PRINT FORM RESET FORM

NEBRASKA
Good Life. Great Service.
DEPARTMENT OF REVENUE

Special Capital Gains/Extraordinary Dividend Election and Computation

FORM 4797N

2022

• Attach this page to Form 1040N or Form 1041N.

Name on Form 1040N or Form 1041N | Social Security Number

Name of person making the election or who previously made the election if different than above.
(If no election has been made previously, go to Part I before completing Exclusion Computation.) | Year the Election Was Made | Social Security Number

Name of the corporation issuing the capital stock or declaring the extraordinary dividend. If different than the name previously provided on the election, explain.

Please provide a description of the capital stock sold. If you are claiming an extraordinary dividend, please provide a detailed description of the dividend transaction.

Name of the employee who originally acquired the capital stock if different from the name on Form 1040N. | Social Security Number

Period of time during which the employee was employed by the corporation
from: ____/____/____ (Month/Day/Year) to: ____/____/____ (Month/Day/Year)

Period of time during which the capital stock was acquired by the employee
from: ____/____/____ (Month/Day/Year) to: ____/____/____ (Month/Day/Year)

If the capital stock was not acquired while employed, explain how the capital stock was acquired "on account of employment."

If you are not the employee, and an election has been made, go to Part III. If you are not the employee, and no election has been made, go to Part II.

Exclusion Computation

Capital Gains

1	Sales price of the qualified capital stock (attach Federal Form 8949 and Federal Schedule D). If the Federal Form 8949 is not attached, complete Part IV or attach Form 6252	1	
2	Cost or other basis in capital stock plus any negative adjustment taken on Form 8949 to exclude part of the gain from selling qualified small business stock under IRC § 1202	2	
3	Capital gains on sales of capital stock during this year (line 1 minus line 2)	3	
4	Capital gains exclusion deferred from a prior year.	4	
5	Total capital gains available for exclusion (line 3 from all forms plus line 4) (see Page 1, General Instructions)	5	
6	Limitation on capital gains exclusion (see instructions)	6	
7	Allowable capital gains (smaller of line 5 or line 6).	7	
8	Capital gains exclusion deferred to next year (line 5 minus line 7)	8	

Extraordinary Dividends

9	Enter the total fair market value of all capital stock owned in the company on the date the dividend was declared	9	
10	Enter the amount of the dividend received (attach Federal Schedule B and other federal documentation)	10	
11 a	Divide line 10 by line 9.	11a	
b	If result is greater than .20 (20%), enter the amount from line 10 on line 11b. If the result is equal to or less than .20 (20%), enter (-0-) on line 11b.	11b	
c	Total extraordinary dividends available for exclusion (line 11b from all forms) (see Page 1, General Instructions)	11c	

Total Exclusion

12	Allowable exclusion (line 7 plus line 11c). Enter here and on Form 1040N, Nebraska Schedule I, line 15, or Form 1041N, line 5. Partial-year residents – do not include this amount on Form 1040N, Nebraska Schedule III, line 1	12	

Part I — Election

• **Complete this part to make the Special Capital Gains/Extraordinary Dividend Election.**

Name of the Employee Who Originally Acquired the Capital Stock	Employee's Social Security Number
Name of the Person Making the Election (if not the employee, **complete Part II**)	Social Security Number

1 Has a previous special capital gains/extraordinary dividend election been made either by or on behalf of the employee?

☐ YES **STOP.** Only one election is available for an employee (see instructions).

☐ NO Continue.

2 Name of the corporation issuing the capital stock or declaring the extraordinary dividend.

3 Please provide a description of the capital stock sold. If claiming extraordinary dividend, please provide a detailed description of the dividend transaction.

4 Has this corporation conducted business in Nebraska for at least three years before the first sale or exchange of capital stock or declaration of extraordinary dividend?

☐ YES Continue.

☐ NO **STOP.** The corporation does not qualify for the election.

5 Was the corporation a publicly-traded corporation?

☐ YES Skip to signature.

☐ NO Continue.

6 How many shareholders did the corporation have at the time of the first sale or exchange of capital stock or declaration of extraordinary dividend?

