PERSONAL PROPERTY TAXATION SUMMARY

Depreciable tangible personal property is subject to property taxation at its net book value.

Exceptions:

1) Registered motor vehicles are subject to motor vehicle taxation, rather than personal property taxation;

2) Livestock is exempt from personal property taxation (§77-202(7)); and

3) Personal property owned for purposes of leasing or renting such property to others for financial gain is considered inventory and is exempt from personal property taxation if it meets the following conditions (§77-202(5)),

    a) The property is of a type which in the ordinary course of business is leased or rented for thirty days or less,
    b) It may be returned at the option of the lessee or renter at any time, and
    c) The property is of a type which would be considered household goods or personal effects if owned by an individual.

Depreciable property is property for which federal depreciation is allowed. For property to be depreciable it must meet the following requirements:

1) Be used in a trade or business or used for the production of income, and

2) Must have a determinable life of longer than one year.

Whether or not the taxpayer actually takes federal depreciation for property which is depreciable has no bearing on its taxability for personal property taxation--if it's depreciable tangible personal property, it is subject to personal property taxation.

For personal property taxation, depreciable property also includes property which is not truly depreciable but for which the taxpayer has taken federal depreciation anyway, see REG 20-001.02B.

Nebraska adjusted basis--This is the owner's original federal basis, generally it is the cost of the item, including sales tax, freight, installation, testing charges, and other fees or taxes associated with the acquisition of the property.

Exceptions--property transferred by gift or inheritance, or in the creation, dissolution, or reorganization of a corporation, partnership, or trust, that is tax-free for income tax purposes, will have the same Nebraska adjusted basis (and year acquired) that it had for the previous owner. Also involuntary conversions with no insurance proceeds. (§77-201(3))

Year acquired is the year the owner of the property acquired the property. If a taxpayer acquires an item (title and possession) in one year but the item does not become "depreciable" (and thus taxable) until a later year, we still use the year acquired for determining the personal property taxable value.

Recovery period is the federal MACRS recovery period, regardless of whether or not the taxpayer actually utilizes the MACRS recovery period for federal income tax purposes.

Nebraska Net Book Depreciation Factor is the percentage of the Nebraska adjusted basis that is taxable for each recovery period and year.

Net book value is the taxable value for personal property taxation. It is the Nebraska adjusted basis multiplied by the appropriate Nebraska Net Book Depreciation Factor (based on the year acquired and recovery period).

What is the 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.

What is a federal section 179 deduction?

A federal section 179 deduction is essentially single year depreciation. For federal income tax purposes, a taxpayer may depreciate or "expense out" up to a limited amount of depreciable property in the year of its acquisition as a section 179 deduction. Property with a federal section 179 deduction is still taxable for Nebraska personal property tax purposes and is treated exactly like property for which typical depreciation is taken. Even though this property is depreciated or "expensed out" in one year, it is still taxable for the duration of the appropriate property tax recovery period.

What about property which is part business use, part personal use--is this allowed for property tax purposes?

We will recognize partial business use and tax only the portion of the property for which the taxpayer is claiming federal depreciation (the percentage of business use). This information will appear on the depreciation worksheet, as the taxpayer must list what percentage of use is business. If no percentage is shown, we must assume 100% business use.

Is computer software taxable?

There are two types of computer software, operational and application.

1) Operational software is what makes the computer a computer, like DOS or Windows.

Operational software is **tangible** personal property, and is taxable.

2) Application software, such as spreadsheets and word processing packages, is designed to tailor computer functions to specific applications.

Application software is **intangible** and is not taxable for personal property tax purposes.

How do you treat personal property which has been inherited?

Section 77-201(5) addresses property which is acquired by means other than a purchase. Inherited or gifted property is taxed based on the previous owner's acquisition date and the previous owner's Nebraska adjusted basis.

Note: For federal income tax, inherited property will have a new basis and acquisition date, but for property tax purposes the taxpayer inheriting the property should use the previous owner's acquisition date and Nebraska adjusted basis.

What do I do if the taxpayer doesn't have a depreciation worksheet?

