

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 547

Introduced by Wayne, 13.

Read first time January 19, 2021

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 49-801.01, 50-1209, 77-2711, 77-27,119, 77-27,144, 77-5905, and
3 84-602.03, Revised Statutes Cumulative Supplement, 2020; to adopt
4 the Nebraska Small Business Act; to provide tax incentives as
5 prescribed; to change provisions relating to refunds of local option
6 sales and use taxes; to harmonize provisions; to provide an
7 operative date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 28 of this act shall be known and may be
2 cited as the Nebraska Small Business Act.

3 Sec. 2. For purposes of the Nebraska Small Business Act, the
4 definitions found in sections 3 to 18 of this act shall be used.

5 Sec. 3. Any term has the same meaning as used in the Nebraska
6 Revenue Act of 1967.

7 Sec. 4. Base year means the year immediately preceding the year of
8 application, except that if the year of application is 2021, the base
9 year is either 2019 or 2020, whichever year the applicant had the larger
10 number of equivalent employees at the qualified location.

11 Sec. 5. Base-year employee means any individual who was employed in
12 Nebraska and subject to the Nebraska income tax on compensation received
13 from the taxpayer or its predecessors during the base year and who is
14 employed at the qualified location.

15 Sec. 6. Economic redevelopment area means an area in the State of
16 Nebraska in which:

17 (1) The average rate of unemployment in the area during the period
18 covered by the most recent federal decennial census or American Community
19 Survey 5-Year Estimate by the United States Bureau of the Census is at
20 least one hundred fifty percent of the average rate of unemployment in
21 the state during the same period; and

22 (2) The average poverty rate in the area is twenty percent or more
23 for the federal census tract in the area.

24 Sec. 7. Equivalent employees means the number of employees computed
25 by dividing the total hours paid in a year to employees by the product of
26 forty times the number of weeks in a year. Only the hours paid to
27 employees who are residents of this state shall be included in such
28 computation. A salaried employee who receives a predetermined amount of
29 compensation each pay period on a weekly or less frequent basis is deemed
30 to have been paid for forty hours per week during the pay period.

31 Sec. 8. Investment means the value of qualified property

1 incorporated into or used at the qualified location. For qualified
2 property owned by the taxpayer, the value shall be the original cost of
3 the property. For qualified property rented by the taxpayer, the average
4 net annual rent shall be multiplied by the number of years of the lease
5 for which the taxpayer was originally bound, not to exceed ten years. The
6 rental of land included in and incidental to the leasing of a building
7 shall not be excluded from the computation. For purposes of this section,
8 original cost means the amount required to be capitalized for
9 depreciation, amortization, or other recovery under the Internal Revenue
10 Code of 1986, as amended. Any amount, including the labor of the
11 taxpayer, that is capitalized as a part of the cost of the qualified
12 property or that is written off under section 179 of the Internal Revenue
13 Code of 1986, as amended, shall be considered part of the original cost.

14 Sec. 9. Nebraska statewide average hourly wage for any year means
15 the most recent statewide average hourly wage paid by all employers in
16 all counties in Nebraska as calculated by the Office of Labor Market
17 Information of the Department of Labor using annual data from the
18 Quarterly Census of Employment and Wages by October 1 of the year prior
19 to application. Hourly wages shall be calculated by dividing the reported
20 average annual weekly wage by forty.

21 Sec. 10. Number of new employees means the number of equivalent
22 employees that are employed at the qualified location during a year that
23 are in excess of the number of base-year employees.

24 Sec. 11. Performance period means the year during which the
25 required increases in employment and investment were met or exceeded and
26 each year thereafter until the end of the third year after the year the
27 required increases were met or exceeded.

28 Sec. 12. Qualified location means any location in this state that
29 is used or will be used by the taxpayer to conduct business activities
30 and that is located within (1) an economic redevelopment area or (2) a
31 city or village with less than one hundred thousand inhabitants.

1 Sec. 13. Qualified property means any tangible property of a type
2 subject to depreciation, amortization, or other recovery under the
3 Internal Revenue Code of 1986, as amended, or the components of such
4 property, that will be located and used at the qualified location.
5 Qualified property does not include (1) aircraft, barges, motor vehicles,
6 railroad rolling stock, or watercraft or (2) property that is rented by
7 the taxpayer qualifying under the Nebraska Small Business Act to another
8 person.

9 Sec. 14. Ramp-up period means two years from the date the complete
10 application was filed with the Director of Economic Development.

11 Sec. 15. Related taxpayers shall include any corporations that are
12 part of a unitary business under the Nebraska Revenue Act of 1967 but are
13 not part of the same corporate taxpayer, any business entities that are
14 not corporations but which would be a part of the unitary business if
15 they were corporations, and any business entities if at least fifty
16 percent of such entities are owned by the same persons or related
17 taxpayers and family members as defined in the ownership attribution
18 rules of the Internal Revenue Code of 1986, as amended.

19 Sec. 16. Taxpayer means a corporate taxpayer or other person
20 subject to either an income tax imposed by the Nebraska Revenue Act of
21 1967 or a franchise tax under Chapter 77, article 38, or a partnership,
22 limited liability company, subchapter S corporation, cooperative,
23 including a cooperative exempt under section 521 of the Internal Revenue
24 Code of 1986, as amended, limited cooperative association, or joint
25 venture that is or would otherwise be a member of the same unitary group
26 if incorporated, which is, or whose partners, members, or owners
27 representing an ownership interest of at least ninety percent of the
28 control of such entity are, subject to or exempt from such taxes, and any
29 other partnership, limited liability company, subchapter S corporation,
30 cooperative, including a cooperative exempt under section 521 of the
31 Internal Revenue Code of 1986, as amended, limited cooperative

1 association, or joint venture when the partners, members, or owners
2 representing an ownership interest of at least ninety percent of the
3 control of such entity are subject to or exempt from such taxes.

4 Sec. 17. Wages means the wages and other payments subject to the
5 federal medicare tax.

6 Sec. 18. Year means the taxable year of the taxpayer.

7 Sec. 19. (1) To earn the incentives set forth in the Nebraska Small
8 Business Act, the taxpayer shall file an application for an agreement
9 with the Director of Economic Development.

10 (2) The application shall:

11 (a) Identify the taxpayer applying for incentives;

12 (b) Identify the location where the new investment and employment
13 will occur, including documentation to show that such location is a
14 qualified location;

15 (c) State the estimated, projected amount of new investment and the
16 estimated, projected number of new equivalent employees; and

17 (d) An application fee of five hundred dollars. The fee shall be
18 remitted to the State Treasurer for credit to the Nebraska Incentives
19 Fund.

20 (3) Subject to the limit in subsection (4) of this section, the
21 director shall approve the application and authorize the total amount of
22 incentives expected to be earned as a result of the project if he or she
23 is satisfied that the plan in the application defines a project that
24 meets the requirements established in section 20 of this act and such
25 requirements will be reached within the required time period.

26 (4) The director shall not approve further applications once the
27 expected incentives from the approved projects total fifteen million
28 dollars. All but one hundred dollars of the application fee shall be
29 refunded to the applicant if the application is not approved for any
30 reason.

31 (5) Applications for incentives shall be considered in the order in

1 which they are received.

2 (6) The director has ninety days to approve a complete application.

