

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 443

Introduced by Stuthman, 22; Gay, 14; Rogert, 16; Wallman, 30;
White, 8;

Read first time January 16, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2703.04, 77-2704.31, 77-4105, and 77-4106, Reissue
3 Revised Statutes of Nebraska, and sections 77-2703.01,
4 77-2711, 77-2712.05, 77-5725, and 77-5726, Revised
5 Statutes Cumulative Supplement, 2006; to authorize
6 creation of transportation development districts; to
7 authorize a local sales tax; to harmonize provisions; and
8 to repeal the original sections.

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

1 Section 1. (1) A city council or county board may
2 create one or more transportation development districts for the
3 purpose of improving or constructing roads, streets, bridges, and
4 related structures within the district by adopting a resolution of
5 intention to establish a district. This shall be the only method
6 to establish a district. The resolution shall contain the following
7 information:

8 (a) A description of the boundaries of the proposed
9 district which shall only include territory within the boundaries
10 of the city or county proposing the district;

11 (b) The time and place of a hearing to be held by
12 the city council or county board to consider establishment of a
13 district;

14 (c) The proposed public facilities and improvements to be
15 made or maintained within any such district; and

16 (d) The proposed or estimated costs for the facilities
17 and improvements and the sales tax rate to be submitted to the
18 registered voters under section 3 of this act.

19 (2) A notice of hearing shall be given by (a) one
20 publication of the resolution of intention in a newspaper of
21 general circulation in the city or county and (b) mailing a
22 complete copy of the resolution of intention to each owner
23 of taxable property within the proposed district as shown on
24 the latest tax rolls of the county treasurer for such county.
25 Publication and mailing shall be completed at least ten days prior

1 to the time of hearing.

2 (3) The city council or county board shall:

3 (a) Hear all protests and receive evidence for or against
4 the proposed action;

5 (b) Rule upon all written protests received prior to the
6 close of the hearing, which ruling shall be final; and

7 (c) Continue the hearing from time to time as the city
8 council or county board may deem necessary.

9 (4) If the city council or county board decides to change
10 the boundaries of the proposed district, the hearing shall be
11 continued to a time at least fifteen days after such decision
12 and notice shall be given as prescribed in this section showing
13 the boundary amendments, but no new or additional resolution of
14 intention shall be required.

15 Sec. 2. The city council or county board, following
16 the hearing, may establish or reject the proposed transportation
17 development district. If the city council or county board decides
18 to establish the district, it shall adopt an ordinance to that
19 effect. This ordinance shall contain the following information:

20 (1) The number, date, and title of the resolution of
21 intention pursuant to which it was adopted;

22 (2) The time and place the hearing was held concerning
23 the formation of such district;

24 (3) A statement that a transportation development
25 district has been established;

1 (4) The purposes of the district and the public
2 improvements and facilities to be included in such district;

3 (5) The description of the boundaries of such district
4 which shall only include territory within the boundaries of the
5 city or county establishing the district; and

6 (6) The sales tax rate to be submitted to registered
7 voters under section 3 of this act.

8 Sec. 3. A city council or county board may impose a
9 sales and use tax of one-eighth percent, one-quarter percent, or
10 one-half percent upon the same transactions sourced as provided
11 in sections 77-2703.01 to 77-2703.04 within a transportation
12 development district on which the state is authorized to impose
13 a tax pursuant to the Nebraska Revenue Act of 1967, as amended
14 from time to time. Any sales and use tax imposed pursuant to this
15 section must be used to finance the improvement or construction
16 of roads, streets, bridges, and related structures within the
17 district. A city council or county board may issue and sell its
18 negotiable coupon bonds to be known as transportation district
19 development bonds in an amount not exceeding the balance of the
20 unpaid cost of such improvements or construction. The bonds shall
21 be payable in not to exceed twenty years from date and bear
22 interest payable annually or semiannually. A sales and use tax
23 shall not be imposed pursuant to this section until an election has
24 been held and a majority of the registered voters in the district
25 or a majority of the property owners within the district have

1 approved the tax as provided in section 4 of this act.

2 Sec. 4. The powers granted by section 3 of this act
3 shall not be exercised unless and until the question has been
4 submitted at a primary, general, or special election held within
5 the transportation development district which would be subject
6 to the tax and in which all registered voters, or all property
7 owners if there are no registered voters within the district, are
8 entitled to vote on such question. The city council or county
9 board shall order the submission of the question by submitting a
10 certified copy of the resolution proposing the tax to the election
11 commissioner or county clerk. The question may include any terms
12 and conditions set forth in the resolution proposing the tax,
13 such as a termination date or the specific project for which the
14 revenue received from the tax will be allocated, and shall include
15 the following language: Shall the city or county impose a sales
16 and use tax upon the same transactions within the transportation
17 development district on which the State of Nebraska is authorized
18 to impose a tax to finance roads, streets, bridges, and related
19 structures within the district? If a majority of the votes cast
20 upon the question are in favor of the tax, the city council or
21 county board may impose the tax. If a majority of those voting on
22 the question are opposed to the tax, the city council or county
23 board shall not impose the tax. Any election under this section
24 shall be conducted in accordance with the procedures provided in
25 the Election Act.

1 Sec. 5. The election commissioner or county clerk shall
2 give notice of the submission of the question of imposing a tax
3 under section 3 of this act not more than thirty days nor less than
4 ten days before the election, by publication one time in one or
5 more newspapers published in or of general circulation in the city
6 or county in which the question is to be submitted. This notice is
7 in addition to any other notice required under the Election Act.

8 Sec. 6. (1) The Tax Commissioner shall administer all
9 sales and use taxes adopted under section 3 of this act. The
10 Tax Commissioner may prescribe forms and adopt and promulgate
11 reasonable rules and regulations in conformity with the Nebraska
12 Revenue Act of 1967, as amended, for the making of returns and
13 for the ascertainment, assessment, and collection of taxes. The
14 city or county shall furnish a certified copy of the adopting or
15 repealing resolution to the Tax Commissioner in accordance with
16 such rules and regulations. The tax shall begin the first day of
17 the next calendar quarter which is at least one hundred twenty days
18 following receipt by the Tax commissioner of the certified copy of
19 the adopted resolution. The Tax Commissioner shall provide at least
20 sixty days' notice of the adoption of the tax or a change in the
21 rate to retailers. Notice shall be provided to retailers within
22 the transportation development district. Notice to retailers may be
23 provided through the web site of the Department of Revenue or by
24 other electronic means.

25 (2) For resolutions containing a termination date, the

1 termination date shall be the first day of a calendar quarter. The
2 county shall furnish a certified statement to the Tax Commissioner
3 no more than one hundred eighty days and at least one hundred
4 twenty days before the termination date that the termination date
5 stated in the resolution is still valid. If the certified statement
6 is not furnished within the prescribed time, the tax shall remain
7 in effect, and the Tax Commissioner shall continue to collect the
8 tax until the first day of the calendar quarter which is at least
9 one hundred twenty days after receipt of the certified statement
10 notwithstanding the termination date stated in the resolution. The
11 Tax Commissioner shall provide at least sixty days' notice of the
12 termination of the tax to retailers. Notice shall be provided to
13 retailers within the transportation development district. Notice to
14 retailers may be provided through the web site of the department or
15 other electronic means.

