

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 914

FINAL READING

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Preister, 5; Raikes, 25; White, 8.

Read first time January 14, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 66-723, 77-1783.01, 77-2709, 77-2777, 77-2778, 77-2780,
3 77-2792, 77-2793, 77-2796, 77-27,100, 77-4104, 77-4928,
4 77-5405, 77-5534, and 79-1034, Reissue Revised Statutes
5 of Nebraska, sections 21-2612, 66-720, 66-722, 66-1344,
6 77-2775, 77-5723, and 77-5726, Revised Statutes
7 Cumulative Supplement, 2006, and sections 77-2711
8 and 77-27,187.02, Revised Statutes Supplement, 2007;
9 to change provisions relating to limited liability
10 companies, timeframes for certain filings and protests,
11 interest and delinquent taxes, and a report; to eliminate
12 funds; to create a fund; to provide operative dates;

LB 914

LB 914

1 to repeal the original sections; and to outright repeal
2 section 77-5732, Revised Statutes Cumulative Supplement,
3 2006.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-2612, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 21-2612 (1) The members and managers of a limited
4 liability company shall not be liable under a judgment, decree, or
5 order of a court or in any other manner for a debt, obligation,
6 or liability of the limited liability company. Except as otherwise
7 specifically set forth in the Limited Liability Company Act, no
8 member, manager, employee, or agent of a limited liability company
9 shall be personally liable under any judgment, decree, or order of
10 any court, agency, or other tribunal in this or any other state, or
11 on any other basis, for any debt, obligation, or liability of the
12 limited liability company.

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

20 (2) Any member, manager, or employee of a limited
21 liability company with the duty to collect, account for, or
22 pay over any taxes imposed upon a limited liability company or
23 with the authority to decide whether the limited liability company
24 will pay taxes imposed upon a limited liability company shall be
25 personally liable for the payment of such taxes in the event of

1 willful failure on his or her part to have a limited liability
2 company perform such act. Such taxes shall be collected in the same
3 manner as provided under section 77-1783.01.

4 Sec. 2. Section 66-720, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 66-720 (1) Any license or permit issued by the department
7 under the motor fuel laws may be suspended for the following
8 reasons:

9 (a) Cancellation of security;

10 (b) Failure to provide additional security as required;

11 (c) Failure to file any report or return, filing an
12 incomplete report or return, or not filing electronically, within
13 the time provided;

14 (d) Failure to pay taxes due within the time provided;

15 (e) Filing of any false report, return, statement, or
16 affidavit, knowing it to be false;

17 (f) Delivering motor fuel to a Nebraska destination if
18 Nebraska is not listed as the destination state on the original
19 bill of sale, bill of lading, or manifest except as authorized
20 under section 66-503;

21 (g) Failure to remain in compliance with requirements of
22 the State Fire Marshal regarding underground storage tanks;

23 (h) Failure to remain in compliance with requirements of
24 the Department of Agriculture regarding weights and measures;

25 (i) Using or placing dyed diesel fuel in a motor vehicle

1 except as authorized under section 66-495.01;

2 (j) No longer being eligible to obtain a license or
3 permit; or

4 (k) Any other violation of the motor fuel laws or the
5 rules and regulations.

6 (2) The department shall mail notice of suspension of any
7 license or permit.

8 (3) The licensee or permitholder may, within ~~thirty~~
9 sixty days after the mailing of the notice of such suspension,
10 petition the Department of Revenue in writing for a hearing and
11 reconsideration of such suspension. If a petition is filed, the
12 department shall, within ten days of receipt of the petition, set a
13 hearing date at which the licensee or permitholder may show cause
14 why his or her suspended license or permit should not be canceled.
15 The department shall give the licensee or permitholder reasonable
16 notice of the time and place of such hearing. Within a reasonable
17 time after the conclusion of the hearing, the department shall
18 issue an order either reinstating or canceling such license or
19 permit.

20 (4) If a petition is not filed within the ~~thirty-day~~
21 sixty-day period, the suspended license or permit shall be canceled
22 by the department at the expiration of the period.

23 (5) The department shall not issue a new permit or
24 license to the same person for one year from the date of
25 cancellation. Any reissuance of a permit or license to the same

1 person within three years from the date of cancellation shall
2 require a reinstatement fee of one hundred dollars to be submitted
3 to the department. The department shall remit the fee to the State
4 Treasurer for credit to the Highway Cash Fund.

5 (6) Suspension or cancellation of a license or permit
6 issued by the department shall not relieve any person from making
7 or filing the reports or returns required by the motor fuel laws in
8 the manner or within the time required.

9 Sec. 3. Section 66-722, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 66-722 (1) As soon as practical after a return is filed,
12 the department shall examine it to determine the correct amount
13 of tax. If the department finds that the amount of tax shown on
14 the return is less than the correct amount, it shall notify the
15 taxpayer of the amount of the deficiency determined.

16 (2) If any person fails to file a return or has
17 improperly purchased motor fuel without the payment of tax, the
18 department shall estimate the person's liability from any available
19 information and notify the person of the amount of the deficiency
20 determined.

21 (3) The amount of the deficiency determined shall
22 constitute a final assessment together with interest and penalties
23 ~~thirty~~ sixty days after the date on which notice was mailed to the
24 taxpayer at his or her last-known address unless a written protest
25 is filed with the department within such ~~thirty-day~~ sixty-day

1 period.

2 (4) The final assessment provisions of this section shall
3 constitute a final decision of the agency for purposes of the
4 Administrative Procedure Act.

5 (5) An assessment made by the department shall be
6 presumed to be correct. In any case when the validity of the
7 assessment is questioned, the burden shall be on the person who
8 challenges the assessment to establish by a preponderance of the
9 evidence that the assessment is erroneous or excessive.

10 (6)(a) Except in the case of a fraudulent return or of
11 neglect or refusal to make a return, the notice of a proposed
12 deficiency determination shall be mailed within three years after
13 the twenty-fifth day of the month following the end of the period
14 for which the amount proposed is to be determined or within three
15 years after the return is filed, whichever period expires later.

16 (b) The taxpayer and the department may agree, prior to
17 the expiration of the period in subdivision (a) of this subsection,
18 to extend the period during which the notice of a deficiency
19 determination can be mailed. The extension of the period for the
20 mailing of a deficiency determination shall also extend the period
21 during which a refund can be claimed.

22 Sec. 4. Section 66-723, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 66-723 (1) Any corporate officer or employee with the
25 authority to decide whether the corporation will pay the taxes

1 imposed upon a corporation by the motor fuel laws, to file any
2 reports or returns required by the motor fuel laws, or to perform
3 any other act required of a corporation under the motor fuel
4 laws shall be personally liable for the payment of the taxes,
5 interest, penalties, or other administrative penalties in the event
6 of willful failure on his or her part to have the corporation
7 perform such act. Such taxes shall be collected in the same manner
8 as provided under the Uniform State Tax Lien Registration and
9 Enforcement Act.

10 (2) Within ~~thirty~~ sixty days after the day on which
11 the notice and demand are made for the payment of such taxes,
12 any corporate officer or employee seeking to challenge the
13 Tax Commissioner's determination as to his or her personal
14 liability for the corporation's unpaid taxes may petition for
15 a redetermination. The petition may include a request for the
16 redetermination of the personal liability of the corporate officer
17 or employee, the redetermination of the amount of the corporation's
18 unpaid taxes, or both. If a petition for redetermination is not
19 filed within the ~~thirty-day~~ sixty-day period, the determination
20 becomes final at the expiration of the period.

21 (3) If the requirements prescribed in subsection (2)
22 of this section are satisfied, the Tax Commissioner shall abate
23 collection proceedings and shall grant the corporate officer or
24 employee an oral hearing and give him or her ten days' notice
25 of the time and place of such hearing. The Tax Commissioner may

1 continue the hearing from time to time as necessary.

2 (4) Any notice required under this section shall be
3 served personally or by mail in the manner provided in section
4 66-721.

5 (5) If the Tax Commissioner determines that further delay
6 in the collection of such taxes from the corporate officer or
7 employee will jeopardize future collection proceedings, nothing in
8 this section shall prevent the immediate collection of such taxes.

9 (6) For purposes of this section:

10 (a) Corporation shall mean any corporation and any other
11 entity that is taxed as a corporation under the Internal Revenue
12 Code;

13 (b) Taxes shall mean all taxes and additions to taxes
14 including interest and penalties imposed under the motor fuel laws
15 which are administered by the Tax Commissioner; and

16 (c) Willful failure shall mean that failure which was the
17 result of an intentional, conscious, and voluntary action.

18 Sec. 5. Section 66-1344, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 66-1344 (1) Beginning June 1, 2000, during such period
21 as funds remain in the Ethanol Production Incentive Cash Fund,
22 any ethanol facility shall receive a credit of seven and one-half
23 cents per gallon of ethanol, before denaturing, for new production
24 for a period not to exceed thirty-six consecutive months. For
25 purposes of this subsection, new production means production which

1 results from the expansion of an existing facility's capacity by
2 at least two million gallons first placed into service after June
3 1, 1999, as certified by the facility's design engineer to the
4 Department of Revenue. For expansion of an existing facility's
5 capacity, new production means production in excess of the average
6 of the highest three months of ethanol production at an ethanol
7 facility during the twenty-four-month period immediately preceding
8 certification of the facility by the design engineer. No credits
9 shall be allowed under this subsection for expansion of an existing
10 facility's capacity until production is in excess of twelve times
11 the three-month average amount determined under this subsection
12 during any twelve-consecutive-month period beginning no sooner than
13 June 1, 2000. New production shall be approved by the Department
14 of Revenue based on such ethanol production records as may be
15 necessary to reasonably determine new production. This credit must
16 be earned on or before December 31, 2003.