☐ Less than 5 **STOP.** The corporation does not qualify for the election.

☐ 5 or More Continue.

7 Did a shareholder, or group of related shareholders, hold more than 90% of the capital stock at the time of the first sale or exchange of capital stock or declaration of extraordinary dividend?

☐ YES **STOP.** The corporation does not qualify for the election.

☐ NO **To exclude income, complete the Exclusion Computation on page 1 and sign below.**

I hereby elect to receive the special capital gains/extraordinary dividend treatment provided under Neb. Rev. Stat. § 77-2715.09, and declare under penalties of perjury that to the best of my knowledge and belief, the capital stock described above qualifies for the special capital gains/extraordinary dividend election.

sign here ▶ Signature of Employee, Surviving Spouse, or Descendant Making this Election Date

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Part II — Determine if a Non-Employee Qualifies to Make the Election
Part III — Determine if the Capital Stock Qualifies
Part IV — Sales and Other Dispositions of Capital Assets

FORM 4797N
2022
Parts II, III, and IV

Name on Form 1040N or Form 1041N | Social Security Number

Part II — Determine if a Non-Employee Qualifies to Make the Election

1 What is your relationship to the employee?

☐ Spouse ☐ Descendant (Oldest child or grandchild) ☐ Other **STOP**. You do not qualify to make the election.

2 Is the employee still living?

☐ YES **STOP.** Only the employee can make the election.
☐ NO Continue.

3 Was the employee married on the date of the employee's death AND is the spouse still living?

☐ YES If you are the spouse, **go to Part I to make the election**. All others **STOP**. Only the spouse can make the election.
☐ NO Continue.

4 Are you the **oldest** surviving descendant (for example, child, grandchild)?

☐ YES You may **go to Part I to make the election.**
☐ NO **STOP.** You do not qualify to make the election.

Part III — Determine if the Capital Stock Qualifies

1 What is your relationship to the employee?

☐ Spouse ☐ Descendant ☐ Trust

2 Was the capital stock a gift from the employee? (Note – inherited stock is not a gift and does not qualify.)

☐ YES If you are the qualified spouse, **go to the next question.** If you represent the trust, **go to Question 4.** If you are a descendant, **complete the Exclusion Computation on page 1.**
☐ NO **STOP.** The capital stock does not qualify.

3 If you are the qualified spouse, were you married to the employee on the date of the sale of the capital stock or the date the dividend was declared?

☐ YES **Complete the Exclusion Computation on page 1.**
☐ NO **STOP.** The capital stock does not qualify.

4 If the trust is claiming the exclusion, was it created while the employee was living **and** are all the beneficiaries either the spouse or descendants of the employee?

☐ YES **Complete the Exclusion Computation on page 1.**
☐ NO **STOP.** The capital stock does not qualify.

Part IV — Sales and Other Dispositions of Capital Assets

• Part IV is only required if you have not attached either Federal Forms 8949 or 6252.
Refer to instructions for Federal Forms 8949 or 6252 for additional information.

(A) Description of Property (Example:100 sh. XYZ Co.)	(B) Date Acquired (Mo., Day, Yr.)	(C) Date Sold or Disposed of (Mo., Day, Yr.)	(D) Proceeds (Sales Price)	(E) Cost or Other Basis	(F) IRC § 1202 Exclusion	(G) Type of Transaction		(H) Gain or (loss) [Subtract Column (E) plus (F) from Column (D)].
						Short-Term Transaction	Long-Term Transaction	
Totals								

General Instructions

How to Complete this Form

To exclude income if an election has previously been made –
If you are the employee, complete Page 1.
If you are not the employee, complete Part III and also Page 1.

To make an election and exclude income –
If you are the employee, complete Part I and Page 1.
If you are not the employee, complete Parts I, II, III, and also Page 1.

To make an election without excluding any income –
If you are the employee, complete only Part I.
If you are not the employee, complete only Parts I and II.

