

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 879**

FINAL READING

Introduced by Cornett, 45.

Read first time January 11, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend  
2 sections 9-1,101, 66-719, 77-1784, 77-2701.38, 77-2711,  
3 77-2712.03, 77-2756, 77-2789, 77-2790, 77-2794, 77-2796,  
4 77-27,100, 77-27,119, 77-5725, 77-5726, 77-5735, and  
5 81-8,128, Reissue Revised Statutes of Nebraska, section  
6 60-484, Revised Statutes Cumulative Supplement, 2008, and  
7 section 49-801.01, Revised Statutes Supplement, 2009; to  
8 update references to the Internal Revenue Code of 1986;  
9 to change provisions relating to waiver of interest,  
10 the streamlined sales and use tax agreement, electronic  
11 fund transfers, income tax withholding, overpayments  
12 of tax, failure to file, penalties, certain appeal  
13 procedures, certain tax incentives, and funding; to

1           require the Department of Motor Vehicles to provide  
2           certain information to the Department of Revenue as  
3           prescribed; to provide for publication of delinquent  
4           taxpayer lists, disclosure of certain information to the  
5           Department of Labor, and applicability; to eliminate a  
6           provision relating to electronic filings and payments; to  
7           harmonize provisions; to provide a duty for the Revisor  
8           of Statutes; to provide operative dates; to repeal the  
9           original sections; to outright repeal section 77-2769.02,  
10          Reissue Revised Statutes of Nebraska; and to declare an  
11          emergency.

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

1           Section 1. Section 9-1,101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           9-1,101 (1) The Nebraska Bingo Act, the Nebraska County  
4 and City Lottery Act, the Nebraska Lottery and Raffle Act, the  
5 Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery  
6 and Raffle Act, and section 9-701 shall be administered and  
7 enforced by the Charitable Gaming Division of the Department  
8 of Revenue, which division is hereby created. The Department of  
9 Revenue shall make annual reports to the Governor, Legislature,  
10 Auditor of Public Accounts, and Attorney General on all tax revenue  
11 received, expenses incurred, and other activities relating to the  
12 administration and enforcement of such acts.

13           (2) The Charitable Gaming Operations Fund is hereby  
14 created. Any money in the fund available for investment shall be  
15 invested by the state investment officer pursuant to the Nebraska  
16 Capital Expansion Act and the Nebraska State Funds Investment Act.

17           (3) (a) Forty percent of the taxes collected pursuant to  
18 sections 9-239, 9-344, 9-429, and 9-648 shall be available to the  
19 Charitable Gaming Division for administering and enforcing the acts  
20 listed in subsection (1) of this section, ~~and section 81-8,128.~~ The  
21 remaining sixty percent shall be transferred to the General Fund.  
22 Any portion of the forty percent not used by the division in the  
23 administration and enforcement of such acts and section shall be  
24 distributed as provided in this subsection.

25           (b) On or before November 1 each year, the State

1 Treasurer shall transfer fifty thousand dollars from the Charitable  
2 Gaming Operations Fund to the Compulsive Gamblers Assistance Fund,  
3 except that no transfer shall occur if the Charitable Gaming  
4 Operations Fund contains less than fifty thousand dollars.

5 (c) Any money remaining in the Charitable Gaming  
6 Operations Fund after the transfer pursuant to subdivision (b)  
7 of this subsection not used by the Charitable Gaming Division in  
8 its administration and enforcement duties pursuant to this section  
9 may be transferred to the General Fund at the direction of the  
10 Legislature.

11 (4) The Tax Commissioner shall employ investigators who  
12 shall be vested with the authority and power of a law enforcement  
13 officer to carry out the laws of this state administered by the Tax  
14 Commissioner or the Department of Revenue and to enforce sections  
15 28-1101 to 28-1117 relating to possession of a gambling device. For  
16 purposes of enforcing sections 28-1101 to 28-1117, the authority  
17 of the investigators shall be limited to investigating possession  
18 of a gambling device, notifying local law enforcement authorities,  
19 and reporting suspected violations to the county attorney for  
20 prosecution.

