

LEGISLATIVE BILL 283

Approved by the Governor March 20, 2013

Introduced by Conrad, 46.

FOR AN ACT relating to limited liability companies; to amend section 9-614, Reissue Revised Statutes of Nebraska, and sections 67-248.02, 67-298, 70-1903, 77-2704.57, 77-2716, 77-2734.01, and 84-511, Revised Statutes Cumulative Supplement, 2012; to eliminate the Limited Liability Company Act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 21-2601, 21-2601.01, 21-2602, 21-2603, 21-2604, 21-2604.01, 21-2605, 21-2606, 21-2607, 21-2608, 21-2609, 21-2610, 21-2611, 21-2612, 21-2613, 21-2614, 21-2615, 21-2616, 21-2617, 21-2617.01, 21-2618, 21-2619, 21-2620, 21-2621, 21-2622, 21-2623, 21-2624, 21-2625, 21-2626, 21-2627, 21-2628, 21-2629, 21-2630, 21-2631, 21-2631.01, 21-2631.02, 21-2631.03, 21-2632, 21-2632.01, 21-2633, 21-2634, 21-2635, 21-2636, 21-2637, 21-2638, 21-2639, 21-2640, 21-2641, 21-2642, 21-2643, 21-2644, 21-2645, 21-2646, 21-2647, 21-2648, 21-2649, 21-2650, 21-2651, 21-2652, 21-2653, and 21-2654, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 9-614, Reissue Revised Statutes of Nebraska, is amended to read:

9-614 Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the ~~Limited Liability Company Act~~ or the Nebraska Uniform Limited Liability Company Act, or incorporated under the Business Corporation Act.

Sec. 2. Section 67-248.02, Revised Statutes Cumulative Supplement, 2012, is amended to read:

67-248.02 (a)(1) A domestic limited partnership may merge or consolidate with one or more domestic or foreign limited partnerships or other business entities pursuant to an agreement or plan of merger or consolidation adopted in accordance with this section setting forth:

(A) The name of each limited partnership or business entity that is a party to the merger or consolidation;

(B) The name, type of business entity, and jurisdiction of formation of the surviving limited partnership or business entity into which the limited partnership and such other business entities will merge or the name, type of business entity, and jurisdiction of formation of the new business entity resulting from the consolidation of the limited partnership and the other business entities that are party to a plan of consolidation;

(C) The terms and conditions of the merger or consolidation, including the manner and basis of converting the interests of the partners, members, or shareholders, as the case may be, of each limited partnership or business entity that is a party to such merger or consolidation into interests or obligations of the surviving or new limited partnership or business entity resulting therefrom or into money or other property in whole or in part; and

(D) Such other provisions as the merging or consolidating limited partnerships or business entities may desire.

(2) Notwithstanding the provisions of section 67-450, an agreement or plan of merger or consolidation shall be approved (A) by each domestic limited partnership that is a party thereto in accordance with the voting provisions of its partnership agreement or, if not so provided, by each general partner and by limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own in the aggregate more than fifty percent of the then current percentage of other interest in the profits of such limited partnership owned by all of the limited partners in each such class or group and (B) by each other business entity that is a party thereto in accordance with the laws under which such business entity was formed and in accordance with the applicable requirements of its organizational documents. Notwithstanding such approval, at any time before the articles of merger or consolidation are filed, an agreement or plan of merger or of consolidation

may be terminated or amended pursuant to a provision for such termination or amendment contained in such agreement or plan of merger or of consolidation.

(b) As used in this section:

(1) Business entity means a domestic or foreign corporation; a domestic or foreign partnership; a domestic or foreign limited partnership; or a domestic or foreign limited liability company; and

(2) Organizational documents includes:

(A) For a domestic or foreign corporation, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute or comparable records as provided in its governing statute;

(B) For a domestic or foreign partnership, its partnership agreement;

(C) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement; and

(D) For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement or comparable records as provided in its governing statute.

(c) After a plan of merger or consolidation with respect to a domestic limited partnership is approved in accordance with this section, the surviving or resulting business entity shall deliver to the Secretary of State for filing articles of merger or consolidation setting forth:

(1) The plan of merger or consolidation;

(2) A statement to the effect that the requisite approval was obtained by the partners, members, or shareholders, as the case may be, of each business entity that is a party to such plan of merger or consolidation; and

(3) If the surviving or resulting business entity of a merger or consolidation is not a domestic business entity, an agreement by the surviving or resulting business entity that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(d) If the surviving or resulting business entity of a merger or consolidation under this section is a domestic corporation, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-20,128 to 21-20,134. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic limited liability company, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-170 to 21-174, ~~or 21-2647 to 21-2652,~~ as the case may be. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic partnership other than a limited partnership, then the merger or consolidation shall become effective and shall have the effects provided in sections 67-450 to 67-452. If the surviving or resulting business entity of a merger or consolidation is a domestic limited partnership, then:

(1) The merger or consolidation shall take effect on the later of:

(A) The approval of the plan or agreement of merger or consolidation as provided in this section;

(B) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger or consolidation; or

(C) Any effective date specified in the plan or agreement of merger or consolidation;

(2) The several limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger plan or agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation plan or agreement;

(3) The separate existence of all limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation, except the surviving or new limited partnership, shall cease;

(4) The surviving or new limited partnership shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited partnership organized under the Nebraska Uniform Limited Partnership Act;

(5) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and other business entities, subject to the Nebraska Uniform Limited Partnership Act. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and

every other interest belonging to or due to any of the limited partnerships and other business entities, as merged or consolidated, shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating business entities. The title to any real property or any interest in such property vested in any of such merging or consolidating business entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships and other business entities so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships or other business entities may be prosecuted as if such merger or consolidation had not taken place or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships or other business entities shall be impaired by such merger or consolidation; and

(7) The equity interests or securities of each limited partnership or other business entity which is a party to the plan or agreement of merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged, shall cease to exist, and the holders of such equity interests or securities shall thereafter be entitled only to the cash, property interests, or securities into which they shall have been converted in accordance with the terms of the plan or agreement of merger or consolidation, subject to any rights under sections 21-20,137 to 21-20,150, ~~the Limited Liability Company Act,~~ or the Nebraska Uniform Limited Liability Company Act or other applicable law.

