

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 915

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 section
2 77-2769, Reissue Revised Statutes of Nebraska, sections
3 77-2727, 77-2734.01, 77-2794, and 77-27,119, Revised
4 Statutes Cumulative Supplement, 2006, and sections
5 77-2717 and 77-5803, Revised Statutes Supplement, 2007;
6 to change provisions relating to income tax, tax credits,
7 and disclosure of information; to provide operative
8 dates; and to repeal the original sections.

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

1 Section 1. Section 77-2717, Revised Statutes Supplement,
2 2007, is amended to read:

3 77-2717 (1)(a) The tax imposed on all resident estates
4 and trusts shall be a percentage of the federal taxable income
5 of such estates and trusts as modified in section 77-2716, plus
6 a percentage of the federal alternative minimum tax and the
7 federal tax on premature or lump-sum distributions from qualified
8 retirement plans. The additional taxes shall be recomputed by (i)
9 substituting Nebraska taxable income for federal taxable income,
10 (ii) calculating what the federal alternative minimum tax would
11 be on Nebraska taxable income and adjusting such calculations for
12 any items which are reflected differently in the determination of
13 federal taxable income, and (iii) applying Nebraska rates to the
14 result. The federal credit for prior year minimum tax, after the
15 recomputations required by the Nebraska Revenue Act of 1967, and
16 the credits provided in the Nebraska Advantage Microenterprise Tax
17 Credit Act and the Nebraska Advantage Research and Development Act
18 shall be allowed as a reduction in the income tax due. A refundable
19 income tax credit shall be allowed for all resident estates and
20 trusts under the Nebraska Advantage Microenterprise Tax Credit Act
21 and the Nebraska Advantage Research and Development Act.

22 (b) The tax imposed on all nonresident estates and trusts
23 shall be the portion of the tax imposed on resident estates and
24 trusts which is attributable to the income derived from sources
25 within this state. The tax which is attributable to income derived

1 from sources within this state shall be determined by multiplying
2 the liability to this state for a resident estate or trust with
3 the same total income by a fraction, the numerator of which is
4 the nonresident estate's or trust's Nebraska income as determined
5 by sections 77-2724 and 77-2725 and the denominator of which is
6 its total federal income after first adjusting each by the amounts
7 provided in section 77-2716. The federal credit for prior year
8 minimum tax, after the recomputations required by the Nebraska
9 Revenue Act of 1967, reduced by the percentage of the total income
10 which is attributable to income from sources outside this state,
11 and the credits provided in the Nebraska Advantage Microenterprise
12 Tax Credit Act and the Nebraska Advantage Research and Development
13 Act shall be allowed as a reduction in the income tax due. A
14 refundable income tax credit shall be allowed for all nonresident
15 estates and trusts under the Nebraska Advantage Microenterprise Tax
16 Credit Act and the Nebraska Advantage Research and Development Act.

17 (2) In all instances wherein a fiduciary income tax
18 return is required under the provisions of the Internal Revenue
19 Code, a Nebraska fiduciary return shall be filed, except that a
20 fiduciary return shall not be required to be filed regarding a
21 simple trust if all of the trust's beneficiaries are residents of
22 the State of Nebraska, all of the trust's income is derived from
23 sources in this state, and the trust has no federal tax liability.
24 The fiduciary shall be responsible for making the return for the
25 estate or trust for which he or she acts, whether the income be

1 taxable to the estate or trust or to the beneficiaries thereof.
2 The fiduciary shall include in the return a statement of each
3 beneficiary's distributive share of net income when such income is
4 taxable to such beneficiaries.

5 (3) The beneficiaries of such estate or trust who are
6 residents of this state shall include in their income their
7 proportionate share of such estate's or trust's federal income and
8 shall reduce their Nebraska tax liability by their proportionate
9 share of the credits as provided in the Nebraska Advantage
10 Microenterprise Tax Credit Act and the Nebraska Advantage Research
11 and Development Act. There shall be allowed to a beneficiary a
12 refundable income tax credit under the Beginning Farmer Tax Credit
13 Act for all taxable years beginning or deemed to begin on or
14 after January 1, 2001, under the Internal Revenue Code of 1986, as
15 amended.