21 (5) The Charitable Gaming Division may charge a fee for  
22 publications and listings it produces. The fee shall not exceed the  
23 cost of publication and distribution of such items. The division  
24 may also charge a fee for making a copy of any record in its  
25 possession equal to the actual cost per page. The division shall

1 remit the fees to the State Treasurer for credit to the Charitable  
2 Gaming Operations Fund.

3 Sec. 2. Section 49-801.01, Revised Statutes Supplement,  
4 2009, is amended to read:

5 49-801.01 Except as provided by Article VIII, section 1B,  
6 of the Constitution of Nebraska and in sections 77-2701.01, 77-2714  
7 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509,  
8 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728,  
9 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the  
10 Internal Revenue Code refers to the Internal Revenue Code of 1986  
11 as it exists on ~~February 27, 2009.~~ the operative date of this  
12 section.

13 Sec. 3. Section 60-484, Revised Statutes Cumulative  
14 Supplement, 2008, is amended to read:

15 60-484 (1)(a) This subsection applies until the  
16 implementation date designated by the director pursuant to section  
17 60-462.02. Except as otherwise provided in the Motor Vehicle  
18 Operator's License Act, no resident of the State of Nebraska shall  
19 operate a motor vehicle upon the alleys or highways of the State  
20 of Nebraska until the person has obtained an operator's license  
21 for that purpose.

22 (b) Application for an operator's license may be made in  
23 a manner prescribed by the department. Such application may be made  
24 to an examiner in any county. The examiner shall personally conduct  
25 the examination of the applicant and deliver to each successful

1 applicant an examiner's certificate containing the statements made  
2 pursuant to subdivision (c) of this subsection.

3 (c) In addition to any other information and questions  
4 necessary to comply with the requirements and purposes of the act,  
5 the applicant (i) shall provide his or her name, age, post office  
6 address, place of residence unless the applicant is a program  
7 participant under the Address Confidentiality Act, date of birth,  
8 gender, social security number, and brief description of himself or  
9 herself, (ii) may complete the voter registration portion pursuant  
10 to section 32-308, (iii) shall be provided the advisement language  
11 required by subsection (5) of section 60-6,197, (iv) shall answer  
12 the following:

13 (A) Have you within the last three months (e.g. due  
14 to diabetes, epilepsy, mental illness, head injury, stroke, heart  
15 condition, neurological disease, etc.):

16 (I) lost voluntary control or consciousness ... yes ...  
17 no

18 (II) experienced vertigo or multiple episodes of  
19 dizziness or fainting ... yes ... no

20 (III) experienced disorientation ... yes ... no

21 (IV) experienced seizures ... yes ... no

22 (V) experienced impairment of memory, memory loss ... yes  
23 ... no

24 Please explain: .....

25 (B) Do you experience any condition which affects your

1 ability to operate a motor vehicle? (e.g. due to loss of, or  
2 impairment of, foot, leg, hand, arm; neurological or neuromuscular  
3 disease, etc.) ... yes ... no

4 Please explain: .....

5 (C) Since the issuance of your last driver's  
6 license/permit has your health or medical condition changed or  
7 worsened? ... yes ... no

8 Please explain, including how the above affects your  
9 ability to drive: ....., and (v) may answer the  
10 following:

11 (A) Do you wish to register to vote as part of this  
12 application process?

13 OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE  
14 FOLLOWING QUESTIONS:

15 (B) Do you wish to be an organ and tissue donor?

16 (C) Do you wish to receive any additional specific  
17 information regarding organ and tissue donation and the Donor  
18 Registry of Nebraska?

19 (D) Do you wish to donate \$1 to promote the Organ and  
20 Tissue Donor Awareness and Education Fund?

21 (d) Application for an operator's license shall be made  
22 under oath or affirmation of the applicant.

23 (e) The social security number shall not be printed on  
24 the operator's license and shall be used only (i) to furnish driver  
25 record information to the United States Selective Service System

1 under section 60-483, (ii) with the permission of the director in  
2 connection with the verification of the status of an individual's  
3 driving record in this state or any other state, (iii) for purposes  
4 of child support enforcement pursuant to section 42-358.08 or  
5 43-512.06, or (iv) to furnish information regarding an applicant  
6 for or holder of a commercial driver's license with a hazardous  
7 materials endorsement to the Transportation Security Administration  
8 of the United States Department of Homeland Security or its agent.

