

E AND R AMENDMENTS TO LB 389

Introduced by Larson, 40, Chairperson Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Sections 1 to 10 of this act shall be known
4 and may be cited as the Angel Investment Tax Credit Act.

5 Sec. 2. For purposes of the Angel Investment Tax Credit
6 Act:

7 (1) Director means the Director of Economic Development;

8 (2) Family means a family member within the meaning of
9 section 267(c)(4) of the Internal Revenue Code of 1986, as amended;

10 (3) Pass-through entity means an organization that for
11 the applicable taxable year is a subchapter S corporation, general
12 partnership, limited partnership, limited liability partnership,
13 trust, or limited liability company and that for the applicable
14 taxable year is not taxed as a corporation;

15 (4) Qualified fund means a fund that has been certified
16 by the director under section 4 of this act;

17 (5) Qualified high-technology field includes, but is
18 not limited to, aerospace, agricultural processing, renewable
19 energy, energy efficiency and conservation, environmental
20 engineering, food technology, cellulosic ethanol, information
21 technology, materials science technology, nanotechnology,
22 telecommunications, biosolutions, medical device products,
23 pharmaceuticals, diagnostics, biologicals, chemistry, veterinary

1 science, and similar fields;

2 (6) Qualified investment means a cash investment in a
3 qualified small business made in exchange for common stock, a
4 partnership or membership interest, preferred stock, debt with
5 mandatory conversion to equity, or an equivalent ownership interest
6 as determined by the director of a minimum of:

7 (a) Twenty-five thousand dollars in a calendar year by a
8 qualified investor; or

9 (b) Fifty thousand dollars in a calendar year by a
10 qualified fund;

11 (7) Qualified investor means an individual, trust, or
12 pass-through entity which has been certified by the director under
13 section 5 of this act; and

14 (8) Qualified small business means a business that has
15 been certified by the director under section 3 of this act.

16 Sec. 3. (1) A business may apply to the director for
17 certification as a qualified small business. The application shall
18 be in the form and be made under the procedures specified by the
19 director.

20 (2) Within thirty days after receiving an application for
21 certification under this section, the director shall certify the
22 business as satisfying the conditions required of a qualified small
23 business, request additional information, or deny the application.
24 If the director requests additional information, the director shall
25 certify the business or deny the application within thirty days
26 after receiving the additional information. If the director neither
27 certifies the business nor denies the application within thirty

1 days after receiving the original application or within thirty days
2 after receiving the additional information requested, whichever is
3 later, then the application is deemed approved. A business that
4 applies for certification and is denied may reapply.

5 (3) To be certified, a business shall:

6 (a) Have its headquarters in Nebraska;

7 (b) Have at least fifty-one percent of its employees
8 employed in Nebraska and have at least fifty-one percent of its
9 total payroll paid or incurred in Nebraska;

10 (c) Be engaged in, or committed to engage in, innovation
11 in Nebraska in one or more of the following activities as its
12 primary business activity:

13 (i) Using proprietary technology to add value to a
14 product, process, or service in a qualified high-technology field;
15 or

16 (ii) Researching, developing, or producing a proprietary
17 product, process, or service in a qualified high-technology field;

18 (d) Except for activities listed in subdivision (3)(c)
19 of this section, not be engaged in political consulting, leisure,
20 hospitality, or professional services provided by attorneys,
21 accountants, physicians, or health care consultants; and

22 (e) Have twenty-five or fewer employees at the time the
23 investment is made.

24 (4) In order for a qualified investment in a qualified
25 small business to be eligible for tax credits, the business shall
26 have applied for and received certification for the calendar year
27 in which the investment was made prior to the date on which the

1 qualified investment was made.

2 Sec. 4. (1) A pass-through entity may apply to the
3 director for certification as a qualified fund for a calendar
4 year. The application shall be in the form and be made under the
5 procedures specified by the director. The application shall be
6 accompanied by an application fee of five hundred dollars.