17 (2)(a) Beginning January 1, 2002, any new ethanol
18 facility which is in production at the minimum rate of one
19 hundred thousand gallons annually for the production of ethanol,
20 before denaturing, and which has provided to the Department of
21 Revenue written evidence substantiating that the ethanol facility
22 has received the requisite authority from the Department of
23 Environmental Quality and from the United States Department of
24 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,
25 on or before June 30, 2004, shall receive a credit of eighteen

1 cents per gallon of ethanol produced for ninety-six consecutive
2 months beginning with the first calendar month for which it is
3 eligible to receive such credit and ending not later than June 30,
4 2012, if the facility is defined by subdivision (b)(i) of this
5 subsection, and for forty-eight consecutive months beginning with
6 the first calendar month for which it is eligible to receive such
7 credit and ending not later than June 30, 2008, if the facility
8 is defined by subdivision (b)(ii) of this subsection. The new
9 ethanol facility shall provide an analysis to the Department of
10 Revenue of samples of the product collected according to procedures
11 specified by the department no later than July 30, 2004, and at
12 least annually thereafter. The analysis shall be prepared by an
13 independent laboratory meeting the International Organization for
14 Standardization standard ISO/IEC 17025:1999. Prior to collecting
15 the samples, the new ethanol facility shall notify the department
16 which may observe the sampling procedures utilized by the new
17 ethanol facility to obtain the samples to be submitted for
18 independent analysis. The minimum rate shall be established for a
19 period of at least thirty days. In this regard, the new ethanol
20 facility must produce at least eight thousand two hundred nineteen
21 gallons of ethanol within a thirty-day period. The ethanol must be
22 finished product which is ready for sale to customers.

23 (b) For purposes of this subsection, new ethanol facility
24 means a facility for the conversion of grain or other raw feedstock
25 into ethanol and other byproducts of ethanol production which (i)

1 is not in production on or before September 1, 2001, or (ii) has
2 not received credits prior to June 1, 1999. A new ethanol facility
3 does not mean an expansion of an existing ethanol plant that
4 does not result in the physical construction of an entire ethanol
5 processing facility or which shares or uses in a significant manner
6 any existing plant's systems or processes and does not include
7 the expansion of production capacity constructed after June 30,
8 2004, of a plant qualifying for credits under this subsection. This
9 definition applies to contracts entered into after April 16, 2004.

10 (c) Not more than fifteen million six hundred
11 twenty-five thousand gallons of ethanol produced annually
12 at an ethanol facility shall be eligible for credits under
13 this subsection. Not more than one hundred twenty-five
14 million gallons of ethanol produced at an ethanol facility
15 by the end of the ninety-six-consecutive-month period or
16 forty-eight-consecutive-month period set forth in this subsection
17 shall be eligible for credits under this subsection.

18 (3) The credits described in this section shall be given
19 only for ethanol produced at a plant in Nebraska at which all
20 fermentation, distillation, and dehydration takes place. No credit
21 shall be given on ethanol produced for or sold for use in the
22 production of beverage alcohol. Not more than ten million gallons
23 of ethanol produced during any twelve-consecutive-month period at
24 an ethanol facility shall be eligible for the credit described
25 in subsection (1) of this section. The credits described in this

1 section shall be in the form of a nonrefundable, transferable motor
2 vehicle fuel tax credit certificate. No transfer of credits will
3 be allowed between the ethanol producer and motor vehicle fuel
4 licensees who are related parties.

5 (4) Ethanol production eligible for credits under this
6 section shall be measured by a device approved by the Division of
7 Weights and Measures of the Department of Agriculture. Confirmation
8 of approval by the division shall be provided by the ethanol
9 facility at the time the initial claim for credits provided under
10 this section is submitted to the Department of Revenue and annually
11 thereafter. Claims submitted by the ethanol producer shall be
12 based on the total number of gallons of ethanol produced, before
13 denaturing, during the reporting period measured in gross gallons.

14 (5) The Department of Revenue shall prescribe an
15 application form and procedures for claiming credits under this
16 section. In order for a claim for credits to be accepted, it must
17 be filed by the ethanol producer within three years of the date
18 the ethanol was produced or by September 30, 2012, whichever occurs
19 first.

20 (6) Every producer of ethanol shall maintain records
21 similar to those required by section 66-487. The ethanol producer
22 must maintain invoices, meter readings, load-out sheets or
23 documents, inventory records, including work-in-progress, finished
24 goods, and denaturant, and other memoranda requested by the
25 Department of Revenue relevant to the production of ethanol. On

1 an annual basis, the ethanol producer shall also be required to
2 furnish the department with copies of the reports filed with the
3 United States Department of Justice, Bureau of Alcohol, Tobacco,
4 Firearms and Explosives. The maintenance of all of this information
5 in a provable computer format or on microfilm is acceptable in
6 lieu of retention of the original documents. The records must be
7 retained for a period of not less than three years after the claim
8 for ethanol credits is filed.

9 (7) For purposes of ascertaining the correctness of any
10 application for claiming a credit provided in this section, the
11 Tax Commissioner (a) may examine or cause to have examined, by
12 any agent or representative designated by him or her for that
13 purpose, any books, papers, records, or memoranda bearing upon such
14 matters, (b) may by summons require the attendance of the person
15 responsible for rendering the application or other document or
16 any officer or employee of such person or the attendance of any
17 other person having knowledge in the premises, and (c) may take
18 testimony and require proof material for his or her information,
19 with power to administer oaths or affirmations to such person
20 or persons. The time and place of examination pursuant to this
21 subsection shall be such time and place as may be fixed by the
22 Tax Commissioner and as are reasonable under the circumstances.
23 In the case of a summons, the date fixed for appearance before
24 the Tax Commissioner shall not be less than twenty days from the
25 time of service of the summons. No taxpayer shall be subjected

1 to unreasonable or unnecessary examinations or investigations. All
2 records obtained pursuant to this subsection shall be subject to
3 the confidentiality requirements and exceptions thereto as provided
4 in section 77-27,119.

5 (8) To qualify for credits under this section, an ethanol
6 producer shall provide public notice for bids before entering
7 into any contract for the construction of a new ethanol facility.
8 Preference shall be given to a bidder residing in Nebraska when
9 awarding any contract for construction of a new ethanol facility
10 if comparable bids are submitted. For purposes of this subsection,
11 bidder residing in Nebraska means any person, partnership, foreign
12 or domestic limited liability company, association, or corporation
13 authorized to engage in business in the state with employees
14 permanently located in Nebraska. If an ethanol producer enters into
15 a contract for the construction of a new ethanol facility with
16 a bidder who is not a bidder residing in Nebraska, such producer
17 shall demonstrate to the satisfaction of the Department of Revenue
18 in its application for credits that no comparable bid was submitted
19 by a responsible bidder residing in Nebraska. The department shall
20 deny an application for credits if it is determined that the
21 contract was denied to a responsible bidder residing in Nebraska
22 without cause.

23 (9) The pertinent provisions of Chapter 66, article 7,
24 relating to the administration and imposition of motor fuel taxes
25 shall apply to the administration and imposition of assessments

1 made by the Department of Revenue relating to excess credits
2 claimed by ethanol producers under the Ethanol Development Act.
3 These provisions include, but are not limited to, issuance of
4 a deficiency following an examination of records, an assessment
5 becoming final after ~~thirty~~ sixty days absent a written protest,
6 presumptions regarding the burden of proof, issuance of deficiency
7 within three years of original filing, issuance of notice by
8 registered or certified mail, issuance of penalties and waiver
9 thereof, issuance of interest and waiver thereof, and issuance of
10 corporate officer or employee or limited liability company manager
11 or member assessments. For purposes of determining interest and
12 penalties, the due date will be considered to be the date on which
13 the credits were used by the licensees to whom the credits were
14 transferred.

15 (10) If a written protest is filed by the ethanol
16 producer with the department within the ~~thirty-day~~ sixty-day period
17 in subsection (9) of this section, the protest shall: (a) Identify
18 the ethanol producer; (b) identify the proposed assessment which
19 is being protested; (c) set forth each ground under which a
20 redetermination of the department's position is requested together
21 with facts sufficient to acquaint the department with the exact
22 basis thereof; (d) demand the relief to which the ethanol producer
23 considers itself entitled; and (e) request that an evidentiary
24 hearing be held to determine any issues raised by the protest if
25 the ethanol producer desires such a hearing.

1 (11) For applications received after April 16, 2004, an
2 ethanol facility receiving benefits under the Ethanol Development
3 Act shall not be eligible for benefits under the Employment and
4 Investment Growth Act, the Invest Nebraska Act, or the Nebraska
5 Advantage Act.