16 (4) If any beneficiary of such estate or trust is a
17 nonresident during any part of the estate's or trust's taxable
18 year, he or she shall file a Nebraska income tax return which
19 shall include (a) in Nebraska adjusted gross income that portion
20 of the estate's or trust's Nebraska income, as determined under
21 sections 77-2724 and 77-2725, allocable to his or her interest
22 in the estate or trust and (b) a reduction of the Nebraska tax
23 liability by his or her proportionate share of the credits as
24 provided in the Nebraska Advantage Microenterprise Tax Credit Act
25 and the Nebraska Advantage Research and Development Act and shall

1 execute and forward to the fiduciary, on or before the original due
2 date of the Nebraska fiduciary return, an agreement which states
3 that he or she will file a Nebraska income tax return and pay
4 income tax on all income derived from or connected with sources in
5 this state, and such agreement shall be attached to the Nebraska
6 fiduciary return for such taxable year.

7 (5) In the absence of the nonresident beneficiary's
8 executed agreement being attached to the Nebraska fiduciary return,
9 the estate or trust shall remit a portion of such beneficiary's
10 income which was derived from or attributable to Nebraska sources
11 with its Nebraska return for the taxable year. The amount of
12 remittance, in such instance, shall be the highest individual
13 income tax rate determined under section 77-2715.02 multiplied by
14 the nonresident beneficiary's share of the estate or trust income
15 which was derived from or attributable to sources within this
16 state. The amount remitted shall be allowed as a credit against the
17 Nebraska income tax liability of the beneficiary.

18 (6) The Tax Commissioner may allow a nonresident
19 beneficiary to not file a Nebraska income tax return if the
20 nonresident beneficiary's only source of Nebraska income was his or
21 her share of the estate's or trust's income which was derived from
22 or attributable to sources within this state, the nonresident did
23 not file an agreement to file a Nebraska income tax return, and
24 the estate or trust has remitted the amount required by subsection
25 (5) of this section on behalf of such nonresident beneficiary. The

1 amount remitted shall be retained in satisfaction of the Nebraska
2 income tax liability of the nonresident beneficiary.

3 (7) For purposes of this section, unless the context
4 otherwise requires, simple trust shall mean any trust instrument
5 which (a) requires that all income shall be distributed currently
6 to the beneficiaries, (b) does not allow amounts to be paid,
7 permanently set aside, or used in the tax year for charitable
8 purposes, and (c) does not distribute amounts allocated in the
9 corpus of the trust. Any trust which does not qualify as a simple
10 trust shall be deemed a complex trust.

11 (8) For purposes of this section, any beneficiary of an
12 estate or trust that is a grantor trust of a nonresident shall be
13 disregarded and this section shall apply as though the nonresident
14 grantor was the beneficiary.

15 Sec. 2. Section 77-2727, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 77-2727 (1) A partnership as such shall not be subject
18 to the income tax imposed by the Nebraska Revenue Act of 1967.
19 Persons or their authorized representatives carrying on business
20 as partners shall be liable for the income tax imposed by the
21 Nebraska Revenue Act of 1967 only in their separate or individual
22 capacities.

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

1 (3) If any partner of such partnership is a nonresident
2 individual during any part of the partnership's reporting year, he
3 or she shall file a Nebraska income tax return which shall include
4 in Nebraska adjusted gross income that portion of the partnership's
5 Nebraska income, as determined under the provisions of sections
6 77-2728 and 77-2729, allocable to his or her interest in the
7 partnership and shall execute and forward to the partnership, on or
8 before the original due date of the Nebraska partnership return,
9 an agreement which states that he or she will file a Nebraska
10 income tax return and pay income tax on all income derived from
11 or attributable to sources in this state, and such agreement shall
12 be attached to the partnership's Nebraska return for such reporting
13 year.

