

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 914

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Preister, 5; Raikes, 25; White, 8.

Read first time January 14, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 66-723, 77-2709, 77-2777, 77-2778, 77-2780, 77-2792,
3 77-2793, 77-2796, 77-27,100, 77-4104, 77-4928, 77-5405,
4 77-5534, and 79-1034, Reissue Revised Statutes of
5 Nebraska, sections 21-2612, 66-720, 66-722, 66-1344,
6 77-2775, 77-5723, and 77-5726, Revised Statutes
7 Cumulative Supplement, 2006, and sections 77-2711
8 and 77-27,187.02, Revised Statutes Supplement, 2007;
9 to change provisions relating to limited liability
10 companies, timeframes for certain filings and protests,
11 interest and delinquent taxes, and a report; to eliminate
12 funds; to create a fund; to provide operative dates;
13 to repeal the original sections; and to outright repeal

LB 914

LB 914

1 section 77-5732, Revised Statutes Cumulative Supplement,

2 2006.

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

1 Section 1. Section 21-2612, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 21-2612 (1) The members and managers of a limited
4 liability company shall not be liable under a judgment, decree, or
5 order of a court or in any other manner for a debt, obligation,
6 or liability of the limited liability company. Except as otherwise
7 specifically set forth in the Limited Liability Company Act, no
8 member, manager, employee, or agent of a limited liability company
9 shall be personally liable under any judgment, decree, or order of
10 any court, agency, or other tribunal in this or any other state, or
11 on any other basis, for any debt, obligation, or liability of the
12 limited liability company.

13 (2) The members of a limited liability company, including
14 members acting as managers, shall be liable in the same manner as a
15 corporate officer for unpaid taxes imposed upon a limited liability
16 company when management is reserved to the members. If management
17 is not reserved to the members, the managers of a limited liability
18 company, including members acting as managers, shall be liable in
19 the same manner as a corporate officer for unpaid taxes imposed
20 upon the limited liability company.

21 Sec. 2. Section 66-720, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 66-720 (1) Any license or permit issued by the department
24 under the motor fuel laws may be suspended for the following
25 reasons:

- 1 (a) Cancellation of security;
- 2 (b) Failure to provide additional security as required;
- 3 (c) Failure to file any report or return, filing an
4 incomplete report or return, or not filing electronically, within
5 the time provided;
- 6 (d) Failure to pay taxes due within the time provided;
- 7 (e) Filing of any false report, return, statement, or
8 affidavit, knowing it to be false;
- 9 (f) Delivering motor fuel to a Nebraska destination if
10 Nebraska is not listed as the destination state on the original
11 bill of sale, bill of lading, or manifest except as authorized
12 under section 66-503;
- 13 (g) Failure to remain in compliance with requirements of
14 the State Fire Marshal regarding underground storage tanks;
- 15 (h) Failure to remain in compliance with requirements of
16 the Department of Agriculture regarding weights and measures;
- 17 (i) Using or placing dyed diesel fuel in a motor vehicle
18 except as authorized under section 66-495.01;
- 19 (j) No longer being eligible to obtain a license or
20 permit; or
- 21 (k) Any other violation of the motor fuel laws or the
22 rules and regulations.
- 23 (2) The department shall mail notice of suspension of any
24 license or permit.
- 25 (3) The licensee or permitholder may, within ~~thirty~~

1 sixty days after the mailing of the notice of such suspension,
2 petition the Department of Revenue in writing for a hearing and
3 reconsideration of such suspension. If a petition is filed, the
4 department shall, within ten days of receipt of the petition, set a
5 hearing date at which the licensee or permitholder may show cause
6 why his or her suspended license or permit should not be canceled.
7 The department shall give the licensee or permitholder reasonable
8 notice of the time and place of such hearing. Within a reasonable
9 time after the conclusion of the hearing, the department shall
10 issue an order either reinstating or canceling such license or
11 permit.

12 (4) If a petition is not filed within the ~~thirty-day~~
13 sixty-day period, the suspended license or permit shall be canceled
14 by the department at the expiration of the period.

15 (5) The department shall not issue a new permit or
16 license to the same person for one year from the date of
17 cancellation. Any reissuance of a permit or license to the same
18 person within three years from the date of cancellation shall
19 require a reinstatement fee of one hundred dollars to be submitted
20 to the department. The department shall remit the fee to the State
21 Treasurer for credit to the Highway Cash Fund.

22 (6) Suspension or cancellation of a license or permit
23 issued by the department shall not relieve any person from making
24 or filing the reports or returns required by the motor fuel laws in
25 the manner or within the time required.

1 Sec. 3. Section 66-722, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 66-722 (1) As soon as practical after a return is filed,
4 the department shall examine it to determine the correct amount
5 of tax. If the department finds that the amount of tax shown on
6 the return is less than the correct amount, it shall notify the
7 taxpayer of the amount of the deficiency determined.

8 (2) If any person fails to file a return or has
9 improperly purchased motor fuel without the payment of tax, the
10 department shall estimate the person's liability from any available
11 information and notify the person of the amount of the deficiency
12 determined.

13 (3) The amount of the deficiency determined shall
14 constitute a final assessment together with interest and penalties
15 ~~thirty~~ sixty days after the date on which notice was mailed to the
16 taxpayer at his or her last-known address unless a written protest
17 is filed with the department within such ~~thirty-day~~ sixty-day
18 period.

19 (4) The final assessment provisions of this section shall
20 constitute a final decision of the agency for purposes of the
21 Administrative Procedure Act.

22 (5) An assessment made by the department shall be
23 presumed to be correct. In any case when the validity of the
24 assessment is questioned, the burden shall be on the person who
25 challenges the assessment to establish by a preponderance of the

1 evidence that the assessment is erroneous or excessive.

2 (6) (a) Except in the case of a fraudulent return or of
3 neglect or refusal to make a return, the notice of a proposed
4 deficiency determination shall be mailed within three years after
5 the twenty-fifth day of the month following the end of the period
6 for which the amount proposed is to be determined or within three
7 years after the return is filed, whichever period expires later.

8 (b) The taxpayer and the department may agree, prior to
9 the expiration of the period in subdivision (a) of this subsection,
10 to extend the period during which the notice of a deficiency
11 determination can be mailed. The extension of the period for the
12 mailing of a deficiency determination shall also extend the period
13 during which a refund can be claimed.

14 Sec. 4. Section 66-723, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 66-723 (1) Any corporate officer or employee with the
17 authority to decide whether the corporation will pay the taxes
18 imposed upon a corporation by the motor fuel laws, to file any
19 reports or returns required by the motor fuel laws, or to perform
20 any other act required of a corporation under the motor fuel
21 laws shall be personally liable for the payment of the taxes,
22 interest, penalties, or other administrative penalties in the event
23 of willful failure on his or her part to have the corporation
24 perform such act. Such taxes shall be collected in the same manner
25 as provided under the Uniform State Tax Lien Registration and

1 Enforcement Act.

2 (2) Within ~~thirty~~ sixty days after the day on which
3 the notice and demand are made for the payment of such taxes,
4 any corporate officer or employee seeking to challenge the
5 Tax Commissioner's determination as to his or her personal
6 liability for the corporation's unpaid taxes may petition for
7 a redetermination. The petition may include a request for the
8 redetermination of the personal liability of the corporate officer
9 or employee, the redetermination of the amount of the corporation's
10 unpaid taxes, or both. If a petition for redetermination is not
11 filed within the ~~thirty-day~~ sixty-day period, the determination
12 becomes final at the expiration of the period.

13 (3) If the requirements prescribed in subsection (2)
14 of this section are satisfied, the Tax Commissioner shall abate
15 collection proceedings and shall grant the corporate officer or
16 employee an oral hearing and give him or her ten days' notice
17 of the time and place of such hearing. The Tax Commissioner may
18 continue the hearing from time to time as necessary.

19 (4) Any notice required under this section shall be
20 served personally or by mail in the manner provided in section
21 66-721.

22 (5) If the Tax Commissioner determines that further delay
23 in the collection of such taxes from the corporate officer or
24 employee will jeopardize future collection proceedings, nothing in
25 this section shall prevent the immediate collection of such taxes.

1 (6) For purposes of this section:

2 (a) Corporation shall mean any corporation and any other
3 entity that is taxed as a corporation under the Internal Revenue
4 Code;

5 (b) Taxes shall mean all taxes and additions to taxes
6 including interest and penalties imposed under the motor fuel laws
7 which are administered by the Tax Commissioner; and

8 (c) Willful failure shall mean that failure which was the
9 result of an intentional, conscious, and voluntary action.

10 Sec. 5. Section 66-1344, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 66-1344 (1) Beginning June 1, 2000, during such period
13 as funds remain in the Ethanol Production Incentive Cash Fund,
14 any ethanol facility shall receive a credit of seven and one-half
15 cents per gallon of ethanol, before denaturing, for new production
16 for a period not to exceed thirty-six consecutive months. For
17 purposes of this subsection, new production means production which
18 results from the expansion of an existing facility's capacity by
19 at least two million gallons first placed into service after June
20 1, 1999, as certified by the facility's design engineer to the
21 Department of Revenue. For expansion of an existing facility's
22 capacity, new production means production in excess of the average
23 of the highest three months of ethanol production at an ethanol
24 facility during the twenty-four-month period immediately preceding
25 certification of the facility by the design engineer. No credits

1 shall be allowed under this subsection for expansion of an existing
2 facility's capacity until production is in excess of twelve times
3 the three-month average amount determined under this subsection
4 during any twelve-consecutive-month period beginning no sooner than
5 June 1, 2000. New production shall be approved by the Department
6 of Revenue based on such ethanol production records as may be
7 necessary to reasonably determine new production. This credit must
8 be earned on or before December 31, 2003.

