

## Personal Property Assessment

### Overview

All depreciable tangible personal property, used in a trade or business, with a life of more than one year is subject to net book personal property tax in Nebraska. Personal property must be reported annually to the county assessor and is based on the depreciated life of an asset. This guide will help property owners understand the assessment process for personal property.

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### Terms

**Depreciable Tangible Personal Property.** Depreciable tangible personal property is personal property used in a trade or business or used for the production of income, and which has a determinable life of longer than one year.

**Intangible Property.** Intangible personal property is all property that has no intrinsic value by itself, but is representative or evidence of value, such as stocks, bonds, promissory notes, contract rights, bank accounts, money, and other such property.

**Nebraska Adjusted Basis.** The Nebraska adjusted basis is the adjusted basis for federal income tax purposes, increased by the amount of depreciation, amortization, or deduction under Section 179 of the Internal Revenue Code, taken on the personal property. Generally, the adjusted basis is the original cost of the item, including sales tax, freight, installation, testing charges, and other fees or taxes associated with the acquisition of the property.

**Nebraska Adjusted Basis for Trade Ins.** For purchases of depreciable personal property occurring on or after January 1, 2018, if similar personal property is traded in as part of the payment for the newly acquired property, the Nebraska adjusted basis is the remaining federal tax basis of the property traded-in, plus the additional cash (boot) paid by the taxpayer for the newly acquired property.

**Nebraska Depreciation Factor.** The Nebraska depreciation factor is the percentage of the adjusted basis that is taxable in Nebraska for each recovery period and year.

**Nebraska Net Book Value.** Nebraska net book value is the taxable value for personal property taxation. It is the Nebraska adjusted basis of the tangible personal property multiplied by the appropriate depreciation factor, based on the year placed in service and the recovery period.

**Personal Property.** Personal property is all property other than real property and franchises.

**Recovery Period.** The recovery period is the federal Modified Accelerated Cost Recovery System (MACRS) recovery period over which the Nebraska adjusted basis of property will be depreciated for property tax purposes.

**Tangible Personal Property.** Tangible personal property is personal property possessing a physical existence, excluding money. Tangible personal property also includes trade fixtures, such as machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property.

**Trade Fixture.** An item of machinery or equipment, used directly in commercial, manufacturing, or processing activities. The degree of attachment does not determine the classification of machinery or equipment as real property. Trade fixtures are items of personal property which are placed upon or affixed to real property for the sole purpose of carrying on a trade or business. Trade fixtures do not become part of, or constitute capital improvements to real property. Trade fixtures are not real property fixtures. See [Directive 11-5](#).

## **Taxable Personal Property**

All depreciable tangible personal property is subject to personal property tax in Nebraska. Depreciable property is property for which federal depreciation is allowed. Whether or not the property owner actually takes federal depreciation has no bearing on its taxability for personal property taxation.

## **Exempt Tangible Personal Property**

- ❖ Motor vehicles, trailers, and semitrailers required to be registered for operation on the highways of this state.
- ❖ Livestock.
- ❖ Household goods or personal effects not owned for financial gain or profit.
- ❖ Business inventory.
- ❖ Personal property owned for purposes of leasing or renting is considered business inventory, if leased or rented for 30 days or less, can be returned at any time by the lessee or renter, and if owned by an individual the property would be deemed household goods and personal effects.
- ❖ Personal property that has qualified and been approved by the Tax Commissioner for an exemption pursuant to the Employment and Investment Growth Act or the Nebraska Advantage Act.
- ❖ Personal property owned by the state or local governmental subdivisions that is being used or developed for a public purpose.
- ❖ Personal property of any educational, religious, charitable, and cemetery organization or any personal property of an organization created for the exclusive benefit of an educational, religious, charitable, or cemetery organization, being used predominantly for educational, religious, charitable, or cemetery purposes, and which has been granted an exemption by the county board of equalization.
- ❖ Personal property owned by a Native American Indian and having situs on a Nebraska Indian reservation.
- ❖ Tangible personal property used directly in the generation of electricity using wind as the fuel source is exempt from property tax and subject to the nameplate capacity tax.
- ❖ Tangible personal property used directly in the generation of electricity using solar, biomass, or landfill gas is exempt from property tax if the depreciable tangible personal property was installed on or after January 1, 2016, and has a nameplate capacity of 100 kilowatts or more.

