

LEGISLATIVE BILL 544

Approved by the Governor May 25, 2021

Introduced by Wayne, 13.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 49-801.01, 50-1209, 77-2711, 77-27,119, 77-27,144, 77-5905, and 84-602.03, Revised Statutes Cumulative Supplement, 2020; to adopt the Urban Redevelopment Act; to provide tax incentives as prescribed; to change provisions relating to refunds of local option sales and use taxes; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Sections 1 to 28 of this act shall be known and may be cited as the Urban Redevelopment Act.

Sec. 2. For purposes of the Urban Redevelopment Act, the definitions found in sections 3 to 18 of this act shall be used.

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

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

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

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

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

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

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

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

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

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

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

Sec. 12. Qualified location means any location in a city of the metropolitan class or a city of the primary class that is used or will be used by the taxpayer to conduct business activities and that is located within an economic redevelopment area. More than one qualified location may be part of the same project.

Sec. 13. Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue

Code of 1986, as amended, or the components of such property, that will be located and used at the qualified location. Qualified property does not include (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (2) property that is rented by the taxpayer qualifying under the Urban Redevelopment Act to another person.

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

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

Sec. 16. Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

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

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

Sec. 19. (1) To earn the incentives set forth in the Urban Redevelopment Act, the taxpayer shall file an application for an agreement with the Director of Economic Development.

(2) The application shall:

(a) Identify the taxpayer applying for incentives;

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

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

(d) Include an application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund.

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

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

(5) Applications for incentives shall be considered in the order in which they are received.

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

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

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

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

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

(d) The date the application was filed; and

(e) The maximum amount of incentives authorized.

(8) The application, the agreement, all supporting information, and all other information reported to the Director of Economic Development shall be kept confidential by the director, except for the name of the taxpayer, the location of the project, the estimated amounts of increased employment and investment stated in the application, the date of the complete application, the date the agreement was signed, and the information required to be reported by section 28 of this act. The application, the agreement, and all supporting information shall be provided by the director to the Department of Revenue. The director shall disclose, to any municipalities in which project locations exist, the approval of an application and the execution of an agreement under this section. The Tax Commissioner shall also notify each municipality of the amount and taxpayer identity for each refund of local option sales and use taxes of the municipality within thirty days after the refund is allowed or

approved. Disclosures shall be kept confidential by the municipality unless publicly disclosed previously by the taxpayer or by the State of Nebraska.

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

Sec. 20. (1) A tax credit shall be allowed to any taxpayer who has an approved application pursuant to the Urban Redevelopment Act if the taxpayer:

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

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

(2) A tax credit shall be allowed to any taxpayer who has an approved application pursuant to the Urban Redevelopment Act if the taxpayer attains a cumulative investment in qualified property of at least fifty thousand dollars at the qualified location before the end of the ramp-up period.

(3) Subject to subsection (5) of this section, the amount of the credit allowed under subsection (1) of this section shall be:

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

(b) Two thousand seven hundred fifty dollars for each fifty thousand dollars of increased investment.

(4) Subject to subsection (5) of this section, the amount of the credit allowed under subsection (2) of this section shall be five percent of the investment.

(5) A taxpayer may qualify for a credit under either subsection (1) or (2) of this section, but cannot qualify for a credit under both such subsections. The credit shall not exceed fifty thousand dollars. The taxpayer shall receive such credit for each year of the performance period that the taxpayer is at or above the required levels of employment and cumulative investment.

(6) A taxpayer shall not qualify for any credits under the Urban Redevelopment Act if the taxpayer is receiving any benefits under any other tax incentive program offered by the State of Nebraska.

(7) A teleworker working from his or her residence shall not be considered an equivalent employee of the taxpayer for purposes of the Urban Redevelopment Act unless the teleworker's residence is located in the economic redevelopment area in which the taxpayer's qualified location is located.

