



Individual Income Tax - Stock Qualification for Purposes of the Capital Gains Election. STOCK RECEIVED IN THE CREATION OF A CORPORATION BY AN EMPLOYEE-INVESTOR MAY QUALIFY FOR THE CAPITAL GAINS INCOME ADJUSTMENT PROVIDED BY NEBRASKA LAW.

Advice has been requested whether stock received in the creation of a corporation by an investor, who is also an employee of the corporation issuing the stock, may qualify for the capital gains election and income exclusion allowed by Nebraska law.

Section 77-2715.09 of the Nebraska Revised Statutes states:

Every resident individual may elect under this section to subtract from federal adjusted gross income the gain from the sale or exchange of capital stock of a corporation acquired by the individual (i) on account of employment by such corporation or (ii) while employed by such corporation.

There are no limitations in the statute which prevent it from applying to stock acquired in the creation of a corporation. The determining factor in the statute is the relationship of employment. Therefore, if stock is received upon incorporation by an individual who is an employee of the corporation issuing the stock, the income exclusion for the gain from sale of the stock will apply if all other statutory requirements are met.

Stock received by an investor who is not an employee of the corporation issuing the stock does not qualify for the income exclusion.

APPROVED:

A handwritten signature in cursive script, appearing to read 'M. Berri Balka', written over a horizontal line.

M. Berri Balka  
State Tax Commissioner

January 22, 1991