

## LEGISLATIVE BILL 989

Approved by the Governor April 19, 2002

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Dierks, 40; Hartnett, 45; Janssen, 15; Landis, 46; Raikes, 25; Redfield, 12

AN ACT relating to revenue and taxation; to amend sections 21-301, 21-304, 21-306, 21-313, 21-323, 21-325, 39-2215, 77-2601, 77-2602.03, 77-2603, 77-2604, 77-2609, 77-2617, 77-2620, and 77-27,150 to 77-27,154, Reissue Revised Statutes of Nebraska, sections 77-2612, 77-2704.12, and 77-27,119, Revised Statutes Supplement, 2000, and section 49-801.01, Revised Statutes Supplement, 2001; to change provisions relating to corporate reports and occupation taxes, the Highway Trust Fund, the Internal Revenue Code, cigarette and tobacco taxation, sales tax exemptions, disclosure of information, and refunds under the Air and Water Pollution Control Tax Refund Act; to provide severability; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 21-301, Reissue Revised Statutes of Nebraska, is amended to read:

21-301. (1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, annually, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The report and annual fee shall be ~~7~~ and forwarded to the Secretary of State. The report and fee shall be due on March 1 of each year and shall become ~~on or~~ before (1) August 1, 1982, or (2) April 15, 1983, and April 15 of each year thereafter. The report shall be for the calendar year beginning January 1, and the annual fee shall become due and assessable on the same date, and delinquent if not filed and paid by ~~on or~~ before (a) August 1, 1982, or (b) April 15, 1983, and April 15 of each year. ~~thereafter.~~ If the Secretary of State finds that such report and annual fee conform to the requirements of the law, ~~he or she~~ the Secretary of State shall file the ~~same~~ report. If ~~he or she~~ the Secretary of State finds that ~~they do~~ the report or fee does not ~~so~~ conform, ~~he or she~~ the Secretary of State shall return the ~~same~~ report and fee to the corporation for any necessary corrections.

(2) The Secretary of State shall cause a notice to be sent by United States mail to each corporation for which a report and annual fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Sec. 2. Section 21-304, Reissue Revised Statutes of Nebraska, is amended to read:

21-304. (1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, make an annual report in writing, to the Secretary of State, as of January 1, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The report and annual fee shall be ~~7~~ and forwarded to the Secretary of State. The report and fee shall be due on March 1 of each year and shall become ~~on or~~ before (1) August 1, 1982, or (2) April 15, 1983, and April 15 of each year thereafter. The report shall be for the calendar year beginning January 1, and the annual fee shall become due and assessable on the ~~same date,~~ and delinquent if not filed and paid by ~~on or~~ before (a) August 1, 1982, or (b) April 15, 1983, and April 15 of each year. ~~thereafter.~~ If the Secretary of State finds that such report and annual fee conform to the requirements of the law, ~~he or she~~ the Secretary of State shall file the ~~same~~ report. If ~~he or she~~ the Secretary of State finds that ~~they~~ the report and ~~fee~~ do not ~~so~~ conform, ~~he or she~~ the Secretary of State shall return the ~~same~~ report and fee to the corporation for any necessary corrections.

(2) The Secretary of State shall cause a notice to be sent by United States mail to each corporation for which a report and annual fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on

March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Sec. 3. Section 21-306, Reissue Revised Statutes of Nebraska, is amended to read:

21-306. Upon the filing of such report with the Secretary of State, it shall be the duty of every foreign corporation for profit, ~~now or hereafter~~ doing business in this state, to pay to the Secretary of State ~~as~~ an annual fee which shall be for the calendar year beginning January 1 and become due and assessable on March 1 of that year and become ~~that date,~~ and delinquent if not paid ~~by on or before~~ ~~(1) August 1, 1982, or (2) April 15, 1983,~~ and April 15 of each year. The fee shall ~~thereafter,~~ ~~to~~ be measured by the property employed by ~~said~~ the foreign corporation in the conduct of its business in the State of Nebraska. For such purpose ~~said~~ ~~the~~ property shall consist of the sum total of the actual value of all real estate and personal property employed in Nebraska by such foreign corporation in the transaction of its business. The annual fee to be paid by such foreign corporation shall be based upon the sum so determined, and shall be considered the capital stock of such foreign corporation in this state for the purpose of ~~said~~ the annual fee. The schedule of payment shall be double the fees set forth in section 21-303, or any amendments thereto, except that the fee shall not exceed fifteen thousand dollars, and the Secretary of State, or any person deputized by ~~him~~ ~~or her~~ the Secretary of State, shall have authority to investigate and obtain information from such corporation or any state, county, or city official. ~~who may have information in reference thereto.~~ Such officers are authorized by ~~the provisions of~~ this section to furnish such information to the Secretary of State, or anyone deputized by ~~the~~ Secretary of State, ~~him or her,~~ in order to determine all facts, and give effect to the collection of the annual fee. ~~as herein defined.~~

Sec. 4. Section 21-313, Reissue Revised Statutes of Nebraska, is amended to read:

21-313. If a corporation required to file the report and pay the fee prescribed in sections 21-301 to 21-325 fails or neglects to make such report, ~~as required therein,~~ or ~~to~~ pay such fee ~~by on or before~~ ~~(1) August 1, 1982, or (2) April 15, 1983,~~ and April 15, of each year ~~thereafter,~~ such corporation shall be automatically dissolved on ~~August 2, 1982, or on April 16, 1983,~~ and April 16 of such year. ~~each year thereafter.~~

Sec. 5. Section 21-323, Reissue Revised Statutes of Nebraska, is amended to read:

21-323. (1) Prior to January 1 of each year, the Secretary of State shall cause to be mailed by first-class mail to the last-named and appointed registered agent at the last-named street address of the registered office of each domestic corporation subject to sections 21-301 to 21-325 a notice stating that ~~(a) on or before August 1, 1982, or (b) April 15, 1983,~~ and April 15 March 1 of each year ~~thereafter~~ that occupation taxes are due to be paid and ~~that~~ a properly executed and signed report is due to be filed. If occupation taxes are not paid and the report is not filed ~~on or before such dates,~~ by April 15 of each year, (a) such taxes and report shall become delinquent, (b) the delinquent ~~corporations~~ corporation shall be automatically dissolved on ~~August 2, 1982, or April 16, 1983,~~ and April 16 of each year ~~thereafter~~ such year for nonpayment of occupation taxes and failure to file the report, ~~+~~ and ~~that~~ (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subsequent only to state, county, and municipal taxes.

(2) Upon the failure of any domestic corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall ~~upon August 2, 1982, or April 16, 1983,~~ and on April 16 of each such year ~~thereafter~~ automatically dissolve the corporation for nonpayment of taxes and make such entry and showing upon the records of his or her office.

(3) (a) ~~Commencing April 16, 1986,~~ ~~the~~ The Secretary of State shall automatically dissolve a corporation subject to the Business Corporation Act by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-2034.

(b) A corporation automatically dissolved continues its corporate existence but may not carry on any business, except that business necessary to wind up and liquidate its business and affairs under section 21-20,155 and notify claimants under sections 21-20,156 and 21-20,157.

(c) The automatic dissolution of a corporation shall not terminate the authority of its registered agent.

(4) All delinquent occupation taxes of the corporation shall be a

lien upon the assets of the corporation, subsequent only to state, county, and municipal taxes. Occupation taxes existing and delinquent on August 28, 1943, shall cease to be a lien as against any mortgagee, pledgee, purchaser, or judgment creditor unless a notice of the lien is filed by the Secretary of State, within one year after March 9, 1957, with the county clerk of the county wherein the personal property sought to be charged with such lien is situated, and with the county clerk or register of deeds of the county wherein the real estate sought to be charged with such lien is situated.

(5) No domestic corporation shall be voluntarily dissolved until all occupation taxes and annual fees due to or assessable by the state have been paid and the report filed by such corporation.