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

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

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

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

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

20 (e) The maximum amount of incentives authorized.

21 (8) The application, the agreement, all supporting information, and
22 all other information reported to the Director of Economic Development
23 shall be kept confidential by the director, except for the name of the
24 taxpayer, the location of the project, the estimated amounts of increased
25 employment and investment stated in the application, the date of the
26 complete application, the date the agreement was signed, and the
27 information required to be reported by section 28 of this act. The
28 application, the agreement, and all supporting information shall be
29 provided by the director to the Department of Revenue. The director shall
30 disclose, to any municipalities in which project locations exist, the
31 approval of an application and the execution of an agreement under this

1 section. The Tax Commissioner shall also notify each municipality of the
2 amount and taxpayer identity for each refund of local option sales and
3 use taxes of the municipality within thirty days after the refund is
4 allowed or approved. Disclosures shall be kept confidential by the
5 municipality unless publicly disclosed previously by the taxpayer or by
6 the State of Nebraska.

7 (9) There shall be no new applications for incentives filed under
8 this section after December 31, 2031.

9 Sec. 20. (1) A tax credit shall be allowed to any taxpayer who has
10 an approved application pursuant to the Nebraska Small Business Act if
11 the taxpayer:

12 (a) Attains a cumulative investment in qualified property of at
13 least one hundred fifty thousand dollars and hires at least five new
14 employees at the qualified location before the end of the ramp-up period;
15 and

16 (b) Pays a minimum qualifying wage of seventy percent of the
17 Nebraska statewide average hourly wage to the new equivalent employees
18 for whom tax incentives are sought under the Nebraska Small Business Act.

19 (2) Subject to subsection (3) of this section, the amount of the
20 credit shall be:

21 (a) Three thousand dollars for each new equivalent employee, except
22 that such amount shall be increased by one thousand dollars for each
23 equivalent employee who lives in an economic redevelopment area; and

24 (b) Five percent of the increased investment, except that such
25 percentage shall be six percent if the taxpayer's increased investment is
26 greater than five hundred thousand dollars.

27 (3) The credit calculated under subsection (2) of this section shall
28 not exceed fifty thousand dollars. The taxpayer shall receive such credit
29 for each year of the performance period that the taxpayer is at or above
30 the required levels of employment and cumulative investment.

31 (4) A taxpayer shall not qualify for any credits under the Nebraska

1 Small Business Act if the taxpayer is receiving any benefits under any
2 other tax incentive program offered by the State of Nebraska.

3 (5) A teleworker working from his or her residence shall not be
4 considered an equivalent employee of the taxpayer for purposes of the
5 Nebraska Small Business Act unless the teleworker's residence is located
6 in the economic redevelopment area, city, or village in which the
7 taxpayer's qualified location is located.

8 Sec. 21. (1)(a) If the taxpayer acquires an existing business, the
9 increases in investment and employment shall be computed as though the
10 taxpayer had owned the business for the entire taxable year preceding the
11 date of application.

12 (b) If the taxpayer disposes of an existing business and the new
13 owner maintains the minimum increases in investment and employment
14 required to create incentives, the taxpayer shall not be required to make
15 any repayment under section 23 of this act solely because of the
16 disposition of the business.

17 (2) If the structure of a business is reorganized, the taxpayer
18 shall compute the increases on a consistent basis for all periods.

19 (3) If the taxpayer moves a business from one qualified location to
20 another qualified location and the business was operated in a qualified
21 location during the taxable year preceding the date of application, the
22 increases in investment and employment shall be computed as though the
23 taxpayer had operated the business at the new location for the entire
24 taxable year preceding the date of application.

25 (4) If the taxpayer enters into any of the following transactions,
26 the transaction shall be presumed to be a transaction entered into for
27 the purpose of generating benefits under the Nebraska Small Business Act
28 and shall not be allowed in the computation of any benefit or the meeting
29 of any required levels under the agreement except as specifically
30 provided in this subsection:

31 (a) The purchase or lease of any property that was previously owned

1 by the taxpayer who filed the application or a related taxpayer unless
2 the first purchase by either the taxpayer who filed the application or a
3 related taxpayer was first placed in service at a qualified location
4 after the beginning of the taxable year the application was filed;

5 (b) The renegotiation of any lease in existence during the taxable
6 year the application was filed which does not materially change any of
7 the terms of the lease other than the expiration date;

8 (c) The purchase or lease of any property from a related taxpayer,
9 except that the taxpayer who filed the application will be allowed any
10 benefits under the act to which the related taxpayer would have been
11 entitled on the purchase or lease of the property if the related taxpayer
12 was considered the taxpayer; and

13 (d) Any transaction entered into primarily for the purpose of
14 receiving benefits under the act which is without a business purpose and
15 does not result in increased economic activity in the state.

16 Sec. 22. (1) The credits allowed under section 20 of this act may
17 be used:

18 (a) To obtain a refund of sales and use taxes paid under the Local
19 Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified
20 Judgment Payment Act, and sections 13-319, 13-324, and 13-2813;

21 (b) As a refundable income tax credit claimed on an income tax
22 return of the taxpayer. The return need not reflect any income tax
23 liability owed by the taxpayer;

24 (c) To reduce the taxpayer's income tax withholding employer or
25 payor tax liability under section 77-2756 or 77-2757. To the extent of
26 the credit used, such withholding shall not constitute public funds or
27 state tax revenue and shall not constitute a trust fund or be owned by
28 the state. The use by the taxpayer of the credit shall not change the
29 amount that otherwise would be reported by the taxpayer to the employee
30 under section 77-2754 as income tax withheld and shall not reduce the
31 amount that otherwise would be allowed by the state as a refundable

1 credit on an employee's income tax return as income tax withheld under
2 section 77-2755. The amount of credits used against income tax
3 withholding shall not exceed the withholding attributable to the number
4 of new equivalent employees employed by the taxpayer. If the amount of
5 credit used by the taxpayer against income tax withholding exceeds such
6 amount, the excess withholding shall be returned to the Department of
7 Revenue in the manner provided in section 77-2756, such excess amount
8 returned shall be considered unused, and the amount of unused credits may
9 be used as otherwise permitted in this section; and

10 (d) To obtain a payment from the state equal to the real property
11 taxes due after the year the required levels of employment and investment
12 were met, for real property at a qualified location that is acquired by
13 the taxpayer after the date the application was filed. The payment from
14 the state shall be made only after payment of the real property taxes
15 have been made to the county as required by law. Payments shall not be
16 allowed for any taxes paid on real property for which the taxes are
17 divided under section 18-2147 or 58-507.

18 (2) A claim for the credit may be filed quarterly for refund of the
19 sales and use taxes paid, either directly or indirectly, after the filing
20 of the income tax return for the taxable year in which the credit was
21 first allowed.

22 (3) Once the taxpayer attains the required levels of employment and
23 investment, the taxpayer shall be entitled to a refund of all sales and
24 use taxes paid, either directly or indirectly, under the Local Option
25 Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment
26 Payment Act, and sections 13-319, 13-324, and 13-2813 on the qualifying
27 investment.

