

## LEGISLATIVE BILL 216

Approved by the Governor March 9, 2005

Introduced by Revenue Committee: Landis, 46, Chairperson; Baker, 44; Connealy, 16; Cornett, 45; Janssen, 15; Preister, 5; Raikes, 25; Redfield, 12

AN ACT relating to revenue and taxation; to amend sections 21-2612, 77-1784, 77-2115, 77-2701.27, 77-2704.25, 77-2708, 77-2711, 77-2716, 77-2727, 77-2734.01, 77-2753, 77-2756, 77-2775, 77-2776, 77-27,119, and 77-27,127, Reissue Revised Statutes of Nebraska, and sections 77-2701.16, 77-2704.12, 77-2786, and 85-1808, Revised Statutes Supplement, 2004; to change provisions relating to limited liability companies, electronic filing, confidentiality, definitions, sales and use tax, and income tax; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 21-2612, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

Sec. 2. Section 77-1784, Reissue Revised Statutes of Nebraska, is amended to read:

77-1784. (1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. ~~or that are made before the establishment of the criteria.~~

(4) For payments due after January 1, ~~2001~~ 2006, the Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer who made payments exceeding ~~one hundred~~ twenty thousand dollars for a tax program in the prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.

(5) Any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party

would have if a different method of filing or payment were used. The Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

Sec. 3. Section 77-2115, Reissue Revised Statutes of Nebraska, is amended to read:

77-2115. (1) If the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services makes known in any manner the value of any estate or any particular set forth or disclosed in any report, state tax return, federal tax return, or other tax information required to be filed with the Tax Commissioner under the provisions of Nebraska's transfer tax laws, except so far as may be necessary for the enforcement and collection of the transfer tax provided for by the laws of this state, such person shall be guilty of a Class I misdemeanor.

(2) Federal tax returns, copies of such returns, and return information as defined under section 6103(d) of the Internal Revenue Code and state transfer tax returns and inheritance tax returns which are required to be filed with the Tax Commissioner for the enforcement of the inheritance and transfer tax laws of this state shall be deemed to be confidential by the Tax Commissioner.

(3) Nothing in this section shall be construed to prohibit:

(a) The delivery or inspection of such returns or tax information

by:

(i) The personal representative or legal representative of the decedent's estate or representative of the transferor;

(ii) The county attorney of the county in which the decedent's or transferor's property is located;

(iii) The judge of the county court in which the decedent's or transferor's property is located; or

(iv) The Attorney General's office or other legal representative of the Tax Commissioner when such returns or tax information are relevant to any action or proceeding instituted by or against the transferor or the personal or legal representative of the decedent's estate or transferor;

(b) The furnishing of such information to the United States Government or to other states allowing similar privileges to the Tax Commissioner; or

(c) The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

Sec. 4. Section 77-2701.16, Revised Statutes Supplement, 2004, is amended to read:

77-2701.16. (1) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(c) The cost of transportation of the property;

(d) The amount of any excise or property tax levied against the property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

(2) Gross receipts of every person engaged as a public utility specified in this subsection or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section shall mean:

(a) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. In the furnishing of mobile telecommunications service as described in section 77-2706.02, the gross

income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications service that is paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands and manufacturing purposes, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property shall mean:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967 and except as provided in section 77-2704.39.

(4) Gross receipts for providing a service shall mean:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax;

(e) The gross income received for labor by a contractor except as provided in section 77-2704.55;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

(h) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

(i) The gross income received for detective services.

(5) Gross receipts shall not include any of the following:

(a) Cash discounts allowed and taken on sales;

(b) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;

(c) Sales price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit;

(d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property or

services under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property or services;

(e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;

(f) The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat;

(g) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the property prior to June 1, 1967, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration; or

(h) Except as provided in subsection (2) of this section, until October 1, 2002, the amount charged for labor or services rendered in installing or applying the property sold if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the property.

(6) Subsections (1) through (6) of this section terminate on January 1, 2004.

(7) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(8) Gross receipts of every person engaged as a public utility specified in this subsection or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (8)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service; and

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (8)(a) or (b) of this section or community antenna television service specified in subdivision (8)(d) of this section, which shall be considered construction services.