9 (f) (i) Except for an individual under the age of eighteen  
10 years, each individual applying for an operator's license or a  
11 state identification card shall furnish proof of date of birth  
12 and identity by a valid Nebraska operator's license, a valid  
13 Nebraska learner's permit, a valid Nebraska school permit, a  
14 valid operator's license from another state or jurisdiction of the  
15 United States, a certified birth certificate, a certified birth  
16 registration, a valid United States passport, a valid United States  
17 military identification card, United States military discharge  
18 papers, other United States-based identification as approved by  
19 the director, or information preserved in the digital system  
20 implemented under section 60-484.01.

21 (ii) Any individual under the age of eighteen years  
22 applying for an operator's license or a state identification card  
23 shall provide a certified copy of his or her birth certificate,  
24 a certified birth registration, or other reliable proof of his or  
25 her identity and age accompanied by a certification signed by a



1 parent or guardian explaining the inability to produce a copy of  
2 such birth certificate. The applicant may be required to furnish  
3 proof to the examiner that the parent or guardian signing the  
4 certification is in fact the parent or guardian of such applicant.

5 (2) (a) This subsection applies beginning on the  
6 implementation date designated by the director pursuant to section  
7 60-462.02. Except as otherwise provided in the Motor Vehicle  
8 Operator's License Act, no resident of the State of Nebraska shall  
9 operate a motor vehicle upon the alleys or highways of this state  
10 until the person has obtained an operator's license for that  
11 purpose.

12 (b) Application for an operator's license or a state  
13 identification card shall be made in a manner prescribed by the  
14 department. Such application may be made to department personnel in  
15 any county. Department personnel shall conduct the examination of  
16 the applicant and deliver to each successful applicant an issuance  
17 certificate containing the statements made pursuant to subdivision  
18 (c) of this subsection.

19 (c) The applicant (i) shall provide his or her full legal  
20 name, date of birth, mailing address, gender, race or ethnicity,  
21 and social security number, two forms of proof of address of  
22 his or her principal residence unless the applicant is a program  
23 participant under the Address Confidentiality Act, evidence of  
24 identity as required by subdivision (2) (f) of this subsection,  
25 and a brief physical description of himself or herself, (ii)

1 may complete the voter registration portion pursuant to section  
2 32-308, (iii) shall be provided the advisement language required  
3 by subsection (5) of section 60-6,197, (iv) shall answer the  
4 following:

5 (A) Have you within the last three months (e.g. due  
6 to diabetes, epilepsy, mental illness, head injury, stroke, heart  
7 condition, neurological disease, etc.):

8 (I) lost voluntary control or consciousness ... yes ...  
9 no

10 (II) experienced vertigo or multiple episodes of  
11 dizziness or fainting ... yes ... no

12 (III) experienced disorientation ... yes ... no

13 (IV) experienced seizures ... yes ... no

14 (V) experienced impairment of memory, memory loss ... yes  
15 ... no

16 Please explain: .....

17 (B) Do you experience any condition which affects your  
18 ability to operate a motor vehicle? (e.g. due to loss of, or  
19 impairment of, foot, leg, hand, arm; neurological or neuromuscular  
20 disease, etc.) ... yes ... no

21 Please explain: .....

22 (C) Since the issuance of your last driver's  
23 license/permit, has your health or medical condition changed or  
24 worsened? ... yes ... no

25 Please explain, including how the above affects your

1 ability to drive: ....., and (v) may answer the  
2 following:

3 (A) Do you wish to register to vote as part of this  
4 application process?

5 OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE  
6 FOLLOWING QUESTIONS:

7 (B) Do you wish to be an organ and tissue donor?

8 (C) Do you wish to receive any additional specific  
9 information regarding organ and tissue donation and the Donor  
10 Registry of Nebraska?

11 (D) Do you wish to donate \$1 to promote the Organ and  
12 Tissue Donor Awareness and Education Fund?

13 (d) Application for an operator's license or state  
14 identification card shall include a signed oath, affirmation,  
15 or declaration of the applicant that the information provided on  
16 the application for the license or card is true and correct.