28 (4) For purposes of subsections (2) and (3) of this section, the
29 taxpayer shall be deemed to have paid indirectly any sales or use taxes
30 paid by a contractor with a purchasing agent agreement on building
31 materials annexed to an improvement to real estate built for the

1 taxpayer. The contractor shall certify to the taxpayer the amount of the
2 sales and use taxes paid on the building materials, or the taxpayer, with
3 the permission of the Director of Economic Development and a
4 certification from the contractor that sales and use taxes were paid on
5 all building materials, may presume that fifty percent of the cost of the
6 improvement was for building materials annexed to real estate on which
7 the tax was paid.

8 (5) Credits distributed to a partner, limited liability company
9 member, shareholder, or beneficiary under section 25 of this act may be
10 used against the income tax liability of the partner, member,
11 shareholder, or beneficiary receiving the credits.

12 Sec. 23. (1) If the taxpayer fails to maintain employment and
13 investment levels at or above the levels required in the agreement for
14 the entire performance period, any refunds or reduction in tax allowed
15 under the Nebraska Small Business Act shall be partially recaptured from
16 the taxpayer. The amount of the recapture for each incentive shall be a
17 percentage equal to the number of years the taxpayer did not maintain the
18 required levels of investment or employment divided by the number of
19 years of the performance period, with such percentage then multiplied by
20 the refunds or reductions in tax allowed.

21 (2) Any refund or reduction in tax due, to the extent required to be
22 recaptured, shall be deemed to be an underpayment of the tax and shall be
23 immediately due and payable. When tax incentives were received in more
24 than one year, the incentives received in the most recent year shall be
25 recovered first and then the incentives received in earlier years up to
26 the extent of the required recapture.

27 (3) Notwithstanding any other limitations contained in the laws of
28 this state, collection of any taxes deemed to be underpayments by this
29 section shall be allowed for a period of three years after the end of the
30 performance period or three calendar years after the incentive was
31 allowed, whichever is later.

1 (4) The recapture required by this section shall not occur if the
2 failure to maintain the required levels of employment or investment was
3 caused by an act of God or a national emergency.

4 Sec. 24. (1) The Director of Economic Development shall not approve
5 or grant to any person any tax incentive under the Nebraska Small
6 Business Act unless the taxpayer provides evidence satisfactory to the
7 director that the taxpayer electronically verified the work eligibility
8 status of all newly hired employees employed in Nebraska.

9 (2) For purposes of calculating any tax incentive available under
10 the act, the director shall exclude hours worked and compensation paid to
11 an employee that is not eligible to work in Nebraska as verified under
12 subsection (1) of this section.

13 Sec. 25. The incentives allowed under the Nebraska Small Business
14 Act shall not be transferable except in the following situations:

15 (1) Any credit allowable to a partnership, a limited liability
16 company, a subchapter S corporation, a cooperative, including a
17 cooperative exempt under section 521 of the Internal Revenue Code of
18 1986, as amended, a limited cooperative association, or an estate or
19 trust may be distributed to the partners, limited liability company
20 members, shareholders, patrons, limited cooperative association members,
21 or beneficiaries. Any credit distributed shall be distributed in the same
22 manner as income is distributed. A credit distributed shall be considered
23 a credit used and the partnership, limited liability company, subchapter
24 S corporation, cooperative, limited cooperative association, estate, or
25 trust shall be liable for any repayment under section 23 of this act;

26 (2) The incentives previously allowed and the future allowance of
27 incentives may be transferred when a project covered by an agreement is
28 transferred by sale or lease to another taxpayer or in an acquisition of
29 assets qualifying under section 381 of the Internal Revenue Code of 1986,
30 as amended. The acquiring taxpayer, as of the date of notification of the
31 Director of Economic Development of the completed transfer, shall be

1 entitled to any unused credits and to any future incentives allowable
2 under the act. The acquiring taxpayer shall be liable for any repayment
3 that becomes due after the date of the transfer with respect to any
4 benefits received either before or after the transfer; and

5 (3) If a taxpayer allowed a credit under section 20 of this act dies
6 and there is credit remaining after the filing of the final return for
7 the taxpayer, the personal representative shall determine the
8 distribution of the credit with the initial fiduciary return filed for
9 the estate. The determination of the distribution of the credit may be
10 changed only after obtaining the permission of the director.

11 Sec. 26. Interest shall not be allowable on any refunds paid
12 because of benefits earned under the Nebraska Small Business Act.

13 Sec. 27. (1) The taxpayer may request the Tax Commissioner to
14 review and certify the taxpayer's base year employment levels. Upon a
15 request for such review, the Tax Commissioner shall be given access to
16 the employment and business records of the taxpayer and must complete the
17 review within ninety days after the request. If the Tax Commissioner
18 requests, by mail or by electronic means, additional information or
19 clarification from the taxpayer in order to make his or her
20 determination, the ninety-day period shall be tolled from the time the
21 Tax Commissioner makes the request to the time he or she receives the
22 requested information or clarification from the taxpayer. The taxpayer
23 and the Tax Commissioner may also agree to extend the ninety-day period.
24 If the Tax Commissioner fails to make his or her determination within the
25 prescribed ninety-day period, the certification is deemed approved.

26 (2) Upon review, the Tax Commissioner may approve or amend the
27 taxpayer's base year employment levels based upon the employment and
28 business records provided by the taxpayer. Once the Tax Commissioner
29 certifies the employment levels, the certification is binding on the
30 Department of Revenue when the taxpayer claims benefits on a return to
31 the extent the information provided by the taxpayer was accurate and to

1 the extent such information is not affected by any of the situations
2 described in section 21 of this act.

3 (3) If the taxpayer does not request review and certification of
4 employment levels under this section, such levels are subject to later
5 audit by the Department of Revenue.

6 Sec. 28. (1) On or before July 15, 2024, and on or before July 15
7 of each year thereafter, the Director of Economic Development shall
8 prepare a report that includes:

9 (a) The total amount of investment at qualified locations in the
10 previous calendar year by taxpayers who are receiving incentives pursuant
11 to the Nebraska Small Business Act;

12 (b) The total number of equivalent employees added in the previous
13 calendar year by taxpayers who are receiving incentives pursuant to the
14 act; and

15 (c) The total amount of credits claimed and refunds approved in the
16 previous calendar year under the act.

17 (2) The report shall also provide information on project-specific
18 total incentives used every two years for each approved project,
19 including (a) the identity of the taxpayer, (b) the qualified location of
20 the project, and (c) the total credits used and refunds approved during
21 the immediately preceding two years expressed as a single, aggregated
22 total. The incentive information required to be reported under this
23 subsection shall not be reported for the first year the taxpayer attains
24 the required employment and investment thresholds. The information on
25 first-year incentives used shall be combined with and reported as part of
26 the second year. Thereafter, the information on incentives used for
27 succeeding years shall be reported for each project every two years and
28 shall include information on two years of credits used and refunds
29 approved. The incentives used shall include incentives that have been
30 approved by the Director of Economic Development, but not necessarily
31 received, during the previous two calendar years.

1 (3) On or before September 1, 2024, and on or before September 1 of
2 each year thereafter, the Department of Economic Development shall
3 present the report electronically to the Appropriations Committee of the
4 Legislature. Any supplemental information requested by three or more
5 committee members shall be presented within thirty days after the
6 request.

7 (4) No information shall be provided in the report that is protected
8 by state or federal confidentiality laws.