9 (2)(a) Beginning January 1, 2002, any new ethanol
10 facility which is in production at the minimum rate of one
11 hundred thousand gallons annually for the production of ethanol,
12 before denaturing, and which has provided to the Department of
13 Revenue written evidence substantiating that the ethanol facility
14 has received the requisite authority from the Department of
15 Environmental Quality and from the United States Department of
16 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,
17 on or before June 30, 2004, shall receive a credit of eighteen
18 cents per gallon of ethanol produced for ninety-six consecutive
19 months beginning with the first calendar month for which it is
20 eligible to receive such credit and ending not later than June 30,
21 2012, if the facility is defined by subdivision (b)(i) of this
22 subsection, and for forty-eight consecutive months beginning with
23 the first calendar month for which it is eligible to receive such
24 credit and ending not later than June 30, 2008, if the facility
25 is defined by subdivision (b)(ii) of this subsection. The new

1 ethanol facility shall provide an analysis to the Department of
2 Revenue of samples of the product collected according to procedures
3 specified by the department no later than July 30, 2004, and at
4 least annually thereafter. The analysis shall be prepared by an
5 independent laboratory meeting the International Organization for
6 Standardization standard ISO/IEC 17025:1999. Prior to collecting
7 the samples, the new ethanol facility shall notify the department
8 which may observe the sampling procedures utilized by the new
9 ethanol facility to obtain the samples to be submitted for
10 independent analysis. The minimum rate shall be established for a
11 period of at least thirty days. In this regard, the new ethanol
12 facility must produce at least eight thousand two hundred nineteen
13 gallons of ethanol within a thirty-day period. The ethanol must be
14 finished product which is ready for sale to customers.

15 (b) For purposes of this subsection, new ethanol facility
16 means a facility for the conversion of grain or other raw feedstock
17 into ethanol and other byproducts of ethanol production which (i)
18 is not in production on or before September 1, 2001, or (ii) has
19 not received credits prior to June 1, 1999. A new ethanol facility
20 does not mean an expansion of an existing ethanol plant that
21 does not result in the physical construction of an entire ethanol
22 processing facility or which shares or uses in a significant manner
23 any existing plant's systems or processes and does not include
24 the expansion of production capacity constructed after June 30,
25 2004, of a plant qualifying for credits under this subsection. This

1 definition applies to contracts entered into after April 16, 2004.

2 (c) Not more than fifteen million six hundred
3 twenty-five thousand gallons of ethanol produced annually
4 at an ethanol facility shall be eligible for credits under
5 this subsection. Not more than one hundred twenty-five
6 million gallons of ethanol produced at an ethanol facility
7 by the end of the ninety-six-consecutive-month period or
8 forty-eight-consecutive-month period set forth in this subsection
9 shall be eligible for credits under this subsection.

10 (3) The credits described in this section shall be given
11 only for ethanol produced at a plant in Nebraska at which all
12 fermentation, distillation, and dehydration takes place. No credit
13 shall be given on ethanol produced for or sold for use in the
14 production of beverage alcohol. Not more than ten million gallons
15 of ethanol produced during any twelve-consecutive-month period at
16 an ethanol facility shall be eligible for the credit described
17 in subsection (1) of this section. The credits described in this
18 section shall be in the form of a nonrefundable, transferable motor
19 vehicle fuel tax credit certificate. No transfer of credits will
20 be allowed between the ethanol producer and motor vehicle fuel
21 licensees who are related parties.

22 (4) Ethanol production eligible for credits under this
23 section shall be measured by a device approved by the Division of
24 Weights and Measures of the Department of Agriculture. Confirmation
25 of approval by the division shall be provided by the ethanol

1 facility at the time the initial claim for credits provided under
2 this section is submitted to the Department of Revenue and annually
3 thereafter. Claims submitted by the ethanol producer shall be
4 based on the total number of gallons of ethanol produced, before
5 denaturing, during the reporting period measured in gross gallons.

6 (5) The Department of Revenue shall prescribe an
7 application form and procedures for claiming credits under this
8 section. In order for a claim for credits to be accepted, it must
9 be filed by the ethanol producer within three years of the date
10 the ethanol was produced or by September 30, 2012, whichever occurs
11 first.

12 (6) Every producer of ethanol shall maintain records
13 similar to those required by section 66-487. The ethanol producer
14 must maintain invoices, meter readings, load-out sheets or
15 documents, inventory records, including work-in-progress, finished
16 goods, and denaturant, and other memoranda requested by the
17 Department of Revenue relevant to the production of ethanol. On
18 an annual basis, the ethanol producer shall also be required to
19 furnish the department with copies of the reports filed with the
20 United States Department of Justice, Bureau of Alcohol, Tobacco,
21 Firearms and Explosives. The maintenance of all of this information
22 in a provable computer format or on microfilm is acceptable in
23 lieu of retention of the original documents. The records must be
24 retained for a period of not less than three years after the claim
25 for ethanol credits is filed.

1 (7) For purposes of ascertaining the correctness of any
2 application for claiming a credit provided in this section, the
3 Tax Commissioner (a) may examine or cause to have examined, by
4 any agent or representative designated by him or her for that
5 purpose, any books, papers, records, or memoranda bearing upon such
6 matters, (b) may by summons require the attendance of the person
7 responsible for rendering the application or other document or
8 any officer or employee of such person or the attendance of any
9 other person having knowledge in the premises, and (c) may take
10 testimony and require proof material for his or her information,
11 with power to administer oaths or affirmations to such person
12 or persons. The time and place of examination pursuant to this
13 subsection shall be such time and place as may be fixed by the
14 Tax Commissioner and as are reasonable under the circumstances.
15 In the case of a summons, the date fixed for appearance before
16 the Tax Commissioner shall not be less than twenty days from the
17 time of service of the summons. No taxpayer shall be subjected
18 to unreasonable or unnecessary examinations or investigations. All
19 records obtained pursuant to this subsection shall be subject to
20 the confidentiality requirements and exceptions thereto as provided
21 in section 77-27,119.

22 (8) To qualify for credits under this section, an ethanol
23 producer shall provide public notice for bids before entering
24 into any contract for the construction of a new ethanol facility.
25 Preference shall be given to a bidder residing in Nebraska when

1 awarding any contract for construction of a new ethanol facility
2 if comparable bids are submitted. For purposes of this subsection,
3 bidder residing in Nebraska means any person, partnership, foreign
4 or domestic limited liability company, association, or corporation
5 authorized to engage in business in the state with employees
6 permanently located in Nebraska. If an ethanol producer enters into
7 a contract for the construction of a new ethanol facility with
8 a bidder who is not a bidder residing in Nebraska, such producer
9 shall demonstrate to the satisfaction of the Department of Revenue
10 in its application for credits that no comparable bid was submitted
11 by a responsible bidder residing in Nebraska. The department shall
12 deny an application for credits if it is determined that the
13 contract was denied to a responsible bidder residing in Nebraska
14 without cause.

15 (9) The pertinent provisions of Chapter 66, article 7,
16 relating to the administration and imposition of motor fuel taxes
17 shall apply to the administration and imposition of assessments
18 made by the Department of Revenue relating to excess credits
19 claimed by ethanol producers under the Ethanol Development Act.
20 These provisions include, but are not limited to, issuance of
21 a deficiency following an examination of records, an assessment
22 becoming final after ~~thirty~~ sixty days absent a written protest,
23 presumptions regarding the burden of proof, issuance of deficiency
24 within three years of original filing, issuance of notice by
25 registered or certified mail, issuance of penalties and waiver

1 thereof, issuance of interest and waiver thereof, and issuance of
2 corporate officer or employee or limited liability company manager
3 or member assessments. For purposes of determining interest and
4 penalties, the due date will be considered to be the date on which
5 the credits were used by the licensees to whom the credits were
6 transferred.

7 (10) If a written protest is filed by the ethanol
8 producer with the department within the ~~thirty-day~~ sixty-day period
9 in subsection (9) of this section, the protest shall: (a) Identify
10 the ethanol producer; (b) identify the proposed assessment which
11 is being protested; (c) set forth each ground under which a
12 redetermination of the department's position is requested together
13 with facts sufficient to acquaint the department with the exact
14 basis thereof; (d) demand the relief to which the ethanol producer
15 considers itself entitled; and (e) request that an evidentiary
16 hearing be held to determine any issues raised by the protest if
17 the ethanol producer desires such a hearing.

18 (11) For applications received after April 16, 2004, an
19 ethanol facility receiving benefits under the Ethanol Development
20 Act shall not be eligible for benefits under the Employment and
21 Investment Growth Act, the Invest Nebraska Act, or the Nebraska
22 Advantage Act.

23 Sec. 6. Section 77-2709, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-2709 (1) If the Tax Commissioner is not satisfied with

1 the return or returns of the tax or the amount of tax required
2 to be paid to the state by any person, he or she may compute and
3 determine the amount required to be paid upon the basis of the
4 facts contained in the return or returns or upon the basis of any
5 information within his or her possession or which may come into
6 his or her possession. One or more deficiency determinations of
7 the amount due for one or more than one period may be made. To
8 the amount of the deficiency determination for each period shall
9 be added a penalty equal to ten percent thereof or twenty-five
10 dollars, whichever is greater. In making a determination, the
11 Tax Commissioner may offset overpayments for a period or periods,
12 together with interest on the overpayments, against underpayments
13 for other period or periods, against penalties, and against the
14 interest on the underpayments.