6 Sec. 6. Section 77-1783.01, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-1783.01 (1) Any officer or employee with the duty
9 to collect, account for, or pay over any taxes imposed upon a
10 corporation or with the authority to decide whether the corporation
11 will pay taxes imposed upon a corporation shall be personally
12 liable for the payment of such taxes in the event of willful
13 failure on his or her part to have a corporation perform such act.
14 Such taxes shall be collected in the same manner as provided under
15 the Uniform State Tax Lien Registration and Enforcement Act.

16 (2) Within ~~thirty~~ sixty days after the day on which the
17 notice and demand are made for the payment of such taxes, any
18 officer or employee seeking to challenge the Tax Commissioner's
19 determination as to his or her personal liability for the
20 corporation's unpaid taxes may petition for a redetermination.
21 The petition may include a request for the redetermination of
22 the personal liability of the corporate officer or employee, the
23 redetermination of the amount of the corporation's unpaid taxes,
24 or both. If a petition for redetermination is not filed within the
25 ~~thirty-day~~ sixty-day period, the determination becomes final at the

1 expiration of the period.

2 (3) If the requirements prescribed in subsection (2)
3 of this section are satisfied, the Tax Commissioner shall abate
4 collection proceedings and shall grant the officer or employee an
5 oral hearing and give him or her ten days' notice of the time
6 and place of such hearing. The Tax Commissioner may continue the
7 hearing from time to time as necessary.

8 (4) Any notice required under this section shall be
9 served personally or by mail in the manner provided in section
10 77-27,135.

11 (5) If the Tax Commissioner determines that further delay
12 in the collection of such taxes from the officer or employee will
13 jeopardize future collection proceedings, nothing in this section
14 shall prevent the immediate collection of such taxes.

15 (6) For purposes of this section:

16 (a) Corporation shall mean any corporation and any other
17 entity that is taxed as a corporation under the Internal Revenue
18 Code;

19 (b) Taxes shall mean all taxes and additions to taxes
20 including interest and penalties imposed under the revenue laws of
21 this state which are administered by the Tax Commissioner; and

22 (c) Willful failure shall mean that failure which was the
23 result of an intentional, conscious, and voluntary action.

24 Sec. 7. Section 77-2709, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-2709 (1) If the Tax Commissioner is not satisfied with
2 the return or returns of the tax or the amount of tax required
3 to be paid to the state by any person, he or she may compute and
4 determine the amount required to be paid upon the basis of the
5 facts contained in the return or returns or upon the basis of any
6 information within his or her possession or which may come into
7 his or her possession. One or more deficiency determinations of
8 the amount due for one or more than one period may be made. To
9 the amount of the deficiency determination for each period shall
10 be added a penalty equal to ten percent thereof or twenty-five
11 dollars, whichever is greater. In making a determination, the
12 Tax Commissioner may offset overpayments for a period or periods,
13 together with interest on the overpayments, against underpayments
14 for other period or periods, against penalties, and against the
15 interest on the underpayments.

16 The interest on underpayments and overpayments shall be
17 computed in the manner set forth hereinafter.

18 (2) If any person fails to make a return, the Tax
19 Commissioner shall make an estimate of the amount of the gross
20 receipts of the person or, as the case may be, of the amount of
21 the total sales, rent, or lease price of property sold, rented,
22 or leased or purchased, by the person, the storage, use, or
23 consumption of which in this state is subject to the use tax.
24 The estimate shall be made for the period or periods in respect
25 to which the person failed to make a return and shall be based

1 upon any information which is in the Tax Commissioner's possession
2 or may come into his or her possession. Upon the basis of this
3 estimate, the Tax Commissioner shall compute and determine the
4 amount required to be paid to the state, adding to the sum thus
5 arrived at a penalty equal to ten percent thereof or twenty-five
6 dollars, whichever is greater. One or more determinations may be
7 made for one or more than one period.

8 (3) The amount of the determination of any deficiency
9 exclusive of penalties shall bear interest at the rate specified in
10 section 45-104.02, as such rate may from time to time be adjusted,
11 from the twenty-fifth of the month following the period for which
12 the amount should have been returned until the date of payment.

13 (4) If any part of a deficiency for which a deficiency
14 determination is made is the result of fraud or an intent to
15 evade the Nebraska Revenue Act of 1967 or authorized rules and
16 regulations, a penalty of twenty-five percent of the amount of
17 the determination or fifty dollars, whichever is greater, shall be
18 added thereto.

19 (5) (a) Promptly after making his or her determination,
20 the Tax Commissioner shall give to the person written notice of his
21 or her determination.

22 (b) The notice may be served personally or by mail, and
23 if by mail the notice shall be addressed to the person at his or
24 her address as it appears in the records of the Tax Commissioner.
25 In case of service by mail of any notice required by the Nebraska

1 Revenue Act of 1967, the service is complete at the time of deposit
2 in the United States post office.

3 (c) Every notice of a deficiency determination shall be
4 personally served or mailed within three years after the last day
5 of the calendar month following the period for which the amount is
6 proposed to be determined or within three years after the return
7 is filed, whichever period expires the later. In the case of
8 failure to make a return, every notice of determination shall be
9 mailed or personally served within five years after the last day
10 of the calendar month following the period for which the amount is
11 proposed to be determined.

12 (d) When, before the expiration of the time prescribed
13 in this section for the mailing of a notice of deficiency
14 determination, both the Tax Commissioner and the taxpayer have
15 consented in writing to its mailing after such time, the notice of
16 the deficiency determination may be mailed at any time prior to the
17 expiration of the period agreed upon. The agreed-upon period may
18 be extended by subsequent agreement, in writing, made before the
19 expiration of the period previously agreed upon.

20 (6) When a business is discontinued, a determination may
21 be made at any time thereafter within the periods specified in this
22 section as to liability arising out of that business, irrespective
23 of whether the determination is issued prior to the due date of
24 the liability as otherwise specified in the Nebraska Revenue Act of
25 1967.

1 (7) Any person against whom a determination is made under
2 subsections (1) and (2) of this section or any person directly
3 interested may petition for a redetermination within ~~thirty~~ sixty
4 days after service upon the person of notice thereof. For the
5 purposes of this subsection, a person is directly interested in a
6 deficiency determination when such deficiency could be collected
7 from such person. If a petition for redetermination is not filed
8 within the ~~thirty-day~~ sixty-day period, the determination becomes
9 final at the expiration of the period.

10 (8) If a petition for redetermination is filed within the
11 ~~thirty-day~~ sixty-day period, the Tax Commissioner shall reconsider
12 the determination and, if the person has so requested in his or her
13 petition, shall grant the person an oral hearing and shall give him
14 or her ten days' notice of the time and place of the hearing. The
15 Tax Commissioner may continue the hearing from time to time as may
16 be necessary.

17 (9) The Tax Commissioner may decrease or increase the
18 amount of the determination before it becomes final, but the amount
19 may be increased only if a claim for the increase is asserted by
20 the Tax Commissioner at or before the hearing, upon which assertion
21 the petitioner shall be entitled to a thirty-day continuance of the
22 hearing to allow him or her to obtain and produce further evidence
23 applicable to the items upon which the increase is based.

24 (10) The order or decision of the Tax Commissioner upon
25 a petition for redetermination shall become final thirty days after

1 service upon the petitioner of notice thereof.

2 (11) All determinations made by the Tax Commissioner
3 under the provisions of subsections (1) and (2) of this section are
4 due and payable at the time they become final. If they are not paid
5 when due and payable, a penalty of ten percent of the amount of the
6 determination, exclusive of interest and penalties, shall be added
7 thereto.

8 (12) Any notice required by this section shall be served
9 personally or by mail in the manner prescribed in subsection (5) of
10 this section.

11 Sec. 8. Section 77-2711, Revised Statutes Supplement,
12 2007, is amended to read:

13 77-2711 (1)(a) The Tax Commissioner shall enforce
14 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
15 enforce rules and regulations relating to the administration and
16 enforcement of such sections.

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

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

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

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

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

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

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

13 (7) It shall be a Class I misdemeanor for the Tax
14 Commissioner or any official or employee of the Tax Commissioner,
15 the State Treasurer, or the Department of Administrative Services
16 to make known in any manner whatever the business affairs,
17 operations, or information obtained by an investigation of records
18 and activities of any retailer or any other person visited
19 or examined in the discharge of official duty or the amount
20 or source of income, profits, losses, expenditures, or any
21 particular thereof, set forth or disclosed in any return, or
22 to permit any return or copy thereof, or any book containing
23 any abstract or particulars thereof to be seen or examined by
24 any person not connected with the Tax Commissioner. Nothing in
25 this section shall be construed to prohibit (a) the delivery to

1 a taxpayer, his or her duly authorized representative, or his
2 or her successors, receivers, trustees, executors, administrators,
3 assignees, or guarantors, if directly interested, of a certified
4 copy of any return or report in connection with his or her tax,
5 (b) the publication of statistics so classified as to prevent
6 the identification of particular reports or returns and the items
7 thereof, (c) the inspection by the Attorney General, other legal
8 representative of the state, or county attorney of the reports
9 or returns of any taxpayer when either (i) information on the
10 reports or returns is considered by the Attorney General to be
11 relevant to any action or proceeding instituted by the taxpayer
12 or against whom an action or proceeding is being considered or
13 has been commenced by any state agency or the county or (ii) the
14 taxpayer has instituted an action to review the tax based thereon
15 or an action or proceeding against the taxpayer for collection of
16 tax or failure to comply with the Nebraska Revenue Act of 1967 is
17 being considered or has been commenced, (d) the furnishing of any
18 information to the United States Government or to states allowing
19 similar privileges to the Tax Commissioner, (e) the disclosure of
20 information and records to a collection agency contracting with the
21 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
22 the disclosure to another party to a transaction of information
23 and records concerning the transaction between the taxpayer and
24 the other party, or (g) the disclosure of information pursuant to
25 section 77-27,195 or 77-5731.