Since the depreciation worksheet is truly a worksheet and not required to be filed as part of the federal income tax return, there may be a few "back of an envelope" depreciators. This does not change the taxability of the property. For each item of taxable property, all you need to know is the Nebraska adjusted basis (remember, this is generally the cost of the item), the year acquired, and the recovery period. Once these three things are determined, net book value is simply a calculation, whether the taxpayer has a depreciation worksheet or not.

A taxpayer brought in their form 4562 which doesn't list property separately and said this is what the IRS accepts as the depreciation worksheet.

Form 4562 is the schedule that summarizes the depreciation claimed for federal income tax purposes. Basically, this form gives a general break down for the depreciation taken. This is not the depreciation worksheet. There usually (see above question) will also be an itemized depreciation worksheet in their records, or with their CPA, that provides the detail to complete the yearly form 4562.

What if a farmer purchases a tractor, but chooses not to depreciate it?

The purchased tractor is still subject to Nebraska personal property tax since it is depreciable property. It is irrelevant whether or not the taxpayer chooses to take the federal income tax depreciation.

What if a farmer purchases a tractor and chooses to pay sales tax rather than take advantage of the sales tax exemption available for agricultural machinery and equipment used in commercial agriculture?

As long as the tractor is depreciable, it will be subject to Nebraska personal property tax. It is irrelevant whether or not the taxpayer pays sales tax on the purchase. **There is a common misconception that farmers may choose to pay either the sales tax or the property tax, this is not true.**

Are boats taxable?

Boats owned by individuals are generally considered to be part of household goods and personal effects. However many businesses actually own the boat and thus depreciate the boat. If the taxpayer has identified the boat as equipment used in their business for federal depreciation purposes, it will show up on the depreciation worksheet and is taxable. However if a boat is owned by an individual, it's treated just like their television, which cannot be depreciated and therefore is not taxable.

What if the taxpayer has taken federal depreciation on equipment, but sold the equipment before January 1?

Remember this is still a property tax and must be owned as of 12:01 a.m. on January 1, in order to be subject to property taxation.

Is inventory taxable?

No, inventory is specifically exempted in section 77-202(5). In addition, inventory cannot be depreciated and is not taxable under the net book method.

If all of a taxpayer's tangible personal property is "fully depreciated" for property tax purposes, do they have to fill out a personal property tax schedule?

There is no filing requirement if the taxpayer has no taxable property.

If an item of personal property is "fully depreciated" for federal income tax purposes, does it have to be reported for personal property taxation?

If it has not been "fully depreciated" (when the property has been owned for more years than the federal MACRS recovery period assigned to the property) for personal property tax purposes, it is still taxable. This will happen when, for federal purposes, the taxpayer depreciates the item over a shorter recovery period than assigned by MACRS--such as using federal section 179 single year depreciation.

What is the Nebraska adjusted basis in a trade in situation?

The Nebraska adjusted basis is the cash (boot) paid, plus any remaining Federal adjusted basis in the property being traded.

Note: Even though 2000 federal law has changed the way property involved in a trade-in (like-kind exchange) is depreciated federally, it did not alter the way the basis in the new item is calculated. Under the new federal law, the item traded away will continue to be depreciated until it is fully depreciated (rather than until it is traded away). The amount depreciated federally for the new item will be the boot amount only (rather than boot plus remaining federal basis in the traded item). Since this change will make it more difficult to verify the Nebraska adjusted basis from the federal depreciation worksheet, preparers and assessors should understand this concept. Also, since both items will remain on the federal depreciation worksheet until fully depreciated, it is important to remember that the item traded prior to January 1 is not taxable to the person who traded it in.

For Nebraska personal property tax purposes, the Nebraska adjusted basis is STILL the cash (boot) paid, plus any remaining Federal adjusted basis (at the time of the trade) in the property being traded.

For example:

a. A taxpayer has a tractor with a **remaining Federal adjusted basis** of $5,000 (amount left to depreciate). He trades this tractor and $30,000 cash for a new tractor with a market value of $50,000. The Nebraska adjusted basis of the new tractor will be $35,000 ($5,000 remaining federal adjusted basis on old tractor + 30,000 cash (boot) paid). The recovery period would be for the full seven years for the tractor.

b. ***What if the above taxpayer's original tractor is already fully depreciated for federal purposes?***

In that case the basis would be $30,000, the cash amount, since the old tractor had no remaining federal basis.