15 The interest on underpayments and overpayments shall be
16 computed in the manner set forth hereinafter.

17 (2) If any person fails to make a return, the Tax
18 Commissioner shall make an estimate of the amount of the gross
19 receipts of the person or, as the case may be, of the amount of
20 the total sales, rent, or lease price of property sold, rented,
21 or leased or purchased, by the person, the storage, use, or
22 consumption of which in this state is subject to the use tax.
23 The estimate shall be made for the period or periods in respect
24 to which the person failed to make a return and shall be based
25 upon any information which is in the Tax Commissioner's possession

1 or may come into his or her possession. Upon the basis of this
2 estimate, the Tax Commissioner shall compute and determine the
3 amount required to be paid to the state, adding to the sum thus
4 arrived at a penalty equal to ten percent thereof or twenty-five
5 dollars, whichever is greater. One or more determinations may be
6 made for one or more than one period.

7 (3) The amount of the determination of any deficiency
8 exclusive of penalties shall bear interest at the rate specified in
9 section 45-104.02, as such rate may from time to time be adjusted,
10 from the twenty-fifth of the month following the period for which
11 the amount should have been returned until the date of payment.

12 (4) If any part of a deficiency for which a deficiency
13 determination is made is the result of fraud or an intent to
14 evade the Nebraska Revenue Act of 1967 or authorized rules and
15 regulations, a penalty of twenty-five percent of the amount of
16 the determination or fifty dollars, whichever is greater, shall be
17 added thereto.

18 (5) (a) Promptly after making his or her determination,
19 the Tax Commissioner shall give to the person written notice of his
20 or her determination.

21 (b) The notice may be served personally or by mail, and
22 if by mail the notice shall be addressed to the person at his or
23 her address as it appears in the records of the Tax Commissioner.
24 In case of service by mail of any notice required by the Nebraska
25 Revenue Act of 1967, the service is complete at the time of deposit

1 in the United States post office.

2 (c) Every notice of a deficiency determination shall be
3 personally served or mailed within three years after the last day
4 of the calendar month following the period for which the amount is
5 proposed to be determined or within three years after the return
6 is filed, whichever period expires the later. In the case of
7 failure to make a return, every notice of determination shall be
8 mailed or personally served within five years after the last day
9 of the calendar month following the period for which the amount is
10 proposed to be determined.

11 (d) When, before the expiration of the time prescribed
12 in this section for the mailing of a notice of deficiency
13 determination, both the Tax Commissioner and the taxpayer have
14 consented in writing to its mailing after such time, the notice of
15 the deficiency determination may be mailed at any time prior to the
16 expiration of the period agreed upon. The agreed-upon period may
17 be extended by subsequent agreement, in writing, made before the
18 expiration of the period previously agreed upon.

19 (6) When a business is discontinued, a determination may
20 be made at any time thereafter within the periods specified in this
21 section as to liability arising out of that business, irrespective
22 of whether the determination is issued prior to the due date of
23 the liability as otherwise specified in the Nebraska Revenue Act of
24 1967.

25 (7) Any person against whom a determination is made under

1 subsections (1) and (2) of this section or any person directly
2 interested may petition for a redetermination within ~~thirty~~ sixty
3 days after service upon the person of notice thereof. For the
4 purposes of this subsection, a person is directly interested in a
5 deficiency determination when such deficiency could be collected
6 from such person. If a petition for redetermination is not filed
7 within the ~~thirty-day~~ sixty-day period, the determination becomes
8 final at the expiration of the period.

9 (8) If a petition for redetermination is filed within the
10 ~~thirty-day~~ sixty-day period, the Tax Commissioner shall reconsider
11 the determination and, if the person has so requested in his or her
12 petition, shall grant the person an oral hearing and shall give him
13 or her ten days' notice of the time and place of the hearing. The
14 Tax Commissioner may continue the hearing from time to time as may
15 be necessary.

16 (9) The Tax Commissioner may decrease or increase the
17 amount of the determination before it becomes final, but the amount
18 may be increased only if a claim for the increase is asserted by
19 the Tax Commissioner at or before the hearing, upon which assertion
20 the petitioner shall be entitled to a thirty-day continuance of the
21 hearing to allow him or her to obtain and produce further evidence
22 applicable to the items upon which the increase is based.

23 (10) The order or decision of the Tax Commissioner upon
24 a petition for redetermination shall become final thirty days after
25 service upon the petitioner of notice thereof.

1 (11) All determinations made by the Tax Commissioner
2 under the provisions of subsections (1) and (2) of this section are
3 due and payable at the time they become final. If they are not paid
4 when due and payable, a penalty of ten percent of the amount of the
5 determination, exclusive of interest and penalties, shall be added
6 thereto.

7 (12) Any notice required by this section shall be served
8 personally or by mail in the manner prescribed in subsection (5) of
9 this section.

10 Sec. 7. Section 77-2711, Revised Statutes Supplement,
11 2007, is amended to read:

12 77-2711 (1)(a) The Tax Commissioner shall enforce
13 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
14 enforce rules and regulations relating to the administration and
15 enforcement of such sections.

16 (b) The Tax Commissioner may prescribe the extent to
17 which any ruling or regulation shall be applied without retroactive
18 effect.

19 (2) The Tax Commissioner may employ accountants,
20 auditors, investigators, assistants, and clerks necessary for the
21 efficient administration of the Nebraska Revenue Act of 1967 and
22 may delegate authority to his or her representatives to conduct
23 hearings, prescribe regulations, or perform any other duties
24 imposed by such act.

25 (3)(a) Every seller, every retailer, and every person

1 storing, using, or otherwise consuming in this state property
2 purchased from a retailer shall keep such records, receipts,
3 invoices, and other pertinent papers in such form as the Tax
4 Commissioner may reasonably require.

5 (b) Every such seller, retailer, or person shall keep
6 such records for not less than three years from the making of such
7 records unless the Tax Commissioner in writing sooner authorized
8 their destruction.

9 (4) The Tax Commissioner or any person authorized in
10 writing by him or her may examine the books, papers, records, and
11 equipment of any person selling property and any person liable for
12 the use tax and may investigate the character of the business of
13 the person in order to verify the accuracy of any return made or,
14 if no return is made by the person, to ascertain and determine
15 the amount required to be paid. In the examination of any person
16 selling property or of any person liable for the use tax, an
17 inquiry shall be made as to the accuracy of the reporting of city
18 sales and use taxes for which the person is liable under the Local
19 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
20 the accuracy of the allocation made between the various counties,
21 cities, villages, and municipal counties of the tax due. The Tax
22 Commissioner may make or cause to be made copies of resale or
23 exemption certificates and may pay a reasonable amount to the
24 person having custody of the records for providing such copies.

25 (5) The taxpayer shall have the right to keep or store

1 his or her records at a point outside this state and shall make his
2 or her records available to the Tax Commissioner at all times.

3 (6) In administration of the use tax, the Tax
4 Commissioner may require the filing of reports by any person or
5 class of persons having in his, her, or their possession or custody
6 information relating to sales of property, the storage, use, or
7 other consumption of which is subject to the tax. The report shall
8 be filed when the Tax Commissioner requires and shall set forth the
9 names and addresses of purchasers of the property, the sales price
10 of the property, the date of sale, and such other information as
11 the Tax Commissioner may require.

12 (7) It shall be a Class I misdemeanor for the Tax
13 Commissioner or any official or employee of the Tax Commissioner,
14 the State Treasurer, or the Department of Administrative Services
15 to make known in any manner whatever the business affairs,
16 operations, or information obtained by an investigation of records
17 and activities of any retailer or any other person visited
18 or examined in the discharge of official duty or the amount
19 or source of income, profits, losses, expenditures, or any
20 particular thereof, set forth or disclosed in any return, or
21 to permit any return or copy thereof, or any book containing
22 any abstract or particulars thereof to be seen or examined by
23 any person not connected with the Tax Commissioner. Nothing in
24 this section shall be construed to prohibit (a) the delivery to
25 a taxpayer, his or her duly authorized representative, or his

1 or her successors, receivers, trustees, executors, administrators,
2 assignees, or guarantors, if directly interested, of a certified
3 copy of any return or report in connection with his or her tax,
4 (b) the publication of statistics so classified as to prevent
5 the identification of particular reports or returns and the items
6 thereof, (c) the inspection by the Attorney General, other legal
7 representative of the state, or county attorney of the reports
8 or returns of any taxpayer when either (i) information on the
9 reports or returns is considered by the Attorney General to be
10 relevant to any action or proceeding instituted by the taxpayer
11 or against whom an action or proceeding is being considered or
12 has been commenced by any state agency or the county or (ii) the
13 taxpayer has instituted an action to review the tax based thereon
14 or an action or proceeding against the taxpayer for collection of
15 tax or failure to comply with the Nebraska Revenue Act of 1967 is
16 being considered or has been commenced, (d) the furnishing of any
17 information to the United States Government or to states allowing
18 similar privileges to the Tax Commissioner, (e) the disclosure of
19 information and records to a collection agency contracting with the
20 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
21 the disclosure to another party to a transaction of information
22 and records concerning the transaction between the taxpayer and
23 the other party, or (g) the disclosure of information pursuant to
24 section 77-27,195 or 77-5731.

25 (8) Notwithstanding the provisions of subsection (7) of

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

11 (9) Notwithstanding the provisions of subsection (7) of
12 this section, the Tax Commissioner may permit other tax officials
13 of this state to inspect the tax returns, reports, and applications
14 filed under sections 77-2701.04 to 77-2713, but such inspection
15 shall be permitted only for purposes of enforcing a tax law and
16 only to the extent and under the conditions prescribed by the rules
17 and regulations of the Tax Commissioner.

18 (10) Notwithstanding the provisions of subsection (7)
19 of this section, the Tax Commissioner may, upon request, provide
20 the county board of any county which has exercised the authority
21 granted by section 81-1254 with a list of the names and addresses
22 of the hotels located within the county for which lodging sales tax
23 returns have been filed or for which lodging sales taxes have been
24 remitted for the county's County Visitors Promotion Fund under the
25 Nebraska Visitors Development Act.

