

LEGISLATIVE BILL 1177

Approved by the Governor April 16, 1996

Introduced by Warner, 25

AN ACT relating to revenue and taxation; to amend sections 13-802 to 13-804, 77-913, 77-27,144, 77-4105, and 77-4106, Reissue Revised Statutes of Nebraska, and section 77-2711, Revised Statutes Supplement, 1995; to provide state aid to municipalities; to define terms; to create a fund; to provide for interlocal agreements for public safety services; to authorize certain taxes; to provide duties; 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. The Municipal Equalization Fund is hereby created. The fund shall be used to provide state aid to equalize the property tax capacity of incorporated cities. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 2. For purposes of sections 1 to 4 of this act:

(1) Average per capita property tax levy means the total property taxes levied by all incorporated municipalities for the immediately preceding fiscal year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the current population of all incorporated municipalities as determined by the Department of Revenue pursuant to section 77-27,137.01:

(2) Average property tax levy means the total property taxes levied by all incorporated municipalities for the prior year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the total amount of valuation subject to property tax in all incorporated municipalities for the immediately preceding fiscal year;

(3) Population means the population of a municipality as determined in section 77-3,119; and

(4) Qualifying municipality means any municipality whose property tax levy for operational purposes in the immediately preceding fiscal year was greater than or equal to the statewide average property tax levy for the immediately preceding fiscal year.

Sec. 3. (1) State aid provided to municipalities pursuant to sections 1 to 4 of this act shall be calculated by determining the average property tax levy for operational purposes other than for principal and interest payments on the indebtedness of all incorporated municipalities.

(2) Each qualifying municipality shall receive state aid from the Municipal Equalization Fund equal to (a) the product of the average per capita property tax levy multiplied by the current population of the municipality minus (b) the product of the average property tax levy multiplied by the certified valuation within the incorporated municipality, except that a municipality shall not receive any aid under this section if the calculation results in a negative number.

(3) If the amount of money in the Municipal Equalization Fund is less than the total amount of state aid for all qualifying municipalities as required by the allocation formula in subsection (2) of this section, the money in the fund shall be allocated on a prorated basis to such municipalities.

Sec. 4. The Department of Revenue shall determine the amount to be distributed to the various municipalities and certify such amounts by voucher to the Director of Administrative Services. The Municipal Equalization Fund shall be distributed on or before the first day of October, January, April, and July of each state fiscal year beginning in fiscal year 1998-99. The director shall, upon receipt of such notification and vouchers, draw warrants against funds appropriated. The proceeds of the payments received by the various municipalities shall be credited to the general fund of the municipality.

Sec. 5. (1) Any county and any municipalities within the county may provide for the joint financing and operation of public safety services pursuant to an agreement under the Interlocal Cooperation Act. The joint public safety services shall be operated by a public safety commission consisting of at least three members who represent the county and the

participating municipalities as provided in the agreement. Elected officials are eligible to serve on the commission.

(2) The commission may employ officers and other employees necessary to carry out its duties and responsibilities for public safety services and may enter into contracts, acquire and dispose of property, and receive funds appropriated to it by the county and any participating municipality, granted or appropriated to it by the state or federal government or an agency thereof, given to it by any individual, or collected from the sales and use tax authorized by section 6 of this act. The commission shall have other powers as are granted to the county and any of the participating municipalities acting independently except as limited by the agreement.

Sec. 6. Any county by resolution of the governing body may impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions within the county, but outside any incorporated municipality which has adopted a local sales tax pursuant to section 77-27.142, on which the state is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. Any sales and use tax imposed pursuant to this section must be used to finance public services provided by a public safety commission or to provide the county share of funds required under any other agreement executed under the Interlocal Cooperation Act. A sales and use tax shall not be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved the tax pursuant to sections 9 and 10 of this act.

Sec. 7. Any county by resolution of the governing body may levy a tax on all taxable property of up to five cents per one hundred dollars of taxable value to provide financing for public safety services provided by a public safety commission or to provide the county share of funds required under any other agreement executed under the Interlocal Cooperation Act. The levy shall not be imposed until an election has been held and a majority of the qualified electors have approved such levy pursuant to sections 9 and 10 of this act. A levy imposed under this section is the levy authorized by subsection (8) of section 1, Legislative Bill 1114, Ninety-fourth Legislature, Second Session, 1996.

Sec. 8. Any incorporated municipality which is a party to the agreement may by resolution of the governing body levy a tax on all taxable property within the municipality not to exceed five cents per one hundred dollars of taxable value to provide financing for public safety services provided by a public safety commission or to provide the municipality's share of funds required under any other agreement executed under the Interlocal Cooperation Act. The levy shall not be imposed until an election has been held and a majority of the qualified electors have approved such levy pursuant to sections 9 and 10 of this act. A levy imposed under this section is the levy authorized by subsection (6) of section 1, Legislative Bill 1114, Ninety-fourth Legislature, Second Session, 1996.