17 (e) The social security number shall not be printed on  
18 the operator's license or state identification card and shall be  
19 used only (i) to furnish information to the United States Selective  
20 Service System under section 60-483, (ii) with the permission of  
21 the director in connection with the verification of the status of  
22 an individual's driving record in this state or any other state,  
23 (iii) for purposes of child support enforcement pursuant to section  
24 42-358.08 or 43-512.06, ~~or~~ (iv) to furnish information regarding  
25 an applicant for or holder of a commercial driver's license with

1 a hazardous materials endorsement to the Transportation Security  
2 Administration of the United States Department of Homeland Security  
3 or its agent, or (v) to furnish information to the Department of  
4 Revenue under section 5 of this act.

5 (f) (i) Each individual applying for an operator's license  
6 or a state identification card shall furnish proof of date of  
7 birth and identity with documents containing a photograph or with  
8 nonphoto identity documents which include his or her full legal  
9 name and date of birth. Such documents shall include, but not be  
10 limited to, any valid Nebraska operator's license or Nebraska state  
11 identification card, a valid operator's license or identification  
12 card from another state or jurisdiction of the United States, a  
13 certified birth certificate, a valid United States passport, or  
14 any other United States-based identification as approved by the  
15 director.

16 (ii) Any individual under the age of eighteen years  
17 applying for an operator's license or a state identification card  
18 shall provide a certified copy of his or her birth certificate  
19 or, if such individual is unable to provide a certified copy of  
20 his or her birth certificate, other reliable proof of his or her  
21 identity and age, as required in subdivision (2) (f) (i) of this  
22 section, accompanied by a certification signed by a parent or  
23 guardian explaining the inability to produce a copy of such birth  
24 certificate. The applicant also may be required to furnish proof  
25 to department personnel that the parent or guardian signing the

1 certification is in fact the parent or guardian of such applicant.

2 (iii) An applicant may present other documents as proof  
3 of identification and age designated by the director. Any documents  
4 accepted shall be recorded according to a written exceptions  
5 process established by the director.

6 Sec. 4. Section 66-719, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 66-719 (1) Any person who neglects or refuses to file the  
9 report or return due for any period or to pay the tax due for any  
10 period within the time prescribed for the filing of such report or  
11 return or for the payment of such tax under the motor fuel laws  
12 shall automatically accrue a penalty of fifty dollars.

13 (2) Any person who neglects or refuses to file the report  
14 or return due for any period or to pay the tax due for any period  
15 within ten days after the time prescribed for the filing of such  
16 report or return or the payment of such tax under the motor fuel  
17 laws shall, in addition to the penalty in subsection (1) of this  
18 section, be subject to the larger of:

19 (a) A penalty of one hundred dollars; or

20 (b) A penalty of ten percent of the tax not paid.

21 (3) (a) Notwithstanding anything in subsection (1) or (2)  
22 of this section to the contrary, no penalty shall be imposed upon  
23 any person who voluntarily reports an underpayment of tax by filing  
24 an amended return and paying such tax if such amended return is  
25 filed and payment is made within thirty days after the date such

1 tax was due.

2 (b) Except as provided in subsection (8) of this section,  
3 interest shall not be waived on any additional tax due as reported  
4 on any amended return, and such interest shall be computed from the  
5 date such tax was due.

6 (4) Any person who neglects or refuses to report and pay  
7 motor fuel tax on methanol, naphtha, benzine, benzol, kerosene,  
8 or any other volatile, flammable, or combustible liquid that is  
9 blended with motor vehicle fuel or undyed diesel fuel shall be  
10 subject to a penalty equal to one hundred percent of the tax not  
11 paid or one thousand dollars, whichever is larger. Such penalty  
12 shall be in addition to the motor fuel tax due and all other  
13 penalties provided by law.

14 (5) If any person knowingly files a false report or  
15 return, the penalty shall be equal to one hundred percent of the  
16 tax not paid or one thousand dollars, whichever is larger, which  
17 penalty shall be in addition to all other penalties provided by  
18 law.

19 (6) Any person who knowingly conducts any activities  
20 requiring a license or permit under the motor fuel laws without  
21 a license or permit or after a license or permit has been  
22 surrendered, suspended, or canceled shall automatically accrue a  
23 penalty of one hundred dollars per day for each day such violation  
24 continues.