7 (2) Within thirty days after receiving an application
8 for certification under this section, the director shall certify
9 the fund as satisfying the conditions required of a qualified
10 fund, request additional information, or deny the application. If
11 the director requests additional information, the director shall
12 certify the fund or deny the application within thirty days after
13 receiving the additional information. If the director neither
14 certifies the fund nor denies the application within thirty days
15 after receiving the original application or within thirty days
16 after receiving the additional information requested, whichever is
17 later, then the application is deemed approved. A fund that applies
18 for certification and is denied may reapply.

19 (3) To be certified, a fund shall:

20 (a) Invest or intend to invest in qualified small
21 businesses; and

22 (b) Have at least three separate investors and all the
23 investors satisfy the conditions in subsection (3) of section 5 of
24 this act.

25 (4) Investments in the fund may consist of equity
26 investments or notes that pay interest or other fixed amounts,
27 or any combination of both.

1 (5) In order for a qualified investment in a qualified
2 small business to be eligible for tax credits, a qualified fund
3 that makes the investment shall have applied for and received
4 certification for the calendar year in which the investment was
5 made prior to making the qualified investment.

6 Sec. 5. (1) An individual, trust, or pass-through entity
7 may apply to the director for certification as a qualified investor
8 for a taxable year. The application shall be in the form and
9 be made under the procedures specified by the director. The
10 application shall be accompanied by an application fee of two
11 hundred fifty dollars. The director shall not certify the following
12 types of investors as qualified investors:

13 (a) An individual who controls fifty percent or more of
14 the qualified small business receiving the investment;

15 (b) A venture capital company; or

16 (c) Any bank, savings and loan association, insurance
17 company, or similar entity whose normal business activities include
18 venture capital investments.

19 (2) Within thirty days after receiving an application
20 for certification under this section, the director shall certify
21 the investor as satisfying the conditions required of a qualified
22 investor, request additional information, or deny the application.
23 If the director requests additional information, the director shall
24 certify the investor or deny the application within thirty days
25 after receiving the additional information. If the director neither
26 certifies the investor nor denies the application within thirty
27 days after receiving the original application or within thirty days

1 after receiving the additional information requested, whichever is
2 later, then the application is deemed approved. An investor who
3 applies for certification and is denied may reapply.

4 (3) In order for a qualified investment in a qualified
5 small business to be eligible for tax credits, a qualified investor
6 who makes the investment shall have applied for and received
7 certification for the calendar year in which the investment was
8 made prior to making the qualified investment, except that in
9 the case of an investor who is an accredited investor within the
10 meaning of Regulation D of the Securities and Exchange Commission,
11 17 C.F.R. 230.501(a), as such regulation existed on January 1,
12 2011, application for certification may be made within thirty days
13 after making the qualified investment.

14 Sec. 6. (1) For taxable years beginning or deemed to
15 begin on or after January 1, 2011, under the Internal Revenue Code
16 of 1986, as amended, a qualified investor or qualified fund is
17 eligible for a refundable credit equal to (a) forty percent of
18 its qualified investment in a qualified small business for calendar
19 years 2011 and 2012 and (b) thirty-five percent of its qualified
20 investment in a qualified small business for other calendar years.
21 The director shall not allocate more than three million dollars in
22 credits to all qualified investors or qualified funds in a calendar
23 year. If the director does not allocate the entire three million
24 dollars of credits in a calendar year, the credits that are not
25 allocated shall not carry forward to subsequent years. The director
26 shall not allocate any amount for credits for calendar years after
27 2017.

1 (2) The director shall not allocate more than a total
2 maximum amount in credits for a taxable year to a qualified
3 investor for the investor's cumulative qualified investments as an
4 individual qualified investor and as an investor in a qualified
5 fund as provided in this subsection. For married couples filing
6 joint returns the maximum is three hundred fifty thousand dollars,
7 and for all other filers the maximum is three hundred thousand
8 dollars. The director shall not allocate more than a total of one
9 million dollars in credits over all taxable years for qualified
10 investments in any one qualified small business.

