

NEBRASKA DEPARTMENT OF REVENUE

**Repeal Redundant Regulations Governing Corporation Income
Taxes**

Title 316, Neb. Admin. Code Ch. 24 §§ 24-40, 49, 55, 59, and 62 are repealed outright.

REG-24-024 PROPERTY FACTOR: IN GENERAL

024.01 The property factor of the apportionment formula shall include all real and tangible personal property owned or rented and used during the tax period. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

024.02 Property used in connection with the production of income that is not subject to apportionment shall be excluded from the property factor.

024.03 The property factor shall reflect the average value of property includable in the factor. See Reg-24-027.

(Sections 77-2901, Article IV, 9., R.R.S. 1943 and 2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-025 PROPERTY FACTOR: PROPERTY USED

025.01 Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used. If the property is partially used while under construction, the value of the property to the extent used shall be included in the property factor. Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

(Sections 77-2901, Article IV, 10., R.R.S. 1943 and 2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-026 PROPERTY FACTOR: CONSISTENCY IN REPORTING

026.01 In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

026.02 If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Sections 77-2734.04 to 77-2734.15, R.S.Supp., 1984 and Section 77-2901, Article IV, are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return of this state the nature and extent of the variance.

(Sections 77-2774, R.R.S. 1943 and 77-2734.09 through 77-2734.11, R.S.Supp., 1984. December 4, 1984.)

REG-24-027 PROPERTY FACTOR: NUMERATOR

027.01 The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or leased electronic equipment which is located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(Sections 77-2901, Article IV, 10., R.R.S. 1943 and 2734.12, R.S.Supp., 1984. December 4, 1984.)

REG-24-028 PROPERTY FACTOR: VALUATION OF OWNED PROPERTY

028.01 Property owned shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

028.02 Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

~~028.03 Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.~~

~~(Sections 77-2901, Article IV, 11., R.R.S. 1943 and 77-2734.12, R.S.Supp., 1984. December 4, 1984.)~~

~~REG-24-029 PROPERTY FACTOR: VALUATION OF RENTED PROPERTY~~

~~029.01 Property rented is valued at eight times its net annual rental rate. The net annual rental rate for any items of rented property is the annual rental rate paid for such property. Subrents are not deducted when the subrents constitute apportionable income.~~

~~029.02 "Annual rental rate" is the amount paid as rental for property for a 12 month period (i.e., the amount of the annual rent). Where property is rented for less than a 12 month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.~~

~~029.03 "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, for the use of the property and includes:~~

~~029.03A Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.~~

~~029.03B Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative value of the rent and other items.~~

~~"Annual rent" does not include incidental day to day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.~~

~~029.04 Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.~~

~~(Sections 77-2901, Article IV, 11., R.R.S. 1943 and 77-2734.12, R.S.Supp., 1984. December 4, 1984.)~~

~~REG-24-030 PROPERTY FACTOR: AVERAGING PROPERTY VALUES~~

~~030.01 As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Tax Commissioner may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the property for the tax period.~~

~~030.02 Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.~~

~~030.03 Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in Reg-24-019.~~

~~(Sections 77-2901, Article IV, 12, R.R.S. 1943 and 77-2734.12, R.S.Supp., 1984. December 4, 1984.)~~

~~REG-24-031 PAYROLL FACTOR: IN GENERAL~~

~~031.01 The payroll factor of the apportionment formula shall include the total amount paid in the regular course of the trade or business for compensation during the tax period.~~

~~031.02 The total amount "paid" to employees is determined by the accounting method used. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes.~~

~~031.03 The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of the board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the Internal Revenue Code.~~

~~031.04 The term "employee" means (a) any officer of a corporation or (b) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are~~

included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common-law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this regulation.

031.05 In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

031.06 If the returns or reports filed with all states to which the unitary group reports under Sections 77-2734.09, R.S.Supp., 1984, are not uniform in the treatment of compensation paid, the return to this state shall disclose the nature and extent of the variance.

031.07 The payroll factor shall not include payroll used in the production of income that is not subject to apportionment.

(Sections 77-2734.09, and 77-2734.10, R.S.Supp., 1984. July 7, 1985.)

REG-24-032 PAYROLL FACTOR: DENOMINATOR

032.01 The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272 (15 U.S.C.A. II 381-385), are included in the denominator of the payroll factor.