25 (7) The department may in its discretion waive all or

1 any portion of the penalties incurred upon sufficient showing  
2 by the taxpayer that the failure to file or pay is not due  
3 to negligence, intentional disregard of the law, rules, or  
4 regulations, intentional evasion of the tax, or fraud committed  
5 with intent to evade the tax or that such penalties should  
6 otherwise be waived.

7 ~~(8)(a)~~ (8) The department may in its discretion waive any  
8 and all interest incurred upon sufficient showing by the taxpayer  
9 that such interest should be waived.

10 ~~(b) Interest may only be waived if:~~

11 ~~(i) Interest is due to an error or unreasonable delay by~~  
12 ~~the department;~~

13 ~~(ii) Interest is due to erroneous written advice by the~~  
14 ~~department when the advice was a direct response to a written~~  
15 ~~request for advice from the taxpayer and the taxpayer reasonably~~  
16 ~~relied upon the advice; or~~

17 ~~(iii) Interest is due because of an amount erroneously~~  
18 ~~refunded if the taxpayer did not request the refund and the refund~~  
19 ~~was not caused by information provided by the taxpayer.~~

20 (9) All penalties collected by the department under this  
21 section shall be remitted to the State Treasurer for credit to the  
22 Highway Trust Fund.

23 Sec. 5. In order to assist the Department of Revenue in  
24 carrying out its duties, the Department of Motor Vehicles shall  
25 provide information about individuals holding an operator's or

1 driver's license or a state identification card under the Motor  
2 Vehicle Operator's License Act to the Department of Revenue in a  
3 manner agreed to by the Department of Revenue and the Department of  
4 Motor Vehicles. The information shall include:

5 (1) The individual's name;

6 (2) The individual's address of record;

7 (3) The individual's social security number, if available  
8 and permissible under law, and the individual's date of birth;

9 (4) The type of license, permit, or card held;

10 (5) The issuance date of the license, permit, or card;

11 (6) The expiration date of the license, permit, or card;

12 and

13 (7) The status of the license, permit, or card.

14 The Department of Revenue may enter into agreements with  
15 the Director of Motor Vehicles to carry out this section.

16 Sec. 6. (1) The Department of Revenue and the Department  
17 of Labor shall prepare, maintain, and publish a list of delinquent  
18 taxpayers who owe taxes or fees, including interest, penalties,  
19 and costs, in excess of twenty thousand dollars for which a  
20 notice of lien has been filed with the appropriate filing officer  
21 in accordance with the Uniform State Tax Lien Registration and  
22 Enforcement Act, except that no such list of delinquent taxpayers  
23 shall include any taxpayer that has not exhausted or waived all  
24 rights of appeal from a final balance of tax liability. The list  
25 may be posted on the web site of the Department of Revenue or the



1 Department of Labor. The list shall include the name and address of  
2 the delinquent taxpayer, the type of tax or fee due, and the amount  
3 of tax or fee due, including interest, penalties, and costs.

4 (2) The Tax Commissioner and Commissioner of Labor shall  
5 update the list of delinquent taxpayers on a quarterly basis. The  
6 list shall not include (a) the name or related information of any  
7 taxpayer who has entered into a payment agreement with the Tax  
8 Commissioner or Commissioner of Labor and who is in compliance with  
9 that agreement or (b) the name or related information of any person  
10 who is protected by a stay that is in effect under the federal  
11 bankruptcy law. The name of a taxpayer shall be removed from the  
12 list within fifteen days after the payment in full of the debt  
13 or within fifteen days after the taxpayer enters into a payment  
14 agreement with the Tax Commissioner or Commissioner of Labor. A  
15 taxpayer may be placed back on the list if the taxpayer is more  
16 than fifteen days delinquent on a payment agreement.

17 (3) At least thirty days before the disclosure of the  
18 name of a delinquent taxpayer pursuant to subsection (1) of this  
19 section, the Tax Commissioner or Commissioner of Labor shall mail  
20 a written notice to the delinquent taxpayer at the taxpayer's  
21 last-known address informing the taxpayer that the failure to cure  
22 the tax delinquency could result in the taxpayer's name being  
23 included in a list of delinquent taxpayers that is published by the  
24 Tax Commissioner or Commissioner of Labor pursuant to this section.