Sec. 6. Section 21-325, Reissue Revised Statutes of Nebraska, is amended to read:

21-325. (1) Prior to January 1 of each year, the Secretary of State shall cause to be mailed by first-class mail to the last-known address of each foreign corporation subject to sections 21-301 to 21-325 a notice stating that ~~(a) on or before August 1, 1982, or (b) April 15, 1983, and April 15~~ March 1 of each year ~~thereafter that~~ occupation taxes are due to be paid and ~~that~~ a properly executed and signed report is due to be filed. If such occupation taxes are not paid and such report is not filed ~~on or before such dates, by~~ April 15 of each year, (a) such taxes and report shall become delinquent, (b) ~~the delinquent corporations~~ corporation shall be automatically dissolved on ~~August 2, 1982, or April 16, 1983, and April 16~~ of each such year thereafter for nonpayment of occupation taxes and failure to file the report, ~~+~~ and ~~that~~ (c) the delinquent occupation tax shall be a lien upon the assets of the corporation subject only to state, county, and municipal taxes.

(2) Upon the failure of any foreign corporation to pay its occupation tax and file the report within the time limited by sections 21-301 to 21-325, the Secretary of State shall ~~upon August 2, 1982, or April 16, 1983, and on~~ April 16 of each such year ~~thereafter~~ automatically dissolve the corporation for nonpayment of taxes and shall bar the corporation from doing business in the State of Nebraska under the corporation laws of the state and make such entry and showing upon the records of his or her office.

(3) (a) ~~Commencing April 16, 1996, the~~ The Secretary of State shall automatically dissolve a foreign corporation subject to the Business Corporation Act by signing a certificate of revocation of authority to transact business in this state that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.

(b) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.

(c) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

(4) All delinquent corporation taxes of the corporation shall be a lien upon the assets of the corporation within the state, subsequent only to state, county, and municipal taxes. Nothing in sections 21-322 to 21-325 shall be construed to allow a foreign corporation to do business in Nebraska without complying with the laws of the State of Nebraska.

(5) No foreign corporation shall be voluntarily withdrawn until all occupation taxes ~~and annual fees~~ due to or assessable by the state have been paid and the report filed by such corporation.

Sec. 7. Section 39-2215, Reissue Revised Statutes of Nebraska, is amended to read:

39-2215. (1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) All funds credited to the Highway Trust Fund pursuant to sections 66-4,140, 66-4,147, 66-669, and 66-6,108, and related penalties and interest, shall be allocated as provided in such sections. The State Treasurer shall make the transfer to the General Fund required by section 66-499.

(3) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel taxes related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to section 60-302, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they

mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(4) Of the money in the fund specified in subsection (3) of this section which is not required for the use specified in such subsection, (a) an amount equal to three dollars times the number of motorcycles registered during the previous month shall be placed in the Motorcycle Safety Education Fund, (b) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-738 on a monthly or other less frequent basis as determined by the appropriation language, (c) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as needed to meet the current obligations associated with the manufacture of license plates and stickers or tabs provided for in sections 60-311, 60-311.02, and 60-1804, as certified by the Director of Motor Vehicles, and (d) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(5) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (4) of this section are satisfied, (a) thirty thousand dollars to the Grade Crossing Protection Fund and (b) the amount calculated pursuant to section 13-1210 for financing the operating costs of public transportation systems to the Highway Cash Fund.

(6) Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Roads, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the Department of Roads shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-305.09 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(7) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the Department of Roads shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (6) of this section.

(8) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

Sec. 8. Section 49-801.01, Revised Statutes Supplement, 2001, is amended to read:

49-801.01. Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, and 77-5539, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on ~~February 7, 2001~~ the effective date of this act.

Sec. 9. Section 77-2601, Reissue Revised Statutes of Nebraska, is amended to read:

77-2601. ~~As used in~~ For purposes of sections 77-2601 to 77-2615:

(1) ~~The word person~~ Person means and includes every individual, firm, association, joint-stock company, partnership, limited liability company, syndicate, and corporation;

(2) ~~the term wholesale dealer includes only those persons~~ Wholesale dealer means a person who sell sells cigarettes to licensed retail dealers other than branch stores operated by or connected with such wholesale dealer ~~or~~ for purposes of resale ~~only as prescribed by section 28-1423 and is licensed under section 28-1423;~~