16 (3) In the rental or lease of automobiles, trucks,
17 trailers, semitrailers, and truck-tractors as defined in the Motor
18 Vehicle Registration Act, the tax shall be collected by the lessor
19 on the rental or lease price at the tax rate in effect on the date
20 the automobile, truck, trailer, semitrailer, or truck-tractor is
21 delivered to the lessee.

22 (4) The Tax Commissioner shall collect the sales and
23 use tax concurrently with collection of a state tax in the same
24 manner as the state tax is collected. The Tax Commissioner shall
25 remit monthly the proceeds of the tax to the cities and counties

1 imposing the tax for deposit in a special fund to be used to
2 finance the improvement or construction of roads, streets, bridges,
3 and related structures within the district, after deducting the
4 amount of refunds made and three percent of the remainder as
5 an administrative fee necessary to defray the cost of collecting
6 the tax and the expenses incident thereto. The Tax Commissioner
7 shall keep full and accurate records of all money received and
8 distributed. All receipts from the three-percent administrative fee
9 shall be deposited in the General Fund.

10 (5) Upon any claim of illegal assessment and collection,
11 the taxpayer has the same remedies provided for claims of illegal
12 assessment and collection of the state tax. It is the intention
13 of the Legislature that the provisions of law which apply to the
14 recovery of state taxes illegally assessed and collected apply
15 to the recovery of sales and use taxes illegally assessed and
16 collected under section 3 of this act.

17 (6) Boundary changes that affect any tax imposed by this
18 section shall be governed as provided in subsections (3) through
19 (9) of section 77-27,143.

20 Sec. 7. (1) All relevant provisions of the Nebraska
21 Revenue Act of 1967, as amended, not inconsistent with sections
22 3 to 6 of this act, shall govern transactions, proceedings, and
23 activities pursuant to any sales and use tax imposed by a city or
24 county under such sections.

25 (2) For the purposes of the sales and use tax imposed by

1 a city or county, all retail sales, rentals, and leases, as defined
2 and described in the Nebraska Revenue Act of 1967, are sourced as
3 provided in sections 77-2703.01 to 77-2703.04.

4 Sec. 8. The city council or county board may disestablish
5 a transportation development district by ordinance after a hearing
6 before the city council or county board. The city council or
7 county board shall adopt a resolution of intention to disestablish
8 the area at least fifteen days prior to the hearing required by
9 this section. The resolution shall give the time and place of the
10 hearing. Upon disestablishment of a district, any proceeds of the
11 sales tax shall be subject to disposition as the city council or
12 county board shall determine.

13 Sec. 9. Section 77-2703.01, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 77-2703.01 (1) The determination of whether a sale or use
16 of property or the provision of services is in this state, in a
17 municipality that has adopted a tax under the Local Option Revenue
18 Act or section 3 of this act, or in a county that has adopted a tax
19 under section 13-319 or section 3 of this act shall be governed by
20 the sourcing rules in sections 77-2703.01 to 77-2703.04.

21 (2) When the property or service is received by the
22 purchaser at a business location of the retailer, the sale is
23 sourced to that business location.

24 (3) When the property or service is not received by the
25 purchaser at a business location of the retailer, the sale is

1 sourced to the location where receipt by the purchaser or the
2 purchaser's donee, designated as such by the purchaser, occurs,
3 including the location indicated by instructions for delivery to
4 the purchaser or donee, known to the retailer.

5 (4) When subsection (2) or (3) of this section does not
6 apply, the sale is sourced to the location indicated by an address
7 or other information for the purchaser that is available from
8 the business records of the retailer that are maintained in the
9 ordinary course of the retailer's business when use of this address
10 does not constitute bad faith.

11 (5) When subsection (2), (3), or (4) of this section does
12 not apply, the sale is sourced to the location indicated by an
13 address for the purchaser obtained during the consummation of the
14 sale, including the address of a purchaser's payment instrument, if
15 no other address is available, when use of this address does not
16 constitute bad faith.

17 (6) When subsection (2), (3), (4), or (5) of this section
18 does not apply, including the circumstance in which the retailer
19 is without sufficient information to apply the rules in any such
20 subsection, then the location will be determined by the address
21 from which property was shipped, from which the digital good was
22 first available for transmission by the retailer, or from which the
23 service was provided disregarding for these purposes any location
24 that merely provided the digital transfer of the product sold.

25 (7) The lease or rental of tangible personal property,

1 other than property identified in subsection (8) or (9) of this
2 section, shall be sourced as follows:

3 (a) For a lease or rental that requires recurring
4 periodic payments, the first periodic payment is sourced the same
5 as a retail sale in accordance with the provisions of subsections
6 (2) through (6) of this section. Periodic payments made subsequent
7 to the first payment are sourced to the primary property location
8 for each period covered by the payment. The primary property
9 location shall be as indicated by an address for the property
10 provided by the lessee that is available to the lessor from its
11 records maintained in the ordinary course of business when use of
12 this address does not constitute bad faith. The property location
13 shall not be altered by intermittent use at different locations,
14 such as use of business property that accompanies employees on
15 business trips and service calls; and

16 (b) For a lease or rental that does not require recurring
17 periodic payments, the payment is sourced the same as a retail sale
18 in accordance with the provisions of subsections (2) through (6) of
19 this section.

20 This subsection does not affect the imposition or
21 computation of sales or use tax on leases or rentals based on a
22 lump-sum or accelerated basis or on the acquisition of property
23 for lease.

24 (8) The lease or rental of motor vehicles, trailers,
25 semitrailers, or aircraft that do not qualify as transportation

1 equipment under subsection (9) of this section shall be sourced as
2 follows:

3 (a) For a lease or rental that requires recurring
4 periodic payments, each periodic payment is sourced to the primary
5 property location. The primary property location shall be as
6 indicated by an address for the property provided by the lessee
7 that is available to the lessor from its records maintained in
8 the ordinary course of business when use of this address does
9 not constitute bad faith. This location shall not be altered by
10 intermittent use at different locations; and

11 (b) For a lease or rental that does not require recurring
12 periodic payments, the payment is sourced the same as a retail sale
13 in accordance with the provisions of subsections (2) through (6) of
14 this section.

15 This subsection does not affect the imposition or
16 computation of sales or use tax on leases or rentals based on a
17 lump-sum or accelerated basis or on the acquisition of property
18 for lease.