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

25 (b) Any amount remitted on behalf of any partner shall be

1 allowed as a credit against the Nebraska income tax liability of
2 the partner.

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

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

21 (6) For purposes of this section, any partner that is
22 a grantor trust of a nonresident shall be disregarded and this
23 section shall apply as though the nonresident grantor was the
24 partner.

25 Sec. 3. Section 77-2734.01, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 77-2734.01 (1) Residents of Nebraska who are shareholders
3 of a small business corporation having an election in effect under
4 subchapter S of the Internal Revenue Code or who are members
5 of a limited liability company organized pursuant to the Limited
6 Liability Company Act shall include in their Nebraska taxable
7 income, to the extent includable in federal gross income, their
8 proportionate share of such corporation's or limited liability
9 company's federal income adjusted pursuant to this section. Income
10 or loss from such corporation or limited liability company
11 conducting a business, trade, profession, or occupation shall
12 be included in the Nebraska taxable income of a shareholder or
13 member who is a resident of this state to the extent of such
14 shareholder's or member's proportionate share of the net income
15 or loss from the conduct of such business, trade, profession, or
16 occupation within this state, determined under subsection (2) of
17 this section. A resident of Nebraska shall include in Nebraska
18 taxable income fair compensation for services rendered to such
19 corporation or limited liability company. Compensation actually
20 paid shall be presumed to be fair unless it is apparent to the Tax
21 Commissioner that such compensation is materially different from
22 fair value for the services rendered or has been manipulated for
23 tax avoidance purposes.

24 (2) The income of any small business corporation having
25 an election in effect under subchapter S of the Internal Revenue

1 Code or limited liability company organized pursuant to the Limited
2 Liability Company Act that is derived from or connected with
3 Nebraska sources shall be determined in the following manner:

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

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

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

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

25 (4) The nonresident shareholder or member shall execute

1 and forward to the corporation or limited liability company before
2 the filing of the corporation's or limited liability company's
3 return an agreement which states he or she will file a Nebraska
4 income tax return and pay the tax on the income derived from or
5 connected with sources in this state, and such agreement shall
6 be attached to the corporation's or limited liability company's
7 Nebraska return for such taxable year.

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

18 (6) The Tax Commissioner may allow a nonresident
19 individual shareholder or member to not file a Nebraska income
20 tax return if the nonresident individual shareholder's or member's
21 only source of Nebraska income was his or her share of the small
22 business corporation's or limited liability company's income which
23 was derived from or attributable to sources within this state, the
24 nonresident did not file an agreement to file a Nebraska income
25 tax return, and the small business corporation or limited liability

1 company has remitted the amount required by subsection (5) of this
2 section on behalf of such nonresident individual shareholder or
3 member. The amount remitted shall be retained in satisfaction of
4 the Nebraska income tax liability of the nonresident individual
5 shareholder or member.

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

12 (8) For purposes of this section, any shareholder or
13 member of the corporation or limited liability company that is
14 a grantor trust of a nonresident shall be disregarded and this
15 section shall apply as though the nonresident grantor was the
16 shareholder or member.

17 Sec. 4. Section 77-2769, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2769 (1) Every resident and nonresident individual,
20 corporation, and other entity taxed as a corporation under the
21 Internal Revenue Code shall pay the estimated tax for the taxable
22 year, in such form as the Tax Commissioner may prescribe, except
23 that (a) no payment of estimated tax is required by an individual
24 if the estimated tax can reasonably be expected to be less than
25 ~~three~~ five hundred dollars and (b) no payment of estimated tax is

1 required by a corporation or other entity taxed as a corporation
2 under the Internal Revenue Code if the estimated tax can reasonably
3 be expected to be less than four hundred dollars.

4 (2) (a) Estimated tax for an individual shall mean the
5 amount which the individual estimates to be his or her income tax
6 under sections 77-2714 to 77-27,135 for the taxable year less the
7 amount which he or she estimates to be the sum of any credits
8 allowable.