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

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

19 (10) Notwithstanding the provisions of subsection (7)
20 of this section, the Tax Commissioner may, upon request, provide
21 the county board of any county which has exercised the authority
22 granted by section 81-1254 with a list of the names and addresses
23 of the hotels located within the county for which lodging sales tax
24 returns have been filed or for which lodging sales taxes have been
25 remitted for the county's County Visitors Promotion Fund under the

1 Nebraska Visitors Development Act.

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

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

22 (b) No employee of the Auditor of Public Accounts or
23 Legislative Performance Audit Section shall disclose to any person,
24 other than another Auditor of Public Accounts or Legislative
25 Performance Audit Section employee whose official duties require

1 such disclosure or as provided in subsections (2) and (3) of
2 section 50-1213, any return or return information described in the
3 Nebraska Revenue Act of 1967 in a form which can be associated
4 with or otherwise identify, directly or indirectly, a particular
5 taxpayer.

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

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

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

14 (b) Return information means:

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

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

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

11 (13) Notwithstanding the provisions of subsection (7) of
12 this section, the Tax Commissioner shall, upon request, provide
13 any municipality which has adopted the local option sales tax
14 under the Local Option Revenue Act with a list of the names and
15 addresses of the retailers which have collected the local option
16 sales tax for the municipality. The request may be made annually
17 and shall be submitted to the Tax Commissioner on or before June
18 30 of each year. The information provided by the Tax Commissioner
19 shall indicate only the names and addresses of the retailers. No
20 additional information shall be revealed.

21 (14) In all proceedings under the Nebraska Revenue Act
22 of 1967, the Tax Commissioner may act for and on behalf of the
23 people of the State of Nebraska. The Tax Commissioner in his or her
24 discretion may waive all or part of any penalties provided by the
25 provisions of such act, ~~but may not waive the minimum or interest~~

1 on delinquent taxes specified in section 45-104.02, as such rate
2 may from time to time be adjusted, ~~except interest on use taxes~~
3 ~~voluntarily reported by an individual.~~

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

9 (b) For purposes of this subsection:

10 (i) Anonymous data means information that does not
11 identify a person;

12 (ii) Confidential taxpayer information means all
13 information that is protected under a member state's laws,
14 regulations, and privileges; and

15 (iii) Personally identifiable information means
16 information that identifies a person.

17 (c) The state agrees that a fundamental precept for model
18 1 sellers is to preserve the privacy of consumers by protecting
19 their anonymity. With very limited exceptions, a certified service
20 provider shall perform its tax calculation, remittance, and
21 reporting functions without retaining the personally identifiable
22 information of consumers.

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

1 that:

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

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

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

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

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

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

1 (f) When any personally identifiable information that
2 has been collected and retained is no longer required for the
3 purposes set forth in subdivision (15)(d)(iv) of this section, such
4 information shall no longer be retained by the member states.

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

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

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

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

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

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

1 other regulations;

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

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

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

9 Sec. 9. Section 77-2775, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 77-2775 (1) If the amount of a taxpayer's federal
12 adjusted gross income, taxable income, or tax liability reported
13 on his or her federal income tax return for any taxable year
14 is changed or corrected by the Internal Revenue Service or other
15 competent authority or as the result of a renegotiation of a
16 contract or subcontract with the United States, the taxpayer shall
17 report such change or correction in federal adjusted gross income,
18 taxable income, or tax liability within ~~ninety~~ sixty days after the
19 final determination of such change, correction, or renegotiation.

20 (2) Whenever the amount of a taxpayer's income which is
21 taxable in any state for any taxable year or any tax credits
22 allowable in such state are changed or corrected in a way material
23 to the tax liability owed to this state by the agency having
24 authority to examine returns filed with such state or any other
25 competent authority or whenever an amended return is filed by any

1 taxpayer with a change or correction material to the tax liability
2 owed to this state with another state, such change or correction
3 shall be reported to the Tax Commissioner within ~~ninety~~ sixty days
4 after the final change or correction or filing of the amended
5 return. The Tax Commissioner shall by rule and regulation provide
6 the nature of any change or correction which must be reported.

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

12 (4) Any taxpayer filing an amended federal income tax
13 return shall also file within ~~ninety~~ sixty days thereafter an
14 amended income tax return under the Nebraska Revenue Act of
15 1967 and shall give such information as the Tax Commissioner may
16 require. For any amended federal income tax return requesting a
17 credit or refund, the amended Nebraska income tax return shall
18 be filed within ~~ninety~~ sixty days after the taxpayer has received
19 proof of federal acceptance of the credit or refund or within the
20 time for filing an amended Nebraska income tax return that would
21 otherwise be applicable notwithstanding the amended federal income
22 tax return, whichever is later.

23 Sec. 10. Section 77-2777, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-2777 ~~Ninety~~ Sixty days after the date on which it

1 was mailed, or one hundred fifty days if the taxpayer is outside
2 the United States, ~~or thirty days if the amount of the deficiency~~
3 ~~relates to tax withheld or required to be withheld by an employer~~
4 ~~or payer~~, a notice of proposed assessment of a deficiency shall
5 constitute a final assessment of the amount of tax specified
6 together with interest, additions to tax, and penalties except only
7 for such amounts as to which the taxpayer has filed a protest with
8 the Tax Commissioner.

9 Sec. 11. Section 77-2778, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 77-2778 Within ~~ninety~~ sixty days after the mailing of a
12 deficiency notice, or one hundred fifty days if the taxpayer is
13 outside the United States, ~~or thirty days if the amount of the~~
14 ~~deficiency relates to tax withheld or required to be withheld by an~~
15 ~~employer or payer~~, the taxpayer or any person directly interested
16 may file with the Tax Commissioner a written protest against the
17 proposed assessment in which he or she shall set forth the grounds
18 on which the protest is based. If a protest is filed, the Tax
19 Commissioner shall reconsider the assessment of the deficiency and,
20 if the taxpayer has so requested, shall grant the taxpayer or his
21 or her authorized representative an oral hearing. For purposes of
22 this section, a person shall be directly interested in a deficiency
23 determination when such deficiency could be collected from such
24 person.

25 Sec. 12. Section 77-2780, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2780 The action of the Tax Commissioner on the
3 taxpayer's protest shall be final upon the expiration of ~~ninety~~
4 sixty days, ~~or thirty days if the amount assessed relates to tax~~
5 ~~withheld or required to be withheld by an employer or payor~~, from
6 after the date when the Tax Commissioner mails notice of his or her
7 action to the taxpayer unless within this period the taxpayer seeks
8 review of the Tax Commissioner's determination as provided in the
9 Nebraska Revenue Act of 1967.

10 Sec. 13. Section 77-2792, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2792 (1) The Tax Commissioner may abate the unpaid
13 portion of the assessment of any income tax or any liability
14 in respect thereto which (a) is excessive in amount, (b) is
15 assessed after the expiration of the period of limitations properly
16 applicable thereto, (c) is erroneously or illegally assessed, or
17 (d) is the result of an inconsistent position under section 1311 of
18 the Internal Revenue Code of 1986.

19 (2) No claim for abatement shall be filed by a taxpayer
20 in respect to an assessment of any income tax imposed under the
21 Nebraska Revenue Act of 1967.

22 (3) The Tax Commissioner may abate the unpaid portion of
23 the assessment of any tax or any liability in respect thereto if he
24 or she determines under uniform rules prescribed by him or her that
25 the administration and collection costs involved would not warrant

1 collection of the amount due.