19 (9) The retail sale, including lease or rental, of
20 transportation equipment shall be sourced the same as a retail sale
21 in accordance with subsections (2) through (6) of this section.
22 Transportation equipment means any of the following:

23 (a) Locomotives and railcars that are utilized for the
24 carriage of persons or property in interstate commerce;

25 (b) Trucks and truck-tractors with a gross vehicle

1 weight rating of ten thousand one pounds or greater, trailers,
2 semitrailers, or passenger buses that are (i) registered through
3 the International Registration Plan and (ii) operated under
4 authority of a carrier authorized and certificated by the United
5 States Department of Transportation or another federal authority
6 to engage in the carriage of persons or property in interstate
7 commerce;

8 (c) Aircraft operated by air carriers authorized and
9 certificated by the United States Department of Transportation or
10 another federal authority or a foreign authority to engage in the
11 carriage of persons or property in interstate or foreign commerce;
12 and

13 (d) Containers designed for use on and component parts
14 attached or secured on the items set forth in subdivisions (9) (a)
15 through (c) of this section.

16 (10) For purposes of this section, receive and receipt
17 mean taking possession of tangible personal property, making first
18 use of services, or taking possession or making first use of
19 digital goods, whichever comes first. The terms receive and receipt
20 do not include possession by a shipping company on behalf of
21 the purchaser. For purposes of sourcing detective services subject
22 to tax under subdivision (10) (i) of section 77-2701.16, making
23 first use of a service shall be deemed to be at the individual's
24 residence, in the case of a customer who is an individual, or
25 at the principal place of business, in the case of a business

1 customer.

2 (11) The sale, not including lease or rental, of a motor
3 vehicle, semitrailer, or trailer as defined in the Motor Vehicle
4 Registration Act shall be sourced to the place of registration of
5 the motor vehicle, semitrailer, or trailer for operation upon the
6 highways of this state.

7 (12) The sale or lease for one year or more of motorboats
8 shall be sourced to the place of registration of the motorboat. The
9 lease of motorboats for less than one year shall be sourced to the
10 point of delivery.

11 Sec. 10. Section 77-2703.04, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-2703.04 (1) Except for the telecommunications
14 service defined in subsection (3) of this section, the sale of
15 telecommunications service sold on a call-by-call basis shall be
16 sourced to (a) each level of taxing jurisdiction where the call
17 originates and terminates in that jurisdiction or (b) each level of
18 taxing jurisdiction where the call either originates or terminates
19 and in which the service address is also located.

20 (2) Except for the telecommunications service defined
21 in subsection (3) of this section, a sale of telecommunications
22 service sold on a basis other than a call-by-call basis is sourced
23 to the customer's place of primary use.

24 (3) (a) For mobile telecommunications service provided and
25 billed to a customer by a home service provider:

1 (i) Notwithstanding any other provision of law or any
2 local ordinance or resolution, such mobile telecommunications
3 service is deemed to be provided by the customer's home service
4 provider;

5 (ii) All taxable charges for such mobile
6 telecommunications service shall be subject to tax by the state or
7 other taxing jurisdiction in this state whose territorial limits
8 encompass the customer's place of primary use regardless of where
9 the mobile telecommunications service originates, terminates, or
10 passes through; and

11 (iii) No taxes, charges, or fees may be imposed on a
12 customer with a place of primary use outside this state.

13 (b) In accordance with the federal Mobile
14 Telecommunications Sourcing Act, as such act existed on July 20,
15 2002, the Tax Commissioner may, but is not required to:

16 (i) Provide or contract for a tax assignment data base
17 based upon standards identified in 4 U.S.C. 119, as such section
18 existed on July 20, 2002, with the following conditions:

19 (A) If such data base is provided, a home service
20 provider shall be held harmless for any tax that otherwise would
21 result from any errors or omissions attributable to reliance on
22 such data base; or

23 (B) If such data base is not provided, a home service
24 provider may rely on an enhanced zip code for identifying the
25 proper taxing jurisdictions and shall be held harmless for any

1 tax that otherwise would result from any errors or omissions
2 attributable to reliance on such enhanced zip code if the home
3 service provider identified the taxing jurisdiction through the
4 exercise of due diligence and complied with any procedures that may
5 be adopted by the Tax Commissioner. Any such procedure shall be in
6 accordance with 4 U.S.C. 120, as such section existed on July 20,
7 2002; and

8 (ii) Adopt procedures for correcting errors in the
9 assignment of primary use that are consistent with 4 U.S.C.
10 121, as such section existed on July 20, 2002.

11 (c) If charges for mobile telecommunications service that
12 are not subject to tax are aggregated with and not separately
13 stated on the bill from charges that are subject to tax, the total
14 charge to the customer shall be subject to tax unless the home
15 service provider can reasonably separate charges not subject to tax
16 using the records of the home service provider that are kept in the
17 regular course of business.

18 (d) For purposes of this subsection:

19 (i) Customer means an individual, business, organization,
20 or other person contracting to receive mobile telecommunications
21 service from a home service provider. Customer does not include a
22 reseller of mobile telecommunications service or a serving carrier
23 under an arrangement to serve the customer outside the home service
24 provider's service area;

25 (ii) Home service provider means a telecommunications

1 company as defined in section 86-322 that has contracted with a
2 customer to provide mobile telecommunications service;

3 (iii) Mobile telecommunications service means a wireless
4 communication service carried on between mobile stations or
5 receivers and land stations, and by mobile stations communicating
6 among themselves, and includes (A) both one-way and two-way
7 wireless communication services, (B) a mobile service which
8 provides a regularly interacting group of base, mobile, portable,
9 and associated control and relay stations, whether on an
10 individual, cooperative, or multiple basis for private one-way or
11 two-way land mobile radio communications by eligible users over
12 designated areas of operation, and (C) any personal communication
13 service;

14 (iv) Place of primary use means the street address
15 representative of where the customer's use of mobile
16 telecommunications service primarily occurs. The place of
17 primary use shall be the residential street address or the primary
18 business street address of the customer and shall be within the
19 service area of the home service provider; and

20 (v) Tax means the sales taxes levied under sections
21 13-319, 77-2703, and 77-27,142 and section 3 of this act, the
22 surcharges levied under the Enhanced Wireless 911 Services Act,
23 the Nebraska Telecommunications Universal Service Fund Act, and
24 the Telecommunications Relay System Act, and any other tax levied
25 against the customer based on the amount charged to the customer.

1 Tax does not mean an income tax, property tax, franchise tax, or
2 any other tax levied on the home service provider that is not based
3 on the amount charged to the customer.

4 (4) A sale of post-paid calling service is sourced to
5 the origination point of the telecommunications signal as first
6 identified by either (a) the seller's telecommunications system, or
7 (b) information received by the seller from its service provider,
8 where the system used to transport such signals is not that of the
9 seller.

10 (5) A sale of prepaid calling service is sourced in
11 accordance with section 77-2703.01, except that in the case of
12 a sale of mobile telecommunications service that is a prepaid
13 telecommunications service, the rule provided in section 77-2703.01
14 shall include as an option the location associated with the mobile
15 telephone number.