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

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

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

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

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

(a) The purchase or lease of any property that was previously owned by the taxpayer who filed the application or a related taxpayer unless the first purchase by either the taxpayer who filed the application or a related taxpayer was first placed in service at a qualified location after the beginning of the taxable year the application was filed;

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

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

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

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

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

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

(c) To reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755. The amount of credits used against income tax withholding shall not exceed the withholding attributable to the number of new equivalent employees employed by the taxpayer. If the amount of credit used by the taxpayer against income tax withholding exceeds such amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section; and

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

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

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

(4) For purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any sales or use taxes paid by a contractor with a purchasing agent agreement on building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the sales and use taxes paid on the building materials, or the taxpayer, with the permission of the Director of Economic Development and a certification from the contractor that sales and use taxes were paid on all building materials, may presume that fifty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

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

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

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

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

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

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

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

Sec. 25. The incentives allowed under the Urban Redevelopment Act shall not be transferable except in the following situations:

(1) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, limited liability company members, shareholders, patrons, limited cooperative association members, or beneficiaries. Any credit distributed shall

be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, limited cooperative association, estate, or trust shall be liable for any repayment under section 23 of this act;

(2) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended. The acquiring taxpayer, as of the date of notification of the Director of Economic Development of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act. The acquiring taxpayer shall be liable for any repayment that becomes due after the date of the transfer with respect to any benefits received either before or after the transfer; and

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

Sec. 26. Interest shall not be allowable on any refunds paid because of benefits earned under the Urban Redevelopment Act.

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

(2) Upon review, the Tax Commissioner may approve or amend the taxpayer's base year employment levels based upon the employment and business records provided by the taxpayer. Once the Tax Commissioner certifies the employment levels, the certification is binding on the Department of Revenue when the taxpayer claims benefits on a return to the extent the information provided by the taxpayer was accurate and to the extent such information is not affected by any of the situations described in section 21 of this act.

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

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

(a) The total amount of investment at qualified locations in the previous calendar year by taxpayers who are receiving incentives pursuant to the Urban Redevelopment Act;

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

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

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

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

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

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

49-801.01 Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109, 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902, 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to

77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, 77-5903, 77-6302, 77-6306, 77-6509, 77-6513, 77-6519, 77-6811, 77-6815, 77-6819, 77-6821, 77-6822, 77-6831, 77-6834, and 77-6842 and sections 8, 13, 15, 16, and 25 of this act, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on April 12, 2018.

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

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

- (a) The Beginning Farmer Tax Credit Act;
- (b) The ImagiNE Nebraska Act;
- (c) The Nebraska Advantage Act;
- (d) The Nebraska Advantage Microenterprise Tax Credit Act;
- (e) The Nebraska Advantage Research and Development Act;
- (f) The Nebraska Advantage Rural Development Act;
- (g) The Nebraska Job Creation and Mainstreet Revitalization Act;
- (h) The New Markets Job Growth Investment Act; ~~and~~
- (i) The Urban Redevelopment Act; and

(j) ~~(i)~~ Any other tax incentive program created by the Legislature for the purpose of recruitment or retention of businesses in Nebraska. In determining whether a future tax incentive program is enacted for the purpose of recruitment or retention of businesses, the office shall consider legislative intent, including legislative statements of purpose and goals, and may also consider whether the tax incentive program is promoted as a business incentive by the Department of Economic Development or other relevant state agency.

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

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

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

- (i) Strengthening the state's economy overall by:
 - (A) Attracting new business to the state;
 - (B) Expanding existing businesses;
 - (C) Increasing employment, particularly employment of full-time workers.

The analysis shall consider whether the job growth in those businesses receiving tax incentives is at least ten percent above industry averages;

- (D) Creating high-quality jobs; and
- (E) Increasing business investment;
- (ii) Revitalizing rural areas and other distressed areas of the state;
- (iii) Diversifying the state's economy and positioning Nebraska for the future by stimulating entrepreneurial firms, high-tech firms, and renewable energy firms; and

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

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

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

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

- (B) By an estimation including all investment;
- (ii) The extent to which the tax incentive changes business behavior;
- (iii) The results of the tax incentive for the economy of Nebraska as a whole. This consideration includes both direct and indirect impacts generally and any effects on other Nebraska businesses; and

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

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

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

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

(4) For purposes of this section:

(a) Distressed area means an area of substantial unemployment as determined by the Department of Labor pursuant to the Nebraska Workforce Innovation and Opportunity Act;

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

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

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

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

(iii) Earns wages that are at least ten percent higher than the statewide

industry sector average and that equal or exceed:

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

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

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

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

(f) New business means a person or unitary group participating in a tax incentive program that did not pay income taxes or wages in the state more than two years prior to submitting an application under the tax incentive program. For any tax incentive program without an application process, new business means a person or unitary group participating in the program that did not pay income taxes or wages in the state more than two years prior to the first day of the first tax year for which a tax benefit was earned;

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

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

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

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

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

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

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

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

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

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

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

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

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of

records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, (g) the disclosure of information pursuant to section 77-27,195, 77-5731, 77-6837, or 77-6839 or section 28 of this act, or (h) the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act.