9 (b) Estimated tax for a corporation or other entity
10 taxed as a corporation under the Internal Revenue Code shall mean
11 the amount which the corporation or business estimates to be its
12 income tax under sections 77-2714 to 77-27,135 for the taxable year
13 less the amount which is estimated to be the sum of any credits
14 allowable.

15 (3) If they are eligible to do so for federal tax
16 purposes, a husband and wife may make a joint payment of estimated
17 tax as if they were one taxpayer, in which case the liability with
18 respect to the estimated tax shall be joint and several. If a joint
19 payment is made but husband and wife elect to determine their taxes
20 separately, the estimated tax for such year may be treated as the
21 estimated tax of either husband or wife, or may be divided between
22 them, as they may elect.

23 (4) The payment of estimated tax for an individual under
24 a disability shall be made and filed in the manner provided in
25 subsection (2) of section 77-2763 for an income tax return.

1 (5) The payment of estimated tax shall be paid on or
2 before the dates prescribed by the laws of the United States
3 for payment of estimated federal income tax, except that the Tax
4 Commissioner, by rule and regulation, may establish other dates for
5 payment of estimated tax.

6 (6) The application of this section to taxable years of
7 less than twelve months shall be in accordance with regulations
8 prescribed by the Tax Commissioner.

9 (7) Payment of the estimated income tax or any
10 installment thereof shall be considered payment on account of the
11 income tax imposed under sections 77-2714 to 77-27,135 for the
12 taxable year.

13 Sec. 5. Section 77-2794, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 77-2794 (1) Under regulations prescribed by the Tax
16 Commissioner interest shall be allowed and paid at the rate
17 specified in section 45-104.02, as such rate may from time to time
18 be adjusted, upon any overpayment in respect to the income tax
19 imposed by the Nebraska Revenue Act of 1967.

20 (2) For purposes of this section:

21 (a) The date of overpayment shall be the last day
22 prescribed for filing the original return of such tax;

23 (b) Any return filed before the last day prescribed for
24 the filing thereof, determined without regard to any extension of
25 time to file the return, shall be considered as filed on such last

1 day;

2 (c) Any tax paid by the taxpayer before the last day
3 prescribed for its payment, any income tax withheld from the
4 taxpayer during any calendar year, and any amount paid by the
5 taxpayer as estimated income tax for a taxable year shall be deemed
6 to have been paid on the last day prescribed for filing the return
7 for the taxable year to which such amount constitutes a credit or
8 payment, determined without regard to any extension of time granted
9 the taxpayer;

10 (d) If at the time an overpayment is to be refunded,
11 the taxpayer also has a reported underpayment of the same tax
12 in another year: (i) If the overpayment is for a taxable year
13 ending before the year of underpayment, the overpayment shall be
14 applied to reduce such underpayment as of the last day prescribed
15 for filing the original return of such tax for the year of
16 underpayment; (ii) if the overpayment is for a taxable year ending
17 after the year of underpayment, the overpayment shall be applied to
18 reduce such underpayment as of the last day prescribed for filing
19 the original return of such tax for the year of overpayment; or
20 (iii) if the overpayment is one for which interest is not allowed
21 under this section, the overpayment shall be applied as of the
22 date of the filing of the claim for refund; and interest shall be
23 allowed for any remaining overpayment as provided in subdivision
24 (a) of this subsection; and

25 (e) The period of overpayment during which interest

1 shall be allowed shall not include any period during which the
2 overpayment continued due to the unreasonable delay by the taxpayer
3 in filing the claim for refund. For this purpose, the burden of
4 proof shall be on the taxpayer to show that a delay of more than
5 ninety days after all of the facts required to prepare a correct
6 claim for refund are available is not unreasonable; ~~and-~~

7 (f) The period of overpayment during which interest shall
8 be allowed shall not include any period during which an agreement
9 between the taxpayer and the Internal Revenue Service was not filed
10 as required by subsection (6) of section 77-2786 and the first
11 ninety days after such agreement is filed.