(Sections 77-2901, Article IV, 13., R.R.S. 1943 and 77-2734.13, R.S.Supp., 1984. December 4, 1984.)

REG-24-033 PAYROLL FACTOR: NUMERATOR

033.01 The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 77-2734.13, R.S.Supp., 1984, to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for employment compensation purposes, it shall be presumed that the total wages reported to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under Reg-24-031 to 24-035. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for employment compensation purposes.

(Section 77-2734.13, R.S.Supp., 1984. July 7, 1985.)

REG-24-034 PAYROLL FACTOR: COMPENSATION PAID IN THIS STATE

034.01 Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

034.01A The employee's service is performed entirely within the state,

034.01B The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction,

034.01C If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

034.01C(1) If the employee's base of operations is in this state,

034.01C(2) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state,

034.01C(3) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

034.02 The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the employer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the employer.

(Sections 77-2901, Article IV, 14., R.R.S. 1943 and 77-2734.13, R.S. Supp., 1984. December 4, 1984.)

REG-24-035 SALES FACTOR: IN GENERAL

035.01 Section 77-2734.04(7) defines the term "sales" to mean all gross receipts of the taxpayer. The following are rules for determining "sales" in various situations:

035.01A In manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory if on hand at the close of the tax period) held primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and

~~allowances, and includes all interest income, service charges, carrying charges, or timeprice differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.~~

~~035.01B In cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.~~

~~035.01C In providing services such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.~~

~~035.01D In renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.~~

~~035.01E In the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.~~

~~035.01F Receipts from the sales of equipment used in the business constitute "sales".~~

~~035.02 In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Reg-24-040.~~

~~035.03 In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the return for the current year shall disclose the nature and extent of the modification.~~

~~035.04 If the returns or reports filed with all states to which the unitary group reports under Sections 77-2734.04 to 77-2734, R.S.Supp., 1984, and 77-2901, Article IV, 1. to 18. are not uniform in the inclusion or exclusion of gross receipts, the return to this state shall disclose the nature and extent of the variance.~~

~~035.05 The sales factor shall not include any sales made in the production of income that is not subject to apportionment.~~

~~(Sections 77-2774, and 77-2734.14, R.S.Supp., 1984. July 7, 1985.)~~

~~REG-24-036 SALES FACTOR: DENOMINATOR~~

~~036.01 The denominator of the sales factor shall include the total gross receipts derived by the taxpayer except receipts excluded under Reg-24-040.~~

~~(Section 77-2734.14, R.S.Supp., 1984. July 7, 1985.)~~

REG-24-037 SALES FACTOR: NUMERATOR

~~037.01 The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer. All interest income, service charges, carrying charges, or time price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.~~

~~(Sections 77-2901, Article IV, 15., R.R.S. 1943 and 77-2734.14, R.S.Supp., 1984. December 4, 1984.)~~

REG-24-038 SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE

~~038.01 For tax years 1997 and thereafter, gross receipts from sales of tangible personal property (except sales to the United States Government; see Reg 24-039) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.~~

~~038.02 Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.~~

~~038.03 Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.~~

~~038.04 The term purchaser within this state shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.~~

~~038.05 When property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state.~~

~~038.06 All mailing lists and prospect lists are considered tangible personal property, even when delivered to the customer in an electronic format. Sales of mailing lists and prospect lists are deemed to be in this state in the same manner as sales of any other tangible personal property.~~

~~(Section 77-2734.14, R.R.S. 2003; and ABI v. Egr, 264 Neb. 574 (2002) . March 7, 2006.)~~

REG-24-039 SALES FACTOR: SALES OF TANGIBLE PERSONAL PROPERTY TO UNITED STATES GOVERNMENT IN THIS STATE

~~039.01 Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of a contract constitute~~

sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government.

(Sections ~~77-2901~~, Article IV, 16.(b), R.R.S. 1943 and ~~77-2734.14~~, R.S.Supp., 1984. December 4, 1984.)