9 Sec. 29. Section 49-801.01, Revised Statutes Cumulative Supplement,
10 2020, is amended to read:

11 49-801.01 Except as provided by Article VIII, section 1B, of the
12 Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109,
13 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902,
14 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515,
15 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802,
16 77-5803, 77-5806, 77-5903, 77-6302, 77-6306, 77-6509, 77-6513, 77-6519,
17 77-6811, 77-6815, 77-6819, 77-6821, 77-6822, 77-6831, 77-6834, and
18 77-6842 and sections 8, 13, 15, 16, and 25 of this act, any reference to
19 the Internal Revenue Code refers to the Internal Revenue Code of 1986 as
20 it exists on April 12, 2018.

21 Sec. 30. Section 50-1209, Revised Statutes Cumulative Supplement,
22 2020, is amended to read:

23 50-1209 (1) Tax incentive performance audits shall be conducted by
24 the office pursuant to this section on the following tax incentive
25 programs:

- 26 (a) The Beginning Farmer Tax Credit Act;
- 27 (b) The Imagine Nebraska Act;
- 28 (c) The Nebraska Advantage Act;
- 29 (d) The Nebraska Advantage Microenterprise Tax Credit Act;
- 30 (e) The Nebraska Advantage Research and Development Act;
- 31 (f) The Nebraska Advantage Rural Development Act;

1 (g) The Nebraska Job Creation and Mainstreet Revitalization Act;
2 (h) The Nebraska Small Business Act;
3 (i) ~~(h)~~ The New Markets Job Growth Investment Act; and
4 (j) ~~(i)~~ Any other tax incentive program created by the Legislature
5 for the purpose of recruitment or retention of businesses in Nebraska. In
6 determining whether a future tax incentive program is enacted for the
7 purpose of recruitment or retention of businesses, the office shall
8 consider legislative intent, including legislative statements of purpose
9 and goals, and may also consider whether the tax incentive program is
10 promoted as a business incentive by the Department of Economic
11 Development or other relevant state agency.

12 (2) The office shall develop a schedule for conducting tax incentive
13 performance audits and shall update the schedule annually. The schedule
14 shall ensure that each tax incentive program is reviewed at least once
15 every five years.

16 (3) Each tax incentive performance audit conducted by the office
17 pursuant to this section shall include the following:

18 (a) An analysis of whether the tax incentive program is meeting the
19 following goals:

20 (i) Strengthening the state's economy overall by:

21 (A) Attracting new business to the state;

22 (B) Expanding existing businesses;

23 (C) Increasing employment, particularly employment of full-time
24 workers. The analysis shall consider whether the job growth in those
25 businesses receiving tax incentives is at least ten percent above
26 industry averages;

27 (D) Creating high-quality jobs; and

28 (E) Increasing business investment;

29 (ii) Revitalizing rural areas and other distressed areas of the
30 state;

31 (iii) Diversifying the state's economy and positioning Nebraska for

1 the future by stimulating entrepreneurial firms, high-tech firms, and
2 renewable energy firms; and

3 (iv) Any other program-specific goals found in the statutes for the
4 tax incentive program being evaluated;

5 (b) An analysis of the economic and fiscal impacts of the tax
6 incentive program. The analysis may take into account the following
7 considerations in addition to other relevant factors:

8 (i) The costs per full-time worker. When practical and applicable,
9 such costs shall be considered in at least the following two ways:

10 (A) By an estimation including the minimum investment required to
11 qualify for benefits; and

12 (B) By an estimation including all investment;

13 (ii) The extent to which the tax incentive changes business
14 behavior;

15 (iii) The results of the tax incentive for the economy of Nebraska
16 as a whole. This consideration includes both direct and indirect impacts
17 generally and any effects on other Nebraska businesses; and

18 (iv) A comparison to the results of other economic development
19 strategies with similar goals, other policies, or other incentives;

20 (c) An assessment of whether adequate protections are in place to
21 ensure the fiscal impact of the tax incentive does not increase
22 substantially beyond the state's expectations in future years;

23 (d) An assessment of the fiscal impact of the tax incentive on the
24 budgets of local governments, if applicable; and

25 (e) Recommendations for any changes to statutes or rules and
26 regulations that would allow the tax incentive program to be more easily
27 evaluated in the future, including changes to data collection, reporting,
28 sharing of information, and clarification of goals.

29 (4) For purposes of this section:

30 (a) Distressed area means an area of substantial unemployment as
31 determined by the Department of Labor pursuant to the Nebraska Workforce

1 Innovation and Opportunity Act;

2 (b) Full-time worker means an individual (i) who usually works
3 thirty-five hours per week or more, (ii) whose employment is reported to
4 the Department of Labor on two consecutive quarterly wage reports, and
5 (iii) who earns wages equal to or exceeding the state minimum wage;

6 (c) High-quality job means a job that:

7 (i) Averages at least thirty-five hours of employment per week;

8 (ii) Is reported to the Department of Labor on two consecutive
9 quarterly wage reports; and

10 (iii) Earns wages that are at least ten percent higher than the
11 statewide industry sector average and that equal or exceed:

12 (A) One hundred ten percent of the Nebraska average weekly wage if
13 the job is in a county with a population of less than one hundred
14 thousand inhabitants; or

15 (B) One hundred twenty percent of the Nebraska average weekly wage
16 if the job is in a county with a population of one hundred thousand
17 inhabitants or more;

18 (d) High-tech firm means a person or unitary group that has a
19 location with any of the following four-digit code designations under the
20 North American Industry Classification System as assigned by the
21 Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112,
22 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

23 (e) Nebraska average weekly wage means the most recent average
24 weekly wage paid by all employers in all counties in Nebraska as reported
25 by the Department of Labor by October 1 of each year;

26 (f) New business means a person or unitary group participating in a
27 tax incentive program that did not pay income taxes or wages in the state
28 more than two years prior to submitting an application under the tax
29 incentive program. For any tax incentive program without an application
30 process, new business means a person or unitary group participating in
31 the program that did not pay income taxes or wages in the state more than

1 two years prior to the first day of the first tax year for which a tax
2 benefit was earned;

3 (g) Renewable energy firm means a person or unitary group that has a
4 location with any of the following six-digit code designations under the
5 North American Industry Classification System as assigned by the
6 Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160,
7 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333,
8 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310,
9 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210,
10 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111,
11 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510,
12 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730,
13 or 562213;

14 (h) Rural area means any village or city of the second class in this
15 state or any county in this state with fewer than twenty-five thousand
16 residents; and

17 (i) Unitary group has the same meaning as in section 77-2734.04.

18 Sec. 31. Section 77-2711, Revised Statutes Cumulative Supplement,
19 2020, is amended to read:

20 77-2711 (1)(a) The Tax Commissioner shall enforce sections
21 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and
22 regulations relating to the administration and enforcement of such
23 sections.

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

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

31 (3)(a) Every seller, every retailer, and every person storing,

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

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

7 (4) The Tax Commissioner or any person authorized in writing by him
8 or her may examine the books, papers, records, and equipment of any
9 person selling property and any person liable for the use tax and may
10 investigate the character of the business of the person in order to
11 verify the accuracy of any return made or, if no return is made by the
12 person, to ascertain and determine the amount required to be paid. In the
13 examination of any person selling property or of any person liable for
14 the use tax, an inquiry shall be made as to the accuracy of the reporting
15 of city and county sales and use taxes for which the person is liable
16 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
17 and 77-6403 and the accuracy of the allocation made between the various
18 counties, cities, villages, and municipal counties of the tax due. The
19 Tax Commissioner may make or cause to be made copies of resale or
20 exemption certificates and may pay a reasonable amount to the person
21 having custody of the records for providing such copies.