25 Sec. 7. Section 77-1784, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-1784 (1) The Tax Commissioner may accept electronic  
3 filing of applications, returns, and any other document required to  
4 be filed with the Tax Commissioner.

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

9           (3) The Tax Commissioner may adopt rules and regulations  
10 to establish the criteria for acceptability of filing documents  
11 and making payments electronically. The criteria may include  
12 requirements for electronic signatures, the type of tax for  
13 which electronic filings or payments will be accepted, the method  
14 of transfer, or minimum amounts which may be transferred. The  
15 Tax Commissioner may refuse to accept any electronic filings or  
16 payments that do not meet the criteria established.

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

1 the first electronic payment is required to be made.

2 (5) Any Except for individual income tax payments  
3 required under section 77-2715 and estimated payments for  
4 individuals under section 77-2769, any person who fails to make a  
5 required payment by electronic fund transfer shall be subject to a  
6 penalty of one hundred dollars for each required payment that was  
7 not made by electronic fund transfer. The penalty provided by this  
8 section shall be in addition to all other penalties and applies  
9 even if payment by some other method is timely made. The Tax  
10 Commissioner may waive the penalty provided in this section upon a  
11 showing of good cause.

12 (6) The use of electronic filing of documents and  
13 electronic fund transfers shall not change the rights of any  
14 party from the rights such party would have if a different method  
15 of filing or payment were used. Until criteria for electronic  
16 signatures are adopted under subsection (3) of this section, the  
17 document produced during the electronic filing of a taxpayer's  
18 information with the state shall be prima facie evidence for all  
19 purposes that the taxpayer's signature accompanied the taxpayer's  
20 information in the electronic transmission.

21 (7) For tax returns due on or after January 1, 2010,  
22 the Tax Commissioner may require any person that aids, procures,  
23 advises, or assists in the preparation of and files any tax return  
24 on behalf of any taxpayer for profit to file an electronic return  
25 if the person filed twenty-five or more tax returns in the prior

1 calendar year. The requirement to require electronic filing may be  
2 phased in as deemed necessary by the Tax Commissioner.

3 Any person that files a tax return on behalf of a  
4 taxpayer must disclose in writing to the taxpayer that the return  
5 will be filed in an electronic format and in accordance with rules  
6 and regulations prescribed by the Tax Commissioner.

7 (8) Any person who fails to file an electronic return  
8 as required under subsection (7) of this section shall be subject  
9 to a penalty of one hundred dollars for each return that was not  
10 properly filed in addition to other penalties provided by law. The  
11 Tax Commissioner may waive the penalty provided in this section  
12 upon a showing of good cause.

13 (9) The Legislature hereby finds and determines that the  
14 development of a comprehensive electronic filing and payment system  
15 for all state tax programs and fees administered by the Department  
16 of Revenue is of critical importance to the State of Nebraska.  
17 It is the intent of the Legislature that the department implement  
18 a mandatory electronic filing system for all state tax programs  
19 and fees administered by the department as deemed practicable and  
20 necessary for the proper administration of the Nebraska Revenue Act  
21 of 1967. It is the intent of the Legislature that the department  
22 require the use of electronic fund transfers for any taxes, fees,  
23 or amounts required to be paid to or collected by the department as  
24 deemed practicable and necessary for the proper administration of  
25 the Nebraska Revenue Act of 1967.

1           Sec. 8. Section 77-2701.38, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2701.38 Streamlined sales and use tax agreement means  
4 the streamlined sales and use tax agreement approved by the  
5 implementing states on November 12, 2002, including amendments  
6 ratified by the Legislature pursuant to section 77-2712.03.

7           Sec. 9. Section 77-2711, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           77-2711 (1)(a) The Tax Commissioner shall enforce  
10 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and  
11 enforce rules and regulations relating to the administration and  
12 enforcement of such sections.

13           (b) The Tax Commissioner may prescribe the extent to  
14 which any ruling or regulation shall be applied without retroactive  
15 effect.