12 (3) If any overpayment of income tax imposed by the
13 Nebraska Revenue Act of 1967 is refunded within ninety days after
14 the last date prescribed, or permitted by extension of time, for
15 filing the return of such tax or within ninety days after any
16 original return, and any amended return filed to carry back a loss
17 was filed, whichever is later, no interest shall be allowed under
18 this section on overpayment. In the case of amended returns filed
19 for any reason other than to carry back a loss, interest shall be
20 allowed as provided in subsection (1) of this section.

21 Sec. 6. Section 77-27,119, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 77-27,119 (1) The Tax Commissioner shall administer and
24 enforce the income tax imposed by sections 77-2714 to 77-27,135,
25 and he or she is authorized to conduct hearings, to adopt and

1 promulgate such rules and regulations, and to require such facts
2 and information to be reported as he or she may deem necessary to
3 enforce the income tax provisions of such sections, except that
4 such rules, regulations, and reports shall not be inconsistent with
5 the laws of this state or the laws of the United States. The Tax
6 Commissioner may for enforcement and administrative purposes divide
7 the state into a reasonable number of districts in which branch
8 offices may be maintained.

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

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

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

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

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

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

9 (6) Except in accordance with proper judicial order or
10 as otherwise provided by law, it shall be unlawful for the Tax
11 Commissioner, any officer or employee of the Tax Commissioner,
12 any person engaged or retained by the Tax Commissioner on an
13 independent contract basis, any person who pursuant to this section
14 is permitted to inspect any report or return or to whom a copy, an
15 abstract, or a portion of any report or return is furnished, any
16 employee of the State Treasurer or the Department of Administrative
17 Services, or any other person to divulge, make known, or use in
18 any manner the amount of income or any particulars set forth or
19 disclosed in any report or return required except for the purpose
20 of enforcing sections 77-2714 to 77-27,135. The officers charged
21 with the custody of such reports and returns shall not be required
22 to produce any of them or evidence of anything contained in them
23 in any action or proceeding in any court, except on behalf of the
24 Tax Commissioner in an action or proceeding under the provisions
25 of the tax law to which he or she is a party or on behalf of

1 any party to any action or proceeding under such sections when the
2 reports or facts shown thereby are directly involved in such action
3 or proceeding, in either of which events the court may require the
4 production of, and may admit in evidence, so much of such reports
5 or of the facts shown thereby as are pertinent to the action or
6 proceeding and no more. Nothing in this section shall be construed
7 (a) to prohibit the delivery to a taxpayer, his or her duly
8 authorized representative, or his or her successors, receivers,
9 trustees, personal representatives, administrators, assignees, or
10 guarantors, if directly interested, of a certified copy of any
11 return or report in connection with his or her tax, (b) to
12 prohibit the publication of statistics so classified as to prevent
13 the identification of particular reports or returns and the items
14 thereof, (c) to prohibit the inspection by the Attorney General,
15 other legal representatives of the state, or a county attorney
16 of the report or return of any taxpayer who brings an action to
17 review the tax based thereon, against whom an action or proceeding
18 for collection of tax has been instituted, or against whom an
19 action, proceeding, or prosecution for failure to comply with the
20 Nebraska Revenue Act of 1967 is being considered or has been
21 commenced, (d) to prohibit furnishing to the Nebraska Workers'
22 Compensation Court the names, addresses, and identification numbers
23 of employers, and such information shall be furnished on request
24 of the court, (e) to prohibit the disclosure of information
25 and records to a collection agency contracting with the Tax