22 (5) The taxpayer shall have the right to keep or store his or her
23 records at a point outside this state and shall make his or her records
24 available to the Tax Commissioner at all times.

25 (6) In administration of the use tax, the Tax Commissioner may
26 require the filing of reports by any person or class of persons having in
27 his, her, or their possession or custody information relating to sales of
28 property, the storage, use, or other consumption of which is subject to
29 the tax. The report shall be filed when the Tax Commissioner requires and
30 shall set forth the names and addresses of purchasers of the property,
31 the sales price of the property, the date of sale, and such other

1 information as the Tax Commissioner may require.

2 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
3 any official or employee of the Tax Commissioner, the State Treasurer, or
4 the Department of Administrative Services to make known in any manner
5 whatever the business affairs, operations, or information obtained by an
6 investigation of records and activities of any retailer or any other
7 person visited or examined in the discharge of official duty or the
8 amount or source of income, profits, losses, expenditures, or any
9 particular thereof, set forth or disclosed in any return, or to permit
10 any return or copy thereof, or any book containing any abstract or
11 particulars thereof to be seen or examined by any person not connected
12 with the Tax Commissioner. Nothing in this section shall be construed to
13 prohibit (a) the delivery to a taxpayer, his or her duly authorized
14 representative, or his or her successors, receivers, trustees, executors,
15 administrators, assignees, or guarantors, if directly interested, of a
16 certified copy of any return or report in connection with his or her tax,
17 (b) the publication of statistics so classified as to prevent the
18 identification of particular reports or returns and the items thereof,
19 (c) the inspection by the Attorney General, other legal representative of
20 the state, or county attorney of the reports or returns of any taxpayer
21 when either (i) information on the reports or returns is considered by
22 the Attorney General to be relevant to any action or proceeding
23 instituted by the taxpayer or against whom an action or proceeding is
24 being considered or has been commenced by any state agency or the county
25 or (ii) the taxpayer has instituted an action to review the tax based
26 thereon or an action or proceeding against the taxpayer for collection of
27 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
28 considered or has been commenced, (d) the furnishing of any information
29 to the United States Government or to states allowing similar privileges
30 to the Tax Commissioner, (e) the disclosure of information and records to
31 a collection agency contracting with the Tax Commissioner pursuant to

1 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
2 transaction of information and records concerning the transaction between
3 the taxpayer and the other party, (g) the disclosure of information
4 pursuant to section 77-27,195, 77-5731, 77-6837, or 77-6839 or section 28
5 of this act, or (h) the disclosure of information to the Department of
6 Labor necessary for the administration of the Employment Security Law,
7 the Contractor Registration Act, or the Employee Classification Act.

8 (8) Notwithstanding the provisions of subsection (7) of this
9 section, the Tax Commissioner may permit the Postal Inspector of the
10 United States Postal Service or his or her delegates to inspect the
11 reports or returns of any person filed pursuant to the Nebraska Revenue
12 Act of 1967 when information on the reports or returns is relevant to any
13 action or proceeding instituted or being considered by the United States
14 Postal Service against such person for the fraudulent use of the mails to
15 carry and deliver false and fraudulent tax returns to the Tax
16 Commissioner with the intent to defraud the State of Nebraska or to evade
17 the payment of Nebraska state taxes.

18 (9) Notwithstanding the provisions of subsection (7) of this
19 section, the Tax Commissioner may permit other tax officials of this
20 state to inspect the tax returns, reports, and applications filed under
21 sections 77-2701.04 to 77-2713, but such inspection shall be permitted
22 only for purposes of enforcing a tax law and only to the extent and under
23 the conditions prescribed by the rules and regulations of the Tax
24 Commissioner.

25 (10) Notwithstanding the provisions of subsection (7) of this
26 section, the Tax Commissioner may, upon request, provide the county board
27 of any county which has exercised the authority granted by section
28 81-3716 with a list of the names and addresses of the hotels located
29 within the county for which lodging sales tax returns have been filed or
30 for which lodging sales taxes have been remitted for the county's County
31 Visitors Promotion Fund under the Nebraska Visitors Development Act.

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

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

20 (b) No employee of the Auditor of Public Accounts or the office of
21 Legislative Audit shall disclose to any person, other than another
22 Auditor of Public Accounts or office employee whose official duties
23 require such disclosure, any return or return information described in
24 the Nebraska Revenue Act of 1967 in a form which can be associated with
25 or otherwise identify, directly or indirectly, a particular taxpayer.

26 (c) Any person who violates the provisions of this subsection shall
27 be guilty of a Class I misdemeanor. For purposes of this subsection,
28 employee includes a former Auditor of Public Accounts or office of
29 Legislative Audit employee.

30 (12) For purposes of this subsection and subsections (11) and (14)
31 of this section:

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

3 (b) Return information means:

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

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

17 (c) Tax return or return means any tax or information return or
18 claim for refund required by, provided for, or permitted under sections
19 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf
20 of, or with respect to any person and any amendment or supplement
21 thereto, including supporting schedules, attachments, or lists which are
22 supplemental to or part of the filed return.

23 (13) Notwithstanding the provisions of subsection (7) of this
24 section, the Tax Commissioner shall, upon request, provide any
25 municipality which has adopted the local option sales tax under the Local
26 Option Revenue Act with a list of the names and addresses of the
27 retailers which have collected the local option sales tax for the
28 municipality. The request may be made annually and shall be submitted to
29 the Tax Commissioner on or before June 30 of each year. The information
30 provided by the Tax Commissioner shall indicate only the names and
31 addresses of the retailers. The Tax Commissioner may provide additional

1 information to a municipality so long as the information does not include
2 any data detailing the specific revenue, expenses, or operations of any
3 particular business.

4 (14)(a) Notwithstanding the provisions of subsection (7) of this
5 section, the Tax Commissioner shall, upon written request, provide an
6 individual certified under subdivision (b) of this subsection
7 representing a municipality which has adopted the local option sales and
8 use tax under the Local Option Revenue Act with confidential sales and
9 use tax returns and sales and use tax return information regarding
10 taxpayers that possess a sales tax permit and the amounts remitted by
11 such permitholders at locations within the boundaries of the requesting
12 municipality or with confidential business use tax returns and business
13 use tax return information regarding taxpayers that file a Nebraska and
14 Local Business Use Tax Return and the amounts remitted by such taxpayers
15 at locations within the boundaries of the requesting municipality. Any
16 written request pursuant to this subsection shall provide the Department
17 of Revenue with no less than ten business days to prepare the sales and
18 use tax returns and sales and use tax return information requested. The
19 individual certified under subdivision (b) of this subsection shall
20 review such returns and return information only upon the premises of the
21 department, except that such limitation shall not apply if the certifying
22 municipality has an agreement in effect under the Nebraska Advantage
23 Transformational Tourism and Redevelopment Act. In such case, the
24 individual certified under subdivision (b) of this subsection may request
25 that copies of such returns and return information be sent to him or her
26 by electronic transmission, secured in a manner as determined by the Tax
27 Commissioner.