~~REG-24-040 SALES FACTOR: SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY IN THIS STATE~~

~~040.01 In general. Sections ~~77-2734.14~~, R.S.Supp., 1984, and ~~77-2901~~, Article IV, 17., R.R.S. 1943 provide for the inclusion in the numerator of the sales factor gross receipts from transactions other than the sales of tangible personal property (including transactions with the United States Government); under this section gross receipts are attributed to this state if the income producing activity which gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.~~

~~040.02 Income producing activity: defined. The term "income producing activity" applies to each separate item of income and means the transactions and activities directly engaged in for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:~~

~~040.02A The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;~~

~~040.02B The sale, rental, leasing, licensing or other use of real property, 040.02C The rental, leasing, licensing or other use of tangible property;~~

~~040.02D The sale, licensing, or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.~~

~~040.03 Costs of performance: defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.~~

~~040.04 Application.~~

~~040.04A In general. Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:~~

~~040.04A(1) The income producing activity is performed wholly within this state;~~

~~040.04A(2) The income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.~~

~~040.04B Special rules. The following are special rules for determining when receipts from the income producing activities described below are in this state:~~

~~040.04B(1) Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.~~

~~040.04B(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing, or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing, or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease, or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.~~

~~040.04B(3) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.~~

~~(Sections 77-2901, Article IV, 17., R.R.S. 1943 and 77-2734.13 and 77-2734.14, R.S.Supp., 1984. December 4, 1984.)~~

REG-24-049 SPECIAL RULES: AIRLINES

~~049.01 The following special rules are established with respect to airlines:~~

~~049.01A In general. When an airline has income from sources both within and without this state, the amount of taxable income from sources within this state shall be determined pursuant to corporation income tax regulations except as modified by this regulation.~~

049.01B Apportionment of taxable income.

049.01B(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

049.01B(1)(a) Cost of aircraft by type means the average original cost or value of aircraft by type which are ready for flight.

049.01B(1)(b) Original cost means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property.

049.01B(1)(c) The value of rented real and tangible personal property means the product of eight (8) times the net annual rental rate.

049.01B(1)(d) Net annual rental rate means the annual rental rate paid by the taxpayer.

049.01B(1)(e) Aircraft ready for flight means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

049.01B(1)(f) Revenue service means the use of aircraft ready for flight for the production of revenue.

049.01B(1)(g) Transportation revenue means revenue earned by transporting passengers, freight, and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

049.01B(1)(h) Departures means for purposes of these regulations all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

049.01B(2) Sales (transportation revenue) factor. The transportation revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year is the result of the following calculation:

~~The ratio of departures of aircraft in this state weighted as to the cost and value of aircraft by type as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any nonflight revenues directly attributable to this state.~~

~~049.01C Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these regulations. Such records are to be subject to review by the State Tax Commissioner or any agent or representative designated by the State Tax Commissioner.~~

~~(Sections 77-2734.14, 77-2734.15, and 77-2734.16 R.R.S. 1996, November 11, 1998.)~~

~~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) 77-2734.06, R.R.S. 2003, and section 77-2716(5) and (6) R.S. Supp., 2008. February 22, 2009.)~~

~~REG-24-056 CORPORATION AS PARTNER IN A PARTNERSHIP OR JOINT VENTURE~~

~~056.01 When a partnership has sufficient contacts with a corporate partner such that it would be considered unitary if it was a corporation that was at least 50 percent owned by that partner then the partnership will be considered unitary with the corporate partner regardless of the actual ownership share of the partner.~~

~~056.01A This determination will have to be made separately for each partner and will be based on the requirements of Reg-24-053.~~

~~056.02 When a corporation and a partnership are considered unitary, the apportionment factors of the corporation will be adjusted to include a portion of the sales factor of the partnership. The percentage of the sales factor included will be the percentage of profits or losses of that corporation. The percentage will be applied to each denominator and each state's numerator equally.~~

~~056.03 Intercompany transactions will be eliminated. The elimination of intercompany transactions will be based on the percentage of the ownership of the corporation, except all sales from the partnership to the corporation will be eliminated to the extent of the corporation's share of total sales of the partnership. If all of the sales from the partnership to the corporation are not eliminated, the remaining sales in each state will be the same percentage of the sales in the state before any eliminations. Any partnership agreements that identify particular activities to a specific partner will be given no effect in the determination of the income of each partner subject to tax in Nebraska.~~

~~056.04 Example. (Illustration only.) X multistate corporation is domiciled outside Nebraska and is a partner in AX, a multistate partnership. X has a 40 percent interest in the profits or losses of~~