(9) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(10) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax;

(e) The gross receipts received for labor by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 except as provided in section 77-2704.55. For purposes of this subdivision, the gross receipts received for labor shall be sixty percent of the sales price for building materials and construction services

less an allowance for sales tax paid on building materials. The allowance for sales tax paid on building materials shall equal the sales tax rate in effect at the time payment is received at the location of the project times forty percent of the sales price for building materials and construction services;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(h) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

(i) The gross income received for detective services.

(11) Gross receipts includes the sale of admissions which means the right or privilege to have access to or to use a place or location. An admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization. When an admission to an activity or a membership constituting an admission pursuant to this subsection is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(12) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(13) Gross receipts includes the sale of any building materials annexed to real estate and any construction services by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(14) Gross receipts includes the sale of prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements. If the sale or recharge of a prepaid telephone calling arrangement does not take place at the vendor's place of business, the sale or recharge shall be conclusively determined to take place at the customer's shipping address or, if there is no item shipped, at the customer's billing address. For purposes of this subsection, a prepaid telephone calling arrangement means the right to exclusively purchase telecommunications services that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.

(15) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

(16) Subsections (7) through (15) of this section become operative on January 1, 2004.

(17) The Tax Commissioner shall hold a hearing on rules and regulations to carry out the changes made to this section by Laws 2003, LB 759. It is the intent of the Legislature that the Tax Commissioner adopt and promulgate rules and regulations to carry out such changes.

Sec. 5. Section 77-2701.27, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.27. Property means all tangible and intangible property that is subject to tax under subsection (1) of section 77-2703 and all rights, licenses, and franchises that are subject to tax under such subsection. To facilitate the proper administration of the Nebraska Revenue Act of 1967, unless the context clearly requires otherwise, the term property shall be construed to include all services subject to tax.

Sec. 6. Section 77-2704.12, Revised Statutes Supplement, 2004, is amended to read:

77-2704.12. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under sections 79-1601 to 79-1607, any private college or

university established under sections 85-1101 to 85-1111, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, ~~or~~ nursing facility, home health agency, hospice or hospice service, or respite care service licensed under the Health Care Facility Licensure Act and organized not for profit, ~~any nonprofit organization providing services primarily for home health care purposes,~~ any licensed child-caring agency, or any licensed child placement agency.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Sec. 7. Section 77-2704.25, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.25. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property, ~~except meals for human consumption,~~ sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself.

Sec. 8. Section 77-2708, Reissue Revised Statutes of Nebraska, is amended to read:

77-2708. (1) (a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b) (i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes

due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty

is being collected under subdivision (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a designated county official, or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) For all sales tax collected prior to October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. For all sales tax collected on and after October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, ~~assignee~~, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. If the Tax Commissioner has neither allowed nor disallowed a claim within such one hundred eighty days, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of



refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation.

Sec. 9. Section 77-2711, Reissue Revised Statutes of Nebraska, 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 sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 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, 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 77-2701.04 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 81-1254 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.

(12)(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 (12)(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. 10. Section 77-2716, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

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

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

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

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

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

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

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

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political

subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

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

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

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

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

~~(8) (a) There shall be subtracted from federal adjusted gross income an amount equal to the difference between the amount qualified for calculation of a deduction as provided in section 162(l) of the Internal Revenue Code and the amount actually allowed pursuant to section 162(l)(1) of the Internal Revenue Code.~~

~~(b) For an individual who itemized deductions on his or her federal return, the maximum amount subtracted under subdivision (8)(a) of this section shall be seven and one-half percent of federal adjusted gross income.~~

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

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed five hundred dollars per married filing separate return or one thousand dollars for any other return.

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

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

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

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

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

depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

~~(11)~~ (10) For taxable years beginning or deemed to begin on or after January 1, 2003, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

Sec. 11. Section 77-2727, Reissue Revised Statutes of Nebraska, is amended to read:

77-2727. (1) A partnership as such shall not be subject to the income tax imposed by the Nebraska Revenue Act of 1967. Persons or their authorized representatives carrying on business as partners shall be liable for the income tax imposed by the Nebraska Revenue Act of 1967 only in their separate or individual capacities.

(2) The partners of such partnership who are residents of this state or corporations shall include in their incomes their proportionate share of such partnership's income.

