

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 389

Final Reading

Introduced by Cornett, 45; at the request of the Governor; Mello, 5;
Smith, 14.

Read first time January 13, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 49-801.01, 77-2715.07, 77-2717, and 77-27,187.02, Reissue
3 Revised Statutes of Nebraska; to adopt the Angel
4 Investment Tax Credit Act; to provide income tax credits;
5 to provide funding; to harmonize provisions; to provide
6 operative dates; to repeal the original sections; and to
7 declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

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

3 Sec. 2. For purposes of the Angel Investment Tax Credit
4 Act:

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

6 (2) Distressed area means a municipality, a county with a
7 population of fewer than one hundred thousand inhabitants according
8 to the most recent federal decennial census, an unincorporated area
9 within a county, or a census tract in Nebraska that (a) has an
10 unemployment rate which exceeds the statewide average unemployment
11 rate, (b) has a per capita income below the statewide average per
12 capita income, or (c) had a population decrease between the two most
13 recent federal decennial censuses;

14 (3) Family member means a family member within the
15 meaning of section 267(c)(4) of the Internal Revenue Code of 1986, as
16 amended;

17 (4) Pass-through entity means an organization that for
18 the applicable taxable year is a subchapter S corporation, general
19 partnership, limited partnership, limited liability partnership,
20 trust, or limited liability company and that for the applicable
21 taxable year is not taxed as a corporation;

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

24 (6) Qualified high-technology field includes, but is not
25 limited to, aerospace, agricultural processing, renewable energy,

1 energy efficiency and conservation, environmental engineering, food
2 technology, cellulosic ethanol, information technology, materials
3 science technology, nanotechnology, telecommunications, biosolutions,
4 medical device products, pharmaceuticals, diagnostics, biologicals,
5 chemistry, veterinary science, and similar fields;

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

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

13 (b) Fifty thousand dollars in a calendar year by a
14 qualified fund;

15 (8) Qualified investor means an individual, trust, or
16 pass-through entity which has been certified by the director under
17 section 5 of this act; and

18 (9) Qualified small business means a business that has
19 been certified by the director under section 3 of this act.

20 Sec. 3. (1) A business may apply to the director for
21 certification as a qualified small business. The application shall be
22 in the form and be made under the procedures specified by the
23 director.

24 (2) Within thirty days after receiving an application for
25 certification under this section, the director shall certify the

1 business as satisfying the conditions required of a qualified small
2 business, request additional information, or deny the application. If
3 the director requests additional information, the director shall
4 certify the business or deny the application within thirty days after
5 receiving the additional information. If the director neither
6 certifies the business nor denies the application within thirty days
7 after receiving the original application or within thirty days after
8 receiving the additional information requested, whichever is later,
9 then the application is deemed approved if the business meets the
10 qualifications in subsection (3) of this section. A business that
11 applies for certification and is denied may reapply.

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

13 (a) Have its headquarters in Nebraska;

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

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

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

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

24 (d) Except for activities listed in subdivision (3)(c) of
25 this section, not be engaged in political consulting, leisure,

1 hospitality, or professional services provided by attorneys,
2 accountants, physicians, or health care consultants; and

3 (e) Have twenty-five or fewer employees at the time the
4 qualified investment is made.

5 (4) In order for a qualified investment in a qualified
6 small business to be eligible for tax credits, the business shall
7 have applied for and received certification for the calendar year in
8 which the qualified investment was made prior to the date on which
9 the qualified investment was made.

10 Sec. 4. (1) A pass-through entity may apply to the
11 director for certification as a qualified fund for a calendar year.
12 The application shall be in the form and be made under the procedures
13 specified by the director.

14 (2) Within thirty days after receiving an application for
15 certification under this section, the director shall certify the
16 pass-through entity as satisfying the conditions required of a
17 qualified fund, request additional information, or deny the
18 application. If the director requests additional information, the
19 director shall certify the pass-through entity or deny the
20 application within thirty days after receiving the additional
21 information. If the director neither certifies the pass-through
22 entity nor denies the application within thirty days after receiving
23 the original application or within thirty days after receiving the
24 additional information requested, whichever is later, then the
25 application is deemed approved if the pass-through entity meets the

1 qualifications in subsection (3) of this section. A pass-through
2 entity that applies for certification and is denied may reapply.

3 (3) To be certified, a pass-through entity shall:

4 (a) Invest or intend to invest in qualified small
5 businesses; and

6 (b) Have at least three separate investors and all the
7 investors satisfy the conditions in subsection (3) of section 5 of
8 this act.