- ❖ Tangible personal property acquired by a person operating a data center located in Nebraska, which is then incorporated into other tangible personal property for subsequent use outside the state by the same person operating a data center in this state.
- ❖ Livestock and exemptions granted under the Beginning Farmer Act, [Neb. Rev. Stat. § 77-5209.02](#).

## Assessment Date

All taxable tangible personal property located in Nebraska must be valued as of January 1, 12:01 a.m., of each year. The personal property must be owned as of that date to be subject to taxation for the current assessment year.

## Situs of Personal Property

Personal property should be listed at the location of the business, unless the property has acquired local situs elsewhere. An item of personal property is deemed to have acquired local situs elsewhere if it is kept in a location, other than the location of the business, for the greater portion of the calendar year.

## Filing Requirements

On or before May 1 of each year, any individual or entity that owns or leases taxable tangible personal property located in Nebraska must file a [Nebraska Personal Property Return](#) with the county assessor in the county in which the personal property has situs. If the property has situs in more than one county, a return must be filed in each county. If May 1 falls on a Saturday, Sunday, or legal holiday, the personal property return will be considered timely if it is filed on the next business day. Filing with the IRS for an extension of the date that a taxpayer's income tax return is due does not extend the due date for filing a personal property return. There is no filing requirement if the property owner has personal property with no taxable value.

## Personal Property Tax Relief Act

The Personal Property Tax Relief Act provides an exemption of the first \$10,000 of tangible personal property value for each tax district in which a personal property return is filed by a taxpayer. Failure to report tangible personal property on the personal property return will result in a forfeiture of the exemption for any personal property not timely reported for that year. The personal property exemption does not apply to accelerated personal property tax. See [Directive 15-5](#).

## Penalties and Failure to File

Extensions of time to file a personal property return may not be granted. Personal property returns filed after May 1 and before June 30 will be subject to a 10% penalty of the tax due on the value added. Personal property returns filed on or after July 1 will be subject to a penalty of 25% of the tax due on the value added. Only penalties which were wrongly imposed or incorrectly calculated can be corrected. Any penalty that was correctly imposed and calculated cannot be waived or reduced.

Failure to file will result in the county assessor filing the return on behalf of the taxpayer. The county assessor will list and value all of the taxpayer's taxable personal property and apply the applicable penalties. A property owner may file a written protest to the county board of equalization to request an adjustment of the value estimated by the county assessor. The property owner should file a copy of their IRS depreciation worksheet proving what equipment they had in the state on January 1.

## Personal Property Brought into Nebraska after January 1 at 12:01 a.m. and before July 1

All taxable personal property brought into the state on or before July 1 of each year must be reported on the [Nebraska Personal Property Return](#) and filed with the county assessor of the county in which the personal property has situs. No filing is necessary if documentation proves that the personal property was purchased after January 1 or was assessed in another county or state.

## **Sales Tax vs. Personal Property Tax**

Payment of sales tax **does not** affect the taxable status of personal property. Personal property remains subject to personal property taxation. While a sales tax exemption may be available for certain purchases, the payment of one tax does not create an exemption from the other.

## **Inspection of Records and Depreciation Worksheets**

The county assessor has the right to demand an inspection of a property owner's records to ensure that all taxable tangible personal property is listed at its taxable value. This demand must be made in writing.

Depreciation detail does not have to be on any particular form for federal income tax purposes and may be recorded as a personal document. The information necessary for the county assessor is the cost of the item, year placed in service, and the recovery period. These documents in the county assessor's office are considered confidential and available to taxing officials only.