16 (6) A sale of a private communication service is sourced
17 as follows:

18 (a) Service for a separate charge related to a customer
19 channel termination point is sourced to each level of jurisdiction
20 in which such customer channel termination point is located;

21 (b) Service where all customer termination points are
22 located entirely within one jurisdiction or levels of jurisdiction
23 is sourced in such jurisdiction in which the customer channel
24 termination points are located;

25 (c) Service for segments of a channel between two

1 customer channel termination points located in different
2 jurisdictions and which segments of channel are separately charged
3 is sourced fifty percent in each level of jurisdiction in which the
4 customer channel termination points are located; and

5 (d) Service for segments of a channel located in more
6 than one jurisdiction or levels of jurisdiction and which segments
7 are not separately billed is sourced in each jurisdiction based
8 on the percentage determined by dividing the number of customer
9 channel termination points in such jurisdiction by the total number
10 of customer channel termination points.

11 (7) For purposes of this section:

12 (a) Air-to-ground radiotelephone service means a radio
13 service, as that term is defined in 47 C.F.R. 22.99, as such
14 regulation existed on January 1, 2003, in which common carriers are
15 authorized to offer and provide radio telecommunications service
16 for hire to subscribers in aircraft;

17 (b) Call-by-call basis means any method of charging
18 for telecommunications service where the price is measured by
19 individual calls;

20 (c) Communications channel means a physical or virtual
21 path of communications over which signals are transmitted between
22 or among customer channel termination points;

23 (d) Customer means the person or entity that contracts
24 with the seller of telecommunications service. If the end user
25 of telecommunications service is not the contracting party, the

1 end user of the telecommunications service is the customer of the
2 telecommunications service, but this sentence only applies for the
3 purpose of sourcing sales of telecommunications service under this
4 section. Customer does not include a reseller of telecommunications
5 service or for mobile telecommunications service of a serving
6 carrier under an agreement to serve the customer outside the home
7 service provider's licensed service area;

8 (e) Customer channel termination point means the location
9 where the customer either inputs or receives the communications;

10 (f) End user means the person who utilizes the
11 telecommunications service. In the case of an entity, end user
12 means the individual who utilizes the service on behalf of the
13 entity;

14 (g) Post-paid calling service means the
15 telecommunications service obtained by making a payment on a
16 call-by-call basis either through the use of a credit card or
17 payment mechanism, such as a bank card, travel card, credit card,
18 or debit card, or by a charge made to a telephone number which
19 is not associated with the origination or termination of the
20 telecommunications service. A post-paid calling service includes a
21 telecommunications service that would be a prepaid calling service
22 except it is not exclusively a telecommunications service;

23 (h) Prepaid calling service means the right to access
24 exclusively telecommunications service, which is paid for in
25 advance and which enables the origination of calls using an access

1 number or authorization code, whether manually or electronically
2 dialed, and that is sold in predetermined units or dollars of which
3 the number declines with use in a known amount;

4 (i) Private communication service means a
5 telecommunications service that entitles the customer to exclusive
6 or priority use of a communications channel or group of channels
7 between or among termination points, regardless of the manner
8 in which such channel or channels are connected, and includes
9 switching capacity, extension lines, stations, and any other
10 associated services that are provided in connection with the use
11 of such channel or channels; and

12 (j) Service address means the location of the
13 telecommunications equipment to which a customer's call is charged
14 and from which the call originates or terminates, regardless of
15 where the call is billed or paid. If this location is not known,
16 service address means the origination point of the signal of the
17 telecommunications service first identified either by the seller's
18 telecommunications system, or in information received by the seller
19 from its service provider, where the system used to transport such
20 signals is not that of the seller. If both locations are not known,
21 the service address means the location of the customer's place of
22 primary use.

23 Sec. 11. Section 77-2704.31, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-2704.31 If any person who causes property or service

1 to be brought into this state has already paid a tax in another
2 state with respect to the sale or use of such property or service
3 in an amount less than the tax imposed by sections 13-319, 13-2813,
4 77-2703, and 77-27,142 and section 3 of this act, the provisions
5 of subsection (2) of section 77-2703 shall apply, but at a rate
6 measured by the difference only between the rate imposed by such
7 sections and the rate by which the previous tax on the sale or use
8 was computed. If such tax imposed and paid in such other state is
9 equal to or more than the tax imposed by such sections, then no
10 use tax shall be due in this state on such property if such other
11 state, territory, or possession grants a reciprocal exclusion or
12 exemption to similar transactions in this state.

13 Sec. 12. Section 77-2711, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

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

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

22 (2) The Tax Commissioner may employ accountants,
23 auditors, investigators, assistants, and clerks necessary for the
24 efficient administration of the Nebraska Revenue Act of 1967 and
25 may delegate authority to his or her representatives to conduct

1 hearings, prescribe regulations, or perform any other duties
2 imposed by such act.

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

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

12 (4) The Tax Commissioner or any person authorized in
13 writing by him or her may examine the books, papers, records, and
14 equipment of any person selling property and any person liable for
15 the use tax and may investigate the character of the business of
16 the person in order to verify the accuracy of any return made or,
17 if no return is made by the person, to ascertain and determine
18 the amount required to be paid. In the examination of any person
19 selling property or of any person liable for the use tax, an
20 inquiry shall be made as to the accuracy of the reporting of
21 city sales and use taxes for which the person is liable under the
22 Local Option Revenue Act or sections 13-319, 13-324, and 13-2813
23 and section 3 of this act and the accuracy of the allocation
24 made between the various counties, cities, villages, and municipal
25 counties of the tax due. The Tax Commissioner may make or cause to

1 be made copies of resale or exemption certificates and may pay a
2 reasonable amount to the person having custody of the records for
3 providing such copies.

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

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

16 (7) It shall be a Class I misdemeanor for the Tax
17 Commissioner or any official or employee of the Tax Commissioner,
18 the State Treasurer, or the Department of Administrative Services
19 to make known in any manner whatever the business affairs,
20 operations, or information obtained by an investigation of records
21 and activities of any retailer or any other person visited
22 or examined in the discharge of official duty or the amount
23 or source of income, profits, losses, expenditures, or any
24 particular thereof, set forth or disclosed in any return, or
25 to permit any return or copy thereof, or any book containing

1 any abstract or particulars thereof to be seen or examined by
2 any person not connected with the Tax Commissioner. Nothing in
3 this section shall be construed to prohibit (a) the delivery to
4 a taxpayer, his or her duly authorized representative, or his
5 or her successors, receivers, trustees, executors, administrators,
6 assignees, or guarantors, if directly interested, of a certified
7 copy of any return or report in connection with his or her tax,
8 (b) the publication of statistics so classified as to prevent
9 the identification of particular reports or returns and the items
10 thereof, (c) the inspection by the Attorney General, other legal
11 representative of the state, or county attorney of the reports
12 or returns of any taxpayer when either (i) information on the
13 reports or returns is considered by the Attorney General to be
14 relevant to any action or proceeding instituted by the taxpayer
15 or against whom an action or proceeding is being considered or
16 has been commenced by any state agency or the county or (ii) the
17 taxpayer has instituted an action to review the tax based thereon
18 or an action or proceeding against the taxpayer for collection of
19 tax or failure to comply with the Nebraska Revenue Act of 1967 is
20 being considered or has been commenced, (d) the furnishing of any
21 information to the United States Government or to states allowing
22 similar privileges to the Tax Commissioner, (e) the disclosure of
23 information and records to a collection agency contracting with the
24 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
25 the disclosure to another party to a transaction of information

1 and records concerning the transaction between the taxpayer and
2 the other party, or (g) the disclosure of information pursuant to
3 section 77-27,195 or section 77-5731.