28 (b) Each municipality that seeks to request information under
29 subdivision (a) of this subsection shall certify to the Department of
30 Revenue one individual who is authorized by such municipality to make
31 such request and review the documents described in subdivision (a) of

1 this subsection. The individual may be a municipal employee or an
2 individual who contracts with the requesting municipality to provide
3 financial, accounting, or other administrative services.

4 (c) No individual certified by a municipality pursuant to
5 subdivision (b) of this subsection shall disclose to any person any
6 information obtained pursuant to a review under this subsection. An
7 individual certified by a municipality pursuant to subdivision (b) of
8 this subsection shall remain subject to this subsection after he or she
9 (i) is no longer certified or (ii) is no longer in the employment of or
10 under contract with the certifying municipality.

11 (d) Any person who violates the provisions of this subsection shall
12 be guilty of a Class I misdemeanor.

13 (e) The Department of Revenue shall not be held liable by any person
14 for an impermissible disclosure by a municipality or any agent or
15 employee thereof of any information obtained pursuant to a review under
16 this subsection.

17 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
18 Tax Commissioner may act for and on behalf of the people of the State of
19 Nebraska. The Tax Commissioner in his or her discretion may waive all or
20 part of any penalties provided by the provisions of such act or interest
21 on delinquent taxes specified in section 45-104.02, as such rate may from
22 time to time be adjusted.

23 (16)(a) The purpose of this subsection is to set forth the state's
24 policy for the protection of the confidentiality rights of all
25 participants in the system operated pursuant to the streamlined sales and
26 use tax agreement and of the privacy interests of consumers who deal with
27 model 1 sellers.

28 (b) For purposes of this subsection:

29 (i) Anonymous data means information that does not identify a
30 person;

31 (ii) Confidential taxpayer information means all information that is

1 protected under a member state's laws, regulations, and privileges; and

2 (iii) Personally identifiable information means information that
3 identifies a person.

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

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

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

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

17 (iii) It provides consumers clear and conspicuous notice of its
18 information practices, including what information it collects, how it
19 collects the information, how it uses the information, how long, if at
20 all, it retains the information, and whether it discloses the information
21 to member states. Such notice shall be satisfied by a written privacy
22 policy statement accessible by the public on the web site of the
23 certified service provider;

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

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

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

4 (f) When any personally identifiable information that has been
5 collected and retained is no longer required for the purposes set forth
6 in subdivision (16)(d)(iv) of this section, such information shall no
7 longer be retained by the member states.

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

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

17 (i) This privacy policy is subject to enforcement by the Attorney
18 General.

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

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

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

27 (iii) Prevent, consistent with state law, disclosure of confidential
28 taxpayer information;

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

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

3 Sec. 32. Section 77-27,119, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 77-27,119 (1) The Tax Commissioner shall administer and enforce the
6 income tax imposed by sections 77-2714 to 77-27,135, and he or she is
7 authorized to conduct hearings, to adopt and promulgate such rules and
8 regulations, and to require such facts and information to be reported as
9 he or she may deem necessary to enforce the income tax provisions of such
10 sections, except that such rules, regulations, and reports shall not be
11 inconsistent with the laws of this state or the laws of the United
12 States. The Tax Commissioner may for enforcement and administrative
13 purposes divide the state into a reasonable number of districts in which
14 branch offices may be maintained.

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

24 (b) The State Department of Education, with the assistance and
25 cooperation of the Department of Revenue, shall develop a uniform system
26 for numbering all school districts in the state. Such system shall be
27 consistent with the data processing needs of the Department of Revenue
28 and shall be used for the school district identification required by
29 subdivision (a) of this subsection.

30 (c) The proper filing of an income tax return shall consist of the
31 submission of such form as prescribed by the Tax Commissioner or an exact

1 facsimile thereof with sufficient information provided by the taxpayer on
2 the face of the form from which to compute the actual tax liability. Each
3 taxpayer shall include such taxpayer's correct social security number or
4 state identification number and the school district identification number
5 of the school district in which the taxpayer resides on the face of the
6 form. A filing is deemed to occur when the required information is
7 provided.

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

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

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

29 (6) Except in accordance with proper judicial order or as otherwise
30 provided by law, it shall be unlawful for the Tax Commissioner, any
31 officer or employee of the Tax Commissioner, any person engaged or

1 retained by the Tax Commissioner on an independent contract basis, any
2 person who pursuant to this section is permitted to inspect any report or
3 return or to whom a copy, an abstract, or a portion of any report or
4 return is furnished, any employee of the State Treasurer or the
5 Department of Administrative Services, or any other person to divulge,
6 make known, or use in any manner the amount of income or any particulars
7 set forth or disclosed in any report or return required except for the
8 purpose of enforcing sections 77-2714 to 77-27,135. The officers charged
9 with the custody of such reports and returns shall not be required to
10 produce any of them or evidence of anything contained in them in any
11 action or proceeding in any court, except on behalf of the Tax
12 Commissioner in an action or proceeding under the provisions of the tax
13 law to which he or she is a party or on behalf of any party to any action
14 or proceeding under such sections when the reports or facts shown thereby
15 are directly involved in such action or proceeding, in either of which
16 events the court may require the production of, and may admit in
17 evidence, so much of such reports or of the facts shown thereby as are
18 pertinent to the action or proceeding and no more. Nothing in this
19 section shall be construed (a) to prohibit the delivery to a taxpayer,
20 his or her duly authorized representative, or his or her successors,
21 receivers, trustees, personal representatives, administrators, assignees,
22 or guarantors, if directly interested, of a certified copy of any return
23 or report in connection with his or her tax, (b) to prohibit the
24 publication of statistics so classified as to prevent the identification
25 of particular reports or returns and the items thereof, (c) to prohibit
26 the inspection by the Attorney General, other legal representatives of
27 the state, or a county attorney of the report or return of any taxpayer
28 who brings an action to review the tax based thereon, against whom an
29 action or proceeding for collection of tax has been instituted, or
30 against whom an action, proceeding, or prosecution for failure to comply
31 with the Nebraska Revenue Act of 1967 is being considered or has been

1 commenced, (d) to prohibit furnishing to the Nebraska Workers'
2 Compensation Court the names, addresses, and identification numbers of
3 employers, and such information shall be furnished on request of the
4 court, (e) to prohibit the disclosure of information and records to a
5 collection agency contracting with the Tax Commissioner pursuant to
6 sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of
7 information pursuant to section 77-27,195, 77-4110, 77-5731, 77-6521,
8 77-6837, or 77-6839 or section 28 of this act, (g) to prohibit the
9 disclosure to the Public Employees Retirement Board of the addresses of
10 individuals who are members of the retirement systems administered by the
11 board, and such information shall be furnished to the board solely for
12 purposes of its administration of the retirement systems upon written
13 request, which request shall include the name and social security number
14 of each individual for whom an address is requested, (h) to prohibit the
15 disclosure of information to the Department of Labor necessary for the
16 administration of the Employment Security Law, the Contractor
17 Registration Act, or the Employee Classification Act, (i) to prohibit the
18 disclosure to the Department of Motor Vehicles of tax return information
19 pertaining to individuals, corporations, and businesses determined by the
20 Department of Motor Vehicles to be delinquent in the payment of amounts
21 due under agreements pursuant to the International Fuel Tax Agreement
22 Act, and such disclosure shall be strictly limited to information
23 necessary for the administration of the act, (j) to prohibit the
24 disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-
25 appointed individuals, the county attorney, any authorized attorney, or
26 the Department of Health and Human Services of an absent parent's
27 address, social security number, amount of income, health insurance
28 information, and employer's name and address for the exclusive purpose of
29 establishing and collecting child, spousal, or medical support, (k) to
30 prohibit the disclosure of information to the Department of Insurance,
31 the Nebraska State Historical Society, or the State Historic Preservation