11 (3) The director shall not allocate a credit to a
12 qualified investor either as an individual qualified investor or
13 as an investor in a qualified fund if the investor receives more
14 than forty-nine percent of the investor's gross annual income from
15 the qualified small business in which the qualified investment is
16 proposed. A member of the family of an individual disqualified by
17 this subsection is not eligible for a credit under this section.
18 For a married couple filing a joint return, the limitations in
19 this subsection apply collectively to the investor and spouse. For
20 purposes of determining the ownership interest of an investor under
21 this subsection, the rules under section 267(c) and (e) of the
22 Internal Revenue Code of 1986, as amended, apply.

23 (4) Tax credits shall be allocated to qualified investors
24 or qualified funds in the order that the tax credit applications
25 are filed with the director. Once credits have been approved and
26 allocated by the director, the qualified investors and qualified
27 funds shall implement the investment specified within ninety days.

1 If the investment is not made within ninety days, the credit
2 allocation is canceled and available for reallocation. A qualified
3 investor or qualified fund that fails to invest as specified in
4 the application within ninety days after allocation of the credits
5 shall notify the director of the failure to invest within five
6 business days after the expiration of the ninety-day investment
7 period.

8 (5) All tax credit applications filed with the
9 director on the same day shall be treated as having been
10 filed contemporaneously. If two or more qualified investors or
11 qualified funds file tax credit applications on the same day and
12 the aggregate amount of credit allocation requests exceeds the
13 aggregate limit of credits under this section or the lesser amount
14 of credits that remain unallocated on that day, then the credits
15 shall be allocated among the qualified investors or qualified
16 funds who filed on that day on a pro-rata basis with respect
17 to the amounts requested. The pro-rata allocation for any one
18 qualified investor or qualified fund shall be the product obtained
19 by multiplying a fraction, the numerator of which is the amount
20 of the credit allocation request filed on behalf of a qualified
21 investor and the denominator of which is the total of all credit
22 allocation requests filed on behalf of all applicants on that day,
23 by the amount of credits that remain unallocated on that day for
24 the taxable year.

25 (6) A qualified investor or qualified fund, or a
26 qualified small business acting on behalf of the investor or
27 fund, shall notify the director when an investment for which

1 credits were allocated has been made and the taxable year in which
2 the investment was made. A qualified fund shall also provide the
3 director with a statement indicating the amount invested by each
4 investor in the qualified fund based on each investor's share of
5 the assets of the qualified fund at the time of the qualified
6 investment. After receiving notification that the investment was
7 made, the director shall issue tax credit certificates for the
8 taxable year in which the investment was made to the qualified
9 investor or, for an investment made by a qualified fund, to each
10 qualified investor who is an investor in the fund. The certificate
11 shall state that the tax credit is subject to revocation if
12 the qualified investor or qualified fund does not hold the
13 investment in the qualified small business for at least three
14 years, consisting of the calendar year in which the investment was
15 made and the two following years. The three-year holding period
16 does not apply if:

17 (a) The investment by the qualified investor or qualified
18 fund becomes worthless before the end of the three-year period;

19 (b) Eighty percent or more of the assets of the qualified
20 small business are sold before the end of the three-year period;

21 (c) The qualified small business is sold or merges with
22 another business before the end of the three-year period; or

23 (d) The qualified small business's common stock begins
24 trading on a public exchange before the end of the three-year
25 period.

26 (7) The director shall notify the Tax Commissioner that
27 tax credit certificates have been issued, including the amount of

1 tax credits and all other pertinent tax information.

2 Sec. 7. (1) Beginning July 1, 2012, each qualified small
3 business, qualified investor, and qualified fund shall submit an
4 annual report to the director by July 1 of each year identifying
5 the amount of money that has been invested by or in it in the
6 previous calendar year under the Angel Investment Tax Credit Act.