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

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

22 (10) Notwithstanding the provisions of subsection (7)
23 of this section, the Tax Commissioner may, upon request, provide
24 the county board of any county which has exercised the authority
25 granted by section 81-1254 with a list of the names and addresses

1 of the hotels located within the county for which lodging sales tax
2 returns have been filed or for which lodging sales taxes have been
3 remitted for the county's County Visitors Promotion Fund under the
4 Nebraska Visitors Development Act.

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

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

24 (b) No employee of the Legislative Performance Audit
25 Section shall disclose to any person, other than another

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

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

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

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

15 (b) Return information means:

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

1 interest, fine, forfeiture, or other imposition or offense; and

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

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

12 (13) In all proceedings under the Nebraska Revenue Act
13 of 1967, the Tax Commissioner may act for and on behalf of the
14 people of the State of Nebraska. The Tax Commissioner in his or
15 her discretion may waive all or part of any penalties provided by
16 the provisions of such act, but may not waive the minimum interest
17 on delinquent taxes specified in section 45-104.02, as such rate
18 may from time to time be adjusted, except interest on use taxes
19 voluntarily reported by an individual.

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

25 (b) For purposes of this subsection:

1 (i) Anonymous data means information that does not
2 identify a person;

3 (ii) Confidential taxpayer information means all
4 information that is protected under a member state's laws,
5 regulations, and privileges; and

6 (iii) Personally identifiable information means
7 information that identifies a person.

8 (c) The state agrees that a fundamental precept for model
9 1 sellers is to preserve the privacy of consumers by protecting
10 their anonymity. With very limited exceptions, a certified service
11 provider shall perform its tax calculation, remittance, and
12 reporting functions without retaining the personally identifiable
13 information of consumers.

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

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

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

23 (iii) It provides consumers clear and conspicuous
24 notice of its information practices, including what information
25 it collects, how it collects the information, how it uses the

1 information, how long, if at all, it retains the information, and
2 whether it discloses the information to member states. Such notice
3 shall be satisfied by a written privacy policy statement accessible
4 by the public on the web site of the certified service provider;

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

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

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

17 (f) When any personally identifiable information that
18 has been collected and retained is no longer required for the
19 purposes set forth in subdivision (14)(d)(iv) of this section, such
20 information shall no longer be retained by the member states.

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

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

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

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

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

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

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

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

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

25 Sec. 13. Section 77-2712.05, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 77-2712.05 By agreeing to the terms of the streamlined
3 sales and use tax agreement, this state agrees to abide by the
4 following requirements:

5 (1) Uniform state rate. The state shall comply with
6 restrictions to achieve over time more uniform state rates through
7 the following:

8 (a) Limiting the number of state rates;

9 (b) Limiting the application of maximums on the amount of
10 state tax that is due on a transaction; and

11 (c) Limiting the application of thresholds on the
12 application of state tax;

13 (2) Uniform standards. The state hereby establishes
14 uniform standards for the following:

15 (a) Sourcing of transactions to taxing jurisdictions as
16 provided in sections 77-2703.01 to 77-2703.04;

17 (b) Administration of exempt sales as set out by the
18 agreement and using procedures as determined by the governing
19 board;

20 (c) Allowances a seller can take for bad debts as
21 provided in section 77-2708; and

22 (d) Sales and use tax returns and remittances. To comply
23 with the agreement, the Tax Commissioner shall:

24 (i) Require only one remittance for each return except
25 as provided in this subdivision. If any additional remittance is

1 required, it may only be required from retailers that collect more
2 than thirty thousand dollars in sales and use taxes in the state
3 during the preceding calendar year as provided in this subdivision.
4 The amount of any additional remittance may be determined through
5 a calculation method rather than actual collections. Any additional
6 remittance shall not require the filing of an additional return;

7 (ii) Require, at his or her discretion, all remittances
8 from sellers under models 1, 2, and 3 to be remitted
9 electronically;

10 (iii) Allow for electronic payments by both automated
11 clearinghouse credit and debit;

12 (iv) Provide an alternative method for making same day
13 payments if an electronic funds transfer fails;

14 (v) Provide that if a due date falls on a legal banking
15 holiday, the taxes are due to that state on the next succeeding
16 business day; and

17 (vi) Require that any data that accompanies a remittance
18 be formatted using uniform tax type and payment type codes approved
19 by the governing board of the member states to the streamlined
20 sales and use tax agreement;

21 (3) Uniform definitions. (a) The state shall utilize the
22 uniform definitions of sales and use tax terms as provided in the
23 agreement. The definitions enable Nebraska to preserve its ability
24 to make taxability and exemption choices not inconsistent with the
25 uniform definitions.

1 (b) The state may enact a product-based exemption without
2 restriction if the agreement does not have a definition for the
3 product or for a term that includes the product. If the agreement
4 has a definition for the product or for a term that includes
5 the product, the state may exempt all items included within the
6 definition but shall not exempt only part of the items included
7 within the definition unless the agreement sets out the exemption
8 for part of the items as an acceptable variation.

9 (c) The state may enact an entity-based or a use-based
10 exemption without restriction if the agreement does not have a
11 definition for the product whose use or purchase by a specific
12 entity is exempt or for a term that includes the product. If the
13 agreement has a definition for the product whose use or specific
14 purchase is exempt, states may enact an entity-based or a use-based
15 exemption that applies to that product as long as the exemption
16 utilizes the agreement definition of the product. If the agreement
17 does not have a definition for the product whose use or specific
18 purchase is exempt but has a definition for a term that includes
19 the product, states may enact an entity-based or a use-based
20 exemption for the product without restriction.