1 Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
2 to prohibit the disclosure of information pursuant to section
3 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure
4 to the Public Employees Retirement Board of the addresses of
5 individuals who are members of the retirement systems administered
6 by the board, and such information shall be furnished to the
7 board solely for purposes of its administration of the retirement
8 systems upon written request, which request shall include the name
9 and social security number of each individual for whom an address
10 is requested, (h) to prohibit the disclosure to the Department
11 of Labor of tax return information pertaining to individuals,
12 corporations, and businesses determined by the Department of Labor
13 to be delinquent in the payment of combined tax or in the repayment
14 of benefit overpayments, and such disclosure shall be strictly
15 limited to information necessary for the administration of the
16 Employment Security Law, (i) to prohibit the disclosure to the
17 Department of Motor Vehicles of tax return information pertaining
18 to individuals, corporations, and businesses determined by the
19 Department of Motor Vehicles to be delinquent in the payment of
20 amounts due under agreements pursuant to the International Fuel
21 Tax Agreement Act, and such disclosure shall be strictly limited
22 to information necessary for the administration of the act, or (j)
23 to prohibit the disclosure under section 42-358.08, 43-512.06, or
24 43-3327 to any court-appointed individuals, the county attorney,
25 any authorized attorney, or the Department of Health and Human

1 Services of an absent parent's address, social security number,
2 amount of income, health insurance information, and employer's
3 name and address for the exclusive purpose of establishing and
4 collecting child, ~~or~~ spousal, or medical support. Information so
5 obtained shall be used for no other purpose. Any person who
6 violates this subsection shall be guilty of a felony and shall upon
7 conviction thereof be fined not less than one hundred dollars nor
8 more than five hundred dollars, or be imprisoned not more than five
9 years, or be both so fined and imprisoned, in the discretion of
10 the court and shall be assessed the costs of prosecution. If the
11 offender is an officer or employee of the state, he or she shall be
12 dismissed from office and be ineligible to hold any public office
13 in this state for a period of two years thereafter.

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

17 (8) Notwithstanding the provisions of subsection (6) of
18 this section, the Tax Commissioner may permit the Secretary of the
19 Treasury of the United States or his or her delegates or the proper
20 officer of any state imposing an income tax, or the authorized
21 representative of either such officer, to inspect the income tax
22 returns of any taxpayer or may furnish to such officer or his or
23 her authorized representative an abstract of the return of income
24 of any taxpayer or supply him or her with information concerning an
25 item of income contained in any return or disclosed by the report

1 of any investigation of the income or return of income of any
2 taxpayer, but such permission shall be granted only if the statutes
3 of the United States or of such other state, as the case may be,
4 grant substantially similar privileges to the Tax Commissioner of
5 this state as the officer charged with the administration of the
6 income tax imposed by sections 77-2714 to 77-27,135.

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

18 (10)(a) Notwithstanding the provisions of subsection (6)
19 of this section, the Tax Commissioner shall, upon written request
20 by the Auditor of Public Accounts or the Legislative Performance
21 Audit Committee, make tax returns and tax return information
22 open to inspection by or disclosure to officers and employees
23 of the Auditor of Public Accounts or Legislative Performance
24 Audit Section employees for the purpose of and to the extent
25 necessary in making an audit of the Department of Revenue pursuant

1 to section 50-1205 or 84-304. The Auditor of Public Accounts
2 or Legislative Performance Audit Section shall statistically and
3 randomly select the tax returns and tax return information to
4 be audited based upon a computer tape provided by the Department
5 of Revenue which contains only total population documents without
6 specific identification of taxpayers. The Tax Commissioner shall
7 have the authority to approve the statistical sampling method used
8 by the Auditor of Public Accounts or Legislative Performance Audit
9 Section. Confidential tax returns and tax return information shall
10 be audited only upon the premises of the Department of Revenue.
11 All audit workpapers pertaining to the audit of the Department of
12 Revenue shall be stored in a secure place in the Department of
13 Revenue.

14 (b) No officer or employee of the Auditor of Public
15 Accounts or Legislative Performance Audit Section employee shall
16 disclose to any person, other than another officer or employee of
17 the Auditor of Public Accounts or Legislative Performance Audit
18 Section employee whose official duties require such disclosure or
19 as provided in subsections (2) and (3) of section 50-1213, any
20 return or return information described in the Nebraska Revenue
21 Act of 1967 in a form which can be associated with or otherwise
22 identify, directly or indirectly, a particular taxpayer.