7 (2) The report shall certify that the business, investor,
8 and fund satisfies the requirements of the act.

9 (3) A qualified small business that ceases all operations
10 and becomes insolvent shall file a final report with the director
11 in the form required by the director documenting its insolvency.

12 (4) To maintain the confidentiality of the qualified
13 investor and qualified small business, the Department of Economic
14 Development shall use a designated number to identify such persons
15 or businesses.

16 (5) A qualified small business, qualified investor, or
17 qualified fund that fails to file an annual report by July 1 shall
18 be subject to a fine of two hundred dollars.

19 Sec. 8. (1) If, at any time within six years after the
20 allocation of credits is made, the director determines that a
21 qualified investor or qualified fund did not meet the three-year
22 holding period required in section 6 of this act, any tax
23 credit allocated and certified to the investor or fund shall
24 be recaptured. The director shall notify the Tax Commissioner of
25 such determination, and the Tax Commissioner shall recapture the
26 tax credits.

27 (2) The director shall, to the extent possible, assure

1 that the distribution of such tax credits provides equitable access
2 to the benefits provided by the Angel Investment Tax Credit Act by
3 all geographic areas of the state.

4 (3) The director may engage in contractual relationships
5 with a statewide public or private nonprofit organization which
6 shall serve as the agent for the Department of Economic Development
7 in order to effect the purposes and fulfill the requirements of the
8 act.

9 Sec. 9. By November 15 of each odd-numbered year, the
10 Department of Economic Development shall submit a report to the
11 Legislature and the Governor that includes:

12 (1) The number and geographic location of qualified
13 investors;

14 (2) The number, geographic location, and amount of
15 investment made into each qualified small business;

16 (3) A breakdown of the industry sectors in which
17 qualified small businesses are involved;

18 (4) The number of actual tax credits issued by project on
19 an annual basis; and

20 (5) The number of jobs created at each qualified small
21 business.

22 Sec. 10. The Department of Economic Development and
23 the Department of Revenue may adopt and promulgate rules and
24 regulations to administer and enforce the Angel Investment Tax
25 Credit Act.

26 Sec. 11. Section 49-801.01, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 49-801.01 Except as provided by Article VIII, section 1B,
2 of the Constitution of Nebraska and in sections 77-2701.01, 77-2714
3 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509,
4 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728,
5 77-5802, 77-5803, 77-5806, and 77-5903 and sections 2 and 6 of
6 this act, any reference to the Internal Revenue Code refers to the
7 Internal Revenue Code of 1986 as it exists on April 6, 2010.

8 Sec. 12. Section 77-2715.07, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-2715.07 (1) There shall be allowed to qualified
11 resident individuals as a nonrefundable credit against the income
12 tax imposed by the Nebraska Revenue Act of 1967:

13 (a) A credit equal to the federal credit allowed under
14 section 22 of the Internal Revenue Code; and

15 (b) A credit for taxes paid to another state as provided
16 in section 77-2730.

17 (2) There shall be allowed to qualified resident
18 individuals against the income tax imposed by the Nebraska Revenue
19 Act of 1967:

20 (a) For returns filed reporting federal adjusted
21 gross incomes of greater than twenty-nine thousand dollars, a
22 nonrefundable credit equal to twenty-five percent of the federal
23 credit allowed under section 21 of the Internal Revenue Code of
24 1986, as amended;

25 (b) For returns filed reporting federal adjusted gross
26 income of twenty-nine thousand dollars or less, a refundable credit
27 equal to a percentage of the federal credit allowable under section

1 21 of the Internal Revenue Code of 1986, as amended, whether or
2 not the federal credit was limited by the federal tax liability.
3 The percentage of the federal credit shall be one hundred percent
4 for incomes not greater than twenty-two thousand dollars, and
5 the percentage shall be reduced by ten percent for each one
6 thousand dollars, or fraction thereof, by which the reported
7 federal adjusted gross income exceeds twenty-two thousand dollars;