9 (4) A qualified fund may consist of equity investments or
10 notes that pay interest or other fixed amounts, or any combination of
11 both.

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

17 Sec. 5. (1) An individual, trust, or pass-through entity
18 may apply to the director for certification as a qualified investor
19 for a calendar year. The application shall be in the form and be made
20 under the procedures specified by the director. The director shall
21 not certify the following types of individuals, trusts, or pass-
22 through entities as qualified investors:

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

25 (b) A venture capital company; or

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

4 (2) Within thirty days after receiving an application for
5 certification under this section, the director shall certify the
6 individual, trust, or pass-through entity as satisfying the
7 conditions required of a qualified investor, request additional
8 information, or deny the application. If the director requests
9 additional information, the director shall certify the individual,
10 trust, or pass-through entity or deny the application within thirty
11 days after receiving the additional information. If the director
12 neither certifies the individual, trust, or pass-through entity nor
13 denies the application within thirty days after receiving the
14 original application or within thirty days after receiving the
15 additional information requested, whichever is later, then the
16 application is deemed approved if the individual, trust, or pass-
17 through entity meets the qualifications in subsection (1) of this
18 section. An individual, trust, or pass-through entity which applies
19 for certification and is denied may reapply.

20 (3) In order for a qualified investment in a qualified
21 small business to be eligible for tax credits, a qualified investor
22 who makes the qualified investment shall have applied for and
23 received certification for the calendar year in which the qualified
24 investment was made prior to making the qualified investment, except
25 that in the case of an investor who is an accredited investor within

1 the meaning of Regulation D of the Securities and Exchange
2 Commission, 17 C.F.R. 230.501(a), as such regulation existed on
3 January 1, 2011, application for certification may be made within
4 thirty days after making the qualified investment.

5 Sec. 6. (1) For taxable years beginning or deemed to
6 begin on or after January 1, 2011, under the Internal Revenue Code of
7 1986, as amended, a qualified investor or qualified fund is eligible
8 for a refundable tax credit equal to thirty-five percent of its
9 qualified investment in a qualified small business, except that if
10 the qualified small business is located in a distressed area the
11 qualified investor or qualified fund is eligible for a refundable tax
12 credit equal to forty percent of its qualified investment in the
13 qualified small business. The director shall not allocate more than
14 three million dollars in tax credits to all qualified investors or
15 qualified funds in a calendar year. If the director does not allocate
16 the entire three million dollars of tax credits in a calendar year,
17 the tax credits that are not allocated shall not carry forward to
18 subsequent years. The director shall not allocate any amount for tax
19 credits for calendar years after 2017.

20 (2) The director shall not allocate more than a total
21 maximum amount in tax credits for a calendar year to a qualified
22 investor for the investor's cumulative qualified investments as an
23 individual qualified investor and as an investor in a qualified fund
24 as provided in this subsection. For married couples filing joint
25 returns the maximum is three hundred fifty thousand dollars, and for

1 all other filers the maximum is three hundred thousand dollars. The
2 director shall not allocate more than a total of one million dollars
3 in tax credits for qualified investments in any one qualified small
4 business.

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

17 (4) Tax credits shall be allocated to qualified investors
18 or qualified funds in the order that the tax credit applications are
19 filed with the director. Once tax credits have been approved and
20 allocated by the director, the qualified investors and qualified
21 funds shall implement the qualified investment specified within
22 ninety days. If the qualified investment is not made within ninety
23 days, the tax credit allocation is canceled and available for
24 reallocation. A qualified investor or qualified fund that fails to
25 invest as specified in the application within ninety days after

1 allocation of the tax credits shall notify the director of the
2 failure to invest within five business days after the expiration of
3 the ninety-day investment period.

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

21 (6) A qualified investor or qualified fund, or a
22 qualified small business acting on behalf of the investor or fund,
23 shall notify the director when an investment for which tax credits
24 were allocated has been made and the date the investment was made. A
25 qualified fund shall also provide the director with a statement

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

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

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

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

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

23 (7) The director shall notify the Tax Commissioner that
24 tax credit certificates have been issued, including the amount of tax
25 credits and all other pertinent tax information.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (4) The number of actual tax credits issued by project
18 under the Angel Investment Tax Credit Act on an annual basis; and