1 The information provided by the Tax Commissioner shall
2 indicate only the names and addresses of the hotels located within
3 the requesting county for which lodging sales tax returns have been
4 filed for a specified period and the fact that lodging sales taxes
5 remitted by or on behalf of the hotel have constituted a portion of
6 the total sum remitted by the state to the county for a specified
7 period under the provisions of the Nebraska Visitors Development
8 Act. No additional information shall be revealed.

9 (11) (a) Notwithstanding the provisions of subsection (7)
10 of this section, the Tax Commissioner shall, upon written request
11 by the Auditor of Public Accounts or the Legislative Performance
12 Audit Committee, make tax returns and tax return information open
13 to inspection by or disclosure to Auditor of Public Accounts or
14 Legislative Performance Audit Section employees for the purpose of
15 and to the extent necessary in making an audit of the Department
16 of Revenue pursuant to section 50-1205 or 84-304. Confidential
17 tax returns and tax return information shall be audited only upon
18 the premises of the Department of Revenue. All audit workpapers
19 pertaining to the audit of the Department of Revenue shall be
20 stored in a secure place in the Department of Revenue.

21 (b) No employee of the Auditor of Public Accounts or
22 Legislative Performance Audit Section shall disclose to any person,
23 other than another Auditor of Public Accounts or Legislative
24 Performance Audit Section employee whose official duties require
25 such disclosure or as provided in subsections (2) and (3) of

1 section 50-1213, any return or return information described in the
2 Nebraska Revenue Act of 1967 in a form which can be associated
3 with or otherwise identify, directly or indirectly, a particular
4 taxpayer.

5 (c) Any person who violates the provisions of this
6 subsection shall be guilty of a Class I misdemeanor. For purposes
7 of this subsection, employee includes a former Auditor of Public
8 Accounts or Legislative Performance Audit Section employee.

9 (12) For purposes of subsections (11) and (12) of this
10 section:

11 (a) Disclosure means the making known to any person in
12 any manner a tax return or return information;

13 (b) Return information means:

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

25 (ii) Any part of any written determination or any

1 background file document relating to such written determination;
2 and

3 (c) Tax return or return means any tax or information
4 return or claim for refund required by, provided for, or permitted
5 under sections 77-2701 to 77-2713 which is filed with the Tax
6 Commissioner by, on behalf of, or with respect to any person
7 and any amendment or supplement thereto, including supporting
8 schedules, attachments, or lists which are supplemental to or part
9 of the filed return.

10 (13) Notwithstanding the provisions of subsection (7) of
11 this section, the Tax Commissioner shall, upon request, provide
12 any municipality which has adopted the local option sales tax
13 under the Local Option Revenue Act with a list of the names and
14 addresses of the retailers which have collected the local option
15 sales tax for the municipality. The request may be made annually
16 and shall be submitted to the Tax Commissioner on or before June
17 30 of each year. The information provided by the Tax Commissioner
18 shall indicate only the names and addresses of the retailers. No
19 additional information shall be revealed.

20 (14) In all proceedings under the Nebraska Revenue Act
21 of 1967, the Tax Commissioner may act for and on behalf of the
22 people of the State of Nebraska. The Tax Commissioner in his or her
23 discretion may waive all or part of any penalties provided by the
24 provisions of such act, ~~but may not waive the minimum or interest~~
25 on delinquent taxes specified in section 45-104.02, as such rate

1 may from time to time be adjusted. ~~7 except interest on use taxes~~
2 ~~voluntarily reported by an individual.~~

3 (15) (a) The purpose of this subsection is to set forth
4 the state's policy for the protection of the confidentiality
5 rights of all participants in the system operated pursuant to
6 the streamlined sales and use tax agreement and of the privacy
7 interests of consumers who deal with model 1 sellers.

8 (b) For purposes of this subsection:

9 (i) Anonymous data means information that does not
10 identify a person;

11 (ii) Confidential taxpayer information means all
12 information that is protected under a member state's laws,
13 regulations, and privileges; and

14 (iii) Personally identifiable information means
15 information that identifies a person.

16 (c) The state agrees that a fundamental precept for model
17 1 sellers is to preserve the privacy of consumers by protecting
18 their anonymity. With very limited exceptions, a certified service
19 provider shall perform its tax calculation, remittance, and
20 reporting functions without retaining the personally identifiable
21 information of consumers.

22 (d) The governing board of the member states in the
23 streamlined sales and use tax agreement may certify a certified
24 service provider only if that certified service provider certifies
25 that:

1 (i) Its system has been designed and tested to ensure
2 that the fundamental precept of anonymity is respected;

3 (ii) Personally identifiable information is only used and
4 retained to the extent necessary for the administration of model 1
5 with respect to exempt purchasers;

6 (iii) It provides consumers clear and conspicuous
7 notice of its information practices, including what information
8 it collects, how it collects the information, how it uses the
9 information, how long, if at all, it retains the information, and
10 whether it discloses the information to member states. Such notice
11 shall be satisfied by a written privacy policy statement accessible
12 by the public on the web site of the certified service provider;

13 (iv) Its collection, use, and retention of personally
14 identifiable information is limited to that required by the member
15 states to ensure the validity of exemptions from taxation that are
16 claimed by reason of a consumer's status or the intended use of the
17 goods or services purchased; and

18 (v) It provides adequate technical, physical, and
19 administrative safeguards so as to protect personally identifiable
20 information from unauthorized access and disclosure.

21 (e) The state shall provide public notification to
22 consumers, including exempt purchasers, of the state's practices
23 relating to the collection, use, and retention of personally
24 identifiable information.

25 (f) When any personally identifiable information that

1 has been collected and retained is no longer required for the
2 purposes set forth in subdivision (15) (d) (iv) of this section, such
3 information shall no longer be retained by the member states.

4 (g) When personally identifiable information regarding an
5 individual is retained by or on behalf of the state, it shall
6 provide reasonable access by such individual to his or her own
7 information in the state's possession and a right to correct any
8 inaccurately recorded information.

9 (h) If anyone other than a member state, or a person
10 authorized by that state's law or the agreement, seeks to discover
11 personally identifiable information, the state from whom the
12 information is sought should make a reasonable and timely effort to
13 notify the individual of such request.

14 (i) This privacy policy is subject to enforcement by the
15 Attorney General.

16 (j) All other laws and regulations regarding the
17 collection, use, and maintenance of confidential taxpayer
18 information remain fully applicable and binding. Without
19 limitation, this subsection does not enlarge or limit the state's
20 authority to:

21 (i) Conduct audits or other reviews as provided under the
22 agreement and state law;

23 (ii) Provide records pursuant to the federal Freedom of
24 Information Act, disclosure laws with governmental agencies, or
25 other regulations;

1 (iii) Prevent, consistent with state law, disclosure of
2 confidential taxpayer information;

3 (iv) Prevent, consistent with federal law, disclosure or
4 misuse of federal return information obtained under a disclosure
5 agreement with the Internal Revenue Service; and

6 (v) Collect, disclose, disseminate, or otherwise use
7 anonymous data for governmental purposes.

8 Sec. 8. Section 77-2775, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 77-2775 (1) If the amount of a taxpayer's federal
11 adjusted gross income, taxable income, or tax liability reported
12 on his or her federal income tax return for any taxable year
13 is changed or corrected by the Internal Revenue Service or other
14 competent authority or as the result of a renegotiation of a
15 contract or subcontract with the United States, the taxpayer shall
16 report such change or correction in federal adjusted gross income,
17 taxable income, or tax liability within ~~ninety~~ sixty days after the
18 final determination of such change, correction, or renegotiation.

19 (2) Whenever the amount of a taxpayer's income which is
20 taxable in any state for any taxable year or any tax credits
21 allowable in such state are changed or corrected in a way material
22 to the tax liability owed to this state by the agency having
23 authority to examine returns filed with such state or any other
24 competent authority or whenever an amended return is filed by any
25 taxpayer with a change or correction material to the tax liability

1 owed to this state with another state, such change or correction
2 shall be reported to the Tax Commissioner within ~~ninety~~ sixty days
3 after the final change or correction or filing of the amended
4 return. The Tax Commissioner shall by rule and regulation provide
5 the nature of any change or correction which must be reported.

6 (3) The taxpayer shall report all changes or corrections
7 required to be reported under this section by filing an amended
8 income tax return and shall give such information as the Tax
9 Commissioner may require. The taxpayer shall concede the accuracy
10 of any change or correction or state why it is erroneous.

11 (4) Any taxpayer filing an amended federal income tax
12 return shall also file within ~~ninety~~ sixty days thereafter an
13 amended income tax return under the Nebraska Revenue Act of
14 1967 and shall give such information as the Tax Commissioner may
15 require. For any amended federal income tax return requesting a
16 credit or refund, the amended Nebraska income tax return shall
17 be filed within ~~ninety~~ sixty days after the taxpayer has received
18 proof of federal acceptance of the credit or refund or within the
19 time for filing an amended Nebraska income tax return that would
20 otherwise be applicable notwithstanding the amended federal income
21 tax return, whichever is later.

22 Sec. 9. Section 77-2777, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-2777 ~~Ninety~~ Sixty days after the date on which it
25 was mailed, or one hundred fifty days if the taxpayer is outside

1 the United States, ~~or thirty days if the amount of the deficiency~~
2 ~~relates to tax withheld or required to be withheld by an employer~~
3 ~~or payer~~, a notice of proposed assessment of a deficiency shall
4 constitute a final assessment of the amount of tax specified
5 together with interest, additions to tax, and penalties except only
6 for such amounts as to which the taxpayer has filed a protest with
7 the Tax Commissioner.