Leases

Net Book Value is calculated using the **OWNER'S (lessor's)** Nebraska adjusted basis and date of acquisition.

NOTE: The amount of the lease payments and the date of the lease are NOT used in calculating the net book value.

Property may be reported by either lessor or lessee, but always based on the owner's basis and date of acquisition.

Taxes may be paid by either lessor or lessee. This is between the lessor and lessee and is typically spelled out in the lease agreement.

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 his buy-out option, he is then the owner of the property and the net book value is then determined using his basis (buy-out price) and date of acquisition (buy-out date).

Example:

A farmer leases a combine for five years beginning in March, 1995. The lease contains a buy-out option at the end of the lease. In March, 2000, the farmer exercises his buy-out option and purchases the combine for $40,000.

For tax years 1996-2000, the combine's net book value is determined using the lessor's (owner) basis and date of acquisition (not the lease date).

Beginning in tax year 2001, the combine's net book value is determined using the farmer's (owner) basis ($40,000) and date of acquisition (March, 2000).

Conditional sales

Conditional sales (see REG 20-006.03) are essentially financing agreements, not true leases. In a conditional sale, the ownership of the property is deemed to rest with the "lessee" at the inception of the lease and it is also the "lessee", not the "lessor", who is able to take federal depreciation on the property. Therefore, in a conditional sale, the "lessee's" basis and date of acquisition is used to determine the net book value as they are considered the owner.

(When in doubt whether a lease agreement is in fact a true lease or a conditional sale, find out which party is able to take the federal depreciation. Whoever is able to take the federal depreciation is considered the owner and their basis and date of acquisition is used in determining net book value.)

Personal Property Taxation Terms

Acceleration

The personal property tax shall be accelerated (become immediately due and collectible) and a distress warrant issued when "(1) any person attempts to sell all or a substantial part of his or her personal property, (2) a levy of attachment is made upon tangible personal property, or (3) a person attempts to remove or removes tangible personal property from the county." (§77-1214)

Airplanes

Depreciable airplanes are subject to personal property taxation. "Personal" planes used only for pleasure are not depreciable and not subject to personal property tax.

Assessment date

Assessment date is January 1.

Boats

Depreciable boats are subject to personal property taxation. "Personal" boats used only for pleasure are not depreciable and not subject to personal property tax.

Class life

Class life is defined by the IRS and is used to convert to Federal MACRS recovery periods. (§77-120)

Date Acquired

Date taxpayer acquired property. Exceptions for property acquired by means other than a purchase. (§77-122, §77-201(3))

Depreciable Property

Depreciable is property for which federal depreciation is allowed. For property to be depreciable it must: 1) be used in a trade or business or used for the production of income; and 2) have a determinable life of longer of than one year. (§77-119)

Depreciation factor

The percentage of the Nebraska adjusted basis that is taxable for each recovery period and year, see table shown in §77-120.

Depreciation worksheet & lack of

The assessor has the right to inspect a taxpayer's federal depreciation worksheet and other documents in order to determine the net book value of any property. Any such documents in the assessor's office are confidential and available to taxing officials only--new law as of 9/13/97. (§77-1236)

If the taxpayer does not have a depreciation worksheet, all they need to know to determine net book value is the Nebraska adjusted basis (generally the cost of the item), the year acquired, and the recovery period.

Disposed of prior to January 1
Assessment date is January 1. Anything the taxpayer has disposed of prior to January 1 is not subject to taxation (to that taxpayer, anyway). Remember that the prior year's depreciation worksheet will include items that were disposed of during the previous year. The taxpayer needs to identify any items that were disposed of prior to January 1.

Exemptions
The following property is exempt from personal property taxation:

> Property owned by the state and local governmental subdivisions and used or being developed for use for a public purpose;
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> Ag societies;
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> Educational, religious, charitable, and cemetery property which has been granted a "permissive" exemption by the county board;
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> Household goods and personal effects not owned for financial gain or profit;
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> Tangible personal property which is NOT depreciable;
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> Registered motor vehicles;
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> Inventory;
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> Livestock;
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> Employment & Investment Growth Act (1987 Neb. Laws LB 775) approved property;
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> Nebraska Advantage Act (2005 Neb. Laws LB 312) approved property.