If a property owner refuses the demand, the county assessor has the authority to issue a [subpoena](#) to compel the appearance of the property owner, together with the information requested. If a property owner refuses to comply with the subpoena, the county assessor may apply to the district court to compel obedience by proceedings for contempt.

## **Determining Nebraska Net Book Value**

There are three things needed to determine Nebraska net book value:

- 1 Nebraska adjusted basis;
- 2 Year placed in service; and
- 3 Recovery period.

The Nebraska adjusted basis of tangible personal property is multiplied by the Nebraska depreciation factor, based on the recovery period and year for the item of personal property. The Nebraska depreciation factor is the percentage of the Nebraska adjusted basis that is taxable. See [Nebraska Personal Property Return](#).

## **Internal Revenue Code Section 179 Deductions**

For federal income tax purposes, a property owner may depreciate or "expense out" up to a limited amount of depreciable property in the year of its acquisition as a section 179 deduction. As long as the personal property could have been depreciated, it is subject to personal property taxation. It is irrelevant whether or not the property owner chose not to take the federal income tax depreciation. For personal property tax purposes, all depreciable tangible personal property is treated like personal property for which typical depreciation is taken. Even though this property is depreciated or "expensed out" in one year, it remains taxable for the duration of the appropriate property tax recovery period.

## **Distinguishing Taxable Items vs. Household Goods and Personal Effects**

In Nebraska, household goods and personal effects/items are not taxable (for example, boats, snow blowers, and lawnmowers). However, by depreciating the item on a depreciation worksheet, the owner of the property is stating that this equipment is being used in a trade or business and, the item is therefore taxable.

## **Dissolution or Reorganization of a Corporation, Partnership, or Trust**

The dissolution or reorganization is not considered a purchase and the new property owner will assume the prior property owner's Nebraska adjusted basis and year placed in service. Purchase does not include transfers for stock or other ownership interests upon creation, dissolution, or any other tax-free reorganization of an entity. Acquisitions structured as a purchase of assets will result in a new Nebraska adjusted basis for the assets purchased.

## Inherited or Gifted Property

Inherited or gifted property is taxed based on the previous owner's acquisition date and the previous owner's Nebraska adjusted basis.

## Involuntary Conversion

Converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or part, theft, or condemnation; and no loss or gain is recognized for income tax purposes.

The property owner's depreciation worksheet will document the calculation of the Nebraska adjusted basis. The following factors must be taken into account when calculating the basis:

- 1 The remaining federal basis for depreciation for the old property;
- 2 The property owner's cost of acquiring replacement property; and
- 3 Any gain or loss recognized on the exchange.

**Example 1.** A farmer has a pivot that was placed in service in 2009. The pivot has been fully depreciated for federal income tax purposes, and has a Nebraska net book value of zero. In the summer of 2017, the pivot is destroyed in a storm. In the fall of 2017, a replacement pivot is acquired and placed in service for \$30,000. The insurance company pays the entire \$30,000 for the replacement pivot. The farmer has already depreciated the entire cost of the old pivot and due to the insurance payment, did not incur any costs in acquiring the new pivot. Since the farmer has no costs to recover, the Nebraska adjusted basis is zero.

**Example 2.** A farmer has a pivot that was placed in service in 2009. The pivot has been fully depreciated for federal income tax purposes, and has a Nebraska net book value of zero. In the summer of 2017, the pivot is destroyed in a storm. In the fall of 2017, a replacement pivot is acquired and placed in service for \$30,000. The insurance company pays only \$25,000 towards the replacement pivot. The farmer must pay the additional \$5,000. The farmer is able to recover his cost and depreciate the \$5,000. Therefore, the Nebraska adjusted basis is \$5,000.

**Example 3.** A farmer has a pivot (7-year recovery period) which has a remaining federal basis for depreciation of \$10,000. In the summer of 2017, the pivot is destroyed in a storm and in the fall of 2017 replacement pivot is acquired for \$35,000.