2 (4) In all proceedings under the Nebraska Revenue Act
3 of 1967, the Tax Commissioner may act for and on behalf of the
4 people of the State of Nebraska. The Tax Commissioner in his or her
5 discretion may waive all or part of any penalties provided by such
6 act ~~but may not waive the minimum or interest~~ on delinquent taxes
7 at the rate specified in section 45-104.02, as such rate may from
8 time to time be adjusted, ~~except as provided in this section.~~

9 ~~(5) The Tax Commissioner may abate interest when:~~

10 ~~(a) The interest is attributable to error or unreasonable~~
11 ~~delay in performing a ministerial duty by the Department of Revenue~~
12 ~~or to erroneous written advice given to the taxpayer by the Tax~~
13 ~~Commissioner or an employee of the department acting in his or her~~
14 ~~official capacity when the written advice was a direct response to~~
15 ~~a request from the taxpayer and the taxpayer reasonably relied upon~~
16 ~~the advice;~~

17 ~~(b) The interest is attributable to an amount previously~~
18 ~~refunded by the Tax Commissioner for the period interest on such~~
19 ~~amount was not allowed under section 77-2794;~~

20 ~~(c) The interest is attributable to the recovery of an~~
21 ~~amount erroneously refunded by the Tax Commissioner for the period~~
22 ~~the amount was actually held by the state, and the first ninety~~
23 ~~days after such amount was refunded, when such refund was not~~
24 ~~requested or caused by information provided by the taxpayer; or~~

25 ~~(d) The interest on the related federal amount was abated~~

1 ~~by the Internal Revenue Service.~~

2 Sec. 14. Section 77-2793, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2793 (1) A claim for credit or refund of an
5 overpayment of any income tax imposed by the Nebraska Revenue Act
6 of 1967 shall be filed by the taxpayer within three years from the
7 time the return was filed or two years from the time the tax was
8 paid, whichever of such periods expires later. No credit or refund
9 shall be allowed or made after the expiration of the period of
10 limitation prescribed in this subsection for the filing of a claim
11 for credit or refund unless a claim for credit or refund is filed
12 by the taxpayer within such period.

13 (2) If the claim is filed by the taxpayer during the
14 three-year period prescribed in subsection (1) of this section, the
15 amount of the credit or refund shall not exceed the portion of the
16 tax paid within the three years immediately preceding the filing of
17 the claim plus the period of any extension of time for filing the
18 return if such return was filed prior to the end of the extension
19 of time. If the claim is not filed within such three-year period,
20 but is filed within the two-year period, the amount of the credit
21 or refund shall not exceed the portion of the tax paid during the
22 two years immediately preceding the filing of the claim. If no
23 claim is filed, the credit or refund shall not exceed the amount
24 which would be allowable under either of the preceding sentences,
25 as the case may be, if a claim was filed on the date the credit or

1 refund is allowed.

2 (3) If an agreement for an extension of the period for
3 assessment of income taxes is made within the period prescribed
4 in subsection (1) of this section for the filing of a claim for
5 credit or refund, the period for filing claim for credit or for
6 making credit or refund if no claim is filed shall not expire prior
7 to six months after the expiration of the period within which an
8 assessment may be made pursuant to the agreement or any extension
9 thereof.

10 (4) If a taxpayer is required by subsection (1) of
11 section 77-2775 to report a change or correction in federal
12 adjusted gross income, taxable income, or tax liability reported
13 on his or her federal income tax return, or to report a change
14 or correction which is treated in the same manner as if it were
15 an overpayment for federal income tax purposes, or to file an
16 amended return with the Tax Commissioner, a claim for credit or
17 refund of any resulting overpayment of tax shall be filed by
18 the taxpayer within two years from the time the notice of such
19 change or correction or such amended return was required to be
20 filed with the Tax Commissioner. If the report or amended return
21 is not filed within the ~~ninety-day~~ sixty-day period specified in
22 such subsection, interest on any resulting refund or credit shall
23 cease to accrue after such ~~ninetieth~~ sixtieth day. The amount of
24 such credit or refund shall not exceed the amount of the reduction
25 in tax attributable to such federal change, correction, or items

1 amended on the taxpayer's amended federal income tax return. This
2 subsection shall not affect the time within which or the amount for
3 which a claim for credit or refund may be filed apart from this
4 subsection.

5 ~~(5)~~ (5)(a) If a taxpayer is required by subsection (2)
6 of section 77-2775 to report a change or correction in the amount
7 of income taxable or tax credit allowable in one or more states
8 and such changes or corrections when reflected in the return filed
9 under the Nebraska Revenue Act of 1967 as most recently amended
10 would result in an overpayment of tax, a claim for credit or refund
11 shall be filed by the taxpayer within the earlier of ~~(a)~~ (i) two
12 years from the time the notice of such change or correction or such
13 amended return was required to be filed with the Tax Commissioner
14 or ~~(b)~~ (ii) ten years from the due date of the return.

15 (b) If the report or amended return is not filed within
16 the ~~ninety-day~~ sixty-day period specified in such subsection,
17 interest on any resulting refund or credit shall cease to accrue
18 after such ~~ninetieth~~ sixtieth day. The amount of such credit or
19 refund shall not exceed the lesser of (i) the reduction in tax
20 attributable to the change or correction in the amount of income
21 taxable or the credit allowable in such other state in the return
22 filed under the Nebraska Revenue Act of 1967 or (ii) the increase
23 in tax actually paid to such other state or states.

24 (c) This subsection shall not affect the time within
25 which or the amount for which a claim for credit or refund may be

1 filed apart from this subsection. This subsection shall apply to
2 changes or corrections which become final on or after May 1, 1993.

3 (6) If the claim for credit or refund relates to an
4 overpayment attributable to a net operating loss carryback derived
5 from or connected with Nebraska sources, the claim may be made
6 under rules and regulations prescribed by the Tax Commissioner
7 consistent, to the extent possible under the Nebraska Revenue Act
8 of 1967, with the laws of the United States.

9 (7) For purposes of this section and section 77-2795,
10 a timely filed petition for redetermination shall be considered
11 a claim for credit or refund filed on the date the notice of
12 deficiency determination was mailed.

13 Sec. 15. Section 77-2796, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-2796 If the Tax Commissioner disallows a claim for
16 refund, he or she shall notify the taxpayer accordingly. The action
17 of the Tax Commissioner denying a claim for refund is final upon
18 the expiration of ~~ninety~~ sixty days ~~from~~ after the date when he or
19 she mails notice of his or her action to the taxpayer unless within
20 this period the taxpayer seeks review of the Tax Commissioner's
21 determination as hereinafter provided.

22 Sec. 16. Section 77-27,100, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-27,100 The action authorized in section 77-2798 shall
25 be filed within three years from the last date prescribed for

1 filing the return or within one year from the date the tax was
2 paid, or within ~~ninety~~ sixty days after the denial of a claim for
3 refund by the Tax Commissioner.

4 Sec. 17. Section 77-27,187.02, Revised Statutes
5 Supplement, 2007, is amended to read:

6 77-27,187.02 (1) To earn the incentives set forth in the
7 Nebraska Advantage Rural Development Act, the taxpayer shall file
8 an application for an agreement with the Tax Commissioner.

9 (2) The application shall contain:

10 (a) A written statement describing the full expected
11 employment or type of livestock production and the investment
12 amount for a qualified business, as described in section 77-27,189,
13 in this state;

14 (b) Sufficient documents, plans, and specifications as
15 required by the Tax Commissioner to support the plan and to define
16 a project; and

17 (c) An application fee of five hundred dollars. The
18 fee shall be remitted to the State Treasurer for credit to the
19 Nebraska Advantage Rural Development Incentives Fund, ~~which fund~~
20 ~~is hereby created. Any money in the fund available for investment~~
21 ~~shall be invested by the state investment officer pursuant to~~
22 ~~the Nebraska Capital Expansion Act and the Nebraska State Funds~~
23 ~~Investment Act.~~ The application and all supporting information
24 shall be confidential except for the name of the taxpayer, the
25 location of the project, and the amounts of increased employment or

1 investment.

2 (3) (a) The Tax Commissioner shall approve the application
3 and authorize the total amount of credits expected to be earned as
4 a result of the project if he or she is satisfied that the plan in
5 the application defines a project that (i) meets the requirements
6 established in section 77-27,188 and such requirements will be
7 reached within the required time period and (ii) for projects other
8 than livestock modernization or expansion projects, is located in
9 an eligible county or enterprise zone.

10 (b) The Tax Commissioner shall not approve further
11 applications once the expected credits from the approved projects
12 total two million five hundred thousand dollars in each of fiscal
13 years 2004-05 and 2005-06 and three million dollars in fiscal
14 year 2006-07 and each fiscal year thereafter. Four hundred dollars
15 of the application fee shall be refunded to the applicant if
16 the application is not approved because the expected credits from
17 approved projects exceed such amounts.

18 (c) Applications for benefits shall be considered in the
19 order in which they are received.

20 (d) Applications shall be filed by November 1 and shall
21 be complete by December 1 of each calendar year. Any application
22 that is filed after November 1 or that is not complete on December
23 1 shall be considered to be filed during the following calendar
24 year.

25 (4) After approval, the taxpayer and the Tax Commissioner

1 shall enter into a written agreement. The taxpayer shall agree
2 to complete the project, and the Tax Commissioner, on behalf of
3 the State of Nebraska, shall designate the approved plans of the
4 taxpayer as a project and, in consideration of the taxpayer's
5 agreement, agree to allow the taxpayer to use the incentives
6 contained in the Nebraska Advantage Rural Development Act up to
7 the total amount that were authorized by the Tax Commissioner
8 at the time of approval. The application, and all supporting
9 documentation, to the extent approved, shall be considered a part
10 of the agreement. The agreement shall state:

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

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

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

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

18 (e) The maximum amount of credits authorized.

19 Sec. 18. Section 77-4104, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-4104 (1) In order to utilize the incentives set forth
22 in the Employment and Investment Growth Act, the taxpayer shall
23 file an application for an agreement with the Tax Commissioner.