8 Sec. 10. Section 77-2778, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-2778 Within ~~ninety~~ sixty days after the mailing of a
11 deficiency notice, or one hundred fifty days if the taxpayer is
12 outside the United States, ~~or thirty days if the amount of the~~
13 ~~deficiency relates to tax withheld or required to be withheld by an~~
14 ~~employer or payer~~, the taxpayer or any person directly interested
15 may file with the Tax Commissioner a written protest against the
16 proposed assessment in which he or she shall set forth the grounds
17 on which the protest is based. If a protest is filed, the Tax
18 Commissioner shall reconsider the assessment of the deficiency and,
19 if the taxpayer has so requested, shall grant the taxpayer or his
20 or her authorized representative an oral hearing. For purposes of
21 this section, a person shall be directly interested in a deficiency
22 determination when such deficiency could be collected from such
23 person.

24 Sec. 11. Section 77-2780, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-2780 The action of the Tax Commissioner on the
2 taxpayer's protest shall be final upon the expiration of ~~ninety~~
3 sixty days, ~~or thirty days if the amount assessed relates to tax~~
4 ~~withheld or required to be withheld by an employer or payor,~~ from
5 after the date when the Tax Commissioner mails notice of his or her
6 action to the taxpayer unless within this period the taxpayer seeks
7 review of the Tax Commissioner's determination as provided in the
8 Nebraska Revenue Act of 1967.

9 Sec. 12. Section 77-2792, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 77-2792 (1) The Tax Commissioner may abate the unpaid
12 portion of the assessment of any income tax or any liability
13 in respect thereto which (a) is excessive in amount, (b) is
14 assessed after the expiration of the period of limitations properly
15 applicable thereto, (c) is erroneously or illegally assessed, or
16 (d) is the result of an inconsistent position under section 1311 of
17 the Internal Revenue Code of 1986.

18 (2) No claim for abatement shall be filed by a taxpayer
19 in respect to an assessment of any income tax imposed under the
20 Nebraska Revenue Act of 1967.

21 (3) The Tax Commissioner may abate the unpaid portion of
22 the assessment of any tax or any liability in respect thereto if he
23 or she determines under uniform rules prescribed by him or her that
24 the administration and collection costs involved would not warrant
25 collection of the amount due.

1 (4) In all proceedings under the Nebraska Revenue Act
2 of 1967, the Tax Commissioner may act for and on behalf of the
3 people of the State of Nebraska. The Tax Commissioner in his or her
4 discretion may waive all or part of any penalties provided by such
5 act ~~but may not waive the minimum or interest~~ on delinquent taxes
6 at the rate specified in section 45-104.02, as such rate may from
7 time to time be adjusted. ~~except as provided in this section.~~

8 ~~(5) The Tax Commissioner may abate interest when:~~

9 ~~(a) The interest is attributable to error or unreasonable~~
10 ~~delay in performing a ministerial duty by the Department of Revenue~~
11 ~~or to erroneous written advice given to the taxpayer by the Tax~~
12 ~~Commissioner or an employee of the department acting in his or her~~
13 ~~official capacity when the written advice was a direct response to~~
14 ~~a request from the taxpayer and the taxpayer reasonably relied upon~~
15 ~~the advice;~~

16 ~~(b) The interest is attributable to an amount previously~~
17 ~~refunded by the Tax Commissioner for the period interest on such~~
18 ~~amount was not allowed under section 77-2794;~~

19 ~~(c) The interest is attributable to the recovery of an~~
20 ~~amount erroneously refunded by the Tax Commissioner for the period~~
21 ~~the amount was actually held by the state, and the first ninety~~
22 ~~days after such amount was refunded, when such refund was not~~
23 ~~requested or caused by information provided by the taxpayer; or~~

24 ~~(d) The interest on the related federal amount was abated~~
25 ~~by the Internal Revenue Service.~~

1 Sec. 13. Section 77-2793, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-2793 (1) A claim for credit or refund of an
4 overpayment of any income tax imposed by the Nebraska Revenue Act
5 of 1967 shall be filed by the taxpayer within three years from the
6 time the return was filed or two years from the time the tax was
7 paid, whichever of such periods expires later. No credit or refund
8 shall be allowed or made after the expiration of the period of
9 limitation prescribed in this subsection for the filing of a claim
10 for credit or refund unless a claim for credit or refund is filed
11 by the taxpayer within such period.

12 (2) If the claim is filed by the taxpayer during the
13 three-year period prescribed in subsection (1) of this section, the
14 amount of the credit or refund shall not exceed the portion of the
15 tax paid within the three years immediately preceding the filing of
16 the claim plus the period of any extension of time for filing the
17 return if such return was filed prior to the end of the extension
18 of time. If the claim is not filed within such three-year period,
19 but is filed within the two-year period, the amount of the credit
20 or refund shall not exceed the portion of the tax paid during the
21 two years immediately preceding the filing of the claim. If no
22 claim is filed, the credit or refund shall not exceed the amount
23 which would be allowable under either of the preceding sentences,
24 as the case may be, if a claim was filed on the date the credit or
25 refund is allowed.

1 (3) If an agreement for an extension of the period for
2 assessment of income taxes is made within the period prescribed
3 in subsection (1) of this section for the filing of a claim for
4 credit or refund, the period for filing claim for credit or for
5 making credit or refund if no claim is filed shall not expire prior
6 to six months after the expiration of the period within which an
7 assessment may be made pursuant to the agreement or any extension
8 thereof.

9 (4) If a taxpayer is required by subsection (1) of
10 section 77-2775 to report a change or correction in federal
11 adjusted gross income, taxable income, or tax liability reported
12 on his or her federal income tax return, or to report a change
13 or correction which is treated in the same manner as if it were
14 an overpayment for federal income tax purposes, or to file an
15 amended return with the Tax Commissioner, a claim for credit or
16 refund of any resulting overpayment of tax shall be filed by
17 the taxpayer within two years from the time the notice of such
18 change or correction or such amended return was required to be
19 filed with the Tax Commissioner. If the report or amended return
20 is not filed within the ~~ninety-day~~ sixty-day period specified in
21 such subsection, interest on any resulting refund or credit shall
22 cease to accrue after such ~~ninetieth~~ sixtieth day. The amount of
23 such credit or refund shall not exceed the amount of the reduction
24 in tax attributable to such federal change, correction, or items
25 amended on the taxpayer's amended federal income tax return. This

1 subsection shall not affect the time within which or the amount for
2 which a claim for credit or refund may be filed apart from this
3 subsection.

4 ~~(5)~~ (5)(a) If a taxpayer is required by subsection (2)
5 of section 77-2775 to report a change or correction in the amount
6 of income taxable or tax credit allowable in one or more states
7 and such changes or corrections when reflected in the return filed
8 under the Nebraska Revenue Act of 1967 as most recently amended
9 would result in an overpayment of tax, a claim for credit or refund
10 shall be filed by the taxpayer within the earlier of ~~(a)~~ (i) two
11 years from the time the notice of such change or correction or such
12 amended return was required to be filed with the Tax Commissioner
13 or ~~(b)~~ (ii) ten years from the due date of the return.

14 (b) If the report or amended return is not filed within
15 the ~~ninety-day~~ sixty-day period specified in such subsection,
16 interest on any resulting refund or credit shall cease to accrue
17 after such ~~ninetieth~~ sixtieth day. The amount of such credit or
18 refund shall not exceed the lesser of (i) the reduction in tax
19 attributable to the change or correction in the amount of income
20 taxable or the credit allowable in such other state in the return
21 filed under the Nebraska Revenue Act of 1967 or (ii) the increase
22 in tax actually paid to such other state or states.

23 (c) This subsection shall not affect the time within
24 which or the amount for which a claim for credit or refund may be
25 filed apart from this subsection. This subsection shall apply to

1 changes or corrections which become final on or after May 1, 1993.

2 (6) If the claim for credit or refund relates to an
3 overpayment attributable to a net operating loss carryback derived
4 from or connected with Nebraska sources, the claim may be made
5 under rules and regulations prescribed by the Tax Commissioner
6 consistent, to the extent possible under the Nebraska Revenue Act
7 of 1967, with the laws of the United States.

8 (7) For purposes of this section and section 77-2795,
9 a timely filed petition for redetermination shall be considered
10 a claim for credit or refund filed on the date the notice of
11 deficiency determination was mailed.

12 Sec. 14. Section 77-2796, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2796 If the Tax Commissioner disallows a claim for
15 refund, he or she shall notify the taxpayer accordingly. The action
16 of the Tax Commissioner denying a claim for refund is final upon
17 the expiration of ~~ninety~~ sixty days ~~from~~ after the date when he or
18 she mails notice of his or her action to the taxpayer unless within
19 this period the taxpayer seeks review of the Tax Commissioner's
20 determination as hereinafter provided.

21 Sec. 15. Section 77-27,100, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-27,100 The action authorized in section 77-2798 shall
24 be filed within three years from the last date prescribed for
25 filing the return or within one year from the date the tax was

1 paid, or within ~~ninety~~ sixty days after the denial of a claim for
2 refund by the Tax Commissioner.

3 Sec. 16. Section 77-27,187.02, Revised Statutes
4 Supplement, 2007, is amended to read:

5 77-27,187.02 (1) To earn the incentives set forth in the
6 Nebraska Advantage Rural Development Act, the taxpayer shall file
7 an application for an agreement with the Tax Commissioner.

8 (2) The application shall contain:

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

13 (b) Sufficient documents, plans, and specifications as
14 required by the Tax Commissioner to support the plan and to define
15 a project; and

16 (c) An application fee of five hundred dollars. The
17 fee shall be remitted to the State Treasurer for credit to the
18 ~~Nebraska Advantage Rural Development~~ Incentive Fund, ~~which fund~~
19 ~~is hereby created. Any money in the fund available for investment~~
20 ~~shall be invested by the state investment officer pursuant to~~
21 ~~the Nebraska Capital Expansion Act and the Nebraska State Funds~~
22 ~~Investment Act.~~ The application and all supporting information
23 shall be confidential except for the name of the taxpayer, the
24 location of the project, and the amounts of increased employment or
25 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 or enterprise zone.