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

22           (3)(a) Every seller, every retailer, and every person  
23 storing, using, or otherwise consuming in this state property  
24 purchased from a retailer shall keep such records, receipts,  
25 invoices, and other pertinent papers in such form as the Tax

1 Commissioner may reasonably require.

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

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

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

25 (6) In administration of the use tax, the Tax

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

9 (7) It shall be a Class I misdemeanor for the Tax  
10 Commissioner or any official or employee of the Tax Commissioner,  
11 the State Treasurer, or the Department of Administrative Services  
12 to make known in any manner whatever the business affairs,  
13 operations, or information obtained by an investigation of records  
14 and activities of any retailer or any other person visited  
15 or examined in the discharge of official duty or the amount  
16 or source of income, profits, losses, expenditures, or any  
17 particular thereof, set forth or disclosed in any return, or  
18 to permit any return or copy thereof, or any book containing  
19 any abstract or particulars thereof to be seen or examined by  
20 any person not connected with the Tax Commissioner. Nothing in  
21 this section shall be construed to prohibit (a) the delivery to  
22 a taxpayer, his or her duly authorized representative, or his  
23 or her successors, receivers, trustees, executors, administrators,  
24 assignees, or guarantors, if directly interested, of a certified  
25 copy of any return or report in connection with his or her tax,

1 (b) the publication of statistics so classified as to prevent  
2 the identification of particular reports or returns and the items  
3 thereof, (c) the inspection by the Attorney General, other legal  
4 representative of the state, or county attorney of the reports  
5 or returns of any taxpayer when either (i) information on the  
6 reports or returns is considered by the Attorney General to be  
7 relevant to any action or proceeding instituted by the taxpayer  
8 or against whom an action or proceeding is being considered or  
9 has been commenced by any state agency or the county or (ii) the  
10 taxpayer has instituted an action to review the tax based thereon  
11 or an action or proceeding against the taxpayer for collection of  
12 tax or failure to comply with the Nebraska Revenue Act of 1967 is  
13 being considered or has been commenced, (d) the furnishing of any  
14 information to the United States Government or to states allowing  
15 similar privileges to the Tax Commissioner, (e) the disclosure of  
16 information and records to a collection agency contracting with the  
17 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)  
18 the disclosure to another party to a transaction of information  
19 and records concerning the transaction between the taxpayer and  
20 the other party, ~~or~~ (g) the disclosure of information pursuant to  
21 section 77-27,195 or 77-5731, or (h) the disclosure of information  
22 to the Department of Labor necessary for the administration of the  
23 Employment Security Law or the Contractor Registration Act.

24 (8) Notwithstanding the provisions of subsection (7) of  
25 this section, the Tax Commissioner may permit the Postal Inspector



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

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

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

25 The information provided by the Tax Commissioner shall

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

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

20           (b) No employee of the Auditor of Public Accounts or  
21 Legislative Performance Audit Section shall disclose to any person,  
22 other than another Auditor of Public Accounts or Legislative  
23 Performance Audit Section employee whose official duties require  
24 such disclosure or as provided in subsections (2) and (3) of  
25 section 50-1213, any return or return information described in the

1 Nebraska Revenue Act of 1967 in a form which can be associated  
2 with or otherwise identify, directly or indirectly, a particular  
3 taxpayer.

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

8 (12) For purposes of this subsection and subsection (11)  
9 of this section:

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

12 (b) Return information means:

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

24 (ii) Any part of any written determination or any  
25 background file document relating to such written determination;

1 and

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

9 (13) Notwithstanding the provisions of subsection (7) of  
10 this section, the Tax Commissioner shall, upon request, provide any  
11 municipality which has adopted the local option sales tax under the  
12 Local Option Revenue Act with a list of the names and addresses  
13 of the retailers which have collected the local option sales tax  
14 for the municipality. The request may be made annually and shall  
15 be submitted to the Tax Commissioner on or before June 30 of  
16 each year. The information provided by the Tax Commissioner shall  
17 indicate only the names and addresses of the retailers. The Tax  
18 Commissioner may provide additional information to a municipality  
19 so long as the information does not include any data detailing  
20 the specific revenue, expenses, or operations of any particular  
21 business.

22 (14) In all proceedings under the Nebraska Revenue Act  
23 of 1967, the Tax Commissioner may act for and on behalf of the  
24 people of the State of Nebraska. The Tax Commissioner in his or her  
25 discretion may waive all or part of any penalties provided by the

1 provisions of such act or interest on delinquent taxes specified in  
2 section 45-104.02, as such rate may from time to time be adjusted.