23 (c) Any person who violates the provisions of this
24 subsection shall be guilty of a Class IV felony and, in the
25 discretion of the court, may be assessed the costs of prosecution.

1 The guilty officer or employee shall be dismissed from employment
2 and be ineligible to hold any position of employment with the State
3 of Nebraska for a period of two years thereafter. For purposes of
4 this subsection, officer or employee shall include a former officer
5 or employee of the Auditor of Public Accounts or former Legislative
6 Performance Audit Section employee.

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

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

16 (b) Return information shall mean:

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

1 or the amount of liability of any person for any tax, penalty,
2 interest, fine, forfeiture, or other imposition or offense; and

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

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

8 (12) The Auditor of Public Accounts or the Legislative
9 Auditor of the Legislative Performance Audit Section shall (a)
10 notify the Tax Commissioner in writing thirty days prior to the
11 beginning of an audit of his or her intent to conduct an audit, (b)
12 provide an audit plan, and (c) provide a list of the tax returns
13 and tax return information identified for inspection during the
14 audit.

15 (13) The Auditor of Public Accounts or the Legislative
16 Performance Audit Section shall, as a condition for receiving tax
17 returns and tax return information: (a) Subject employees involved
18 in the audit to the same confidential information safeguards
19 and disclosure procedures as required of Department of Revenue
20 employees; (b) establish and maintain a permanent system of
21 standardized records with respect to any request for tax returns
22 or tax return information, the reason for such request, and the
23 date of such request and any disclosure of the tax return or
24 tax return information; (c) establish and maintain a secure area
25 or place in the Department of Revenue in which the tax returns,

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

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

20 (15) The Tax Commissioner shall compile the school
21 district information required by subsection (2) of this section.
22 Insofar as it is possible, such compilation shall include, but
23 not be limited to, the total adjusted gross income of each school
24 district in the state. The Tax Commissioner shall adopt and
25 promulgate such rules and regulations as may be necessary to insure

1 that such compilation does not violate the confidentiality of any
2 individual income tax return nor conflict with any other provisions
3 of state or federal law.

4 Sec. 7. Section 77-5803, Revised Statutes Supplement,
5 2007, is amended to read:

6 77-5803 (1) Any business firm which makes expenditures
7 in research and experimental activities as defined in section
8 174 of the Internal Revenue Code of 1986, as amended, in this
9 state shall be allowed a research tax credit as provided in the
10 Nebraska Advantage Research and Development Act. The credit amount
11 shall equal fifteen percent of the federal credit allowed under
12 section 41 of the Internal Revenue Code of 1986, as amended, or as
13 apportioned to this state under subsection (2) of this section. The
14 credit shall be allowed for the first tax year it is claimed and
15 for the four tax years immediately following.

16 (2) For any business firm doing business both within
17 and without this state, the amount of the federal credit may
18 be determined either by dividing the amount expended in research
19 and experimental activities in this state in any tax year may
20 be determined either by satisfactory proof of purchase by the
21 total amount expended in research and experimental activities or
22 by apportioning the amount of the credit on the federal income tax
23 return to the state based on the average of the property factor
24 as determined in section 77-2734.12 and the payroll factor as
25 determined in section 77-2734.13.

1 Sec. 8. Sections 1, 2, 3, 4, 7, and 9 of this act become
2 operative for all taxable years beginning or deemed to begin on or
3 after January 1, 2008, under the Internal Revenue Code of 1986, as
4 amended. Sections 5, 6, 8, and 10 of this act become operative on
5 their effective date.

6 Sec. 9. Original section 77-2769, Reissue Revised
7 Statutes of Nebraska, sections 77-2727 and 77-2734.01, Revised
8 Statutes Cumulative Supplement, 2006, and sections 77-2717 and
9 77-5803, Revised Statutes Supplement, 2007, are repealed.

10 Sec. 10. Original sections 77-2794 and 77-27,119, Revised
11 Statutes Cumulative Supplement, 2006, are repealed.