Terms

Capital Stock. Capital stock is common or preferred stock and may be either voting or nonvoting. Capital stock does not include stock rights, stock warrants, stock options, debt securities, or cash distributions from employee stock ownership plans.

Descendant. Descendant is a direct descendant of the employee (for example, child, or grandchild). Please contact the Nebraska Department of Revenue (DOR) if you have a specific question regarding whether a person qualifies as a descendant.

Eligible Employee (Employee). For purposes of this form, an eligible employee is an individual, subject to income tax withholding, who is or was employed by a qualified corporation and who obtained the capital stock either: (1) because of employment by the qualified corporation; or (2) while employed by the qualified corporation.

Extraordinary Dividend. Extraordinary dividend is any dividend that is more than 20% of the fair market value of the related stock on the date the dividend is declared.

Non-Qualified Stock. Non-qualified stock is stock that does not qualify for the exclusion because it was received:

1. Through the creation or purchase of a corporation by an investor who is not an employee;
2. For services performed for a corporation by a non-employee; or
3. Stock that was inherited or transferred through a testamentary trust.

Qualified Corporation. Qualified corporation is any corporation which (at the time of the first sale or exchange of capital stock or declaration of extraordinary dividend on capital stock for which the election is made):

1. Has been in existence and actively doing business in Nebraska for at least three years;
2. Has at least five shareholders; and
3. Has no more than 90% of the capital stock held by any single shareholder or group of related shareholders.

Qualified corporation includes any entity organized as a corporation and any entity that for income tax purposes has elected under the Internal Revenue Code (IRC) and Treasury Regulations to be taxed as a C corporation or S corporation.

For purposes of determining whether a corporation has at least five shareholders and whether any single shareholder or group of related shareholders holds more than 90% of the capital stock, each member of an employee stock ownership plan (ESOP) trust qualified under IRC § 401(a) is counted as an individual shareholder.

Other Corporations. The election also applies to the capital stock of other corporations that are related to the elected corporation, such as a parent or subsidiary. Brother-sister corporations do not qualify under the same election. The election also applies to the capital stock of a corporation that was a party to a tax-free reorganization with the elected corporation that occurred after the election was made. If the name of the corporation is not the same as the name on the election, include an explanation of how the named corporation is a qualified corporation.

The Exclusion

Once the election is made, the following transactions by a **resident**, or by a **partial-year resident while a resident**, qualify for the income exclusion:

1. Sales and exchanges of the qualifying stock in the taxable year the election was made and any following taxable year; and
2. Sales and exchanges of stock owned by a spouse or descendant received as a gift, including a gift to a trust from the employee for the benefit of the employee's spouse or issue during the employee's lifetime. Stock received by a non-employee through a will or testamentary trust does **not** qualify for the exclusion.

For more information, refer to Neb. Rev. Stat. §§ 77-2715.08 and 77-2715.09.

Qualifying Capital Stock. To exclude income from the sale or exchange of capital stock of a corporation, it is necessary to determine if the specific shares that were sold or exchanged qualify for the exclusion. The qualifying shares must have been acquired either while the employee was employed by the corporation or on account of employment.

Shares acquired while employed can be either shares received from the corporation as compensation, shares received for retirement purposes, or shares the employee acquired on their own in the open market. If the shares were not acquired while employed, they must have been acquired on account of employment. For the shares to have been acquired on account of employment, the employee must have received a vested right to the shares from the corporation while employed. Stock acquired by exercising an option without additional payment that is granted as part of the employee's or former employee's compensation is considered acquired on account of employment. Gains realized from selling or exercising a stock option are not eligible for this exclusion.

Income from the sale or exchange of capital stock owned by the spouse or descendant will only qualify for the exclusion if the employee could have taken the exclusion for the same shares if the employee still owned them. To qualify, shares owned by the spouse or descendant must have been received as a gift from the employee while the employee was alive. Any shares that are inherited or received because of the death of the employee, such as a testamentary trust, do not qualify for the exclusion.

Page I — General Instructions

Multiple Sales of Capital Stock from One Employee. When multiple sales of capital stock from one employee were made during the tax year, combine all sales onto a single Page 1 to determine the exclusion.