The insurance company pays \$30,000 towards the replacement pivot and the farmer paid the balance of \$5,000. Since insurance proceeds were paid, the Nebraska adjusted basis for this replacement pivot is \$10,000 (remaining federal basis) plus \$5,000 = \$15,000 total Nebraska adjusted basis for replacement pivot.

The date placed in service for this replacement property that involved insurance proceeds is 2017. In tax year 2018, the basis of \$15,000 begins as year 1 of the 7 year recovery to determine the taxable value.

## Items with Repairs

Depreciable repairs to, or overhauls of, depreciable tangible personal property that substantially prolong the life of the property are subject to personal property tax at the Nebraska net book value. The property class and recovery period of the repair is the same as the original property.

**Example 4.** A property owner has an item with a recovery period of 7 years. In the third year of ownership of this property, it has repair expenses of \$10,000. The item is still taxable for 4 more years. Repairs assume the item's recovery period. Repairs are still depreciable, even if the item is fully depreciated. The \$10,000 repair will be its own line item subject to taxation at its net book value.

If the property owner sells the item before the repairs are fully depreciated, neither the item nor the repairs are taxable. Property must be owned on January 1 to be taxable.

## Trade-In (change per Neb. Law 2019 LB 663)

For purchases of depreciable personal property occurring on or after January 1, 2018, if similar personal property is traded in as part of the payment for the newly acquired property, the Nebraska adjusted basis is the remaining federal tax basis of the property traded-in, plus the additional cash (boot) paid by the taxpayer for the newly acquired property.

**Example 5.** A property owner trades in a piece of equipment with a remaining federal tax basis of \$5,000. He pays \$30,000 plus trade-in for a new piece of equipment. The Nebraska adjusted basis for the new item is \$35,000 [\$5,000 remaining federal basis on old item + \$30,000 cash (boot) paid].

**Example 6.** A property owner trades in a piece of equipment with a remaining federal tax basis of zero. He pays \$30,000 plus trade-in for a new piece of equipment. The Nebraska adjusted basis for the new item is \$30,000 [\$0 remaining federal basis on old item + \$30,000 cash (boot) paid].

## Leased Personal Property

Personal property may be reported either by the lessor (owner) or the lessee. The Nebraska net book value is always calculated using the owner's Nebraska adjusted basis and date the property was placed in service. Whichever party takes the federal depreciation is considered the owner and their basis and date the property was placed in service is used in determining Nebraska net book value.

Leases with a purchase option at the end of the lease period are treated as any other lease until the buy-out option is exercised. When the lessee exercises the buy-out option, the lessee is then the owner of the personal property and the Nebraska net book value is then determined using the new owner's basis (buy-out price) and date placed in service (buy-out date).

**Example 7.** A property owner leases an item for five years beginning in March, 2014. The lease contains a buy-out option at the end of the lease. In March, 2017, the property owner exercises the buy-out option and purchases the item for \$40,000.

For tax years 2015-2017, Nebraska net book value for this item is determined using the lessor's (owner's) basis and date placed in service (not the lease date).

Beginning in tax year 2018, Nebraska net book value for this item is determined using the property owner's basis (\$40,000) and date placed in service of March, 2015.

## Conditional Sales

Conditional sales are financing agreements, not true leases. In a conditional sale, the lessee takes the federal depreciation on the personal property, and is deemed the owner of the personal property. In a conditional sale, the lessee's basis and date of acquisition are used in determining Nebraska net book value.

## Personal Property for Both Business and Personal Use

Partial business use is recognized, and only the portion of the property for which the property owner is claiming federal depreciation (the percentage of business use) is subject to assessment.

## Amended Federal Income Tax Return or Changes to Federal Return by the IRS

If a person files an amended federal income tax return, or his or her return is changed or corrected by the IRS, and the amended federal return affects the property owner's Nebraska adjusted basis, the owner must file an amended [Nebraska Personal Property Return](#) within 90 days after the filing of the amended federal return, or within 90 days of the date the change or correction became final. No amended list will be accepted by the county assessor until the property owner provides proof of the amended federal return.