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

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

24 Sec. 11. Section 49-801.01, Reissue Revised Statutes of
25 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, 77-5515,
4 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802,
5 77-5803, 77-5806, and 77-5903 and sections 2 and 6 of this act, any
6 reference to the Internal Revenue Code refers to the Internal Revenue
7 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 tax
12 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 gross
21 incomes of greater than twenty-nine thousand dollars, a nonrefundable
22 credit equal to twenty-five percent of the federal credit allowed
23 under section 21 of the Internal Revenue Code of 1986, as amended;

24 (b) For returns filed reporting federal adjusted gross
25 income of twenty-nine thousand dollars or less, a refundable credit

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

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

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

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

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

25 (a) A credit for personal exemptions allowed under

1 section 77-2716.01;

2 (b) A credit for contributions to certified community
3 betterment programs as provided in the Community Development
4 Assistance Act. Each partner, each shareholder of an electing
5 subchapter S corporation, each beneficiary of an estate or trust, or
6 each member of a limited liability company shall report his or her
7 share of the credit in the same manner and proportion as he or she
8 reports the partnership, subchapter S corporation, estate, trust, or
9 limited liability company income; and

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

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

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

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

19 (c) A refundable credit for individuals who qualify for
20 an income tax credit as an owner of agricultural assets under the
21 Beginning Farmer Tax Credit Act for all taxable years beginning or
22 deemed to begin on or after January 1, 2009, under the Internal
23 Revenue Code of 1986, as amended. The credit allowed for each
24 partner, shareholder, member, or beneficiary of a partnership,
25 corporation, limited liability company, or estate or trust qualifying

1 for an income tax credit as an owner of agricultural assets under the
2 Beginning Farmer Tax Credit Act shall be equal to the partner's,
3 shareholder's, member's, or beneficiary's portion of the amount of
4 tax credit distributed pursuant to subsection (4) of section 77-5211.

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

15 (b) For all taxable years beginning on or after January
16 1, 2009, under the Internal Revenue Code of 1986, as amended, there
17 shall be allowed to each partner, shareholder, member, or beneficiary
18 of a partnership, subchapter S corporation, limited liability
19 company, or estate or trust a nonrefundable credit against the income
20 tax imposed by the Nebraska Revenue Act of 1967 equal to the
21 partner's, shareholder's, member's, or beneficiary's portion of the
22 amount of franchise tax paid to the state under sections 77-3801 to
23 77-3807 by a financial institution.

24 (c) Each partner, shareholder, member, or beneficiary
25 shall report his or her share of the credit in the same manner and

1 proportion as he or she reports the partnership, subchapter S
2 corporation, limited liability company, or estate or trust income. If
3 any partner, shareholder, member, or beneficiary cannot fully utilize
4 the credit for that year, the credit may not be carried forward or
5 back.

6 Sec. 13. Section 77-2717, Reissue Revised Statutes of
7 Nebraska, is amended to read:

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

1 Credit Act, and the Nebraska Advantage Research and Development Act.

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

22 (2) In all instances wherein a fiduciary income tax
23 return is required under the provisions of the Internal Revenue Code,
24 a Nebraska fiduciary return shall be filed, except that a fiduciary
25 return shall not be required to be filed regarding a simple trust if

1 all of the trust's beneficiaries are residents of the State of
2 Nebraska, all of the trust's income is derived from sources in this
3 state, and the trust has no federal tax liability. The fiduciary
4 shall be responsible for making the return for the estate or trust
5 for which he or she acts, whether the income be taxable to the estate
6 or trust or to the beneficiaries thereof. The fiduciary shall include
7 in the return a statement of each beneficiary's distributive share of
8 net income when such income is taxable to such beneficiaries.

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

20 (4) If any beneficiary of such estate or trust is a
21 nonresident during any part of the estate's or trust's taxable year,
22 he or she shall file a Nebraska income tax return which shall include
23 (a) in Nebraska adjusted gross income that portion of the estate's or
24 trust's Nebraska income, as determined under sections 77-2724 and
25 77-2725, allocable to his or her interest in the estate or trust and

1 (b) a reduction of the Nebraska tax liability by his or her
2 proportionate share of the credits as provided in the Angel
3 Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax
4 Credit Act, and the Nebraska Advantage Research and Development Act
5 and shall execute and forward to the fiduciary, on or before the
6 original due date of the Nebraska fiduciary return, an agreement
7 which states that he or she will file a Nebraska income tax return
8 and pay income tax on all income derived from or connected with
9 sources in this state, and such agreement shall be attached to the
10 Nebraska fiduciary return for such taxable year.