Sales of Capital Stock from More than One Employee. When multiple sales of capital stock from more than one employee were made during the tax year, whether the spouse is also an employee or the capital stock was gifted, complete a separate Page 1 for each employee's capital stock. The separate Page 1s must be completed through line 3. Then, consolidate the amounts on lines 4 through 8 on a single Page 1.

Multiple Extraordinary Dividends. One extraordinary dividend may be included on the same Page 1 as a special capital gains exclusion if it is from capital stock from the same employee. A separate Page 1 is required for each additional extraordinary dividend declared during the year.

Page I — Specific Instructions

Name of Person Making Election. If the election is being made on this return, enter the phrase "See Part I." If an election was previously made, attach a copy of the Form 4797N where the initial election was previously made either by you or the qualified person.

Name of the Corporation Issuing the Capital Stock or Declaring the Extraordinary Dividend. Enter the name of the corporation that issued the capital stock or declared the extraordinary dividend. If capital stock issued by more than one corporation is included under the same election, list the names of all corporations. If this information is the same as what you entered on line 2 of Part I, enter "Same as line 2 of Part I."

If the name of the corporation which issued the stock or declared the extraordinary dividend is different than the corporation name appearing on line 2 of Part I, attach an explanation as to how the corporations are related, and why the gain or dividend being excluded qualifies for the income exclusion.

Description of the Capital Stock or the Extraordinary Dividend. Enter the description of the capital stock (for example, "sold 100 shares of 7% preferred voting stock"). If you are claiming an extraordinary dividend, please enter a detailed description of the dividend transaction. If this information is the same as what you entered on line 3 of Part I, enter "Same as line 3 of Part I."

If the Capital Stock Was Not Acquired While Employed. If the date the capital stock was acquired is not during employment dates, attach an explanation of how the capital stock was acquired either because of employment or while employed by the corporation.

Line 1, Sales Price of the Capital Stock. Enter the sales price of the capital stock as shown on the Federal Form 8949 or payments received during the year from Federal Form 6252. If a broker advised that the gross proceeds (gross sales price) less commission and option premium were reported to the Internal Revenue Service, enter the net amount on line 1. Do not include the commission and option premium on line 2.

Line 2, Cost or Other Basis in Capital Stock. In general, the "cost or other basis" is the cost of the capital stock as shown on the Federal Form 8949 or the payments received during this tax year, minus the installment sale income from Federal Form 6252. If cash cost was not used as a basis, attach an explanation of your basis.

When selling capital stock, adjust your basis by subtracting all the nontaxable distributions received before the sale. Also, adjust the basis for any stock splits in column E and add any gain excluded on Federal Form 8949, column G because the stock qualified as a sale of small business stock under IRC § 1202 in column F.

Increase the basis by any expenses of the sale such as broker's fees, commissions, and option premiums before making an entry on line 2, unless net sales price was reported on line 1.

LINE 3, Capital Gains on Sales of Capital Stock During this Year. Enter the amount of the capital gains on qualifying capital stock transactions this year.

1. Distributions considered ordinary income or reported on Form W-2, and not on Federal Form 8949, do not qualify.
2. Losses on the qualifying capital stock must be netted against gains on the qualifying capital stock to determine the amount to enter on line 3.

LINE 4, Capital Gains Exclusion Deferred from a Prior Year. Enter the amount of the qualified capital gain on transactions in prior years that was carried over.

LINE 6, Limitation on Capital Gains Exclusion. If line 7, Federal Form 1040, or line 4, Federal Form 1041, is a capital gain, add that amount to $3,000 ($1,500 if married, filing separately). Enter the result on line 6 of this form. If the amount is a capital loss, enter $3,000, ($1,500 if married, filing separately) less the amount of the loss. The Form 4797N must be completed each consecutive year until the prior year carryover has been used.

If your federal capital loss is less than $3,000, the available carryover must be used. The carryover amount must be used or forfeited each year, unless the taxpayer has a negative adjusted taxable income for the year.