(3) ~~the term retail~~ Retail dealer includes every person other than a wholesale dealer engaged in the business of selling cigarettes in this state irrespective of quantity, amount, or number of sales thereof;

(4) ~~the term department shall mean the~~ Tax Commissioner means the Tax Commissioner of the State of Nebraska; as it now exists, or whatever agency of the state succeeds to its functions, by whatever name known; (5) ~~the term director means the Tax Commissioner, or his or her successor, by whatever name known;~~ (6) ~~the term cigarettes includes~~

(5) Cigarette means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco; ~~and~~ (7) ~~the term consumer~~

(6) Consumer means any person, firm, association, partnership, limited liability company, joint-stock company, syndicate, or corporation not having a license to sell cigarettes; ~~and~~

(7) Tobacco product manufacturer has the same meaning as in section 69-2702.

Sec. 10. Section 77-2602.03, Reissue Revised Statutes of Nebraska, is amended to read:

77-2602.03. The increase in the tax shall apply to all unused stamps, meter impressions, and packages of stamped cigarettes owned by cigarette wholesalers at 12:01 a.m. on the day the increase becomes operative. On the date any change in the tax takes effect, each cigarette wholesaler shall take an inventory of all unused stamps, meter impressions, and packages of stamped cigarettes owned by the cigarette wholesaler at 12:01 a.m. The additional tax shall be remitted with the return for the last month preceding the date any change in the tax takes effect. ~~The Department of Revenue Tax Commissioner shall credit to each wholesaler an amount equal to the additional tax on two weeks of such wholesaler's average purchases of tax stamps.~~

Sec. 11. Section 77-2603, Reissue Revised Statutes of Nebraska, is amended to read:

77-2603. (1) The tax, as levied in section 77-2602, shall be paid and the stamps or cigarette tax meter impressions, ~~hereinafter provided for,~~ shall be affixed or printed with a cigarette tax meter by the person having possession and ownership of such cigarettes after the same shall have come to rest in this state and intended to be sold or given away in this state. ~~Nothing + PROVIDED, that nothing~~ in sections 77-2601 to 77-2615 shall be construed to require a wholesale dealer to fix the retail price or to require any retailer to sell at any particular price. Subject to such rules and regulations as the Tax Commissioner shall prescribe, tax meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes. Before any wholesale dealer ~~shall be~~ is issued a permit to affix stamps or cigarette tax meter impressions, ~~he~~ the wholesale dealer shall make application to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity and, if approval is given by the Tax Commissioner, the dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615, in a sum not less than one thousand dollars. Nothing in sections 77-2601 to 77-2615 shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by wholesalers as determined by such rules and regulations adopted by the Tax Commissioner.

(2) A tobacco product manufacturer whose cigarettes are sold for consumption in Nebraska shall annually certify, under penalty of perjury, that as of the date of such certification, such tobacco product manufacturer: (a) Is a participating manufacturer as defined in subdivision (1) of section 69-2703; or (b) is in full compliance with subdivision (2) of section 69-2703, including having made all payments required to be made for the current and all prior years. Such certification shall be executed and delivered to the Tax Commissioner, the Attorney General, and any wholesale dealer who affixes the stamps or meter impressions required by this section to cigarettes of such tobacco product manufacturer. The certification shall be delivered after the start of each calendar year and no later than April 30 of each year; except

that for the year 2002, the certifications shall be delivered no later than August 30. The certification shall be accompanied by a list of each cigarette brand of such tobacco product manufacturer sold for consumption in Nebraska. A wholesale dealer shall retain such certifications for at least five years. The Tax Commissioner shall prescribe the form of the certification required to be filed pursuant to this subsection.

(3) A wholesale dealer shall not affix, or cause to be affixed, a stamp or meter impression required by this section to a package of cigarettes if: (a) The tobacco product manufacturer of such cigarettes has not provided such wholesale dealer with the certification required by this section; or (b) the Tax Commissioner, after consultation with the Attorney General, has notified the wholesale dealer that such tobacco product manufacturer is in violation of section 69-2703 or has filed a false certification under this section and such wholesale dealer has not been notified by the Tax Commissioner that such violation has ceased.