21 (d) For purposes of complying with the requirements in
22 this section, the inclusion of a product within the definition of
23 tangible personal property is disregarded;

24 (4) Central registration. The state shall participate in
25 an electronic central registration system that allows a seller to

1 register to collect and remit sales and use taxes for all member
2 states. Under the system:

3 (a) A retailer registering under the agreement is
4 registered in this state;

5 (b) The state agrees not to require the payment of any
6 registration fees or other charges for a retailer to register in
7 the state if the retailer has no legal requirement to register;

8 (c) A written signature from the retailer is not
9 required;

10 (d) An agent may register a retailer under uniform
11 procedures adopted by the member states pursuant to the agreement;

12 (e) A retailer may cancel its registration under the
13 system at any time under uniform procedures adopted by the
14 governing board. Cancellation does not relieve the retailer of its
15 liability for remitting to the proper states any taxes collected;

16 (f) When registering, the retailer that is registered
17 under the agreement may select one of the following methods of
18 remittances or other method allowed by state law to remit the taxes
19 collected:

20 (i) Model 1, wherein a seller selects a certified service
21 provider as an agent to perform all the seller's sales or use tax
22 functions, other than the seller's obligation to remit tax on its
23 own purchases;

24 (ii) Model 2, wherein a seller selects a certified
25 automated system to use which calculates the amount of tax due on a

1 transaction; and

2 (iii) Model 3, wherein a seller utilizes its own
3 proprietary automated sales tax system that has been certified
4 as a certified automated system; and

5 (g) Sellers who register within twelve months after this
6 state's first approval of a certified service provider are relieved
7 from liability, including the local option tax, for tax not
8 collected or paid if the seller was not registered between October
9 1, 2004, and September 30, 2005. Such relief from liability shall
10 be in accordance with the terms of the agreement;

11 (5) No nexus attribution. The state agrees that
12 registration with the central registration system and the
13 collection of sales and use taxes in the state will not be used as
14 a factor in determining whether the seller has nexus with the state
15 for any tax at any time;

16 (6) Local sales and use taxes. The agreement requires
17 the reduction of the burdens of complying with local sales and use
18 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,
19 77-27,142, 77-27,143, and 77-27,144 and section 3 of this act that
20 require the following:

21 (a) No variation between the state and local tax bases;

22 (b) Statewide administration of all sales and use taxes
23 levied by local jurisdictions within the state so that sellers
24 collecting and remitting these taxes will not have to register or
25 file returns with, remit funds to, or be subject to independent

1 audits from local taxing jurisdictions;

2 (c) Limitations on the frequency of changes in the local
3 sales and use tax rates and setting effective dates for the
4 application of local jurisdictional boundary changes to local sales
5 and use taxes; and

6 (d) Uniform notice of changes in local sales and use
7 tax rates and of changes in the boundaries of local taxing
8 jurisdictions;

9 (7) Complete a taxability matrix approved by the
10 governing board. (a) Notice of changes in the taxability of the
11 products or services listed will be provided as required by the
12 governing board.

13 (b) The entries in the matrix shall be provided and
14 maintained in a data base that is in a downloadable format approved
15 by the governing board.

16 (c) Sellers and certified service providers are relieved
17 from liability, including the local option tax, for having charged
18 and collected the incorrect amount of sales or use tax resulting
19 from the seller or certified service provider relying on erroneous
20 data provided by the member state in the taxability matrix;

21 (8) Monetary allowances. The state agrees to allow any
22 monetary allowances that are to be provided by the states to
23 sellers or certified service providers in exchange for collecting
24 sales and use taxes as provided in Article VI of the agreement;

25 (9) State compliance. The agreement requires the state to

1 certify compliance with the terms of the agreement prior to joining
2 and to maintain compliance, under the laws of the member state,
3 with all provisions of the agreement while a member;

4 (10) Consumer privacy. The state hereby adopts a uniform
5 policy for certified service providers that protects the privacy of
6 consumers and maintains the confidentiality of tax information as
7 provided in section 77-2711; and

8 (11) Advisory councils. The state agrees to
9 the appointment of an advisory council of private-sector
10 representatives and an advisory council of nonmember state
11 representatives to consult with in the administration of the
12 agreement.

13 Sec. 14. Section 77-4105, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-4105 (1) A taxpayer who has signed an agreement under
16 section 77-4104 may elect to determine taxable income for purposes
17 of the Nebraska income tax using the sales factor only. The
18 election may be made for the year during which the application was
19 filed and for each year thereafter through the eighth year after
20 the end of the entitlement period. The election shall be made for
21 the year of the election by computing taxable income using the
22 sales factor only on the tax return.

23 (2) A taxpayer who has signed an agreement under section
24 77-4104 shall receive the incentive provided in this subsection
25 if the agreement contains one or more projects which together

1 will result in the investment in qualified property of at least
2 ten million dollars and the hiring of at least one hundred new
3 employees. Such ten-million-dollar investment and hiring of at
4 least one hundred new employees shall be considered a required
5 level of investment and employment for this subsection and for the
6 recapture of personal property tax only.

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

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

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

24 (c) Personal property which is business equipment located
25 in a single project if (i) the business equipment is involved

1 directly in the manufacture or processing of agricultural products
2 and (ii) the investment in the single project exceeds ten million
3 dollars.

4 Such property shall be eligible for exemption from the
5 tax on personal property from the first January 1 following the
6 date of acquisition for property in subdivision (2)(a) of this
7 section, or from the first January 1 following the end of the
8 year during which the required levels were exceeded for property
9 in subdivisions (2)(b) and (2)(c) of this section, through the
10 sixteenth December 31 after the filing of the application. In order
11 to receive the property tax exemptions allowed by subdivisions
12 (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall
13 annually file a claim for exemption with the Property Tax
14 Administrator on or before May 1. The form and supporting schedules
15 shall be prescribed by the Property Tax Administrator and shall
16 list all property for which exemption is being sought under this
17 section. A separate claim for exemption must be filed for each
18 project and each county in which property is claimed to be exempt.
19 A copy of this form must also be filed with the county assessor
20 in each county in which the applicant is requesting exemption.
21 The Property Tax Administrator shall determine the eligibility
22 of each item listed for exemption and, on or before August 10,
23 certify such to the taxpayer and to the affected county assessor.
24 Notwithstanding any other provision of law, the Property Tax
25 Administrator shall be allowed access to the applications and such

1 other records of the Department of Revenue as necessary in order to
2 determine the eligibility for exemption.

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

6 (a) A refund of all sales and use taxes paid under the
7 Nebraska Revenue Act of 1967, the Local Option Revenue Act, and
8 sections 13-319, 13-324, and 13-2813 and section 3 of this act from
9 the date of the application through the meeting of the required
10 levels of employment and investment for all purchases, including
11 rentals, of:

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

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

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

20 (iv) Tangible personal property by a contractor or
21 repairperson after appointment as a purchasing agent of the owner
22 of the improvement to real estate. The refund shall be based on
23 fifty percent of the contract price, excluding any land, as the
24 cost of materials subject to the sales and use tax; and

25 (b) A refund of the sales and use taxes paid under the

1 Nebraska Revenue Act of 1967, the Local Option Revenue Act, and
2 sections 13-319, 13-324, and 13-2813 and section 3 of this act on
3 the types of purchases, including rentals, listed in subdivision
4 (a) of this subsection for such taxes paid during each year of
5 the entitlement period in which the taxpayer is at or above the
6 required levels of employment and investment.

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

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

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

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

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

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

6 Sec. 15. Section 77-4106, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-4106 (1)(a) The credits prescribed in section 77-4105
9 shall be established by filing the forms required by the Tax
10 Commissioner with the income tax return for the year. The credits
11 may be used after any other nonrefundable credits to reduce the
12 taxpayer's income tax liability imposed by sections 77-2714 to
13 77-27,135. The credits may be used to obtain a refund of sales and
14 use taxes under the Nebraska Revenue Act of 1967, the Local Option
15 Revenue Act, and sections 13-319, 13-324, and 13-2813 and section
16 3 of this act which are not otherwise refundable that are paid on
17 purchases, including rentals, for use at the project.