8 (c) A refundable credit as provided in section 77-5209.01
9 for individuals who qualify for an income tax credit as a qualified
10 beginning farmer or livestock producer under the Beginning Farmer
11 Tax Credit Act for all taxable years beginning or deemed to begin
12 on or after January 1, 2006, under the Internal Revenue Code of
13 1986, as amended;

14 (d) A refundable credit for individuals who qualify for
15 an income tax credit under the Angel Investment Tax Credit Act, the
16 Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska
17 Advantage Research and Development Act; and

18 (e) A refundable credit equal to ten percent of the
19 federal credit allowed under section 32 of the Internal Revenue
20 Code of 1986, as amended.

21 (3) There shall be allowed to all individuals as a
22 nonrefundable credit against the income tax imposed by the Nebraska
23 Revenue Act of 1967:

24 (a) A credit for personal exemptions allowed under
25 section 77-2716.01;

26 (b) A credit for contributions to certified community
27 betterment programs as provided in the Community Development

1 Assistance Act. Each partner, each shareholder of an electing
2 subchapter S corporation, each beneficiary of an estate or trust,
3 or each member of a limited liability company shall report his or
4 her share of the credit in the same manner and proportion as he
5 or she reports the partnership, subchapter S corporation, estate,
6 trust, or limited liability company income; and

7 (c) A credit for investment in a biodiesel facility as
8 provided in section 77-27,236.

9 (4) There shall be allowed as a credit against the income
10 tax imposed by the Nebraska Revenue Act of 1967:

11 (a) A credit to all resident estates and trusts for taxes
12 paid to another state as provided in section 77-2730;

13 (b) A credit to all estates and trusts for contributions
14 to certified community betterment programs as provided in the
15 Community Development Assistance Act; and

16 (c) A refundable credit for individuals who qualify for
17 an income tax credit as an owner of agricultural assets under the
18 Beginning Farmer Tax Credit Act for all taxable years beginning
19 or deemed to begin on or after January 1, 2009, under the
20 Internal Revenue Code of 1986, as amended. The credit allowed
21 for each partner, shareholder, member, or beneficiary of a
22 partnership, corporation, limited liability company, or estate
23 or trust qualifying for an income tax credit as an owner of
24 agricultural assets under the Beginning Farmer Tax Credit Act
25 shall be equal to the partner's, shareholder's, member's, or
26 beneficiary's portion of the amount of tax credit distributed
27 pursuant to subsection (4) of section 77-5211.

1 (5) (a) For all taxable years beginning on or after
2 January 1, 2007, and before January 1, 2009, under the Internal
3 Revenue Code of 1986, as amended, there shall be allowed to each
4 partner, shareholder, member, or beneficiary of a partnership,
5 subchapter S corporation, limited liability company, or estate or
6 trust a nonrefundable credit against the income tax imposed by
7 the Nebraska Revenue Act of 1967 equal to fifty percent of the
8 partner's, shareholder's, member's, or beneficiary's portion of the
9 amount of franchise tax paid to the state under sections 77-3801 to
10 77-3807 by a financial institution.

11 (b) For all taxable years beginning on or after January
12 1, 2009, under the Internal Revenue Code of 1986, as amended,
13 there shall be allowed to each partner, shareholder, member, or
14 beneficiary of a partnership, subchapter S corporation, limited
15 liability company, or estate or trust a nonrefundable credit
16 against the income tax imposed by the Nebraska Revenue Act of 1967
17 equal to the partner's, shareholder's, member's, or beneficiary's
18 portion of the amount of franchise tax paid to the state under
19 sections 77-3801 to 77-3807 by a financial institution.