~~AX. X and AX are unitary, not considering the attribute of ownership. Corporation X has sales of \$10,000,000, \$1,000,000 of which were to Partnership AX. Partnership AX has sales of \$2,000,000, \$900,000, of which were to Corporation X. Corporation X has apportionable income of \$3,000,000, exclusive of its interest in AX's income, and Partnership AX has apportionable income totaling \$500,000. 056.05 The denominator to be used in a combined report of income with the corporate return is calculated as follows:~~

	Sales
Corporation X	\$10,000,000.
Partnership AX	800,000.*
Less intercompany sales eliminations:	
Corporation X sales to AX	
(\$1,000,000 x 40% ownership interest)	(400,000)
Partnership AX sales to Corporation X,	
\$900,000, limited to 40% ownership	
interest of \$2,000,000 total sales,	(800,000)
Totals	\$9,600,000

~~*\$2,000,000 x 40% = \$800,000~~

~~056.06 The expanded apportionment factor will be applied to the apportionable income of Corporation X calculated as follows:~~

~~Apportionable income:~~

Corporation X	\$ 3,000,000
Partnership AX: \$500,000 x 40% ownership interest	200,000
Combined apportionable taxable income (equals Corporation X's total federal taxable income)	\$ 3,200,000

~~056.07 When a corporation engages in a partnership with which it is unitary as defined above, its apportionment formula shall be determined in accordance with this regulation.~~

~~(Sections 77-2734.14, 77-2734.15 and 77-2734.16, R.R.S. 1996, November 11, 1998.)~~

~~REG-24-059 SPECIAL RULES: TRUCKING COMPANIES~~

~~059.01 The following special rules are established with respect to trucking companies:~~

~~059.01A In general. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation.~~

~~059.01B Apportionment of taxable income.~~

~~059.01B(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions:~~

~~059.01B(1)(a) Trucking company means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation.~~

~~059.01B(1)(b) Transportation revenue means revenue derived from hauling freight, mail and express.~~

~~059.01B(1)(c) Mobile property means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.~~

~~059.01B(1)(d) Mobile property mile is the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.~~

~~059.01B(2) Sales Factor~~

~~059.01B(2)(a) The gross receipts of the taxpayer, other than transportation revenue, shall be included in the sales factor numerator in accordance with Reg 24-036 through Reg 24-040. The transportation revenue from any shipment which both originates and terminates within this state shall be included in the numerator. The transportation revenue from movements of shipments passing through, into or out of this state shall be included in the numerator on the basis of the ratio which the mobile property miles traveled by such movements or shipments in this state bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.~~

~~059.01C Unitary Group. A trucking company can be included in a unitary group with companies which are not trucking companies.~~

~~059.02 Records. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this regulation. Such records are subject to review by the Department of Revenue or its agents.~~

~~(Section 77-2734.15, R.R.S. 1996, November 11, 1998.)~~

REG-24-062 SPECIAL RULES: PIPELINE COMPANIES

062.01 The following special rules are established with respect to pipeline companies:

062.01A In general. When a pipeline company has income from sources both within and without this state the amount of business income from sources within this state shall be determined pursuant to this regulation.

062.01B Apportionment of taxable income

062.01B(1) General definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions:

062.01B(1)(a) Pipeline company means any corporate taxpayer engaged in the business of moving, conveying or transporting any oil, gas, refined petroleum products, or any other substance through a pipeline for a consideration.

062.01B(1)(b) Transportation revenue means the gross receipts or sales derived from moving, conveying or transporting oil, gas, refined petroleum products or any other substance through a pipeline for a consideration.

062.01B(1)(c) Revenue mile means the transportation of one barrel of oil, refined petroleum product or other liquid, one thousand cubic feet of gas or any other appropriate measure of a product the distance of one mile for a consideration.

062.01B(2) Sales Factor

062.01B(2)(a) The gross receipts of the taxpayer, other than transportation revenue, shall be included in the sales factor numerator in accordance with Reg-24-036 through Reg-24-040. Transportation revenue shall be included in the sales factor numerator on the basis of the ratio of the revenue miles in this state to the total revenue miles.

062.01C Unitary Group. A pipeline company can be included in unitary group with companies which are not pipeline companies.

062.02 Records. The taxpayer shall maintain the records necessary to identify revenue miles and to enumerate by state its revenue miles as those terms are used in this regulation. Such records are subject to review by the Department of Revenue or its agents.

(Section 77-2734.15, R.R.S. 1996. November 11, 1998.)