Sec. 3. Section 67-298, Revised Statutes Cumulative Supplement, 2012, is amended to read:

67-298 (a) After a plan of conversion is approved, a domestic limited partnership that is being converted shall deliver to the Secretary of State for filing articles of conversion which shall include all of the following:

(1) A statement that the domestic limited partnership has been converted into another entity;

(2) The name and form of the other entity and the jurisdiction of its governing statute;

(3) The date the conversion is effective under the governing statute of the converted entity;

(4) A statement that the conversion was approved as required by sections 67-446 to 67-453;

(5) A statement that the conversion was approved as required by the governing statute of the converted entity; and

(6) A domestic limited partnership converting into a foreign limited liability company shall deliver to the office of the Secretary of State for filing (A) a certificate which sets forth all of the information required to be in the certificate or other instrument of conversion filed pursuant to the laws under which the resulting foreign limited liability company is formed and (B) an agreement that the resulting foreign limited liability company may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of the former domestic corporation.

(b) The conversion shall become effective as provided by the ~~Limited Liability Company Act,~~ the Nebraska Uniform Limited Liability Company Act, the Uniform Partnership Act of 1998, or the governing statute of the foreign limited liability company.

Sec. 4. Section 70-1903, Revised Statutes Cumulative Supplement, 2012, is amended to read:

70-1903 For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or

local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(3) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska;

(4) Gross power purchase agreement payments means the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the ~~Limited Liability Company Act~~ or the Nebraska Uniform Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(e) A tribal council.

Sec. 5. Section 77-2704.57, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-2704.57 (1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

(a) C-BED project or community-based energy development project means a new wind energy project that:

(i) Has an ownership structure as follows:

(A) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(B) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(ii) Has a resolution of support adopted:

(A) By the county board of each county in which the C-BED project is to be located; or

(B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(b) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(c) New wind energy project means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

(d) Qualified owner means:

(i) A Nebraska resident;

(ii) A limited liability company that is organized under the ~~Limited Liability Company Act~~ or the Nebraska Uniform Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(iii) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(iv) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(A) Fifteen percent either directly or indirectly by a single electric supplier; and

(B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(v) A tribal council.

(4) Gross power purchase agreement payments are the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments. For the purpose of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind agreement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would otherwise have been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Sec. 6. Section 77-2716, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-2716 (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall

not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the ~~Limited Liability Company Act~~ or the Nebraska Uniform Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a

participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed two thousand five hundred dollars per married filing separate return or five thousand dollars for any other return.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

Sec. 7. Section 77-2734.01, Revised Statutes Cumulative Supplement,

2012, is amended to read:

77-2734.01 (1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the ~~Limited Liability Company Act or the~~ Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the ~~Limited Liability Company Act or the~~ Nebraska Uniform Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) For taxable years beginning or deemed to begin before January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. For taxable years beginning or deemed to begin on or after January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a

Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Sec. 8. Section 84-511, Revised Statutes Cumulative Supplement, 2012, is amended to read:

84-511 The Secretary of State may provide for the electronic transmission and filing of documents delivered for filing under (1) the Business Corporation Act, ~~the Limited Liability Company Act~~, the Nebraska Limited Cooperative Association Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Uniform Limited Liability Company Act, the Nebraska Uniform Limited Partnership Act, the Nonstock Cooperative Marketing Act, the Uniform Partnership Act of 1998, and the Trademark Registration Act and (2) any filing provisions of sections 21-1301 to 21-1306, 21-1333 to 21-1339, and 87-208 to 87-219.01. The Secretary of State shall adopt and promulgate rules and regulations to implement this section.

Sec. 9. Original section 9-614, Reissue Revised Statutes of Nebraska, and sections 67-248.02, 67-298, 70-1903, 77-2704.57, 77-2716, 77-2734.01, and 84-511, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 10. The following sections are outright repealed: Sections 21-2601, 21-2601.01, 21-2602, 21-2603, 21-2604, 21-2604.01, 21-2605, 21-2606, 21-2607, 21-2608, 21-2609, 21-2610, 21-2611, 21-2612, 21-2613, 21-2614, 21-2615, 21-2616, 21-2617, 21-2617.01, 21-2618, 21-2619, 21-2620, 21-2621, 21-2622, 21-2623, 21-2624, 21-2625, 21-2626, 21-2627, 21-2628, 21-2629, 21-2630, 21-2631, 21-2631.01, 21-2631.02, 21-2631.03, 21-2632, 21-2632.01, 21-2633, 21-2634, 21-2635, 21-2636, 21-2637, 21-2638, 21-2639, 21-2640, 21-2641, 21-2642, 21-2643, 21-2644, 21-2645, 21-2646, 21-2647, 21-2648, 21-2649, 21-2650, 21-2651, 21-2652, 21-2653, and 21-2654, Reissue Revised Statutes of Nebraska.