20 (c) Each partner, shareholder, member, or beneficiary
21 shall report his or her share of the credit in the same manner
22 and proportion as he or she reports the partnership, subchapter S
23 corporation, limited liability company, or estate or trust income.
24 If any partner, shareholder, member, or beneficiary cannot fully
25 utilize the credit for that year, the credit may not be carried
26 forward or back.

27 Sec. 13. Section 77-2717, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2717 (1)(a) The tax imposed on all resident estates
3 and trusts shall be a percentage of the federal taxable income
4 of such estates and trusts as modified in section 77-2716, plus
5 a percentage of the federal alternative minimum tax and the
6 federal tax on premature or lump-sum distributions from qualified
7 retirement plans. The additional taxes shall be recomputed by (i)
8 substituting Nebraska taxable income for federal taxable income,
9 (ii) calculating what the federal alternative minimum tax would
10 be on Nebraska taxable income and adjusting such calculations for
11 any items which are reflected differently in the determination of
12 federal taxable income, and (iii) applying Nebraska rates to the
13 result. The federal credit for prior year minimum tax, after the
14 recomputations required by the Nebraska Revenue Act of 1967, and
15 the credits provided in the Nebraska Advantage Microenterprise Tax
16 Credit Act and the Nebraska Advantage Research and Development
17 Act shall be allowed as a reduction in the income tax due. A
18 refundable income tax credit shall be allowed for all resident
19 estates and trusts under the Angel Investment Tax Credit Act, the
20 Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska
21 Advantage Research and Development Act.

22 (b) The tax imposed on all nonresident estates and trusts
23 shall be the portion of the tax imposed on resident estates and
24 trusts which is attributable to the income derived from sources
25 within this state. The tax which is attributable to income derived
26 from sources within this state shall be determined by multiplying
27 the liability to this state for a resident estate or trust with

1 the same total income by a fraction, the numerator of which is
2 the nonresident estate's or trust's Nebraska income as determined
3 by sections 77-2724 and 77-2725 and the denominator of which is
4 its total federal income after first adjusting each by the amounts
5 provided in section 77-2716. The federal credit for prior year
6 minimum tax, after the recomputations required by the Nebraska
7 Revenue Act of 1967, reduced by the percentage of the total income
8 which is attributable to income from sources outside this state,
9 and the credits provided in the Nebraska Advantage Microenterprise
10 Tax Credit Act and the Nebraska Advantage Research and Development
11 Act shall be allowed as a reduction in the income tax due. A
12 refundable income tax credit shall be allowed for all nonresident
13 estates and trusts under the Angel Investment Tax Credit Act, the
14 Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska
15 Advantage Research and Development Act.

16 (2) In all instances wherein a fiduciary income tax
17 return is required under the provisions of the Internal Revenue
18 Code, a Nebraska fiduciary return shall be filed, except that a
19 fiduciary return shall not be required to be filed regarding a
20 simple trust if all of the trust's beneficiaries are residents of
21 the State of Nebraska, all of the trust's income is derived from
22 sources in this state, and the trust has no federal tax liability.
23 The fiduciary shall be responsible for making the return for the
24 estate or trust for which he or she acts, whether the income be
25 taxable to the estate or trust or to the beneficiaries thereof.
26 The fiduciary shall include in the return a statement of each
27 beneficiary's distributive share of net income when such income is

1 taxable to such beneficiaries.

2 (3) The beneficiaries of such estate or trust who are
3 residents of this state shall include in their income their
4 proportionate share of such estate's or trust's federal income and
5 shall reduce their Nebraska tax liability by their proportionate
6 share of the credits as provided in the Angel Investment Tax Credit
7 Act, the Nebraska Advantage Microenterprise Tax Credit Act, and
8 the Nebraska Advantage Research and Development Act. There shall be
9 allowed to a beneficiary a refundable income tax credit under the
10 Beginning Farmer Tax Credit Act for all taxable years beginning or
11 deemed to begin on or after January 1, 2001, under the Internal
12 Revenue Code of 1986, as amended.