Sec. 9. The powers granted by sections 6 to 8 of this act shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the area which would be subject to the tax and in which all registered voters are entitled to vote on such question. The officials of the incorporated municipality or county shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk. The question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific public safety service for which the revenue received from the tax will be allocated, and shall include the following language: Shall the county impose a sales and use tax upon the same transactions within the county, other than in municipalities which impose a local option sales tax, on which the State of Nebraska is authorized to impose a tax to finance public safety services? or Shall the (county or incorporated municipality) levy a property tax to finance public safety services? If a majority of the votes cast upon the question are in favor of the tax, the governing body may impose or levy the tax. If a majority of those voting on the question are opposed to the tax, the governing body shall not impose or levy the tax. Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Sec. 10. The election commissioner or county clerk shall give notice of the submission of the question of imposing or levying a tax under section 6, 7, or 8 of this act, not more than thirty days nor less than ten days before the election, by publication one time in one or more newspapers published in or of general circulation in the municipality or county in which the question is to be submitted. This notice is in addition to any other notice required under the Election Act.

Sec. 11. (1) The Tax Commissioner shall administer all sales and

use taxes adopted under section 6 of this act. The Tax Commissioner may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The county shall furnish a certified copy of the adopting or repealing resolution to the Tax Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter following receipt by the Tax Commissioner of the certified copy of the adopted resolution if the certified copy of the adopted resolution is received sixty days prior to the start of the next calendar quarter.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The county shall furnish a certified statement to the Tax Commissioner no more than one hundred twenty days and at least sixty days before the termination date that the termination date stated in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least sixty days after receipt of the certified statement notwithstanding the termination date stated in the resolution.

(3) The Tax Commissioner shall collect the sales and use tax 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 counties imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three percent administrative fee shall be deposited in the state General Fund.

(4) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 6 of this act.

Sec. 12. The proceeds of the sales and use tax imposed by a county under section 6 of this act shall be distributed to the county for deposit in its general fund.

Sec. 13. (1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 6, 11, and 12 of this act, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a county.

(2) For the purposes of the sales and use tax imposed by a county, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are consummated:

(a) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and commencing January 1, 1997, motorboats, if a purchaser takes possession of tangible personal property within a county which has enacted a tax under the Local Option Revenue Act, regardless of the business location of the Nebraska retailer;

(b) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that Nebraska intrastate message toll telephone and telegraph services which are consummated in the county where the customer is normally billed for such services;

(c) At the physical location of individual vending machines; and

(d) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and commencing January 1, 1997, motorboats sold or leased or rented for more than one year.

Sec. 14. Section 13-802, Reissue Revised Statutes of Nebraska, is amended to read:

13-802. It is the purpose of the Interlocal Cooperation Act to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

Sec. 15. Section 13-803, Reissue Revised Statutes of Nebraska, is amended to read:

13-803. For purposes of the Interlocal Cooperation Act:

(1) Joint entity shall mean an entity created by agreement pursuant to section 13-804;

(2) Public agency shall mean any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state; and

(3) Public safety services shall mean public services for the protection of persons or property. Public safety services shall include law enforcement, fire protection, and emergency response services; and

(4) State shall mean a state of the United States and the District of Columbia.

Sec. 16. Section 13-804, Reissue Revised Statutes of Nebraska, is amended to read:

13-804. (1) Any power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having such power or powers, privileges, or authority and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges, and authority conferred by the Interlocal Cooperation Act upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The general organization, composition, and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) The manner of levying, collecting, and accounting for any tax authorized under sections 5 to 13 of this act; and

(g) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items enumerated in subsection (3) of this section, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, the public agencies party to the agreement shall be represented; and

(b) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(5) No agreement made pursuant to the Interlocal Cooperation Act shall relieve any public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to the act, which performance may be offered in satisfaction of the obligation or responsibility.

(6) In the event that an agreement made pursuant to this section creates a joint entity, such joint entity shall be subject to control by its members in accordance with the terms of the agreement; shall constitute a separate public body corporate and politic of this state, exercising public powers and acting on behalf of the public agencies which are parties to such agreement; and shall have power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with the necessity thereof, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend, and repeal bylaws, rules, and regulations, not inconsistent with the Interlocal Cooperation Act and the agreement providing for its creation, to carry out and effectuate its powers and purposes.

(7) No entity created by local public agencies pursuant to the Interlocal Cooperation Act shall be considered a state agency, and no employee of such an entity shall be considered a state employee.