Federally depreciated out, with "PP" life remaining
Even if a piece of equipment is "fully depreciated" for Federal Income Tax purposes, if it has not been "fully depreciated" (when the property has been owned for more years than the MACRS recovery period assigned to the property) for personal property tax purposes, it is still taxable. This will happen when, for federal purposes, the taxpayer depreciates the item over a shorter recovery period than assigned by MACRS--such as using federal section 179 single year depreciation.

Inherited/gifted
Inherited or gifted property is subject to taxation based on the previous owner's date acquired and the previous owner's Nebraska adjusted basis. (§77-201)

Involuntary conversion
This is property acquired by a taxpayer as a replacement for property lost due to casualty, theft, or condemnation. Go to depreciation worksheet to find Nebraska adjusted basis. Review narrow "exception" for replacement property acquired with NO insurance proceeds. (§77-201(3))

Leases/conditional sales
Depreciable tangible personal property which is being leased is taxed based on the OWNER'S (Lessor's) Nebraska adjusted basis and date of acquisition. Review conditional sale in REG 20-006.03 and attached summary on leases vs. conditional sales.

Motor vehicles (non-registered)
Non-registered motor vehicles that are not depreciable are not subject to taxation. Depreciable non-registered motor vehicles are taxable.

Nebraska adjusted basis
The owner's original federal basis for depreciation, generally it is the cost of the item, including sales tax, freight, installation, testing charges, and other fees or taxes associated with the acquisition of the property. (§77-118)

Net Book Value
Net book value is the taxable value for personal property taxation. It is the Nebraska adjusted basis multiplied by the appropriate Nebraska Book Depreciation Factor (based on the year acquired and recovery period. (§77-120, §77-201(3))

Penalties
Any taxable personal property value not reported by May 1 shall be subject to a penalty.

Any personal property value added after May 1 and on or before July 31 of the year the property was required to be reported shall be subject to a penalty of 10% of the tax due on the value added.

Any personal property value added on or after August 1 of the year the property was required to be reported shall be subject to a penalty of 25% of the tax due on the value added.

Imposition of these penalties is mandatory. Notice to taxpayer required. Appeal is to county board. County Board may act only to correct penalties which were wrongly imposed or incorrectly calculated.

Real vs. personal
Annexation, application, intent (see Directive 06-2). Courts have placed the heaviest emphasis on the intent of the taxpayer. When in doubt, the assessor should establish policy for their county, but must respond to taxpayer's REASONABLE intent which is contrary to such policy.

Recovery period
Is the federal MACRS recovery period, regardless of whether or not the taxpayer actually utilizes the MACRS recovery period for federal income tax purposes.

Returns
Personal property is reported to the county assessor by the taxpayer on or before May 1. This is still a self-reporting tax.

Sales Tax vs. Property Tax
The payment or nonpayment of sales tax DOES NOT impact the property tax status of personal property. As long as the property is depreciable tangible personal property it is subject to personal property taxation. While a sales tax exemption may be available for certain purchases, there is NEVER a choice to pick either sales or property taxes. In many cases, both sales and property taxes are payable.

Section 179
A federal section 179 deduction is essentially single year depreciation. For federal income tax purposes, a taxpayer may depreciate or "expense out" up to a limited amount of depreciable property in the year of its acquisition as a federal section 179 deduction. Property with a federal section 179 deduction is still taxable for Nebraska personal property tax purposes and is treated exactly like property for which typical depreciation is taken. Even though this property is depreciated or "expensed out" in one year, it is still taxable for the duration of the appropriate property tax recovery period.

Situs
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.

Subpoena power
Included in the assessor's right to inspect a taxpayer's depreciation worksheet and other pertinent documents is the right to subpoena such records if the taxpayer refuses access. Any such documents in the assessor's office are confidential and available to taxing officials only--new law as of 9/13/97. (§77-1236)

Trade-in
The Nebraska adjusted basis for property acquired in a trade-in situation is generally the cost (boot) paid, plus any remaining Federal adjusted basis in the property being traded away.