1 Officer as necessary to carry out the Department of Revenue's
2 responsibilities under the Nebraska Job Creation and Mainstreet
3 Revitalization Act, or (1) to prohibit the disclosure to the Department
4 of Insurance of information pertaining to authorization for, and use of,
5 tax credits under the New Markets Job Growth Investment Act. Information
6 so obtained shall be used for no other purpose. Any person who violates
7 this subsection shall be guilty of a felony and shall upon conviction
8 thereof be fined not less than one hundred dollars nor more than five
9 hundred dollars, or be imprisoned not more than five years, or be both so
10 fined and imprisoned, in the discretion of the court and shall be
11 assessed the costs of prosecution. If the offender is an officer or
12 employee of the state, he or she shall be dismissed from office and be
13 ineligible to hold any public office in this state for a period of two
14 years thereafter.

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

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

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

11 (10)(a) Notwithstanding the provisions of subsection (6) of this
12 section, the Tax Commissioner shall, upon written request by the Auditor
13 of Public Accounts or the office of Legislative Audit, make tax returns
14 and tax return information open to inspection by or disclosure to
15 officers and employees of the Auditor of Public Accounts or employees of
16 the office of Legislative Audit for the purpose of and to the extent
17 necessary in making an audit of the Department of Revenue pursuant to
18 section 50-1205 or 84-304. The Auditor of Public Accounts or office of
19 Legislative Audit shall statistically and randomly select the tax returns
20 and tax return information to be audited based upon a computer tape
21 provided by the Department of Revenue which contains only total
22 population documents without specific identification of taxpayers. The
23 Tax Commissioner shall have the authority to approve the statistical
24 sampling method used by the Auditor of Public Accounts or office of
25 Legislative Audit. Confidential tax returns and tax return information
26 shall be audited only upon the premises of the Department of Revenue. All
27 audit workpapers pertaining to the audit of the Department of Revenue
28 shall be stored in a secure place in the Department of Revenue.

29 (b) When selecting tax returns or tax return information for a
30 performance audit of a tax incentive program, the office of Legislative
31 Audit shall select the tax returns or tax return information for either

1 all or a statistically and randomly selected sample of taxpayers who have
2 applied for or who have qualified for benefits under the tax incentive
3 program that is the subject of the audit. When the office of Legislative
4 Audit reports on its review of tax returns and tax return information, it
5 shall comply with subdivision (10)(c) of this section.

6 (c) No officer or employee of the Auditor of Public Accounts or
7 office of Legislative Audit employee shall disclose to any person, other
8 than another officer or employee of the Auditor of Public Accounts or
9 office of Legislative Audit whose official duties require such
10 disclosure, any return or return information described in the Nebraska
11 Revenue Act of 1967 in a form which can be associated with or otherwise
12 identify, directly or indirectly, a particular taxpayer.

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

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

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

28 (b) Return information shall mean:

29 (i) A taxpayer's identification number and (A) the nature, source,
30 or amount of his or her income, payments, receipts, deductions,
31 exemptions, credits, assets, liabilities, net worth, tax liability, tax

1 withheld, deficiencies, overassessments, or tax payments, whether the
2 taxpayer's return was, is being, or will be examined or subject to other
3 investigation or processing or (B) any other data received by, recorded
4 by, prepared by, furnished to, or collected by the Tax Commissioner with
5 respect to a return or the determination of the existence or possible
6 existence of liability or the amount of liability of any person for any
7 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
8 and

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

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

13 (12) The Auditor of Public Accounts shall (a) notify the Tax
14 Commissioner in writing thirty days prior to the beginning of an audit of
15 his or her intent to conduct an audit, (b) provide an audit plan, and (c)
16 provide a list of the tax returns and tax return information identified
17 for inspection during the audit. The office of Legislative Audit shall
18 notify the Tax Commissioner of the intent to conduct an audit and of the
19 scope of the audit as provided in section 50-1209.

20 (13) The Auditor of Public Accounts or the office of Legislative
21 Audit shall, as a condition for receiving tax returns and tax return
22 information: (a) Subject employees involved in the audit to the same
23 confidential information safeguards and disclosure procedures as required
24 of Department of Revenue employees; (b) establish and maintain a
25 permanent system of standardized records with respect to any request for
26 tax returns or tax return information, the reason for such request, and
27 the date of such request and any disclosure of the tax return or tax
28 return information; (c) establish and maintain a secure area or place in
29 the Department of Revenue in which the tax returns, tax return
30 information, or audit workpapers shall be stored; (d) restrict access to
31 the tax returns or tax return information only to persons whose duties or

1 responsibilities require access; (e) provide such other safeguards as the
2 Tax Commissioner determines to be necessary or appropriate to protect the
3 confidentiality of the tax returns or tax return information; (f) provide
4 a report to the Tax Commissioner which describes the procedures
5 established and utilized by the Auditor of Public Accounts or office of
6 Legislative Audit for insuring the confidentiality of tax returns, tax
7 return information, and audit workpapers; and (g) upon completion of use
8 of such returns or tax return information, return to the Tax Commissioner
9 such returns or tax return information, along with any copies.

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

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

23 Sec. 33. Section 77-27,144, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by
26 any incorporated municipality concurrently with collection of a state tax
27 in the same manner as the state tax is collected. The Tax Commissioner
28 shall remit monthly the proceeds of the tax to the incorporated
29 municipalities levying the tax, after deducting the amount of refunds
30 made and three percent of the remainder to be credited to the Municipal
31 Equalization Fund.

1 (2) Deductions for a refund made pursuant to section 77-4105,
2 77-4106, 77-5725, or 77-5726 shall be delayed for one year after the
3 refund has been made to the taxpayer. The Department of Revenue shall
4 notify the municipality liable for a refund exceeding one thousand five
5 hundred dollars of the pending refund, the amount of the refund, and the
6 month in which the deduction will be made or begin, except that if the
7 amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or
8 77-5726 exceeds twenty-five percent of the municipality's total sales and
9 use tax receipts, net of any refunds or sales tax collection fees, for
10 the municipality's prior fiscal year, the department shall deduct the
11 refund over the period of one year in equal monthly amounts beginning
12 after the one-year notification period required by this subsection. This
13 subsection applies to refunds owed by cities of the first class, cities
14 of the second class, and villages. This subsection applies to refunds
15 beginning January 1, 2014.