13 (4) If any beneficiary of such estate or trust is a
14 nonresident during any part of the estate's or trust's taxable
15 year, he or she shall file a Nebraska income tax return which shall
16 include (a) in Nebraska adjusted gross income that portion of the
17 estate's or trust's Nebraska income, as determined under sections
18 77-2724 and 77-2725, allocable to his or her interest in the
19 estate or trust and (b) a reduction of the Nebraska tax liability
20 by his or her proportionate share of the credits as provided
21 in the Angel Investment Tax Credit Act, the Nebraska Advantage
22 Microenterprise Tax Credit Act, and the Nebraska Advantage Research
23 and Development Act and shall execute and forward to the fiduciary,
24 on or before the original due date of the Nebraska fiduciary
25 return, an agreement which states that he or she will file a
26 Nebraska income tax return and pay income tax on all income derived
27 from or connected with sources in this state, and such agreement

1 shall be attached to the Nebraska fiduciary return for such taxable
2 year.

3 (5) In the absence of the nonresident beneficiary's
4 executed agreement being attached to the Nebraska fiduciary return,
5 the estate or trust shall remit a portion of such beneficiary's
6 income which was derived from or attributable to Nebraska sources
7 with its Nebraska return for the taxable year. The amount of
8 remittance, in such instance, shall be the highest individual
9 income tax rate determined under section 77-2715.02 multiplied by
10 the nonresident beneficiary's share of the estate or trust income
11 which was derived from or attributable to sources within this
12 state. The amount remitted shall be allowed as a credit against the
13 Nebraska income tax liability of the beneficiary.

14 (6) The Tax Commissioner may allow a nonresident
15 beneficiary to not file a Nebraska income tax return if the
16 nonresident beneficiary's only source of Nebraska income was his or
17 her share of the estate's or trust's income which was derived from
18 or attributable to sources within this state, the nonresident did
19 not file an agreement to file a Nebraska income tax return, and
20 the estate or trust has remitted the amount required by subsection
21 (5) of this section on behalf of such nonresident beneficiary. The
22 amount remitted shall be retained in satisfaction of the Nebraska
23 income tax liability of the nonresident beneficiary.

24 (7) For purposes of this section, unless the context
25 otherwise requires, simple trust shall mean any trust instrument
26 which (a) requires that all income shall be distributed currently
27 to the beneficiaries, (b) does not allow amounts to be paid,

1 permanently set aside, or used in the tax year for charitable
2 purposes, and (c) does not distribute amounts allocated in the
3 corpus of the trust. Any trust which does not qualify as a simple
4 trust shall be deemed a complex trust.

5 (8) For purposes of this section, any beneficiary of an
6 estate or trust that is a grantor trust of a nonresident shall be
7 disregarded and this section shall apply as though the nonresident
8 grantor was the beneficiary.

9 Sec. 14. Section 77-27,187.02, Reissue Revised Statutes
10 of Nebraska, is amended to read:

11 77-27,187.02 (1) To earn the incentives set forth in the
12 Nebraska Advantage Rural Development Act, the taxpayer shall file
13 an application for an agreement with the Tax Commissioner.

14 (2) The application shall contain:

15 (a) A written statement describing the full expected
16 employment or type of livestock production and the investment
17 amount for a qualified business, as described in section 77-27,189,
18 in this state;

19 (b) Sufficient documents, plans, and specifications as
20 required by the Tax Commissioner to support the plan and to define
21 a project; and

22 (c) An application fee of five hundred dollars. The fee
23 shall be remitted to the State Treasurer for credit to the Nebraska
24 Incentives Fund. The application and all supporting information
25 shall be confidential except for the name of the taxpayer, the
26 location of the project, and the amounts of increased employment or
27 investment.