(3) If any partner of such partnership is a nonresident individual during any part of the partnership's reporting year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the partnership's Nebraska income, as determined under the provisions of sections 77-2728 and 77-2729, allocable to his or her interest in the partnership and shall execute and forward to the partnership, on or before the original due date of the Nebraska partnership return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or attributable to sources in this state, and such agreement shall be attached to the partnership's Nebraska return for such reporting year.

(4) (a) ~~In~~ Except as provided in subdivision (c) of this subsection, in the absence of the nonresident individual partner's executed agreement being attached to the Nebraska partnership return, the partnership shall remit a portion of such partner's income which was derived from or attributable to Nebraska sources with its Nebraska return for the reporting year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state.

(b) Any amount remitted on behalf of any partner shall be allowed as a credit against the Nebraska income tax liability of the partner.

(c) Subdivision (a) of this subsection does not apply to a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code of 1986, as amended, that is treated as a partnership for the purposes of the code and that has agreed to file an annual information return with the Department of Revenue reporting the name, address, taxpayer identification number, and other information requested by the department of each unit holder with an income in the state in excess of five hundred dollars.

(5) The Tax Commissioner may allow a nonresident individual partner to not file a Nebraska income tax return if the nonresident individual partner's only source of Nebraska income was his or her share of the partnership's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the partnership has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual partner. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual partner.

Sec. 12. Section 77-2734.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2734.01. (1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income,

their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

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

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

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

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

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

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

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

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

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

Sec. 13. Section 77-2753, Reissue Revised Statutes of Nebraska, is amended to read:

77-2753. (1) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or

other payments as defined in subsection (5) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

(2) (a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation, partnership, or limited liability company described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be four percent, and for all other payments, the percentage shall be six percent.

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not apply to any payment to a nonresident alien, corporation, partnership, or limited liability company if such individual, shareholder, partner, or member provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States.

(3) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(4) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

(5) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments



subject to 26 U.S.C. ~~3405~~ 3406, (b) payments of gambling winnings, or (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments.

Sec. 14. Section 77-2756, Reissue Revised Statutes of Nebraska, is amended to read:

77-2756. (1) Except as provided in subsection (2) of this section, every employer or payor required to deduct and withhold income tax under the Nebraska Revenue Act of 1967 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld, except that for the fourth quarter of the calendar year, the employer or payor shall also file on or before March 15 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. When the aggregate amount required to be deducted and withheld by any employer or payor for either the first or second month of a calendar quarter exceeds five hundred dollars, the employer or payor shall, by the fifteenth day of the succeeding month, pay over such aggregate amount to the Tax Commissioner or to a depository designated by the Tax Commissioner. The amount so paid shall be allowed as a credit against the liability shown on the employer's or payor's quarterly withholding return required by this section. The Tax Commissioner may, by rule and regulation, provide for the filing of returns and the payment of the tax deducted and withheld on other than a quarterly basis.

(2) When the aggregate amount required to be deducted and withheld by any employer or payor for the entire calendar year is less than five hundred dollars, the employer or payor shall, for each calendar year, on or before the last day of the month following the close of such calendar year, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld, and the employer or payor shall also file on or before March 15 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. The employer or payor may elect or the Tax Commissioner may require the filing of returns and the payment of taxes on a quarterly basis.

(3) Whenever any employer or payor fails to collect, truthfully account for, pay over, or make returns of the income tax as required by this section, the Tax Commissioner may serve a notice requiring such employer or payor to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the Tax Commissioner in a separate account in trust for and payable to the Tax Commissioner, and to keep the amount of such tax in such account until paid over to the Tax Commissioner. Such notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(4) Any employer or payor may appoint an agent in accordance with section 3504 of the Internal Revenue Code of 1986, as amended, for the purpose of withholding, reporting, or making payment of amounts withheld on behalf of the employer or payor. The agent shall be considered an employer or payor for purposes of the Nebraska Revenue Act of 1967 and, with the actual employer or payor, shall be jointly and severally liable for any amount required to be withheld and paid over to the Tax Commissioner and any additions to tax, penalties, and interest with respect thereto.