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 and three million dollars in fiscal
13 year 2006-07 and each fiscal year thereafter. Four hundred dollars
14 of the application fee shall be refunded to the applicant if
15 the application is not approved because the expected credits from
16 approved projects exceed such amounts.

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

19 (d) Applications shall be filed by November 1 and shall
20 be complete by December 1 of each calendar year. Any application
21 that is filed after November 1 or that is not complete on December
22 1 shall be considered to be filed during the following calendar
23 year.

24 (4) After approval, the taxpayer and the Tax Commissioner
25 shall enter into a written agreement. The taxpayer shall agree

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

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

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

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

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

17 (e) The maximum amount of credits authorized.

18 Sec. 17. Section 77-4104, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-4104 (1) In order to utilize the incentives set forth
21 in the Employment and Investment Growth Act, the taxpayer shall
22 file an application for an agreement with the Tax Commissioner.

23 (2) The application shall contain:

24 (a) A written statement describing the plan of employment
25 and investment for a qualified business in this state;

1 (b) Sufficient documents, plans, and specifications as
2 required by the Tax Commissioner to support the plan and to define
3 a project;

4 (c) If more than one location within this state is
5 involved, sufficient documentation to show that the employment and
6 investment at different locations are interdependent parts of the
7 plan. A headquarters shall be presumed to be interdependent with
8 any other location directly controlled by such headquarters. A
9 showing that the parts of the plan would be considered parts of
10 a unitary business for corporate income tax purposes shall not
11 be sufficient to show interdependence for the purposes of this
12 subdivision;

13 (d) A nonrefundable application fee of five hundred
14 dollars. The fee shall be deposited into the ~~Employment and~~
15 ~~Investment Growth~~ Nebraska Incentives Fund; ~~7~~ which fund is hereby
16 created. Any money in the fund available for investment shall be
17 invested by the state investment officer pursuant to the Nebraska
18 ~~Capital Expansion Act and the Nebraska State Funds Investment Act;~~
19 and

20 (e) A timetable showing the expected sales tax refunds
21 and what year they are expected to be claimed. The timetable shall
22 include both direct refunds due to investment and credits taken as
23 sales tax refunds as accurately as possible.

24 The application and all supporting information shall be
25 confidential except for the name of the taxpayer, the location of

1 the project, the amounts of increased employment and investment,
2 and the information required to be reported by sections 77-4110 and
3 77-4113.

4 (3) Once satisfied that the plan in the application
5 defines a project consistent with the purposes stated in section
6 77-4102 in one or more qualified business activities within this
7 state, that the plans will result in either (a) the investment
8 in qualified property of at least three million dollars and the
9 hiring of at least thirty new employees or (b) the investment in
10 qualified property resulting in a net gain in the total value of
11 tangible property in this state of a type subject to depreciation,
12 amortization, or other recovery under the Internal Revenue Code of
13 1986 of at least twenty million dollars, and that the required
14 levels of employment and investment for the project will be met
15 prior to the end of the sixth year after the year in which the
16 application was submitted, the Tax Commissioner shall approve the
17 application. In determining the net gain in value for purposes of
18 this subsection, all tangible personal property shall be valued
19 in a manner consistent with the value determined for qualified
20 property, and the total value on the last day of each year shall be
21 compared with the total value on the last day of the base year.

22 (4) After approval, the taxpayer and the Tax Commissioner
23 shall enter into a written agreement. The taxpayer shall agree
24 to complete the project, and the Tax Commissioner, on behalf
25 of the State of Nebraska, shall designate the approved plans

1 of the taxpayer as a project and, in consideration of the
2 taxpayer's agreement, agree to allow the taxpayer to use the
3 incentives contained in the Employment and Investment Growth
4 Act. The application, and all supporting documentation, to the
5 extent approved, shall be considered a part of the agreement. The
6 agreement shall state:

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

9 (b) The time period under the act in which the required
10 levels must be met;

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

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

14 (e) A requirement that the company update the Department
15 of Revenue annually on any changes in plans or circumstances which
16 affect the timetable of sales tax refunds as set out in the
17 application. If the company fails to comply with this requirement,
18 the Tax Commissioner may defer any pending sales tax refunds until
19 the company does comply.

20 (5) The incentives contained in section 77-4105 shall
21 be in lieu of the tax credits allowed by section 77-27,188 for
22 any project. In computing credits under section 77-27,188, any
23 investment or employment which is eligible for benefits under
24 the Employment and Investment Growth Act shall be subtracted from
25 the increases computed for determining the credits under section

1 77-27,188.

2 (6) A taxpayer and the Tax Commissioner may enter into
3 agreements for more than one project and may include more than
4 one project in a single agreement. The projects may be either
5 sequential or concurrent. A project may involve the same location
6 as another project. No new employment or new investment shall be
7 included in more than one project for either the meeting of the
8 employment or investment requirements or the creation of credits.
9 When projects overlap and the plans do not clearly specify, then
10 the taxpayer shall specify in which project the employment and
11 investment belongs.

12 Sec. 18. Section 77-4928, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-4928 (1) In order for the employee and company to be
15 eligible for the wage benefit credit, the company shall file an
16 application for an agreement with the board.

17 (2) The application shall contain:

18 (a) The exact name of the company and any related
19 companies which will be included in the project;

20 (b) A statement describing, in detail, the nature of
21 the company's business, including the products sold and respective
22 markets;

23 (c) A detailed narrative that describes the proposed
24 project, including how the company intends to attain and maintain
25 the job and investment requirements;

1 (d) A request that the company be considered for approval
2 under the Quality Jobs Act;

3 (e) If more than one location within this state is
4 to be involved in the project, sufficient documentation to show
5 that the employment and investment at the different locations are
6 interdependent parts of the project plan;

7 (f) A copy of the corporate authorization for the
8 project;

9 (g) A copy of the company's most recent financial report,
10 federal income tax return, Nebraska income tax return, Nebraska
11 reconciliation of income tax withheld, and Nebraska sales and use
12 tax identification number;

13 (h) The number of base-year employees, the expected
14 number of new employees, the expected timing of the hiring of the
15 new employees, the anticipated timing and amounts of new investment
16 in buildings and equipment, and the average salaries expected by
17 category for the new employees to be employed at the project; and

18 (i) A five-thousand-dollar nonrefundable application fee
19 payable to the Department of Revenue. The fee shall be remitted to
20 the Quality Jobs Nebraska Incentives Fund, ~~which fund is created.~~
21 ~~Any money in the fund available for investment shall be invested~~
22 ~~by the state investment officer pursuant to the Nebraska Capital~~
23 ~~Expansion Act and the Nebraska State Funds Investment Act.~~

24 (3) The application and all supporting information shall
25 be confidential except for the name of the company, the location

1 of the project, the amounts of increased employment and investment,
2 the result of the net benefit calculations, and whether the
3 application has been approved.

4 (4) The board shall determine whether to approve the
5 company's application by majority vote based on its determination
6 as to whether the project will sufficiently help enable the state
7 to accomplish the purposes of the Quality Jobs Act. The board
8 shall be governed by and shall take into consideration all of the
9 following factors in making its determination:

10 (a) The timing, number, wage levels, employee benefit
11 package, and types of new jobs to be created by the project;

12 (b) The type of industry in which the company and the
13 project would be engaged;

14 (c) The timing, amount, and types of investment in
15 qualified property to be made at the project; and

16 (d) Whether the board believes the project would occur in
17 this state regardless of whether the application was approved.

18 (5) The board shall notify the company in writing as
19 to whether it has approved or not approved the application. The
20 board shall decide and mail such notice within thirty days after
21 receipt of the application whether it approves or disapproves the
22 application, unless such time is extended by mutual written consent
23 of the board and the company.

24 (6) A project shall be considered eligible under the act
25 and may be approved by the board only if the application defines

1 a project consistent with the legislative purposes contained in
2 section 77-4902 in one or more qualified business activities within
3 this state that will result in (a) the investment in qualified
4 property of at least fifty million dollars and the hiring of
5 a number of new employees of at least five hundred or (b) the
6 investment in qualified property of at least one hundred million
7 dollars and the hiring of a number of new employees of at least two
8 hundred fifty. The new investment and employment shall occur within
9 seven years, meaning by the end of the sixth year after the end of
10 the year the application was filed, and shall be maintained for the
11 entire entitlement period. These thresholds shall constitute the
12 required levels of employment and investment for purposes of the
13 act.

14 (7) If the project application is approved by the board,
15 the company and the state shall enter into a written agreement,
16 which shall be executed on behalf of the state by the Tax
17 Commissioner. In the agreement the company shall agree to complete
18 the project and the state shall designate the approved plans of
19 the company as a project and, in consideration of the company's
20 agreement, agree to allow the wage benefit credit as provided for
21 in the act. The application, and all supporting documentation, to
22 the extent approved, shall be considered a part of the agreement.
23 The agreement shall contain such terms and conditions as the board
24 shall specify in order to carry out the legislative purposes of the
25 act. The agreement shall contain provisions to allow the Department

1 of Revenue to verify that the required levels of employment have
2 been attained and maintained.

3 (8) The address of the board shall be the address of the
4 Department of Revenue.

5 Sec. 19. Section 77-5405, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-5405 (1) In order to use the incentives in the Rural
8 Economic Opportunities Act, the taxpayer shall file an application
9 for an agreement with the Tax Commissioner.