24 (2) The application shall contain:

25 (a) A written statement describing the plan of employment

1 and investment for a qualified business in this state;

2 (b) Sufficient documents, plans, and specifications as
3 required by the Tax Commissioner to support the plan and to define
4 a project;

5 (c) If more than one location within this state is
6 involved, sufficient documentation to show that the employment and
7 investment at different locations are interdependent parts of the
8 plan. A headquarters shall be presumed to be interdependent with
9 any other location directly controlled by such headquarters. A
10 showing that the parts of the plan would be considered parts of
11 a unitary business for corporate income tax purposes shall not
12 be sufficient to show interdependence for the purposes of this
13 subdivision;

14 (d) A nonrefundable application fee of five hundred
15 dollars. The fee shall be deposited into the ~~Employment and~~
16 ~~Investment Growth~~ Nebraska Incentives Fund; ~~7~~ which fund is hereby
17 created. Any money in the fund available for investment shall be
18 invested by the state investment officer pursuant to the Nebraska
19 ~~Capital Expansion Act and the Nebraska State Funds Investment Act~~;
20 and

21 (e) A timetable showing the expected sales tax refunds
22 and what year they are expected to be claimed. The timetable shall
23 include both direct refunds due to investment and credits taken as
24 sales tax refunds as accurately as possible.

25 The application and all supporting information shall be

1 confidential except for the name of the taxpayer, the location of
2 the project, the amounts of increased employment and investment,
3 and the information required to be reported by sections 77-4110 and
4 77-4113.

5 (3) Once satisfied that the plan in the application
6 defines a project consistent with the purposes stated in section
7 77-4102 in one or more qualified business activities within this
8 state, that the plans will result in either (a) the investment
9 in qualified property of at least three million dollars and the
10 hiring of at least thirty new employees or (b) the investment in
11 qualified property resulting in a net gain in the total value of
12 tangible property in this state of a type subject to depreciation,
13 amortization, or other recovery under the Internal Revenue Code of
14 1986 of at least twenty million dollars, and that the required
15 levels of employment and investment for the project will be met
16 prior to the end of the sixth year after the year in which the
17 application was submitted, the Tax Commissioner shall approve the
18 application. In determining the net gain in value for purposes of
19 this subsection, all tangible personal property shall be valued
20 in a manner consistent with the value determined for qualified
21 property, and the total value on the last day of each year shall be
22 compared with the total value on the last day of the base year.

23 (4) After approval, the taxpayer and the Tax Commissioner
24 shall enter into a written agreement. The taxpayer shall agree
25 to complete the project, and the Tax Commissioner, on behalf

1 of the State of Nebraska, shall designate the approved plans
2 of the taxpayer as a project and, in consideration of the
3 taxpayer's agreement, agree to allow the taxpayer to use the
4 incentives contained in the Employment and Investment Growth
5 Act. The application, and all supporting documentation, to the
6 extent approved, shall be considered a part of the agreement. The
7 agreement shall state:

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

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

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

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

15 (e) A requirement that the company update the Department
16 of Revenue annually on any changes in plans or circumstances which
17 affect the timetable of sales tax refunds as set out in the
18 application. If the company fails to comply with this requirement,
19 the Tax Commissioner may defer any pending sales tax refunds until
20 the company does comply.

21 (5) The incentives contained in section 77-4105 shall
22 be in lieu of the tax credits allowed by section 77-27,188 for
23 any project. In computing credits under section 77-27,188, any
24 investment or employment which is eligible for benefits under
25 the Employment and Investment Growth Act shall be subtracted from

1 the increases computed for determining the credits under section
2 77-27,188.

3 (6) A taxpayer and the Tax Commissioner may enter into
4 agreements for more than one project and may include more than
5 one project in a single agreement. The projects may be either
6 sequential or concurrent. A project may involve the same location
7 as another project. No new employment or new investment shall be
8 included in more than one project for either the meeting of the
9 employment or investment requirements or the creation of credits.
10 When projects overlap and the plans do not clearly specify, then
11 the taxpayer shall specify in which project the employment and
12 investment belongs.

13 Sec. 19. Section 77-4928, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-4928 (1) In order for the employee and company to be
16 eligible for the wage benefit credit, the company shall file an
17 application for an agreement with the board.

18 (2) The application shall contain:

19 (a) The exact name of the company and any related
20 companies which will be included in the project;

21 (b) A statement describing, in detail, the nature of
22 the company's business, including the products sold and respective
23 markets;

24 (c) A detailed narrative that describes the proposed
25 project, including how the company intends to attain and maintain

1 the job and investment requirements;

2 (d) A request that the company be considered for approval
3 under the Quality Jobs Act;

4 (e) If more than one location within this state is
5 to be involved in the project, sufficient documentation to show
6 that the employment and investment at the different locations are
7 interdependent parts of the project plan;

8 (f) A copy of the corporate authorization for the
9 project;

10 (g) A copy of the company's most recent financial report,
11 federal income tax return, Nebraska income tax return, Nebraska
12 reconciliation of income tax withheld, and Nebraska sales and use
13 tax identification number;

14 (h) The number of base-year employees, the expected
15 number of new employees, the expected timing of the hiring of the
16 new employees, the anticipated timing and amounts of new investment
17 in buildings and equipment, and the average salaries expected by
18 category for the new employees to be employed at the project; and

19 (i) A five-thousand-dollar nonrefundable application fee
20 payable to the Department of Revenue. The fee shall be remitted to
21 the Quality Jobs Nebraska Incentives Fund, ~~which fund is created.~~
22 ~~Any money in the fund available for investment shall be invested~~
23 ~~by the state investment officer pursuant to the Nebraska Capital~~
24 ~~Expansion Act and the Nebraska State Funds Investment Act.~~

25 (3) The application and all supporting information shall

1 be confidential except for the name of the company, the location
2 of the project, the amounts of increased employment and investment,
3 the result of the net benefit calculations, and whether the
4 application has been approved.

5 (4) The board shall determine whether to approve the
6 company's application by majority vote based on its determination
7 as to whether the project will sufficiently help enable the state
8 to accomplish the purposes of the Quality Jobs Act. The board
9 shall be governed by and shall take into consideration all of the
10 following factors in making its determination:

11 (a) The timing, number, wage levels, employee benefit
12 package, and types of new jobs to be created by the project;

13 (b) The type of industry in which the company and the
14 project would be engaged;

15 (c) The timing, amount, and types of investment in
16 qualified property to be made at the project; and

17 (d) Whether the board believes the project would occur in
18 this state regardless of whether the application was approved.

19 (5) The board shall notify the company in writing as
20 to whether it has approved or not approved the application. The
21 board shall decide and mail such notice within thirty days after
22 receipt of the application whether it approves or disapproves the
23 application, unless such time is extended by mutual written consent
24 of the board and the company.

25 (6) A project shall be considered eligible under the act

1 and may be approved by the board only if the application defines
2 a project consistent with the legislative purposes contained in
3 section 77-4902 in one or more qualified business activities within
4 this state that will result in (a) the investment in qualified
5 property of at least fifty million dollars and the hiring of
6 a number of new employees of at least five hundred or (b) the
7 investment in qualified property of at least one hundred million
8 dollars and the hiring of a number of new employees of at least two
9 hundred fifty. The new investment and employment shall occur within
10 seven years, meaning by the end of the sixth year after the end of
11 the year the application was filed, and shall be maintained for the
12 entire entitlement period. These thresholds shall constitute the
13 required levels of employment and investment for purposes of the
14 act.

15 (7) If the project application is approved by the board,
16 the company and the state shall enter into a written agreement,
17 which shall be executed on behalf of the state by the Tax
18 Commissioner. In the agreement the company shall agree to complete
19 the project and the state shall designate the approved plans of
20 the company as a project and, in consideration of the company's
21 agreement, agree to allow the wage benefit credit as provided for
22 in the act. The application, and all supporting documentation, to
23 the extent approved, shall be considered a part of the agreement.
24 The agreement shall contain such terms and conditions as the board
25 shall specify in order to carry out the legislative purposes of the

1 act. The agreement shall contain provisions to allow the Department
2 of Revenue to verify that the required levels of employment have
3 been attained and maintained.

4 (8) The address of the board shall be the address of the
5 Department of Revenue.

6 Sec. 20. Section 77-5405, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-5405 (1) In order to use the incentives in the Rural
9 Economic Opportunities Act, the taxpayer shall file an application
10 for an agreement with the Tax Commissioner.

11 (2) The application shall contain:

12 (a) A written statement describing the plan of
13 employment, wages, and investment for a qualified business in
14 Nebraska;

15 (b) Sufficient documents, plans, and specifications as
16 required by the Tax Commissioner to support the plan and define a
17 project;

18 (c) If more than one location within the state is
19 involved, sufficient documentation to show that the employment,
20 wages, and investment at different locations are interdependent
21 parts of the plan. A headquarters shall be presumed to be
22 interdependent with any other location directly controlled by
23 such headquarters. A showing that the parts of the plan would be
24 considered parts of a unitary business for corporate income tax
25 purposes shall not be sufficient to show interdependence for the

1 purposes of this subdivision; and

2 (d) A nonrefundable application fee of five hundred
3 dollars. The fee shall be deposited into the ~~Rural Economic~~
4 ~~Opportunities~~ Nebraska Incentives Fund,~~7~~ ~~which is hereby created.~~
5 ~~Any money in the fund available for investment shall be invested~~
6 ~~by the state investment officer pursuant to the Nebraska Capital~~
7 ~~Expansion Act and the Nebraska State Funds Investment Act.~~

8 The application and all supporting information shall be
9 confidential except for the name, location, and qualification level
10 of approved projects and the information required to be reported by
11 section 77-5412.

