previously made and you are qualified to make the special capital gains election for the qualified stock. Those qualified to make the election primarily are employees, but may include a surviving spouse or oldest issue (e.g., child, grandchild). **If you are not the employee, FIRST COMPLETE PART III on the reverse side of this form to determine if you are qualified to make the initial election.** PART II computes the income exclusion and is completed only after a proper election has been made.

### PART I ELECTION — Complete this part to make the Special Capital Gains Election

Name of Employee Who Originally Acquired the Stock

Employee's Social Security Number

1 Has employee (or another qualified individual on behalf of the employee) made a previous special capital gains election?

YES  NO

If Yes, do not complete the remainder of Part I. Instead, attach a copy of the previous election (Form 4797N), and enter year election was made \_\_\_\_\_. If No, complete Part I to make the election.

2 Complete the following statement by checking the applicable box:

I am the:  Employee  Surviving Spouse  Oldest Issue

If you checked Employee, you qualify to make the election. If you checked Surviving Spouse or Oldest Issue, you must complete Part III to see if you qualify to make the election (see instructions).

3 Was the stock acquired by the employee because of employment by the issuing corporation or while employed by the issuing corporation?

YES  NO

4 Name of Corporation Issuing Stock for Which This Election is Made:

5 Description of the Stock

6 Has the corporation which issued the stock conducted business in Nebraska for three years immediately preceding the time of the first sales or exchange?

YES  NO

7 Was the corporation a publicly traded corporation?

YES  NO

If No, answer questions 8 and 9.

8 If you answered No to question 7, how many shareholders did the corporation have at the time of the first sale or exchange of stock?

9 If you answered No to question 7, did a shareholder or group of related shareholders hold more than 90% of the stock at the time of the first sale or exchange of stock?

YES  NO

I hereby elect to receive the special capital gains treatment provided under Section 77-2715.09, R.R.S. 1943, 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 election.

**sign here**

Signature of Employee, Surviving Spouse, or Oldest Issue Making this Election

Date

### PART I — INSTRUCTIONS

This irrevocable one-time election may be made by any full-year resident individual who acquired the capital stock of a qualified corporation either on account of employment by the corporation or while employed by the corporation. Partial-year residents may also make the election to claim the income exclusion, if they sell the stock while living in Nebraska.

If the employee died without making the election, the surviving spouse or, if no surviving spouse, the oldest surviving issue (e.g., child,

grandchild) may make the election if the election could have been made by the employee.

Part III sets out the criteria to be met for a proper election when the individual making the election is not the employee.

An individual making this special capital gains election must complete Part I of Form 4797N, and attach it to his or her Nebraska Individual Income Tax Return, Form 1040N.

### PART II INCOME EXCLUSION — Complete this part to compute the Income Exclusion

This part is to be completed if you are claiming an exclusion from income for Nebraska purposes because of the sale of qualified stock for which an election has previously been made or is being made in Part I of this form.

**If you are the spouse or issue of the employee or a trust for the benefit of the spouse or issue and received the qualified stock as a gift from the employee, FIRST COMPLETE PART III on the reverse side of this form to determine if the sale of stock qualifies for the income exclusion. CAUTION: If you are not the employee, you must have received the stock as a gift from the employee in order for it to qualify.**

Name of Stock Owner at Time of Sale or Exchange

If not employee, was the stock a gift from employee?

YES  NO If No, STOP, you do not qualify for the election.

1 Name of Corporation Issuing Stock

2 Description of Stock

3 Name of Employee Who Originally Acquired Stock

4 Employed by the Qualified Corporation

from: \_\_\_\_\_ to: \_\_\_\_\_  
Month/Day/Year Month/Day/Year

5 Date Stock Acquired by Employee

from: \_\_\_\_\_ to: \_\_\_\_\_  
Month/Day/Year Month/Day/Year

6 Your Relationship to Employee

7 The election to designate stock for the income exclusion was made by (see instructions):

\_\_\_\_\_ on \_\_\_\_\_  
Name of Person Making the Election or Who Previously Made the Election Month Year

8 Sale price of stock (attach Federal Schedule D and other appropriate federal documentation) .....	8		
9 Cost or other basis in stock .....	9		
10 Capital gain on sale of stock during this year (line 8 minus line 9) .....	10		
11 Capital gain exclusion not taken in prior year .....	11		
12 Total capital gain available for exclusion (line 10 plus line 11) .....	12		
13 Limitation on capital gains exclusion (see instructions) .....	13		
14 Allowable capital gains exclusion (smaller of line 12 or line 13). Enter here and on line 42, Sch. I, Form 1040N or line 7, Form 1041N .....	14		
15 Capital gains exclusion deferred to next year (line 12 minus line 14) .....	15		

## INSTRUCTIONS

## DEFINITIONS

**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.

**Stock received through the creation or purchase of a corporation by an investor who is not also an employee, or for services performed for a corporation by a non-employee does not qualify for this election. Stock that was inherited or transferred through a testamentary trust does not qualify for this election.**

**QUALIFIED CORPORATION** is any corporation which, at the time of the first sale or exchange for which the election is made, has been in existence and actively doing business in Nebraska for at least three years. At that time, the corporation must either (1) have at least five shareholders with at least two shareholders or groups of shareholders who are not related to each other and each of which owns at least ten percent of the capital stock, or (2) be a publicly traded corporation.