Caution – The amount on line 6 of this form cannot be:

1. Less than zero; or
2. Greater than Nebraska Taxable Income, line 14 from Form 1040N, without the exclusion.

Line 8, Capital Gains Exclusion Deferred to Next Year. If line 5 is greater than line 7 on this form, subtract line 7 from line 5. This is the qualified gain that may be carried over and excluded in future years. If line 5 is less than line 7, enter (-0-).

Line 10, Enter the Amount of the Dividend Received. Do not include any distribution or the portion of a distribution that is not treated as a dividend on the federal return, such as a return of capital.

Line 11, Total Extraordinary Dividends Available for Exclusion. For the extraordinary dividend exclusion to be eligible, the dividend must be greater than 20% of the fair market value of the capital stock on the dividend declaration date. If more than one extraordinary dividend was received, complete a separate Page 1 for each dividend. Compute the percentage separately for each dividend and add all of the line 11b amounts on a single line 11c on Page 1.

Part I – Instructions

Part I is only to be completed if an election has never been made for the employee who originally received the stock. If a previous election has been made for the employee, that is the only election allowed.

The Election

This election may be made for the capital stock of one corporation. The election may only be made once for an individual and once made, the election may not be changed. The election may be made even if there is no sale or exchange of stock, or no extraordinary dividend is received. Each spouse may make their own election and the elections may be for different corporations.

If you are not the employee, use Part II to determine if you qualify to make the election.

Once the election is made for an employee, that election will apply to sales or exchanges of capital stock of the selected corporation for the employee, the spouse, or descendants. The spouse or descendant must attach a copy of the completed election for the exclusion to apply.

Line 5. Publicly-traded corporations meet the ownership requirements and lines 6 and 7 do not have to be completed.

Line 6. If you answered No to question 5, the corporation must have at least five shareholders in order to be a qualified corporation.

Line 7. The qualified corporation must have some unrelated shareholders. If a group of shareholders who are related to each other, hold more than 90% of the shares of the stock, the company is too closely held to qualify.

Shareholders are related if one is married to, a lineal ancestor or descendent of, or is the brother, sister, aunt, uncle, cousin, niece, or nephew of another person who owns capital stock either directly or indirectly. Shareholders who are otherwise unrelated are related if they are each related to the same person.

Part II – Instructions

Part II is only completed when an election has not been previously made, and a person other than the employee needs to make the election. If the employee is alive, then only the employee can make the election. If the employee died without making the election, the surviving spouse may make the election provided the election could have been made by the employee.

A surviving spouse is a spouse who was married to the employee on the date of the employee's death.

If there is no surviving spouse, then the oldest living descendant may make the election.

Part III – Instructions

Part III is only completed when a person other than the employee wants to exclude income from the sale or exchange of qualifying capital stock, or an extraordinary dividend. The election applies to sales or exchanges of qualifying capital stock when made by the spouse or descendants of the employee.

Line 2. All capital stock owned by the spouse or descendants must have been received from the employee by gift. Any shares that are inherited, or that were transferred as a result of the death of the employee, are ineligible for the exclusion.

Line 3. The spouse must have been married to the employee at the time of the sale of the capital stock, whether or not they are married at the time the return is filed, or the date of death of the employee, if deceased.

Line 4. Shares held by an inter vivos trust created for the benefit of the spouse or descendants qualify for the exclusion if the exclusion would have applied to shares owned directly by the spouse or descendants at the time of the sale; and if the rights to the shares in the trust were not changed by the death of the employee. When a trust is claiming the exclusion, please contact DOR for specific instructions.

Part IV – Instructions

Part IV is only required if you have not attached Federal Forms 8949 or 6252. Complete Part IV for all short-term and long-term capital stock transactions. Use column E to adjust the basis for any stock splits. Use Column F to add to the cost basis any gain excluded on Federal Form 8949, column G because the stock qualified as a sale of small business stock under IRC § 1202. Refer to the instructions for Federal Forms 8949 or 6252 for additional information. If taxpayers choose to complete and attach Federal Form 8949, even if not required to do so in connection with their federal return, then Part IV, Form 4797N is not required to be completed.

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