Sec. 12. Section 77-2604, Reissue Revised Statutes of Nebraska, is amended to read:

77-2604. Every wholesale dealer and retail dealer who is subject to ~~the provisions of~~ sections 77-2601 to ~~77-2615,~~ 77-2622 and section 15 of this act shall make and file with the Tax Commissioner, on or before the tenth day of each calendar month on blanks furnished by the ~~director thereof~~ Tax Commissioner, true, correct, and sworn reports, covering, for the last preceding calendar month, the number of cigarettes purchased, from whom purchased, the specific kinds and brands thereof, the manufacturer, if known, and such other matters and in such detail as the ~~director~~ Tax Commissioner may require.

Sec. 13. Section 77-2609, Reissue Revised Statutes of Nebraska, is amended to read:

77-2609. Any spoiled or unused stamps in the hands of the ~~director~~ Tax Commissioner shall be destroyed upon the joint certificate of the ~~said director~~ Tax Commissioner, the State Treasurer, and the Secretary of State, setting forth the number, denomination, and face value of the same. Such certificate shall relieve the ~~director~~ Tax Commissioner from accountability in the amount thereof.

Sec. 14. Section 77-2612, Revised Statutes Supplement, 2000, is amended to read:

77-2612. The Tax Commissioner ~~is hereby authorized to~~ may employ, with the advice and consent of the Governor, a sufficient number of inspectors, clerks, assistants, and agents to enforce the provisions of sections 77-2601 to ~~77-2615~~ 77-2622 and section 15 of this act, including the collection of all stamp taxes and all revenue from cigarette tax meters. ~~provided for herein.~~ In such enforcement, the Tax Commissioner may call to his or her aid the Attorney General, any county attorney, any sheriff, any deputy sheriff, or any other peace officer. The compensation of all persons employed ~~hereunder~~ shall be fixed by the Governor and shall be paid from the revenue derived under ~~the provisions of~~ sections 77-2601 to ~~77-2615~~ 77-2622 and section 15 of this act. The expenses of administering sections 77-2601 to ~~77-2615~~ 77-2622 and section 15 of this act, including necessary assistants, clerical help, cost of enforcement, cost of stamps, and incidental expenses, when approved by the Tax Commissioner, shall be paid by warrants, issued against the General Fund, but such warrants shall not exceed four percent of the funds collected under sections 77-2601 to ~~77-2615~~ 77-2622 and section 15 of this act, such expenses in each instance to be approved by the Tax Commissioner.

The Tax Commissioner ~~is hereby authorized to~~ may adopt and promulgate rules and regulations which are consistent with the provisions of sections 77-2601 to ~~77-2615~~ 77-2622 and section 15 of this act and their proper enforcement.

Each wholesale dealer shall ~~make application~~ annually apply to the Tax Commissioner, upon forms to be furnished by the Tax Commissioner for a permit to use the tax meter machines, as set forth in section 77-2603, or to purchase such stamps as provided in section 77-2608, or both. The permit shall expire on December 31 each year. Each wholesale dealer shall furnish with such application evidence satisfactory to the Tax Commissioner showing that he or she has obtained a license as a wholesale dealer in accordance with section 28-1423. He or she shall accompany the application with a fee of five hundred dollars to be placed in the General Fund if the permit is granted and otherwise to be returned to the applicant. If the applicant is an individual, the application shall include the applicant's social security number. If the application is approved and the bond referred to in section 77-2603 is given and approved, if such bond is required under section 77-2603, the Tax Commissioner shall issue such license which shall be conspicuously posted in

the place of business of such wholesale dealer.

Sec. 15. (1) In addition to the provisions of sections 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622 or the rules and regulations adopted and promulgated under such sections, the Tax Commissioner may:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429 or 77-2601 to 77-2622. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

(b) Impose an administrative penalty not to exceed one thousand dollars for any violation.

(2) Any person whose license has been so revoked may apply at the expiration of sixty days for a reinstatement of his or her license. The license may be reinstated if it appears to the satisfaction of the Tax Commissioner that the licensee will comply with sections 77-2601 to 77-2622 and the rules and regulations adopted and promulgated under such sections.