**EMPLOYEE** is the individual who acquired the capital stock of a qualified corporation either (1) because of employment by the corporation, or (2) while employed by the corporation.

**Once the election has been made,** (1) subsequent sales and exchanges of the qualifying stock in any taxable year and (2) sales and exchanges of stock owned by a spouse or issue received as a gift, including a gift in trust, from the employee, qualify for the income exclusion. However, the gain on the sale of stock owned by other trusts, partnerships, or other entities cannot be excluded even though it is reported on the employee's return.

**MAXIMUM EXCLUSION.** The amount to be excluded cannot exceed the amount of the gain included in your adjusted gross income.

## PART II — INSTRUCTIONS

## SPECIAL INSTRUCTIONS

If a joint return is being filed and both spouses are reporting a special capital gains exclusion, file a separate Form 4797N for each spouse and complete all appropriate lines through Part II, line 7. Complete lines 8 through 15 on only one of the Forms 4797 using the combined information for both spouses. On the other Form 4797 write, "Exclusion calculation on other form".

## PART III — If you are not the employee, complete this part to see if you qualify to make the Election and claim the Income Exclusion

## INSTRUCTIONS

Start with Question #1. Follow the directions provided by the questions. Answer **only** the questions indicated by the directions. You will not have to answer all of the questions. If the Part III questions do not pertain to your particular situation, contact the Nebraska Department of Revenue for assistance in determining your qualifications for the special capital gains election. If a trust, the beneficiary(ies) must answer the questions.

1 Has the employee previously made a special capital gains election for this stock?  YES  NO

If Yes, answer Question 2. If No, answer Question 4.

2 Relationship to employee (check only one):

Spouse  Child or Other Issue, e.g., grandchild

If Spouse, answer Question 3. **If Child or Other Issue, STOP HERE.**

You qualify for the income exclusion. Complete Part II and include a copy of the 4797N which has previously been filed by employee.

3 Were you married to the employee on the date of sale or exchange of the stock?  YES  NO

**STOP HERE.** If Yes, you qualify for the income exclusion. Complete Part II and include a copy of the 4797N which has previously been filed by the employee.

If No, you do not qualify for the election. Do not answer the remaining questions and do not complete Part I or Part II.

4 Is the employee still living?  YES  NO

**If Yes, STOP HERE.** You do not qualify for the election. Do not answer the remaining questions and do not complete Part I or Part II.

If No, answer Question 5.

5 Relationship to employee (check only one):

Spouse  Child or Other Issue, e.g., grandchild

If Spouse, answer Question 6. If Child or Other Issue, answer Question 7.

6 Were you married to the employee on the date of sale or exchange of stock or on the date of the employee's death, whichever is earlier?  YES  NO

**STOP HERE.** If Yes, you may make the election by completing Part I; then complete Part II. If No, you do not qualify for the election. Do not answer the remaining questions and do not complete Part I or Part II.

**LINE 2.** Enter the description of the capital stock. For example, "100 shares of seven percent preferred voting stock."

**LINE 7.** If the election is properly being made on this return, enter the phrase "See Part I." If an election was previously made, attach a copy of the Form 4797N upon which the election was previously made either by you or the qualified person.

**LINE 8.** Enter the sales price of the stock as shown on your Federal Schedule D (or Form 1099-B). If a broker advised you 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 8 and do not include the commission and option premium on line 9.

**LINE 9.** In general, the cost or other basis is the cost of the stock as shown on your Federal Schedule D. If you do not use cash cost as a basis, attach an explanation of your basis.

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

Increase your basis by any expenses of sale such as a broker's fee, commission, and option premium before making an entry on line 9, unless you reported net sales price on line 8.

**LINE 10.** Enter the amount of the capital gain on qualified stock transactions this year. Losses on the sale of qualifying stock must be netted against gains to determine the amount of capital gain to report on line 10.

**LINE 11.** Enter the amount of the qualified gain on transactions in prior years that has been carried forward.

**LINE 13.** 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 separate) and enter on line 13 of this form. If line 13, Federal Form 1040 or line 4, Form 1041, is a capital loss, enter \$3,000 (\$1,500 if married filing separate) reduced by the amount of that loss. This amount cannot be less than zero.

**LINE 15.** If line 12 is larger than line 14, subtract line 14 from line 12. This is the amount of qualified gain that may be carried over and excluded in future years. Otherwise, enter -0-.

**Attach a copy of your Federal Schedule D, or other appropriate federal documentation. If the gain results from an installment sale, you must attach a copy of Federal Form 6252.**

7 Did the employee's spouse make the special capital gains election?  YES  NO

**If Yes, STOP HERE.** You qualify for the income exclusion. Complete Part II and include a copy of the 4797N which has previously been filed by the employee's spouse.

If No, answer Question 8.

8 Is the employee's spouse still living?  YES  NO

**If Yes, STOP HERE.** You do not qualify for the election. Do not answer the remaining question and do not complete Part I or Part II.

If No, answer Question 9.

9 Are you the **oldest** surviving issue, e.g., child, grandchild?  YES  NO

**If Yes, STOP HERE.** You may make the election by completing Part I; then complete Part II.

If No, answer Question 10.

10 Did the employee's **oldest** surviving issue previously make the special capital gains election?  YES  NO

**STOP HERE.** If Yes, you qualify for the income exclusion. Complete Part II, and include a copy of 4797N which has previously been filed by the employee's oldest surviving issue.

If No, you do not qualify for the election. Do not complete Part I or Part II.