If the amended Nebraska Personal Property Return results in a reduction of Nebraska net book value, the property owner may file a written claim for a refund of taxes, related to the changes, with the county treasurer.

If the amended Nebraska Personal Property Return results in an increase of Nebraska net book value, the county assessor will compute the additional tax due, plus penalty and interest, if applicable. Interest is computed from the date the tax would have been delinquent if the personal property had been listed on or before May 1 of the appropriate year. If the property owner files an amended listing within the 90-day period, no additional penalties will be assessed. Penalties will be added to the tax if a property owner files the amended return after the 90-day period.

## **Omitted Personal Property**

If a property owner files or amends the Nebraska Personal Property Return for omitted property after May 1, the personal property must be assessed at the same rate in the tax district in which the property should have been reported for taxation purposes. Penalties must be added to the assessment.

If the county assessor discovers that taxable personal property has not been reported, the county assessor must list any omitted property and determine the Nebraska net book value. The county assessor may list the personal property for the current taxing period and the three previous taxing periods. The tangible personal property must be taxed at the same rate as would have been imposed upon the property in the tax district in which the personal property should have been reported for taxation purposes. Penalties will be added to the tax.

## **Notice of Change in Personal Property Valuation**

If the county assessor makes any changes in valuation or additions for omitted personal property, the county assessor must send a notice to the property owner advising of the action taken, any penalties imposed, the rate of interest, if any, and the appeal process.

## **Protest of Value or Penalties**

The assessed valuation of personal property or penalties imposed may be protested to the county board of equalization. Protests may be filed by June 30 on all taxable tangible personal property returns filed from January 1 through May 1. Protests may also be filed within 30 days of receipt of a notice from the county assessor regarding personal property.

The protest must be signed by the protester, contain a description of the property, and a written statement of the reason why the requested change in assessment should be made. Failure to state the reasons for the protest and provide a description of the property will result in an automatic dismissal of the protest.

The county board of equalization must provide a ten day notice of the protest hearing date to the property owner. The county board of equalization must make its determination on the protest within 30 days after the date of the hearing.

Within seven days after the final decision by the county board of equalization the county clerk must send notice to the protester of the action taken.

If the property owner disagrees with the decision of the county board of equalization, an appeal may be filed with the Tax Equalization and Review Commission within 30 days after the decision of the county board of equalization.

Any person aggrieved by a final decision of the Tax Equalization and Review Commission may file an appeal with the Court of Appeals.

## **Taxes Due**

Personal property taxes are due December 31. The first half of the tax becomes delinquent on the following May 1, and the second half becomes delinquent on September 1; except in Douglas, Lancaster, and Sarpy counties, where the first half is delinquent April 1, and the second half becomes delinquent August 1.

On the due date, personal property taxes become a first lien on all personal property owned. If the taxes are not paid, any personal property owned, whether taxable or not, is subject to seizure in order to satisfy the lien.

## **Personal Property Sold or Removed before Current Year's Taxes Have Been Calculated**

It is the duty of the county assessor, county sheriff, constable, or city council to inform the county treasurer that there has been a sale or that the personal property is being removed from the county's jurisdiction.

Taxes for the current year must be computed on the basis of the current valuation and the last preceding levy, also known as "acceleration of tax due." The county treasurer must issue a distress warrant for the amount of taxes due. The taxes due will be a first lien upon all personal property of the property owner to whom the assessment was made.

### **Resource List**

- ❖ [Nebraska Personal Property Return](#)
- ❖ [Personal Property Forms](#)
- ❖ [Nebraska Administrative Code 350, Chapter 20 – Personal Property Regulations, Nebraska Department of Revenue](#)
- ❖ [Nebraska Revised Statutes, Chapter 77 Revenue and Taxation; PDF](#)

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402-471-5984

Nebraska Department of Revenue

Property Assessment Division, PO Box 98919, Lincoln, Nebraska 68509-8919