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

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

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

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

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

16 (d) All refund claims shall be filed, processed, and
17 allowed as any other claim under section 77-2708, except that the
18 amounts allowed to be refunded under the Employment and Investment
19 Growth Act shall be deemed to be overpayments and shall be refunded
20 notwithstanding any limitation in subdivision (2) (a) of section
21 77-2708. The refund may be allowed if the claim is filed within
22 three calendar years from the end of the year the required levels
23 of employment and investment are met or within the period set forth
24 in section 77-2708.

25 (e) Interest shall not be allowed on any sales and use

1 taxes refunded under the Employment and Investment Growth Act.

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

11 Sec. 16. Section 77-5725, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 77-5725 (1) Applicants may qualify for benefits under the
14 Nebraska Advantage Act in one of five tiers:

15 (a) Tier 1, investment in qualified property of at least
16 one million dollars and the hiring of at least ten new employees.
17 There shall be no new project applications for benefits under
18 this tier filed on or after January 1, 2011, without further
19 authorization of the Legislature. All complete project applications
20 filed before January 1, 2011, shall be considered by the Tax
21 Commissioner and approved if the project and taxpayer qualify
22 for benefits. Agreements may be executed with regard to completed
23 project applications filed before January 1, 2011. All project
24 agreements pending, approved, or entered into before such date
25 shall continue in full force and effect;

1 (b) Tier 2, investment in qualified property of at least
2 three million dollars and the hiring of at least thirty new
3 employees;

4 (c) Tier 3, the hiring of at least thirty new employees.
5 There shall be no new project applications for benefits under
6 this tier filed on or after January 1, 2011, without further
7 authorization of the Legislature. All complete project applications
8 filed before January 1, 2011, shall be considered by the Tax
9 Commissioner and approved if the project and taxpayer qualify
10 for benefits. Agreements may be executed with regard to completed
11 project applications filed before January 1, 2011. All project
12 agreements pending, approved, or entered into before such date
13 shall continue in full force and effect;

14 (d) Tier 4, investment in qualified property of at least
15 ten million dollars and the hiring of at least one hundred new
16 employees; and

17 (e) Tier 5, investment in qualified property of at least
18 thirty million dollars. Failure to maintain an average number of
19 equivalent employees as defined in section 77-5727 greater than or
20 equal to the number of equivalent employees in the base year shall
21 result in a partial recapture of benefits.

22 (2) When the taxpayer has met the required levels of
23 employment and investment contained in the agreement for a tier 1,
24 tier 2, tier 4, or tier 5 project, the taxpayer shall be entitled
25 to the following incentives:

1 (a) A refund of all sales and use taxes for a tier 2,
2 tier 4, or tier 5 project or a refund of one-half of all sales
3 and use taxes for a tier 1 project paid under the Local Option
4 Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319,
5 13-324, and 13-2813 and section 3 of this act from the date of
6 the application through the meeting of the required levels of
7 employment and investment for all purchases, including rentals, of:

8 (i) Qualified property used as a part of the project;
9 (ii) Property, excluding motor vehicles, based in this
10 state and used in both this state and another state in connection
11 with the project except when any such property is to be used for
12 fundraising for or for the transportation of an elected official;

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

16 (iv) Tangible personal property by a contractor or
17 repairperson after appointment as a purchasing agent of the owner
18 of the improvement to real estate. The refund shall be based on
19 fifty percent of the contract price, excluding any land, as the
20 cost of materials subject to the sales and use tax; and

21 (b) A refund of all sales and use taxes for a tier 2,
22 tier 4, or tier 5 project or a refund of one-half of all sales and
23 use taxes for a tier 1 project paid under the Local Option Revenue
24 Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324,
25 and 13-2813 and section 3 of this act on the types of purchases,

1 including rentals, listed in subdivision (a) of this subsection for
2 such taxes paid during each year of the entitlement period in which
3 the taxpayer is at or above the required levels of employment and
4 investment.

5 (3) Any taxpayer who qualifies for a tier 1, tier 2,
6 tier 3, or tier 4 project shall be entitled to a credit equal to
7 three percent times the average wage of new employees times the
8 number of new employees if the average wage of the new employees
9 equals at least sixty percent of the Nebraska average annual wage
10 for the year of application. The credit shall equal four percent
11 times the average wage of new employees times the number of new
12 employees if the average wage of the new employees equals at least
13 seventy-five percent of the Nebraska average annual wage for the
14 year of application. The credit shall equal five percent times the
15 average wage of new employees times the number of new employees
16 if the average wage of the new employees equals at least one
17 hundred percent of the Nebraska average annual wage for the year of
18 application. The credit shall equal six percent times the average
19 wage of new employees times the number of new employees if the
20 average wage of the new employees equals at least one hundred
21 twenty-five percent of the Nebraska average annual wage for the
22 year of application. For computation of such credit:

23 (a) Average annual wage means the total compensation paid
24 to employees during the year at the project who are not base-year
25 employees and who are paid wages equal to at least sixty percent

1 of the Nebraska average weekly wage for the year of application
2 divided by the number of equivalent employees making up such total
3 compensation;

4 (b) Average wage of new employees means the average
5 annual wage paid to employees during the year at the project who
6 are not base-year employees and who are paid wages equal to at
7 least sixty percent of the Nebraska average weekly wage for the
8 year of application; and

9 (c) Nebraska average annual wage means the Nebraska
10 average weekly wage times fifty-two.

11 (4) Any taxpayer who has met the required levels of
12 employment and investment for a tier 2 or tier 4 project shall
13 receive a credit equal to ten percent of the investment made in
14 qualified property at the project. Any taxpayer who has met the
15 required levels of investment and employment for a tier 1 project
16 shall receive a credit equal to three percent of the investment
17 made in qualified property at the project.

18 (5) The credits prescribed in subsections (3) and (4)
19 of this section shall be allowable for compensation paid and
20 investments made during each year of the entitlement period that
21 the taxpayer is at or above the required levels of employment and
22 investment.

23 (6) The credit prescribed in subsection (4) of this
24 section shall also be allowable during the first year of the
25 entitlement period for investment in qualified property at the

1 project after the date of the application and before the required
2 levels of employment and investment were met.

3 (7)(a) A taxpayer who has met the required levels of
4 employment and investment for a tier 4 project shall receive
5 the incentive provided in this subsection. Such investment and
6 hiring of new employees shall be considered a required level of
7 investment and employment for this subsection and for the recapture
8 of benefits under this subsection only.

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

13 (i) Turbine-powered aircraft, including turboprop,
14 turbojet, and turbofan aircraft, except when any such aircraft is
15 used for fundraising for or for the transportation of an elected
16 official;

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

1 (iii) Depreciable personal property used for a
2 distribution facility, including, but not limited to, storage
3 racks, conveyor mechanisms, forklifts, and other property used to
4 store or move products; and

5 (iv) Personal property which is business equipment
6 located in a single project if the business equipment is involved
7 directly in the manufacture or processing of agricultural products.