Sec. 15. Section 77-2775, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) Whenever the amount of a taxpayer's income which is taxable in any state for any taxable year or any tax credits allowable in such state are changed or corrected in a way material to the tax liability owed to this state by the agency having authority to examine returns filed with such state or any other competent authority or whenever an amended return is filed by any taxpayer with a change or correction material to the tax liability owed to this state with another state, such change or correction shall be reported to the Tax Commissioner within ninety days after the final change or correction

or filing of the amended return. The Tax Commissioner shall by rule and regulation provide the nature of any change or correction which must be reported. ~~This subsection shall apply to changes or corrections which become final on or after May 17, 1993.~~

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

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

Sec. 16. Section 77-2776, Reissue Revised Statutes of Nebraska, is amended to read:

77-2776. (1) As soon as practical after an income tax return is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall credit the overpayment against any taxes due by the taxpayer and refund the difference. The Tax Commissioner shall, upon request, make prompt assessment of taxes due as provided by the laws of the United States for federal income tax purposes.

(2) If the taxpayer fails to file an income tax return, the Tax Commissioner shall estimate the taxpayer's tax liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed by certified or registered mail to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, ~~he~~ the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed by certified or registered mail to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner, shareholder, or member of such entity, but only for items of entity income reported by the partner, shareholder, or member.

Sec. 17. Section 77-2786, Revised Statutes Supplement, 2004, is amended to read:

77-2786. (1) Except as otherwise provided in the Nebraska Revenue Act of 1967, a notice of a proposed deficiency determination shall be mailed to the taxpayer within three years after the return was filed. Except as otherwise provided in the Nebraska Revenue Act of 1967, no deficiency shall be assessed or collected with respect to the year for which the return was filed unless a notice of a proposed deficiency determination is mailed within three years after the return was filed or the period otherwise fixed.

(2) If the taxpayer omits from Nebraska taxable income an amount properly includable therein which is in excess of twenty-five percent of the amount of taxable income stated in the return or a corporate return omits a properly includable member of the unitary group as defined in section 77-2734.04, a notice of a deficiency determination may be mailed to the taxpayer within six years after the return was filed. A notice of deficiency determination based on the omission of a member of a unitary group shall be limited to the increase in the tax caused by including the omitted member. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Tax Commissioner of the nature and amount of such item and the

manner in which such item would affect the computation of Nebraska taxable income.

(3) If no return is filed or a false and fraudulent return is filed with intent to evade the income tax imposed by the Nebraska Revenue Act of 1967, a notice of deficiency determination may be mailed to the taxpayer at any time.

(4) If a taxpayer fails to comply with the requirement of section 77-2775 by not reporting a change or correction increasing his or her federal adjusted gross income, taxable income, or tax liability or a change or correction which is treated in the same manner as if it were a deficiency determination for federal income tax purposes, or by not reporting a change or correction ~~which has become final on or after May 1, 1993,~~ in income taxable in or tax credit allowable by any state to the extent required by the Tax Commissioner by regulation, or in not filing an amended return, a notice of deficiency determination based on a complete examination of the tax liability for the tax years involved may be mailed to the taxpayer at any time.

(5) If the taxpayer, pursuant to section 77-2775, reports a federal change or correction or a state change or correction, ~~which has become final on or after May 1, 1993,~~ files an amended return increasing his or her federal adjusted gross income, taxable income, or tax liability, or reports a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of a deficiency determination based on a redetermination of Nebraska tax liability to reflect the change or correction may be mailed at any time within two years after such report or amended return was filed.

(6) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to the mailing after such time, the notice of deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

An agreement between the taxpayer and the Internal Revenue Service providing for the extension of the period for the mailing of a notice of deficiency determination of federal income taxes shall constitute an agreement with the Tax Commissioner to extend the period for assessment of income taxes under the Nebraska Revenue Act of 1967 through the ending date shown on the federal agreement. A copy of all such agreements and extensions thereof shall be filed with the Tax Commissioner within thirty days after their execution. If the copy of the extension agreement with the Internal Revenue Service is not filed pursuant to this subsection, the notice of deficiency determination for such taxable year may be mailed at any time within one year of the discovery of the extension by the Tax Commissioner.