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

22 (6) The Tax Commissioner may allow a nonresident
23 beneficiary to not file a Nebraska income tax return if the
24 nonresident beneficiary's only source of Nebraska income was his or
25 her share of the estate's or trust's income which was derived from or

1 attributable to sources within this state, the nonresident did not
2 file an agreement to file a Nebraska income tax return, and the
3 estate or trust has remitted the amount required by subsection (5) of
4 this section on behalf of such nonresident beneficiary. The amount
5 remitted shall be retained in satisfaction of the Nebraska income tax
6 liability of the nonresident beneficiary.

7 (7) For purposes of this section, unless the context
8 otherwise requires, simple trust shall mean any trust instrument
9 which (a) requires that all income shall be distributed currently to
10 the beneficiaries, (b) does not allow amounts to be paid, permanently
11 set aside, or used in the tax year for charitable purposes, and (c)
12 does not distribute amounts allocated in the corpus of the trust. Any
13 trust which does not qualify as a simple trust shall be deemed a
14 complex trust.

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

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

21 77-27,187.02 (1) To earn the incentives set forth in the
22 Nebraska Advantage Rural Development Act, the taxpayer shall file an
23 application for an agreement with the Tax Commissioner.

24 (2) The application shall contain:

25 (a) A written statement describing the full expected

1 employment or type of livestock production and the investment amount
2 for a qualified business, as described in section 77-27,189, in this
3 state;

4 (b) Sufficient documents, plans, and specifications as
5 required by the Tax Commissioner to support the plan and to define a
6 project; and

7 (c) An application fee of five hundred dollars. The fee
8 shall be remitted to the State Treasurer for credit to the Nebraska
9 Incentives Fund. The application and all supporting information shall
10 be confidential except for the name of the taxpayer, the location of
11 the project, and the amounts of increased employment or investment.

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

20 (b) The Tax Commissioner shall not approve further
21 applications once the expected credits from the approved projects
22 total two million five hundred thousand dollars in each of fiscal
23 years 2004-05 and 2005-06, three million dollars in each of fiscal
24 years 2006-07 through 2008-09, and four million dollars in fiscal
25 year 2009-10. For applications filed in calendar ~~year~~years 2010 ~~and~~

1 ~~each calendar year thereafter, and 2011,~~ the Tax Commissioner shall
2 not approve further applications once the expected credits from the
3 approved projects total four million dollars. For applications filed
4 in calendar year 2012 and each year thereafter, the Tax Commissioner
5 shall not approve further applications once the expected credits from
6 the approved projects total one million dollars. Four hundred dollars
7 of the application fee shall be refunded to the applicant if the
8 application is not approved because the expected credits from
9 approved projects exceed such amounts. It is the intent of the
10 Legislature that all tax credits deemed unallocated for this section
11 for calendar year 2011 shall be used for purposes of the Angel
12 Investment Tax Credit Act.

13 (c) Applications for benefits shall be considered in the
14 order in which they are received.

15 (d)(i) For applications filed in calendar year 2011,
16 applications shall be filed by July 1 and shall be complete by August
17 1 of the calendar year. Any application that is filed after July 1 or
18 that is not complete on August 1 shall be considered to be filed
19 during the following calendar year.

20 (ii) For applications filed in calendar year 2012 and
21 each year thereafter, applications ~~(d) Applications~~ shall be filed by
22 November 1 and shall be complete by December 1 of each calendar year.
23 Any application that is filed after November 1 or that is not
24 complete on December 1 shall be considered to be filed during the
25 following calendar year.

1 (4) After approval, the taxpayer and the Tax Commissioner
2 shall enter into a written agreement. The taxpayer shall agree to
3 complete the project, and the Tax Commissioner, on behalf of the
4 State of Nebraska, shall designate the approved plans of the taxpayer
5 as a project and, in consideration of the taxpayer's agreement, agree
6 to allow the taxpayer to use the incentives contained in the Nebraska
7 Advantage Rural Development Act up to the total amount that were
8 authorized by the Tax Commissioner at the time of approval. The
9 application, and all supporting documentation, to the extent
10 approved, shall be considered a part of the agreement. The agreement
11 shall state:

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

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

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

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

19 (e) The maximum amount of credits authorized.

20 Sec. 15. Sections 12, 13, and 16 of this act become
21 operative for all taxable years beginning or deemed to begin on or
22 after January 1, 2011, under the Internal Revenue Code of 1986, as
23 amended. Sections 14, 15, 18, and 19 of this act become operative on
24 July 1, 2011. The other sections of this act become operative on
25 September 1, 2011.

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

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

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

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