10 (2) The application shall contain:

11 (a) A written statement describing the plan of
12 employment, wages, and investment for a qualified business in
13 Nebraska;

14 (b) Sufficient documents, plans, and specifications as
15 required by the Tax Commissioner to support the plan and define a
16 project;

17 (c) If more than one location within the state is
18 involved, sufficient documentation to show that the employment,
19 wages, and investment at different locations are interdependent
20 parts of the plan. A headquarters shall be presumed to be
21 interdependent with any other location directly controlled by
22 such headquarters. A showing that the parts of the plan would be
23 considered parts of a unitary business for corporate income tax
24 purposes shall not be sufficient to show interdependence for the
25 purposes of this subdivision; and

1 (d) A nonrefundable application fee of five hundred
2 dollars. The fee shall be deposited into the ~~Rural Economic~~
3 ~~Opportunities~~ Nebraska Incentives Fund. ~~7~~ ~~which is hereby created.~~
4 ~~Any money in the fund available for investment shall be invested~~
5 ~~by the state investment officer pursuant to the Nebraska Capital~~
6 ~~Expansion Act and the Nebraska State Funds Investment Act.~~

7 The application and all supporting information shall be
8 confidential except for the name, location, and qualification level
9 of approved projects and the information required to be reported by
10 section 77-5412.

11 (3) The Tax Commissioner shall approve the application
12 only if it satisfactorily meets the following conditions:

13 (a) Defines a project in one or more qualified business
14 activities in the state;

15 (b) Shows that the project will result in (i) the hiring
16 of a number of new employees equal to at least one-half of one
17 percent of the labor force in the county or counties in which the
18 project will be located, (ii) the paying of annual wages to the
19 number of new employees that will average at least the qualifying
20 wage, and (iii) (A) for a county or counties with a labor force
21 greater than three thousand, the investment in qualified property
22 of at least one hundred thousand dollars times one-half of one
23 percent of the labor force in the county or counties in which the
24 project will be located rounded to the nearest whole number or
25 (B) for a county or counties with a labor force of three thousand

1 or less, the investment in qualified property of at least fifty
2 thousand dollars times one-half of one percent of the labor force
3 in the county or counties in which the project will be located
4 rounded to the nearest whole number; and

5 (c) Contains plans for achieving the required levels of
6 employment, wages, and investment for the project prior to the
7 end of the second year after the year in which the application is
8 submitted and maintaining the required levels of employment, wages,
9 and investment for the entitlement period.

10 (4) After approval, the taxpayer and Tax Commissioner
11 shall enter into a written agreement. The taxpayer shall agree
12 to complete the project, and the Tax Commissioner, on behalf of
13 the State of Nebraska, shall designate the approved plans of the
14 taxpayer as a project and, in consideration of the taxpayer's
15 agreement, agree to allow the taxpayer to use the incentives
16 contained in the Rural Economic Opportunities Act. The application,
17 and all supporting documentation, to the extent approved, shall be
18 considered a part of the agreement. The agreement shall state:

19 (a) The levels of employment, wages, and investment
20 required by the act for the project based on the date of the
21 application;

22 (b) The time period under the act in which the required
23 levels must be met;

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

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

2 (e) That the required levels of employment, wages,
3 and investment shall be achieved and maintained throughout the
4 entitlement period or any incentives used will be subject to
5 recapture.

6 (5) The incentives contained in section 77-5407 shall
7 be in lieu of the tax credits allowed by sections 77-27,188 and
8 77-4105 for any project. Any employment, wages, or investment which
9 is eligible for credits under the act shall be subtracted from
10 the increases computed for determining the benefits under sections
11 77-27,188 and 77-4105.

12 (6) A taxpayer and the Tax Commissioner may enter into
13 agreements for more than one project. The projects may be either
14 sequential or concurrent. A project may involve the same location
15 as another project. No new employment, new wages, or new investment
16 shall be included in more than one project for either the
17 meeting of the employment, wages, or investment requirements or
18 the creation of credits. When projects overlap and the plans do not
19 clearly specify, the taxpayer shall specify in which project the
20 employment, wages, and investment belong.

21 Sec. 20. Section 77-5534, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-5534 (1) In order for the company to be eligible
24 for the wage benefit credit or the investment tax credit, as
25 applicable, the company shall file an application for an agreement

1 with the board.

2 (2) The application shall contain:

3 (a) The exact name of the company and any related
4 companies which will be included in the project;

5 (b) A statement describing, in detail, the nature of
6 the company's business, including the products sold and respective
7 markets;

8 (c) A detailed narrative that describes the proposed
9 project, including how the company intends to attain and maintain
10 the job and investment requirements and the expected start date for
11 the project;

12 (d) A request that the company be considered for approval
13 under the Invest Nebraska Act;

14 (e) If more than one location within this state is
15 to be involved in the project, sufficient documentation to show
16 that the employment and investment at the different locations are
17 interdependent parts of the project plan;

18 (f) A copy of the company's authorization for the
19 project;

20 (g) A copy of the company's most recent financial report,
21 federal income tax return, Nebraska income tax return, Nebraska
22 reconciliation of income tax withheld, and Nebraska sales and use
23 tax identification number;

24 (h) The expected number of base-year employees, the
25 expected number of new employees, the expected timing of the hiring

1 of the new employees, the anticipated timing and amounts of new
2 investment in buildings and equipment, and the average salaries
3 expected by category for the new employees to be employed at the
4 project;

5 (i) A copy of the written policy of the company which
6 prohibits the company from requiring as a condition of employment
7 or promotion at the project that an employee or an individual
8 applying for employment at the project submit to a genetic test or
9 provide genetic information outside of the scope of normal blood
10 testing; and

11 (j) A five-thousand-dollar nonrefundable application fee
12 payable to the Department of Revenue. The fee shall be remitted to
13 the ~~Invest Nebraska Incentives Fund, which fund is created. Any~~
14 ~~money in the fund available for investment shall be invested by the~~
15 ~~state investment officer pursuant to the Nebraska Capital Expansion~~
16 ~~Act and the Nebraska State Funds Investment Act.~~

17 (3) Any representations made by the company, or the
18 company's representatives, during the meeting before the board
19 shall become a part of the application. The application and all
20 supporting information and information received during a closed
21 session of the board shall be confidential except for the name
22 of the company, the location of the project, the amounts of
23 increased employment and investment, and whether the application
24 has been approved. The confidential information contained in an
25 application shall be discussed only in a closed session of the

1 board, unless the company waives its right to confidentiality in
2 writing. The members of the board will respect the confidentiality
3 of the information received and will not disclose any confidential
4 information regarding the company to any person other than the
5 representatives of the company, the Tax Commissioner, or other
6 employees of the Department of Revenue, except as specifically
7 provided in the Invest Nebraska Act. Any applications, or parts
8 of applications, provided to the members of the board shall be
9 numbered copies and shall be delivered to the offices of the
10 board members in a double envelope. All applications, or parts of
11 applications, shall be returned to the department at the conclusion
12 of the meeting.

13 Sec. 21. Section 77-5723, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 77-5723 (1) In order to utilize the incentives set
16 forth in the Nebraska Advantage Act, the taxpayer shall file
17 an application, on a form developed by the Tax Commissioner,
18 requesting an agreement with the Tax Commissioner.

19 (2) The application shall contain:

20 (a) A written statement describing the plan of employment
21 and investment for a qualified business in this state;

22 (b) Sufficient documents, plans, and specifications as
23 required by the Tax Commissioner to support the plan and to define
24 a project;

25 (c) If more than one location within this state is

1 involved, sufficient documentation to show that the employment and
2 investment at different locations are interdependent parts of the
3 plan. A headquarters shall be presumed to be interdependent with
4 each other location directly controlled by such headquarters. A
5 showing that the parts of the plan would be considered parts of
6 a unitary business for corporate income tax purposes shall not
7 be sufficient to show interdependence for the purposes of this
8 subdivision;

9 (d) A nonrefundable application fee of one thousand
10 dollars for a tier 1 project, two thousand five hundred dollars for
11 a tier 2, tier 3, or tier 5 project, and five thousand dollars
12 for a tier 4 project. The fee shall be credited to the Nebraska
13 Advantage Incentives Fund; and

14 (e) A timetable showing the expected sales tax refunds
15 and what year they are expected to be claimed. The timetable shall
16 include both direct refunds due to investment and credits taken as
17 sales tax refunds as accurately as possible.

18 The application and all supporting information shall be
19 confidential except for the name of the taxpayer, the location of
20 the project, the amounts of increased employment and investment,
21 and the information required to be reported by sections 77-5731 and
22 77-5734.

23 (3) An application must be complete to establish the date
24 of the application. An application shall be considered complete
25 once it contains the items listed in subsection (2) of this

1 section, regardless of the Tax Commissioner's additional needs
2 pertaining to information or clarification in order to approve or
3 not approve the application.

4 (4) Once satisfied that the plan in the application
5 defines a project consistent with the purposes stated in the
6 Nebraska Advantage Act in one or more qualified business activities
7 within this state, that the taxpayer and the plan will qualify for
8 benefits under the act, and that the required levels of employment
9 and investment for the project will be met prior to the end of the
10 fourth year after the year in which the application was submitted
11 for a tier 1 or tier 3 project or the end of the sixth year after
12 the year in which the application was submitted for a tier 2,
13 tier 4, or tier 5 project, the Tax Commissioner shall approve the
14 application.

15 (5) After approval, the taxpayer and the Tax Commissioner
16 shall enter into a written agreement. The taxpayer shall agree
17 to complete the project, and the Tax Commissioner, on behalf of
18 the State of Nebraska, shall designate the approved plan of the
19 taxpayer as a project and, in consideration of the taxpayer's
20 agreement, agree to allow the taxpayer to use the incentives
21 contained in the Nebraska Advantage Act. The application, and
22 all supporting documentation, to the extent approved, shall be
23 considered a part of the agreement. The agreement shall state:

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

1 (b) The time period under the act in which the required
2 levels must be met;

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

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

6 (e) A requirement that the company update the Department
7 of Revenue annually on any changes in plans or circumstances which
8 affect the timetable of sales tax refunds as set out in the
9 application. If the company fails to comply with this requirement,
10 the Tax Commissioner may defer any pending sales tax refunds until
11 the company does comply.