(7) For purposes of this section, an income tax return filed before the last day prescribed by the Nebraska Revenue Act of 1967 for the filing thereof, determined without regard to any extension of time to file the return, shall be deemed to be filed on such last day. If a return or withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

(8) When it becomes necessary for the Tax Commissioner to apply for a court order under subsection (2) of section 77-27,109 for the production of books, papers, records, or memoranda or the testimony of any person, the period for the mailing of a notice of deficiency determination shall be tolled from the date the Tax Commissioner first applies to the appropriate court for the order until the last date on which the information or testimony contained in the application for the court order is obtained by the Tax Commissioner.

This subsection shall not apply if the court finds that the information is not relevant to the determination of the tax liability, the information was provided prior to the filing of the application, or the application was not filed within the time period otherwise provided in this section for the mailing of a notice of deficiency determination.

(9) Any extension for an item of entity income that is signed on behalf of the entity or by the entity's tax matters person for federal income tax purposes shall extend the time period during which a notice of deficiency could be mailed to the partners, shareholders, or members of the entity with respect to any item of entity income.

Sec. 18. Section 77-27,119, Reissue Revised Statutes of Nebraska, 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 77-4110, (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 to the Department of Labor of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Labor to be delinquent in the payment of combined tax or in the repayment of benefit overpayments, and such disclosure shall be strictly limited to information necessary for the administration of the Employment Security Law, (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, or (j) to prohibit the disclosure under section 42-358.08 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 or spousal support. 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, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 84-304. The Auditor of Public Accounts 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. 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 officer or employee of the Auditor of Public Accounts shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts 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 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.

(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.

(13) The Auditor of Public Accounts shall, as a condition for receiving tax returns and tax return information: (a) Subject his or her employees 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 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. 19. Section 77-27,127, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,127. Any final action of the Tax Commissioner may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The appeal provided by this section shall be the exclusive remedy available to any taxpayer, and no other legal or equitable proceedings shall issue to prevent or enjoin the assessment or collection of any tax imposed under the Nebraska Revenue Act of 1967. The appeal provided by this section shall be in the district court for Lancaster County except as provided in section 77-2798.

Sec. 20. Section 85-1808, Revised Statutes Supplement, 2004, is amended to read:

85-1808. (1) A participant may cancel a participation agreement at will. The trustee shall determine and collect a refund penalty by deducting the refund penalty from the returned funds. Collected refund penalties shall be deposited in the endowment fund. Endowment fund money credited to the program account shall be forfeited and returned to the endowment fund.

(2) Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of a refund or termination of a participation agreement:

(a) Death of the beneficiary;

(b) Permanent disability or mental incapacity of the beneficiary;

(c) The beneficiary is awarded a scholarship as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount; or

(d) A qualified rollover is made as permitted by section 529 of the Internal Revenue Code, except that if a qualified rollover is made into a plan sponsored by another state or entity, the participation agreement shall be deemed to have been canceled for purposes of subdivision ~~(9)(d)~~ (8)(d) of section 77-2716 and federal adjusted gross income shall be increased to the extent previously deducted as a contribution to the trust.

(3) In the event of cancellation of a participation agreement for any of the causes listed in subsection (2) of this section, the participant shall be entitled to receive the principal amount of all contributions made by the participant under the participation agreement plus the actual program fund investment income earned on the contributions, less any losses incurred on the investment, but not endowment fund money. Notwithstanding any other provisions of this section, under no circumstances shall a participant or beneficiary receive a refund or distribution that is more than the fair market value of the specific account on the applicable liquidation date.

Sec. 21. Sections 2, 13, and 23 of this act become operative on January 1, 2006. Sections 4 to 8 and 24 of this act become operative on October 1, 2005. Sections 10 to 12, 20, and 22 of this act become operative for taxable years beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on their effective date.

Sec. 22. Original sections 77-2716, 77-2727, and 77-2734.01, Reissue Revised Statutes of Nebraska, and section 85-1808, Revised Statutes Supplement, 2004, are repealed.

Sec. 23. Original sections 77-1784 and 77-2753, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 24. Original sections 77-2701.27, 77-2704.25, and 77-2708, Reissue Revised Statutes of Nebraska, and sections 77-2701.16 and 77-2704.12, Revised Statutes Supplement, 2004, are repealed.

Sec. 25. Original sections 21-2612, 77-2115, 77-2711, 77-2756, 77-2775, 77-2776, 77-27,119, and 77-27,127, Reissue Revised Statutes of Nebraska, and section 77-2786, Revised Statutes Supplement, 2004, are repealed.