16 (3) Deductions for a refund made pursuant to the Imagine Nebraska
17 Act shall be delayed as provided in this subsection after the refund has
18 been made to the taxpayer. The Department of Revenue shall notify each
19 municipality liable for a refund exceeding one thousand five hundred
20 dollars of the pending refund and the amount of the refund claimed under
21 the Imagine Nebraska Act. The notification shall be made by March 1 of
22 each year beginning in 2021 and shall be used to establish the refund
23 amount for the following calendar year. The notification shall include
24 any excess or underpayment from the prior calendar year. The department
25 shall deduct the refund over a period of one year in equal monthly
26 amounts beginning in January following the notification. This subsection
27 applies to total annual refunds exceeding one million dollars or twenty-
28 five percent of the municipality's total sales and use tax receipts for
29 the prior fiscal year, whichever is the lesser amount.

30 (4) Deductions for a refund made pursuant to the Nebraska Small
31 Business Act shall be delayed as provided in this subsection after the

1 refund has been made to the taxpayer. The Department of Revenue shall
2 notify each municipality liable for a refund exceeding one thousand five
3 hundred dollars of the pending refund and the amount of the refund
4 claimed under the Nebraska Small Business Act. The notification shall be
5 made by March 1 of each year beginning in 2022 and shall be used to
6 establish the refund amount for the following calendar year. The
7 notification shall include any excess or underpayment from the prior
8 calendar year. The department shall deduct the refund over a period of
9 one year in equal monthly amounts beginning in January following the
10 notification. This subsection applies to total annual refunds exceeding
11 one million dollars or twenty-five percent of the municipality's total
12 sales and use tax receipts for the prior fiscal year, whichever is the
13 lesser amount.

14 ~~(5) (4)~~ The Tax Commissioner shall keep full and accurate records of
15 all money received and distributed under the provisions of the Local
16 Option Revenue Act. When proceeds of a tax levy are received but the
17 identity of the incorporated municipality which levied the tax is unknown
18 and is not identified within six months after receipt, the amount shall
19 be credited to the Municipal Equalization Fund. The municipality may
20 request the names and addresses of the retailers which have collected the
21 tax as provided in subsection (13) of section 77-2711 and may certify an
22 individual to request and review confidential sales and use tax returns
23 and sales and use tax return information as provided in subsection (14)
24 of section 77-2711.

25 ~~(6)(a) (5)(a)~~ Every qualifying business that has filed an
26 application to receive tax incentives under the Employment and Investment
27 Growth Act, the Nebraska Advantage Act, ~~or~~ the Imagine Nebraska Act, or
28 the Nebraska Small Business Act shall, with respect to such acts, provide
29 annually to each municipality, in aggregate data, the maximum amount the
30 qualifying business is eligible to receive in the current year in refunds
31 of local sales and use taxes of the municipality and exemptions for the

1 previous year, and the estimate of annual refunds of local sales and use
2 taxes of the municipality and exemptions such business intends to claim
3 in each future year. Such information shall be kept confidential by the
4 municipality unless publicly disclosed previously by the taxpayer or by
5 the State of Nebraska.

6 (b) For purposes of this subsection, municipality means a
7 municipality that has adopted the local option sales and use tax under
8 the Local Option Revenue Act and to which the qualifying business has
9 paid such sales and use tax.

10 (c) The qualifying business shall provide the information to the
11 municipality on or before June 30 of each year.

12 (d) Any amounts held by a municipality to make sales and use tax
13 refunds under the Employment and Investment Growth Act, the Nebraska
14 Advantage Act, ~~and~~ the Imagine Nebraska Act, and the Nebraska Small
15 Business Act shall not count toward any budgeted restricted funds
16 limitation as provided in section 13-519 or toward any cash reserve
17 limitation as provided in section 13-504.

18 Sec. 34. Section 77-5905, Revised Statutes Cumulative Supplement,
19 2020, is amended to read:

20 77-5905 (1) If the Department of Revenue determines that an
21 application meets the requirements of section 77-5904 and that the
22 investment or employment is eligible for the credit and (a) the applicant
23 is actively engaged in the operation of the microbusiness or will be
24 actively engaged in the operation upon its establishment, (b) the
25 applicant will make new investment or employment in the microbusiness,
26 and (c) the new investment or employment will create new income or jobs,
27 the department shall approve the application and authorize tentative tax
28 credits to the applicant within the limits set forth in this section and
29 certify the amount of tentative tax credits approved for the applicant.
30 Applications for tax credits shall be considered in the order in which
31 they are received.

1 (2) The department may approve applications up to the adjusted limit
2 for each calendar year beginning January 1, 2006, through December 31,
3 2022. After applications totaling the adjusted limit have been approved
4 for a calendar year, no further applications shall be approved for that
5 year. The adjusted limit in a given year is two million dollars plus
6 tentative tax credits that were not granted by the end of the preceding
7 year. Tax credits shall not be allowed for a taxpayer receiving benefits
8 under the Employment and Investment Growth Act, the Nebraska Advantage
9 Act, the Nebraska Advantage Rural Development Act, ~~or~~ the Imagine
10 Nebraska Act, or the Nebraska Small Business Act.

11 Sec. 35. Section 84-602.03, Revised Statutes Cumulative Supplement,
12 2020, is amended to read:

13 84-602.03 For purposes of the Taxpayer Transparency Act:

14 (1)(a) Expenditure of state funds means all expenditures of state
15 receipts, whether appropriated or nonappropriated, by a state entity in
16 forms including, but not limited to:

17 (i) Grants;

18 (ii) Contracts;

19 (iii) Subcontracts;

20 (iv) State aid to political subdivisions;

21 (v) Tax refunds or credits that may be disclosed pursuant to the
22 Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit
23 Act, the Nebraska Advantage Research and Development Act, the Nebraska
24 Advantage Rural Development Act, ~~or~~ the Imagine Nebraska Act, or the
25 Nebraska Small Business Act; and

26 (vi) Any other disbursement of state receipts by a state entity in
27 the performance of its functions;

28 (b) Expenditure of state funds includes expenditures authorized by
29 the Board of Regents of the University of Nebraska, the Board of Trustees
30 of the Nebraska State Colleges, or a public corporation pursuant to
31 sections 85-403 to 85-411; and

1 (c) Expenditure of state funds does not include the transfer of
2 funds between two state entities, payments of state, federal, or other
3 assistance to an individual, or the expenditure of pass-through funds;

4 (2) Pass-through funds means any funds received by a state entity if
5 the state entity is acting only as an intermediary or custodian with
6 respect to such funds and is obligated to pay or otherwise return such
7 funds to the person entitled thereto;

8 (3) State entity means (a) any agency, board, commission, or
9 department of the state and (b) any other body created by state statute
10 that includes a person appointed by the Governor, the head of any state
11 agency or department, an employee of the State of Nebraska, or any
12 combination of such persons and that is empowered pursuant to such
13 statute to collect and disburse state receipts; and

14 (4) State receipts means revenue or other income received by a state
15 entity from tax receipts, fees, charges, interest, or other sources which
16 is (a) used by the state entity to pay the expenses necessary to perform
17 the state entity's functions and (b) reported to the State Treasurer in
18 total amounts by category of income. State receipts does not include
19 pass-through funds.

20 Sec. 36. This act becomes operative on January 1, 2022.

21 Sec. 37. Original sections 49-801.01, 50-1209, 77-2711, 77-27,119,
22 77-27,144, 77-5905, and 84-602.03, Revised Statutes Cumulative
23 Supplement, 2020, are repealed.