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

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

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

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

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

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

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

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

(a) Disclosure means the making known to any person in any manner a tax

return or return information;

(b) Return information means:

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

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

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

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. The Tax Commissioner may provide additional information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

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

(b) Each municipality that seeks to request information under subdivision (a) of this subsection shall certify to the Department of Revenue one individual who is authorized by such municipality to make such request and review the documents described in subdivision (a) of this subsection. The individual may be a municipal employee or an individual who contracts with the requesting municipality to provide financial, accounting, or other administrative services.

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

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

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

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

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

(b) For purposes of this subsection:

- (i) Anonymous data means information that does not identify a person;
- (ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and
- (iii) Personally identifiable information means information that identifies a person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all

school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

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

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

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

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, any employee of the State Treasurer or the Department of Administrative Services, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-27,195, 77-4110, 77-5731, 77-6521, 77-6837, or 77-6839 or section 28 of this act, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act, (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, (j) to prohibit the disclosure

under section 42-358.08, 43-512.06, or 43-3327 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child, spousal, or medical support, (k) to prohibit the disclosure of information to the Department of Insurance, the Nebraska State Historical Society, or the State Historic Preservation Officer as necessary to carry out the Department of Revenue's responsibilities under the Nebraska Job Creation and Mainstreet Revitalization Act, or (l) to prohibit the disclosure to the Department of Insurance of information pertaining to authorization for, and use of, tax credits under the New Markets Job Growth Investment Act. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

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

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

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

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

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

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

(d) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or

employee of the Auditor of Public Accounts or former employee of the office of Legislative Audit.

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

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

(b) Return information shall mean:

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

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

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

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

(13) The Auditor of Public Accounts or the office of Legislative Audit shall, as a condition for receiving tax returns and tax return information: (a) Subject employees involved in the audit to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts or office of Legislative Audit for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

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

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

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

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

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

the second class, and villages. This subsection applies to refunds beginning January 1, 2014.

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

(4) Deductions for a refund made pursuant to the Urban Redevelopment Act shall be delayed as provided in this subsection after the refund has been made to the taxpayer. The Department of Revenue shall notify each municipality liable for a refund exceeding one thousand five hundred dollars of the pending refund and the amount of the refund claimed under the Urban Redevelopment Act. The notification shall be made by March 1 of each year beginning in 2022 and shall be used to establish the refund amount for the following calendar year. The notification shall include any excess or underpayment from the prior calendar year. The department shall deduct the refund over a period of one year in equal monthly amounts beginning in January following the notification. This subsection applies to total annual refunds exceeding one million dollars or twenty-five percent of the municipality's total sales and use tax receipts for the prior fiscal year, whichever is the lesser amount.

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

~~(6)(a)~~ ~~(5)(a)~~ Every qualifying business that has filed an application to receive tax incentives under the Employment and Investment Growth Act, the Nebraska Advantage Act, ~~or the ImagiNE Nebraska Act, or the Urban Redevelopment Act~~ shall, with respect to such acts, provide annually to each municipality, in aggregate data, the maximum amount the qualifying business is eligible to receive in the current year in refunds of local sales and use taxes of the municipality and exemptions for the previous year, and the estimate of annual refunds of local sales and use taxes of the municipality and exemptions such business intends to claim in each future year. Such information shall be kept confidential by the municipality unless publicly disclosed previously by the taxpayer or by the State of Nebraska.

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

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

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

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

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

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

Sec. 35. Section 84-602.03, Revised Statutes Cumulative Supplement, 2020,

is amended to read:

84-602.03 For purposes of the Taxpayer Transparency Act:

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

- (i) Grants;
- (ii) Contracts;
- (iii) Subcontracts;
- (iv) State aid to political subdivisions;

(v) Tax refunds or credits that may be disclosed pursuant to the Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Advantage Rural Development Act, ~~or the Imagine Nebraska Act, or the Urban Redevelopment Act;~~ and

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

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

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

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

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

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

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

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