(3) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by him or her. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under sections 28-1420 to 28-1429 or 77-2601 to 77-2622.

(4) Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 16. Section 77-2617, Reissue Revised Statutes of Nebraska, is amended to read:

77-2617. Every person, firm, corporation, or association, using cigarettes subject to taxation on the use thereof under the provisions of sections 77-2616 to 77-2619, shall pay such tax and make report thereof to the Tax Commissioner under such rules and regulations as may be prescribed by the ~~department~~ Tax Commissioner.

Sec. 17. Section 77-2620, Reissue Revised Statutes of Nebraska, is amended to read:

77-2620. All cigarettes subject to the tax as imposed by section 77-2602, to which stamps have not been affixed or tax impressions made, as required by sections 77-2601 to 77-2615, except as permitted by the provisions of section 77-2607, or which have been stamped or metered in violation of subsection (3) of section 77-2603, when found in any place in this state are declared to be contraband goods and may be seized by the Tax Commissioner, ~~his~~ by the Tax Commissioner's agents or employees, or by any peace officer of this state, when directed by the Tax Commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated cigarettes when he or she has ~~shall have~~ reason to believe that the owner thereof has not willfully or intentionally evaded any duty imposed under subsection (3) of section 77-2603 or any tax imposed under section 77-2602. The Tax Commissioner may, in the absence of proof of good faith, confiscate any unstamped cigarettes or cigarettes without tax impressions found in the possession of any person, except as permitted by ~~the provisions of~~ section 77-2607, and may within a reasonable time thereafter, by a public notice of at least fifteen days before the day of sale, sell such confiscated cigarettes at public sale and pay the proceeds into the state treasury. ~~The , and the~~ State Treasurer shall credit the ~~same~~ proceeds as provided in section 77-2602. Any purchaser of such cigarettes shall be required to purchase and affix the stamps or make the tax impressions, as required by sections 77-2601 to 77-2615. The Tax Commissioner may, in the absence of proof of good faith, confiscate any cigarettes which were stamped or metered in violation of subsection (3) of section 77-2603 and shall destroy such cigarettes. The seizure, ~~and~~ sale, or destruction of any cigarettes under ~~the provisions of~~ this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of ~~the provisions of~~ sections 77-2601 to 77-2615. The Tax Commissioner, his or her agents, ~~and~~ employees, and any peace officer of this state, when directed so to do, shall not in any way be responsible in any court for the seizure, ~~or the~~ confiscation, or destruction of any unstamped packages of cigarettes, ~~or~~ cigarettes without tax impressions, or cigarettes stamped or metered in violation of subsection (3) of section 77-2603.

Sec. 18. Section 77-2704.12, Revised Statutes Supplement, 2000, is amended to read:

77-2704.12. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created exclusively for religious purposes, any nonprofit organization providing

services exclusively to the blind, any private educational institution established under sections 79-1601 to 79-1607, any private college or university established under sections 85-1101 to 85-1111, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives ~~funds under the Urban Health Initiative Program or the Rural Health Initiative Program of the United States Public Health Service~~ federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, skilled nursing facility, intermediate care facility, or nursing facility licensed under the Health Care Facility Licensure Act and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of property which is physically annexed to the structure and which subsequently belongs to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to property being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the property physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming property in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which property is annexed to real estate and which subsequently belongs to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the property physically annexed to real estate in the construction, improvement, or repair.

Sec. 19. Section 77-27,119, Revised Statutes Supplement, 2000, is amended to read:

77-27,119. (1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2) (a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the high school district in which he or she lives and the county in which the high school district is headquartered. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for

numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-4110, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the

retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure to the Department of Labor of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Labor to be delinquent in the payment of combined tax or in the repayment of benefit overpayments, and such disclosure shall be strictly limited to information necessary for the administration of the Employment Security Law, ~~or~~ (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, or (j) to prohibit the disclosure under section 42-358.08 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child or spousal support. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(10)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 84-304. The Auditor of Public Accounts shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No officer or employee of the Auditor of Public Accounts shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts whose official duties require such disclosure, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a

particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts shall, as a condition for receiving tax returns and tax return information: (a) Subject his or her employees to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Sec. 20. Section 77-27,150, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,150. (1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may, ~~upon completion of such facility,~~ be filed with the Tax Commissioner by the owner

of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated therein; (b) a descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; ~~and~~ (d) the acquisition cost of the facility for which a refund is claimed; and (e) a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151.