Sec. 17. Section 77-913, Reissue Revised Statutes of Nebraska, is amended to read:

77-913. The State Treasurer shall receive the funds paid pursuant to Chapter 77, article 9, and, except as provided in sections 77-912 and 77-918, shall keep all money received in a separate fund to be known as the Insurance Tax Fund. Prior to June 1 of each year, the State Treasurer shall disburse all of the funds in the Insurance Tax Fund on May 1 of each year as follows:

(1) Ten percent of the total shall be allocated to the counties proportionately in the proportion that the population of each county bears to the entire state, as shown by the last United States Government census;

(2) Thirty percent of the total shall be allocated to incorporated municipalities proportionately in the proportion that the population of each incorporated municipality bears to the total population of all incorporated municipalities, as determined by the last United States Government census the Municipal Equalization Fund; and

(3) Sixty percent of the total shall be allocated to the State Department of Education for distribution to school districts based on the pro rata enumeration of children who are five through eighteen years of age in each school district. The Commissioner of Education shall certify the amount allocated to each school district to the Director of Administrative Services who shall, on June 1 of each year, draw a warrant on the State Treasurer in favor of each such school district for the respective amounts so certified by the commissioner as equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act as follows: The Commissioner of Education shall (a) include the amount certified by the State Treasurer pursuant to this section with the amount appropriated to the Tax Equity and Educational Opportunities Fund for distribution in the ensuing school fiscal year, (b) include such amounts in the state aid certified to each school district pursuant to section 668, Legislative Bill 900, Ninety-fourth Legislature, Second Session, 1996, and (c) distribute such funds as equalization aid under the provisions of the act during the ensuing fiscal year.

Sec. 18. Section 77-2711, Revised Statutes Supplement, 1995, is amended to read:

77-2711. (1)(a) The Tax Commissioner shall enforce sections 77-2702.03 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 sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 6 and 11 of this act and the accuracy of the allocation made between the various counties, cities, and villages 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 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, or (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party.

(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 77-2702.03 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 81-1254 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) 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, but may not waive the minimum interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted, except interest on use taxes voluntarily reported by an individual.

Sec. 19. Section 77-27,144, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,144. 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 then three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto to be credited to the Municipal Equalization Fund. The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of sections 77-27,142 to 77-27,148 the Local Option Revenue Act.

All receipts from the three percent administrative fee shall be deposited in the state General Fund.

Sec. 20. Section 77-4105, Reissue Revised Statutes of Nebraska, is amended to read:

77-4105. (1) A taxpayer who has signed an agreement under section 77-4104 may elect to determine taxable income for purposes of the Nebraska income tax using the sales factor only. The election may be made for the year during which the application was filed and for each year thereafter through the eighth year after the end of the entitlement period. The election shall be made for the year of the election by computing taxable income using the sales factor only on the tax return.

(2) A taxpayer who has signed an agreement under section 77-4104 shall receive the incentive provided in this subsection if the agreement contains one or more projects which together will result in the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. Such ten-million-dollar investment and hiring of at least one hundred new employees shall be considered a required level of investment and employment for this subsection and for the recapture of personal property tax only.

The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(a) Turbine-powered aircraft, including turboprop, turbojet, and turboprop aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(b) Mainframe business computers used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user plus peripheral components which require environmental controls of temperature and power connected to such computers. Computer peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, and communication controllers; and

(c) Personal property which is business equipment located in a single project if (i) the business equipment is involved directly in the manufacture or processing of agricultural products, (ii) the investment in the single project exceeds ten million dollars, and (iii) the use, value, and proper classification of the business equipment has been certified by the Tax Commissioner.

Such property shall be exempt from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (2)(a) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (2)(b) and (2)(c) of this section, through the sixteenth December 31 after the filing of the application.

(3) When the taxpayer has met the required levels of employment and investment contained in the agreement, the taxpayer shall also be entitled to the following incentives:

(a) A refund of all sales and use taxes paid under the Nebraska Revenue Act of 1967, and the Local Option Revenue Act, and sections 6 and 11 of this act from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson

after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of the sales and use taxes paid under the Nebraska Revenue Act of 1967, and the Local Option Revenue Act, and sections 6 and 11 of this act on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(4) Any taxpayer who qualifies for the incentives contained in subsections (1) and (3) of this section and who has added at least thirty new employees at the project shall also be entitled to:

(a) A credit equal to five percent of the amount by which the total compensation paid during the year to employees who are either Nebraska employees or base-year employees while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees.

For the computation of such credit, average compensation shall mean the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(b) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (a) and (b) of this subsection shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

The credit prescribed in subdivision (b) of this subsection shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

Sec. 21. Section 77-4106, Reissue Revised Statutes of Nebraska, is amended to read:

77-4106. (1)(a) The credits prescribed in section 77-4105 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27135. The credits may be used to obtain a refund of sales and use taxes under the Nebraska Revenue Act of 1967, and the Local Option Revenue Act, and sections 6 and 11 of this act which are not otherwise refundable that are paid on purchases, including rentals, for use at the project.

(b) The credits may be used as allowed in subdivision (a) of this subsection and shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(c) The credit may be carried over until fully utilized, except that such credit may not be carried over more than eight years after the end of the entitlement period.

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

(b) Refund claims shall be filed no more than once each quarter for refunds under the Employment and Investment Growth Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

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

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Employment and Investment Growth Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) Interest shall not be allowed on any sales and use taxes refunded under the Employment and Investment Growth Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

Sec. 22. This act becomes operative on July 1, 1998.

Sec. 23. Original sections 13-802 to 13-804, 77-913, 77-27,144, 77-4105, and 77-4106, Reissue Revised Statutes of Nebraska, and section 77-2711, Revised Statutes Supplement, 1995, are repealed.