12 (3) The Tax Commissioner shall approve the application
13 only if it satisfactorily meets the following conditions:

14 (a) Defines a project in one or more qualified business
15 activities in the state;

16 (b) Shows that the project will result in (i) the hiring
17 of a number of new employees equal to at least one-half of one
18 percent of the labor force in the county or counties in which the
19 project will be located, (ii) the paying of annual wages to the
20 number of new employees that will average at least the qualifying
21 wage, and (iii) (A) for a county or counties with a labor force
22 greater than three thousand, the investment in qualified property
23 of at least one hundred thousand dollars times one-half of one
24 percent of the labor force in the county or counties in which the
25 project will be located rounded to the nearest whole number or

1 (B) for a county or counties with a labor force of three thousand
2 or less, the investment in qualified property of at least fifty
3 thousand dollars times one-half of one percent of the labor force
4 in the county or counties in which the project will be located
5 rounded to the nearest whole number; and

6 (c) Contains plans for achieving the required levels of
7 employment, wages, and investment for the project prior to the
8 end of the second year after the year in which the application is
9 submitted and maintaining the required levels of employment, wages,
10 and investment for the entitlement period.

11 (4) After approval, the taxpayer and Tax Commissioner
12 shall enter into a written agreement. The taxpayer shall agree
13 to complete the project, and the Tax Commissioner, on behalf of
14 the State of Nebraska, shall designate the approved plans of the
15 taxpayer as a project and, in consideration of the taxpayer's
16 agreement, agree to allow the taxpayer to use the incentives
17 contained in the Rural Economic Opportunities Act. The application,
18 and all supporting documentation, to the extent approved, shall be
19 considered a part of the agreement. The agreement shall state:

20 (a) The levels of employment, wages, and investment
21 required by the act for the project based on the date of the
22 application;

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

25 (c) The documentation the taxpayer will need to supply

1 when claiming an incentive under the act;

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

3 (e) That the required levels of employment, wages,
4 and investment shall be achieved and maintained throughout the
5 entitlement period or any incentives used will be subject to
6 recapture.

7 (5) The incentives contained in section 77-5407 shall
8 be in lieu of the tax credits allowed by sections 77-27,188 and
9 77-4105 for any project. Any employment, wages, or investment which
10 is eligible for credits under the act shall be subtracted from
11 the increases computed for determining the benefits under sections
12 77-27,188 and 77-4105.

13 (6) A taxpayer and the Tax Commissioner may enter into
14 agreements for more than one project. The projects may be either
15 sequential or concurrent. A project may involve the same location
16 as another project. No new employment, new wages, or new investment
17 shall be included in more than one project for either the
18 meeting of the employment, wages, or investment requirements or
19 the creation of credits. When projects overlap and the plans do not
20 clearly specify, the taxpayer shall specify in which project the
21 employment, wages, and investment belong.

22 Sec. 21. Section 77-5534, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-5534 (1) In order for the company to be eligible
25 for the wage benefit credit or the investment tax credit, as

1 applicable, the company shall file an application for an agreement
2 with the board.

3 (2) The application shall contain:

4 (a) The exact name of the company and any related
5 companies which will be included in the project;

6 (b) A statement describing, in detail, the nature of
7 the company's business, including the products sold and respective
8 markets;

9 (c) A detailed narrative that describes the proposed
10 project, including how the company intends to attain and maintain
11 the job and investment requirements and the expected start date for
12 the project;

13 (d) A request that the company be considered for approval
14 under the Invest Nebraska Act;

15 (e) If more than one location within this state is
16 to be involved in the project, sufficient documentation to show
17 that the employment and investment at the different locations are
18 interdependent parts of the project plan;

19 (f) A copy of the company's authorization for the
20 project;

21 (g) A copy of the company's most recent financial report,
22 federal income tax return, Nebraska income tax return, Nebraska
23 reconciliation of income tax withheld, and Nebraska sales and use
24 tax identification number;

25 (h) The expected number of base-year employees, the

1 expected number of new employees, the expected timing of the hiring
2 of the new employees, the anticipated timing and amounts of new
3 investment in buildings and equipment, and the average salaries
4 expected by category for the new employees to be employed at the
5 project;

6 (i) A copy of the written policy of the company which
7 prohibits the company from requiring as a condition of employment
8 or promotion at the project that an employee or an individual
9 applying for employment at the project submit to a genetic test or
10 provide genetic information outside of the scope of normal blood
11 testing; and

12 (j) A five-thousand-dollar nonrefundable application fee
13 payable to the Department of Revenue. The fee shall be remitted to
14 the Invest Nebraska Incentives Fund,⁷ ~~which fund is created. Any~~
15 ~~money in the fund available for investment shall be invested by the~~
16 ~~state investment officer pursuant to the Nebraska Capital Expansion~~
17 ~~Act and the Nebraska State Funds Investment Act.~~

18 (3) Any representations made by the company, or the
19 company's representatives, during the meeting before the board
20 shall become a part of the application. The application and all
21 supporting information and information received during a closed
22 session of the board shall be confidential except for the name
23 of the company, the location of the project, the amounts of
24 increased employment and investment, and whether the application
25 has been approved. The confidential information contained in an

1 application shall be discussed only in a closed session of the
2 board, unless the company waives its right to confidentiality in
3 writing. The members of the board will respect the confidentiality
4 of the information received and will not disclose any confidential
5 information regarding the company to any person other than the
6 representatives of the company, the Tax Commissioner, or other
7 employees of the Department of Revenue, except as specifically
8 provided in the Invest Nebraska Act. Any applications, or parts
9 of applications, provided to the members of the board shall be
10 numbered copies and shall be delivered to the offices of the
11 board members in a double envelope. All applications, or parts of
12 applications, shall be returned to the department at the conclusion
13 of the meeting.

14 Sec. 22. Section 77-5723, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 77-5723 (1) In order to utilize the incentives set
17 forth in the Nebraska Advantage Act, the taxpayer shall file
18 an application, on a form developed by the Tax Commissioner,
19 requesting an agreement with the Tax Commissioner.

20 (2) The application shall contain:

21 (a) A written statement describing the plan of employment
22 and investment for a qualified business in this state;

23 (b) Sufficient documents, plans, and specifications as
24 required by the Tax Commissioner to support the plan and to define
25 a project;

1 (c) If more than one location within this state is
2 involved, sufficient documentation to show that the employment and
3 investment at different locations are interdependent parts of the
4 plan. A headquarters shall be presumed to be interdependent with
5 each other location directly controlled by such headquarters. A
6 showing that the parts of the plan would be considered parts of
7 a unitary business for corporate income tax purposes shall not
8 be sufficient to show interdependence for the purposes of this
9 subdivision;

10 (d) A nonrefundable application fee of one thousand
11 dollars for a tier 1 project, two thousand five hundred dollars for
12 a tier 2, tier 3, or tier 5 project, and five thousand dollars
13 for a tier 4 project. The fee shall be credited to the Nebraska
14 Advantage Incentives Fund; and

15 (e) A timetable showing the expected sales tax refunds
16 and what year they are expected to be claimed. The timetable shall
17 include both direct refunds due to investment and credits taken as
18 sales tax refunds as accurately as possible.

19 The application and all supporting information shall be
20 confidential except for the name of the taxpayer, the location of
21 the project, the amounts of increased employment and investment,
22 and the information required to be reported by sections 77-5731 and
23 77-5734.

24 (3) An application must be complete to establish the date
25 of the application. An application shall be considered complete

1 once it contains the items listed in subsection (2) of this
2 section, regardless of the Tax Commissioner's additional needs
3 pertaining to information or clarification in order to approve or
4 not approve the application.

5 (4) Once satisfied that the plan in the application
6 defines a project consistent with the purposes stated in the
7 Nebraska Advantage Act in one or more qualified business activities
8 within this state, that the taxpayer and the plan will qualify for
9 benefits under the act, and that the required levels of employment
10 and investment for the project will be met prior to the end of the
11 fourth year after the year in which the application was submitted
12 for a tier 1 or tier 3 project or the end of the sixth year after
13 the year in which the application was submitted for a tier 2,
14 tier 4, or tier 5 project, the Tax Commissioner shall approve the
15 application.

16 (5) After approval, the taxpayer and the Tax Commissioner
17 shall enter into a written agreement. The taxpayer shall agree
18 to complete the project, and the Tax Commissioner, on behalf of
19 the State of Nebraska, shall designate the approved plan of the
20 taxpayer as a project and, in consideration of the taxpayer's
21 agreement, agree to allow the taxpayer to use the incentives
22 contained in the Nebraska Advantage Act. The application, and
23 all supporting documentation, to the extent approved, shall be
24 considered a part of the agreement. The agreement shall state:

25 (a) The levels of employment and investment required by

1 the act for the project;

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

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

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

7 (e) A requirement that the company update the Department
8 of Revenue annually on any changes in plans or circumstances which
9 affect the timetable of sales tax refunds as set out in the
10 application. If the company fails to comply with this requirement,
11 the Tax Commissioner may defer any pending sales tax refunds until
12 the company does comply.