~~(2) Before applying for a refund of Nebraska sales and use taxes paid, the applicant shall receive approval of the Department of Environmental Quality. If the department finds that a facility is designed and operated primarily for control, capture, abatement, or removal of industrial or agricultural waste from air or water, is suitable, is reasonably adequate, and meets the standards and regulations adopted pursuant to the Environmental Protection Act, the department shall notify the owner of the facility in writing of its approval. The Tax Commissioner shall offer an applicant a hearing upon request of such applicant. The hearing shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act.~~

(3) A claim for refund received without a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151 shall not be considered a valid claim and shall be returned to the applicant.

(4) Notice of the Tax Commissioner's refusal to issue a refund shall be sent by certified mail to the applicant.

Sec. 21. Section 77-27,151, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,151. If the Department of Environmental Quality finds that a facility ~~is~~ or multiple facilities at a single location are designed and operated primarily for control, capture, abatement, or removal of industrial or agricultural waste from air or water and ~~is~~ are suitable, ~~is~~ are reasonably adequate, and ~~meets~~ meet the intent and purposes of the Environmental Protection Act, the Department of Environmental Quality ~~it~~ shall so notify the ~~Tax Commissioner who shall issue the refund~~ owner of the facility in writing of its findings that the facility, multiple facilities, or the specified portions of any facility are approved. The Department of Environmental Quality shall also notify the Tax Commissioner of its findings and the extent of commercial or productive value derived from any materials captured or recovered by the facility.

Sec. 22. Section 77-27,152, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,152. ~~(1) Notice of the commissioner's refusal to issue a refund shall be sent by certified mail to the applicant.~~

~~(2)~~ The Tax Commissioner, after giving notice by certified mail to the applicant and giving an opportunity for a hearing, shall ~~on his or her own initiative or on complaint of the Department of Environmental Quality~~ modify or revoke the refund whenever ~~any~~ of the following appears: (a) The refund was obtained by fraud or misrepresentation; ~~(b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or~~ ~~(c) regarding the payment of tax on materials incorporated into the facility or facilities; or~~ (b) the Department of Environmental Quality has modified its findings regarding the facility covered by the refund.

(2) The Department of Environmental Quality may modify its findings when it determines any of the following: (a) The refund was obtained by fraud or misrepresentation regarding the facility or planned operation of the facility; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c) the facility covered by the refund is no longer used for the primary purpose of pollution control.

(3) On the mailing by certified mail to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation, all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Sec. 23. Section 77-27,153, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,153. (1) A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax refund may appeal from the finding and order of the Tax Commissioner. The finding and order shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act. The ~~7~~ and the appeal shall be in accordance with the Administrative Procedure Act.

(2) The Department of Environmental Quality shall make its findings for the Air and Water Pollution Control Tax Refund Act in accordance with its normal administrative procedures. Nothing in the act is intended to affect the department's authority to make findings and to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Sec. 24. Section 77-27,154, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,154. The Tax Commissioner ~~shall~~ may adopt and promulgate rules and regulations that are necessary for the administration of the Air and Water Pollution Control Tax Refund Act. Such rules and regulations shall not abridge the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Sec. 25. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 26. Original sections 21-301, 21-304, 21-306, 21-313, 21-323, 21-325, 39-2215, 77-2601, 77-2602.03, 77-2603, 77-2604, 77-2609, 77-2617, 77-2620, and 77-27,150 to 77-27,154, Reissue Revised Statutes of Nebraska, sections 77-2612, 77-2704.12, and 77-27,119, Revised Statutes Supplement, 2000, and section 49-801.01, Revised Statutes Supplement, 2001, are repealed.

Sec. 27. Since an emergency exists, this act takes effect when passed and approved according to law.