12 (6) The incentives contained in section 77-5725 shall be
13 in lieu of the tax credits allowed by the Nebraska Advantage Rural
14 Development Act for any project. In computing credits under the
15 act, any investment or employment which is eligible for benefits
16 or used in determining benefits under the Nebraska Advantage Act
17 shall be subtracted from the increases computed for determining
18 the credits under section 77-27,188. New investment or employment
19 at a project location that results in the meeting or maintenance
20 of the employment or investment requirements, the creation of
21 credits, or refunds of taxes under the Employment and Investment
22 Growth Act shall not be considered new investment or employment
23 for purposes of the Nebraska Advantage Act. The use of carryover
24 credits under the Employment and Investment Growth Act, the Invest
25 Nebraska Act, the Nebraska Advantage Rural Development Act, or the

1 Quality Jobs Act shall not preclude investment and employment from
2 being considered new investment or employment under the Nebraska
3 Advantage Act. The use of property tax exemptions at the project
4 under the Employment and Investment Growth Act shall not preclude
5 investment not eligible for the property tax exemption from being
6 considered new investment under the Nebraska Advantage Act.

7 (7) A taxpayer and the Tax Commissioner may enter into
8 agreements for more than one project and may include more than
9 one project in a single agreement. The projects may be either
10 sequential or concurrent. A project may involve the same location
11 as another project. No new employment or new investment shall be
12 included in more than one project for either the meeting of the
13 employment or investment requirements or the creation of credits.
14 When projects overlap and the plans do not clearly specify, then
15 the taxpayer shall specify in which project the employment or
16 investment belongs.

17 Sec. 22. Section 77-5726, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 77-5726 (1)(a) The credits prescribed in section 77-5725
20 shall be established by filing the forms required by the Tax
21 Commissioner with the income tax return for the year. The credits
22 may be used and shall be applied in the order in which they
23 were first allowed. The credits may be used after any other
24 nonrefundable credits to reduce the taxpayer's income tax liability
25 imposed by sections 77-2714 to 77-27,135. Any decision on how part

1 of the credit is applied shall not limit how the remaining credit
2 could be applied under this section.

3 (b) The taxpayer may use the credit provided in
4 subsection (3) of section 77-5725 to reduce the taxpayer's income
5 tax withholding employer or payor tax liability under section
6 77-2756 or 77-2757 to the extent such liability is attributable to
7 the number of new employees at the project. To the extent of the
8 credit used, such withholding shall not constitute public funds
9 or state tax revenue and shall not constitute a trust fund or be
10 owned by the state. The use by the taxpayer of the credit shall not
11 change the amount that otherwise would be reported by the taxpayer
12 to the employee under section 77-2754 as income tax withheld and
13 shall not reduce the amount that otherwise would be allowed by the
14 state as a refundable credit on an employee's income tax return as
15 income tax withheld under section 77-2755.

16 The amount of credits used against income tax withholding
17 shall not exceed the withholding attributable to new employees at
18 the project. If the amount of credit used by the taxpayer against
19 income tax withholding exceeds this amount, the excess withholding
20 shall be returned to the Department of Revenue in the manner
21 provided in section 77-2756, such excess amount returned shall be
22 considered unused, and the amount of unused credits may be used
23 as otherwise permitted in this section or shall carry over to the
24 extent authorized in subdivision (1)(d) of this section.

25 (c) Credits may be used to obtain a refund of sales and

1 use taxes under the Local Option Revenue Act, the Nebraska Revenue
2 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
3 otherwise refundable that are paid on purchases, including rentals,
4 for use at the project.

5 (d) Credits may be carried over until fully utilized,
6 except that such credits may not be carried over more than nine
7 years after the year of application for a tier 1 or tier 3 project
8 or fourteen years after the year of application for a tier 2 or
9 tier 4 project.

10 (2) (a) No refund claims shall be filed until after the
11 required levels of employment and investment have been met.

12 (b) Refund claims shall be filed no more than once each
13 quarter for refunds under the Nebraska Advantage Act, except that
14 any claim for a refund in excess of twenty-five thousand dollars
15 may be filed at any time.

16 (c) Any refund claim for sales and use taxes on materials
17 incorporated into real estate as a part of the project shall be
18 filed by and the refund paid to the owner of the improvement
19 to real estate. A refund claim for such materials purchased
20 by a purchasing agent shall include a copy of the purchasing
21 agent appointment, the contract price, and a certification by
22 the contractor or repairperson of the percentage of the materials
23 incorporated into the project on which sales and use taxes were
24 paid to Nebraska after appointment as purchasing agent.

25 (d) All refund claims shall be filed, processed, and

1 allowed as any other claim under section 77-2708, except that
2 the amounts allowed to be refunded under the Nebraska Advantage
3 Act shall be deemed to be overpayments and shall be refunded
4 notwithstanding any limitation in subdivision (2)(a) of section
5 77-2708. The refund may be allowed if the claim is filed within
6 three calendar years from the end of the year the required levels
7 of employment and investment are met or within the period set forth
8 in section 77-2708.

9 (e) If a claim for a refund of sales and use taxes
10 under the Local Option Revenue Act or sections 13-319, 13-324, and
11 13-2813 of more than twenty-five thousand dollars is filed by June
12 15 of a given year, the refund shall be made on or after November
13 15 of the same year. If such a claim is filed on or after June
14 16 of a given year, the refund shall not be made until on or
15 after November 15 of the following year. The Tax Commissioner shall
16 notify the affected city, village, county, or municipal county of
17 the amount of refund claims of sales and use taxes under the Local
18 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
19 in excess of twenty-five thousand dollars on or before July 1 of
20 the year before the claims will be paid under this section.

21 (f) Interest shall not be allowed on any sales and use
22 taxes refunded under the Nebraska Advantage Act.

23 (3) The appointment of purchasing agents shall be
24 recognized for the purpose of changing the status of a contractor
25 or repairperson as the ultimate consumer of tangible personal

1 property purchased after the date of the appointment which is
2 physically incorporated into the project and becomes the property
3 of the owner of the improvement to real estate. The purchasing
4 agent shall be jointly liable for the payment of the sales and use
5 tax on the purchases with the owner of the improvement to real
6 estate.

7 (4) A determination that a taxpayer is not engaged in a
8 qualified business or has failed to meet or maintain the required
9 levels of employment or investment for incentives, exemptions, or
10 recapture may be protested to the Tax Commissioner within thirty
11 days after the written determination by the Department of Revenue.
12 The Tax Commissioner shall issue a written order resolving such
13 protests. The determination of the Tax Commissioner within sixty
14 days after the mailing of the written notice of the proposed
15 determination. If the notice of proposed determination is not
16 protested within the sixty-day period, the proposed determination
17 is a final determination. If the notice is protested, the Tax
18 Commissioner shall issue a written order resolving such protests.
19 The written order of the Tax Commissioner resolving a protest may
20 be appealed to the district court of Lancaster County within thirty
21 days after the issuance of the order.

22 Sec. 23. The Nebraska Incentives Fund is created. Any
23 money in the Employment and Investment Growth Fund, the Invest
24 Nebraska Fund, the Nebraska Advantage Fund, the Nebraska Advantage
25 Rural Development Fund, the Quality Jobs Fund, or the Rural

1 Economic Opportunities Fund, on the effective date of this act
2 shall be transferred by the State Treasurer to the Nebraska
3 Incentives Fund. Any money in the fund available for investment
4 shall be invested by the state investment officer pursuant to
5 the Nebraska Capital Expansion Act and the Nebraska State Funds
6 Investment Act.

7 Sec. 24. Section 79-1034, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 79-1034 The county treasurer shall collect or cause to be
10 collected the fines and all money for school purposes in his or
11 her county and take all proper measures to secure to each district
12 its full amount of school funds. All county treasurers shall report
13 to the State Treasurer ~~and Tax Commissioner~~ semiannually, on or
14 before the third Monday of April and the first Monday of November
15 ~~and at such other times as the Tax Commissioner may require,~~ a
16 statement showing the whole amount of money collected on behalf of
17 school districts from all sources, noting the interest separately,
18 and the amount received on account of licenses and fines and from
19 all other sources from which school funds are derived, together
20 with a statement showing the amount paid out, to whom, and on
21 what account. At the same time the county treasurer shall pay over
22 to the State Treasurer all funds and money, from whatever source
23 derived, belonging to the general school fund in his or her hands
24 and make a settlement thereof with the State Treasurer.

25 Sec. 25. Sections 1, 7, 12, 16, 17, 18, 19, 20, 21, 23,

1 24, 25, 26, and 28 of this act become operative on their effective
2 date. Sections 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 22, and 27
3 of this act become operative on January 1, 2009.

4 Sec. 26. Original sections 77-2792, 77-4104, 77-4928,
5 77-5405, 77-5534, and 79-1034, Reissue Revised Statutes of
6 Nebraska, sections 21-2612 and 77-5723, Revised Statutes Cumulative
7 Supplement, 2006, and sections 77-2711 and 77-27,187.02, Revised
8 Statutes Supplement, 2007, are repealed

9 Sec. 27. Original sections 66-723, 77-2709, 77-2777,
10 77-2778, 77-2780, 77-2793, 77-2796, and 77-27,100, Reissue Revised
11 Statutes of Nebraska, and sections 66-720, 66-722, 66-1344,
12 77-2775, and 77-5726, Revised Statutes Cumulative Supplement, 2006,
13 are repealed.

14 Sec. 28. The following section is outright repealed:
15 Section 77-5732, Revised Statutes Cumulative Supplement, 2006.