

May 3, 2002

Fiduciary Income Tax -- Bonus Depreciation. FIDUCIARIES RECEIVING BONUS DEPRECIATION UNDER THE FEDERAL JOB CREATION AND WORKER ASSISTANCE ACT OF 2002 (SECTIONS 168(k) OR 1400L OF THE INTERNAL REVENUE CODE), MUST ADJUST THEIR NEBRASKA INCOME TAX RETURNS TO ADD BACK A PORTION OF SUCH BONUS DEPRECIATION.

Advice has been requested as to whether fiduciaries which received bonus depreciation under certain federal law provisions must adjust their Nebraska income tax returns to add back a portion of such bonus depreciation.

Due to recent legislation enacted by the Nebraska Legislature, for Nebraska income tax returns filed after September 10, 2001, fiduciary taxpayers must increase federal taxable income by eighty-five percent of any amount of bonus depreciation received under the Job Creation and Worker Assistance Act of 2002 (sections 168(k) or 1400L of the Internal Revenue Code of 1986, as amended) for assets placed in service after September 10, 2001, and before September 11, 2004.

Specifically, eighty-five percent of bonus depreciation deducted on a tax year 2000 or 2001 federal income tax return should be entered as an "other Nebraska adjustment increasing federal taxable income" on line 5, Nebraska Fiduciary Income Tax Return, Form 1041N, for both 2000 and 2001 returns. If an original Nebraska Form 1041N has already been filed, report the increase on an amended Nebraska return.

For fiduciaries that distribute income to beneficiaries in the current year, the bonus depreciation shall be distributed to such beneficiaries in the same manner as income is distributed for purposes of calculating their tax liabilities on their Nebraska Individual Income Tax Returns, Forms 1040N. See Revenue Ruling 22-02-1.

The amount of bonus depreciation added to federal taxable income for Nebraska purposes shall be subtracted in later taxable years as follows:

Twenty percent of the total amount of bonus depreciation added back may be subtracted in the fiduciary's first taxable year beginning or deemed to begin on or after January 1, 2005, as determined under the Internal Revenue Code of 1986, as amended; and

Twenty percent in each of the next four following taxable years.

APPROVED:



Mary Jane Egr
State Tax Commissioner

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