8 (c) Such property shall be eligible for exemption from
9 the tax on personal property from the first January 1 following
10 the date of acquisition for property in subdivision (7)(b)(i)
11 of this section, or from the first January 1 following the end
12 of the year during which the required levels were exceeded for
13 property in subdivisions (7)(b)(ii), (iii), and (iv) of this
14 section, through the ninth December 31 after the first year the
15 property qualifies for the exemption. In order to receive the
16 property tax exemptions allowed by subdivisions (7)(b)(i), (ii),
17 (iii), and (iv) of this section, the taxpayer shall annually
18 file a claim for exemption with the Property Tax Administrator
19 on or before May 1. The form and supporting schedules shall be
20 prescribed by the Property Tax Administrator and shall list all
21 property for which exemption is being sought under this section.
22 A separate claim for exemption must be filed for each project and
23 each county in which property is claimed to be exempt. A copy
24 of this form must also be filed with the county assessor in each
25 county in which the applicant is requesting exemption. The Property

1 Tax Administrator shall determine the eligibility of each item
2 listed for exemption and, on or before August 10, certify such to
3 the taxpayer and to the affected county assessor. In determining
4 the eligibility of items of personal property for exemption,
5 the Property Tax Administrator is limited to the question of
6 whether the property claimed as exempt by the taxpayer falls
7 within the classes of property described in subdivision (7)(b) of
8 this section. The determination of whether a taxpayer is eligible
9 to obtain exemption for personal property based on meeting the
10 required levels of investment and employment is the responsibility
11 of the Tax Commissioner. Notwithstanding any other provision of
12 law, the Property Tax Administrator shall be allowed access to the
13 applications and such other records of the Department of Revenue as
14 necessary in order to determine the eligibility for exemption.

15 (8) The investment thresholds in this section for a
16 particular year of application shall be adjusted by the method
17 provided in this subsection. Beginning October 1, 2006, and each
18 October 1 thereafter, the Producer Price Index for all commodities,
19 published by the United States Department of Labor, Bureau of Labor
20 Statistics, for the most recent available period shall be divided
21 by the Producer Price Index for the first quarter of 2006 and
22 the result multiplied by the applicable investment threshold. The
23 investment thresholds shall be adjusted for cumulative inflation
24 since 2006. If the resulting amount is not a multiple of one
25 million dollars, the amount shall be rounded to the next lowest

1 one million dollars. The investment thresholds established by this
2 subsection apply for purposes of project qualifications for all
3 applications filed on or after January 1 of the following year
4 for all years of the project. Adjustments do not apply to projects
5 after the year of application.

6 Sec. 17. Section 77-5726, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-5726 (1)(a) The credits prescribed in section 77-5725
9 shall be established by filing the forms required by the Tax
10 Commissioner with the income tax return for the year. The credits
11 may be used and shall be applied in the order in which they
12 were first allowed. The credits may be used after any other
13 nonrefundable credits to reduce the taxpayer's income tax liability
14 imposed by sections 77-2714 to 77-27,135. Any decision on how part
15 of the credit is applied shall not limit how the remaining credit
16 could be applied under this section.

17 (b) The taxpayer may use the credit provided in
18 subsection (3) of section 77-5725 to reduce the taxpayer's income
19 tax withholding employer or payor tax liability under section
20 77-2756 or 77-2757 to the extent such liability is attributable to
21 the number of new employees at the project. To the extent of the
22 credit used, such withholding shall not constitute public funds
23 or state tax revenue and shall not constitute a trust fund or be
24 owned by the state. The use by the taxpayer of the credit shall not
25 change the amount that otherwise would be reported by the taxpayer

1 to the employee under section 77-2754 as income tax withheld and
2 shall not reduce the amount that otherwise would be allowed by the
3 state as a refundable credit on an employee's income tax return as
4 income tax withheld under section 77-2755.

5 The amount of credits used against income tax withholding
6 shall not exceed the withholding attributable to new employees at
7 the project. If the amount of credit used by the taxpayer against
8 income tax withholding exceeds this amount, the excess withholding
9 shall be returned to the Department of Revenue in the manner
10 provided in section 77-2756, such excess amount returned shall be
11 considered unused, and the amount of unused credits may be used
12 as otherwise permitted in this section or shall carry over to the
13 extent authorized in subdivision (1)(d) of this section.

14 (c) Credits may be used to obtain a refund of sales and
15 use taxes under the Local Option Revenue Act, the Nebraska Revenue
16 Act of 1967, and sections 13-319, 13-324, and 13-2813 and section
17 3 of this act which are not otherwise refundable that are paid on
18 purchases, including rentals, for use at the project.

19 (d) Credits may be carried over until fully utilized,
20 except that such credits may not be carried over more than nine
21 years after the year of application for a tier 1 or tier 3 project
22 or fourteen years after the year of application for a tier 2 or
23 tier 4 project.

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

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

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

14 (d) All refund claims shall be filed, processed, and
15 allowed as any other claim under section 77-2708, except that
16 the amounts allowed to be refunded under the Nebraska Advantage
17 Act shall be deemed to be overpayments and shall be refunded
18 notwithstanding any limitation in subdivision (2)(a) of section
19 77-2708. The refund may be allowed if the claim is filed within
20 three calendar years from the end of the year the required levels
21 of employment and investment are met or within the period set forth
22 in section 77-2708.

23 (e) If a claim for a refund of sales and use taxes
24 under the Local Option Revenue Act or sections 13-319, 13-324, and
25 13-2813 and section 3 of this act of more than twenty-five thousand

1 dollars is filed by June 15 of a given year, the refund shall be
2 made on or after November 15 of the same year. If such a claim is
3 filed on or after June 16 of a given year, the refund shall not
4 be made until on or after November 15 of the following year. The
5 Tax Commissioner shall notify the affected city, village, county,
6 or municipal county of the amount of refund claims of sales and
7 use taxes under the Local Option Revenue Act or sections 13-319,
8 13-324, and 13-2813 and section 3 of this act that are in excess of
9 twenty-five thousand dollars on or before July 1 of the year before
10 the claims will be paid under this section.

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

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

22 (4) A determination that a taxpayer is not engaged in a
23 qualified business or has failed to meet or maintain the required
24 levels of employment or investment for incentives, exemptions, or
25 recapture may be protested to the Tax Commissioner within thirty

1 days after the written determination by the Department of Revenue.
2 The Tax Commissioner shall issue a written order resolving such
3 protests. The determination of the Tax Commissioner may be appealed
4 to the district court of Lancaster County within thirty days after
5 the issuance of the order.

6 Sec. 18. Original sections 77-2703.04, 77-2704.31,
7 77-4105, and 77-4106, Reissue Revised Statutes of Nebraska, and
8 sections 77-2703.01, 77-2711, 77-2712.05, 77-5725, and 77-5726,
9 Revised Statutes Cumulative Supplement, 2006, are repealed.