13 (6) The incentives contained in section 77-5725 shall be
14 in lieu of the tax credits allowed by the Nebraska Advantage Rural
15 Development Act for any project. In computing credits under the
16 act, any investment or employment which is eligible for benefits
17 or used in determining benefits under the Nebraska Advantage Act
18 shall be subtracted from the increases computed for determining
19 the credits under section 77-27,188. New investment or employment
20 at a project location that results in the meeting or maintenance
21 of the employment or investment requirements, the creation of
22 credits, or refunds of taxes under the Employment and Investment
23 Growth Act shall not be considered new investment or employment
24 for purposes of the Nebraska Advantage Act. The use of carryover
25 credits under the Employment and Investment Growth Act, the Invest

1 Nebraska Act, the Nebraska Advantage Rural Development Act, or the
2 Quality Jobs Act shall not preclude investment and employment from
3 being considered new investment or employment under the Nebraska
4 Advantage Act. The use of property tax exemptions at the project
5 under the Employment and Investment Growth Act shall not preclude
6 investment not eligible for the property tax exemption from being
7 considered new investment under the Nebraska Advantage Act.

8 (7) A taxpayer and the Tax Commissioner may enter into
9 agreements for more than one project and may include more than
10 one project in a single agreement. The projects may be either
11 sequential or concurrent. A project may involve the same location
12 as another project. No new employment or new investment shall be
13 included in more than one project for either the meeting of the
14 employment or investment requirements or the creation of credits.
15 When projects overlap and the plans do not clearly specify, then
16 the taxpayer shall specify in which project the employment or
17 investment belongs.

18 Sec. 23. Section 77-5726, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 77-5726 (1) (a) The credits prescribed in section 77-5725
21 shall be established by filing the forms required by the Tax
22 Commissioner with the income tax return for the year. The credits
23 may be used and shall be applied in the order in which they
24 were first allowed. The credits may be used after any other
25 nonrefundable credits to reduce the taxpayer's income tax liability

1 imposed by sections 77-2714 to 77-27,135. Any decision on how part
2 of the credit is applied shall not limit how the remaining credit
3 could be applied under this section.

4 (b) The taxpayer may use the credit provided in
5 subsection (3) of section 77-5725 to reduce the taxpayer's income
6 tax withholding employer or payor tax liability under section
7 77-2756 or 77-2757 to the extent such liability is attributable to
8 the number of new employees at the project. To the extent of the
9 credit used, such withholding shall not constitute public funds
10 or state tax revenue and shall not constitute a trust fund or be
11 owned by the state. The use by the taxpayer of the credit shall not
12 change the amount that otherwise would be reported by the taxpayer
13 to the employee under section 77-2754 as income tax withheld and
14 shall not reduce the amount that otherwise would be allowed by the
15 state as a refundable credit on an employee's income tax return as
16 income tax withheld under section 77-2755.

17 The amount of credits used against income tax withholding
18 shall not exceed the withholding attributable to new employees at
19 the project. If the amount of credit used by the taxpayer against
20 income tax withholding exceeds this amount, the excess withholding
21 shall be returned to the Department of Revenue in the manner
22 provided in section 77-2756, such excess amount returned shall be
23 considered unused, and the amount of unused credits may be used
24 as otherwise permitted in this section or shall carry over to the
25 extent authorized in subdivision (1)(d) of this section.

1 (c) Credits may be used to obtain a refund of sales and
2 use taxes under the Local Option Revenue Act, the Nebraska Revenue
3 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
4 otherwise refundable that are paid on purchases, including rentals,
5 for use at the project.

6 (d) Credits may be carried over until fully utilized,
7 except that such credits may not be carried over more than nine
8 years after the year of application for a tier 1 or tier 3 project
9 or fourteen years after the year of application for a tier 2 or
10 tier 4 project.

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

13 (b) Refund claims shall be filed no more than once each
14 quarter for refunds under the Nebraska Advantage Act, except that
15 any claim for a refund in excess of twenty-five thousand dollars
16 may be filed at any time.

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

1 (d) All refund claims shall be filed, processed, and
2 allowed as any other claim under section 77-2708, except that
3 the amounts allowed to be refunded under the Nebraska Advantage
4 Act shall be deemed to be overpayments and shall be refunded
5 notwithstanding any limitation in subdivision (2)(a) of section
6 77-2708. The refund may be allowed if the claim is filed within
7 three calendar years from the end of the year the required levels
8 of employment and investment are met or within the period set forth
9 in section 77-2708.

10 (e) If a claim for a refund of sales and use taxes
11 under the Local Option Revenue Act or sections 13-319, 13-324, and
12 13-2813 of more than twenty-five thousand dollars is filed by June
13 15 of a given year, the refund shall be made on or after November
14 15 of the same year. If such a claim is filed on or after June
15 16 of a given year, the refund shall not be made until on or
16 after November 15 of the following year. The Tax Commissioner shall
17 notify the affected city, village, county, or municipal county of
18 the amount of refund claims of sales and use taxes under the Local
19 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
20 in excess of twenty-five thousand dollars on or before July 1 of
21 the year before the claims will be paid under this section.

22 (f) Interest shall not be allowed on any sales and use
23 taxes refunded under the Nebraska Advantage Act.

24 (3) The appointment of purchasing agents shall be
25 recognized for the purpose of changing the status of a contractor

1 or repairperson as the ultimate consumer of tangible personal
2 property purchased after the date of the appointment which is
3 physically incorporated into the project and becomes the property
4 of the owner of the improvement to real estate. The purchasing
5 agent shall be jointly liable for the payment of the sales and use
6 tax on the purchases with the owner of the improvement to real
7 estate.

8 (4) A determination that a taxpayer is not engaged in a
9 qualified business or has failed to meet or maintain the required
10 levels of employment or investment for incentives, exemptions, or
11 recapture may be protested to the Tax Commissioner within thirty
12 days after the written determination by the Department of Revenue.
13 The Tax Commissioner shall issue a written order resolving such
14 protests. The determination of the Tax Commissioner within sixty
15 days after the mailing of the written notice of the proposed
16 determination. If the notice of proposed determination is not
17 protested within the sixty-day period, the proposed determination
18 is a final determination. If the notice is protested, the Tax
19 Commissioner shall issue a written order resolving such protests.
20 The written order of the Tax Commissioner resolving a protest may
21 be appealed to the district court of Lancaster County within thirty
22 days after the issuance of the order.

23 Sec. 24. The Nebraska Incentives Fund is created. Any
24 money in the Employment and Investment Growth Fund, the Invest
25 Nebraska Fund, the Nebraska Advantage Fund, the Nebraska Advantage

1 Rural Development Fund, the Quality Jobs Fund, or the Rural
2 Economic Opportunities Fund, on the operative date of this section
3 shall be transferred by the State Treasurer to the Nebraska
4 Incentives Fund. Any money in the fund available for investment
5 shall be invested by the state investment officer pursuant to
6 the Nebraska Capital Expansion Act and the Nebraska State Funds
7 Investment Act.

8 Sec. 25. Section 79-1034, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 79-1034 The county treasurer shall collect or cause to be
11 collected the fines and all money for school purposes in his or
12 her county and take all proper measures to secure to each district
13 its full amount of school funds. All county treasurers shall report
14 to the State Treasurer and ~~Tax Commissioner~~ semiannually, on or
15 before the third Monday of April and the first Monday of November,
16 and at such other times as the ~~Tax Commissioner~~ may require, a
17 statement showing the whole amount of money collected on behalf of
18 school districts from all sources, noting the interest separately,
19 and the amount received on account of licenses and fines and from
20 all other sources from which school funds are derived, together
21 with a statement showing the amount paid out, to whom, and on
22 what account. At the same time the county treasurer shall pay over
23 to the State Treasurer all funds and money, from whatever source
24 derived, belonging to the general school fund in his or her hands
25 and make a settlement thereof with the State Treasurer.

1 Sec. 26. Sections 1, 8, 13, 17, 18, 19, 20, 21, 22, 24,
2 25, 26, 27, and 29 of this act become operative on their effective
3 date. Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 23, and
4 28 of this act become operative on January 1, 2009.

5 Sec. 27. Original sections 77-2792, 77-4104, 77-4928,
6 77-5405, 77-5534, and 79-1034, Reissue Revised Statutes of
7 Nebraska, sections 21-2612 and 77-5723, Revised Statutes Cumulative
8 Supplement, 2006, and sections 77-2711 and 77-27,187.02, Revised
9 Statutes Supplement, 2007, are repealed.

10 Sec. 28. Original sections 66-723, 77-1783.01, 77-2709,
11 77-2777, 77-2778, 77-2780, 77-2793, 77-2796, and 77-27,100, Reissue
12 Revised Statutes of Nebraska, and sections 66-720, 66-722, 66-1344,
13 77-2775, and 77-5726, Revised Statutes Cumulative Supplement, 2006,
14 are repealed.

15 Sec. 29. The following section is outright repealed:
16 Section 77-5732, Revised Statutes Cumulative Supplement, 2006.