1 (3) (a) The Tax Commissioner shall approve the application
2 and authorize the total amount of credits expected to be earned as
3 a result of the project if he or she is satisfied that the plan in
4 the application defines a project that (i) meets the requirements
5 established in section 77-27,188 and such requirements will be
6 reached within the required time period and (ii) for projects other
7 than livestock modernization or expansion projects, is located in
8 an eligible county, city, or village.

9 (b) The Tax Commissioner shall not approve further
10 applications once the expected credits from the approved projects
11 total two million five hundred thousand dollars in each of fiscal
12 years 2004-05 and 2005-06, three million dollars in each of
13 fiscal years 2006-07 through 2008-09, and four million dollars
14 in fiscal year 2009-10. For applications filed in calendar year
15 years 2010 and each calendar year thereafter, and 2011, the
16 Tax Commissioner shall not approve further applications once the
17 expected credits from the approved projects total four million
18 dollars. For applications filed in calendar year 2012 and each
19 year thereafter, the Tax Commissioner shall not approve further
20 applications once the expected credits from the approved projects
21 total one million dollars. Four hundred dollars of the application
22 fee shall be refunded to the applicant if the application is not
23 approved because the expected credits from approved projects exceed
24 such amounts. It is the intent of the Legislature that all tax
25 credits deemed unallocated for this section for calendar year 2011
26 shall be used for purposes of the Angel Investment Tax Credit Act.

27 (c) Applications for benefits shall be considered in the

1 order in which they are received.

2 (d) (i) For applications filed in calendar year 2011,
3 applications shall be filed by July 1 and shall be complete by
4 August 1 of the calendar year. Any application that is filed after
5 July 1 or that is not complete on August 1 shall be considered to
6 be filed during the following calendar year.

7 (ii) For applications filed in calendar year 2012 and
8 each year thereafter, applications ~~(d) Applications~~ shall be filed
9 by November 1 and shall be complete by December 1 of each calendar
10 year. Any application that is filed after November 1 or that is not
11 complete on December 1 shall be considered to be filed during the
12 following calendar year.

13 (4) After approval, the taxpayer and the Tax Commissioner
14 shall enter into a written agreement. The taxpayer shall agree
15 to complete the project, and the Tax Commissioner, on behalf of
16 the State of Nebraska, shall designate the approved plans of the
17 taxpayer as a project and, in consideration of the taxpayer's
18 agreement, agree to allow the taxpayer to use the incentives
19 contained in the Nebraska Advantage Rural Development Act up to
20 the total amount that were authorized by the Tax Commissioner
21 at the time of approval. The application, and all supporting
22 documentation, to the extent approved, shall be considered a part
23 of the agreement. The agreement shall state:

24 (a) The levels of employment and investment required by
25 the act for the project;

26 (b) The time period under the act in which the required
27 level must be met;

1 (c) The documentation the taxpayer will need to supply
2 when claiming an incentive under the act;

3 (d) The date the application was filed; and

4 (e) The maximum amount of credits authorized.

5 Sec. 15. Sections 12, 13, and 16 of this act become
6 operative for all taxable years beginning or deemed to begin on or
7 after January 1, 2011, under the Internal Revenue Code of 1986, as
8 amended. Sections 14, 15, 18, and 19 of this act become operative
9 on July 1, 2011. The other sections of this act become operative on
10 September 1, 2011.

11 Sec. 16. Original sections 77-2715.07 and 77-2717,
12 Reissue Revised Statutes of Nebraska, are repealed.

13 Sec. 17. Original section 49-801.01, Reissue Revised
14 Statutes of Nebraska, is repealed.

15 Sec. 18. Original section 77-27,187.02, Reissue Revised
16 Statutes of Nebraska, is repealed.

17 Sec. 19. Since an emergency exists, this act takes effect
18 when passed and approved according to law.

19 2. On page 1, line 2, after the third comma insert "and";
20 in lines 2 and 3 strike "and 77-5905,"; in line 6 strike "and"; and
21 in line 7 after "sections" insert "; and to declare an emergency".