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

8 (b) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

1 identifiable information.

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

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

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

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

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

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

25 (ii) Provide records pursuant to the federal Freedom of

1 Information Act, disclosure laws with governmental agencies, or  
2 other regulations;

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

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

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

10 Sec. 10. Section 77-2712.03, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 77-2712.03 (1) The streamlined sales and use tax  
13 agreement, as adopted by the streamlined sales tax implementing  
14 states on November 12, 2002, including amendments through December  
15 ~~14, 2006,~~ 31, 2009, is hereby ratified by the Legislature. The  
16 Governor shall enter into the agreement with one or more states  
17 to simplify and modernize sales and use tax administration in  
18 order to substantially reduce the burden of tax compliance for  
19 all sellers and for all types of commerce. In furtherance of  
20 the agreement, the Department of Revenue is authorized to act  
21 jointly with other states that are members under Articles VII or  
22 VIII of the agreement to establish standards for certification  
23 of a certified service provider and certified automated system  
24 and establish performance standards for multistate sellers. The  
25 department is further authorized to take other actions permissible



1 under law reasonably required to implement the provisions set forth  
2 in the agreement. Other actions authorized by this section include,  
3 but are not limited to, the adoption and promulgation of rules and  
4 regulations and the joint procurement, with other member states, of  
5 goods and services in furtherance of the agreement.

6 (2) The Tax Commissioner or his or her designee and two  
7 representatives of the Legislature appointed by the Executive Board  
8 of the Legislative Council are authorized to represent Nebraska  
9 before the other member states under the agreement. The state  
10 also agrees to participate in and comply with the procedures of  
11 and decisions made by the governing board of the member states.  
12 These provisions of the agreement include the creation of the  
13 organization as provided in Article VII of the agreement, the  
14 requirements for state entry and withdrawal as provided in Article  
15 VIII of the agreement, amendments to the agreement as provided in  
16 Article IX of the agreement, and a dispute resolution process as  
17 provided in Article X of the agreement.

18 Sec. 11. Section 77-2756, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-2756 (1) Except as provided in subsection (2) of this  
21 section, every employer or payor required to deduct and withhold  
22 income tax under the Nebraska Revenue Act of 1967 shall, for each  
23 calendar quarter, on or before the last day of the month following  
24 the close of such calendar quarter, file a withholding return  
25 as prescribed by the Tax Commissioner and pay over to the Tax

1 Commissioner or to a depository designated by the Tax Commissioner  
2 the taxes so required to be deducted and withheld in such form  
3 and content as the Tax Commissioner may prescribe and containing  
4 such information as the Tax Commissioner deems necessary for the  
5 proper administration of the Nebraska Revenue Act of 1967. When  
6 the aggregate amount required to be deducted and withheld by any  
7 employer or payor for either the first or second month of a  
8 calendar quarter exceeds five hundred dollars, the employer or  
9 payor shall, by the fifteenth day of the succeeding month, pay over  
10 such aggregate amount to the Tax Commissioner or to a depository  
11 designated by the Tax Commissioner. The amount so paid shall be  
12 allowed as a credit against the liability shown on the employer's  
13 or payor's quarterly withholding return required by this section.  
14 The Tax Commissioner may, by rule and regulation, provide for the  
15 filing of returns and the payment of the tax deducted and withheld  
16 on other than a quarterly basis.

17 (2) When the aggregate amount required to be deducted  
18 and withheld by any employer or payor for the entire calendar year  
19 is less than five hundred dollars or the employer or payor is  
20 allowed to file federal withholding returns annually, the employer  
21 or payor shall, for each calendar year, on or before the last day  
22 of the month following the close of such calendar year, file a  
23 withholding return as prescribed by the Tax Commissioner and pay  
24 over to the Tax Commissioner or to a depository designated by the  
25 Tax Commissioner the taxes so required to be deducted and withheld

1 in such form and content as the Tax Commissioner may prescribe and  
2 containing such information as the Tax Commissioner deems necessary  
3 for the proper administration of the Nebraska Revenue Act of 1967.

4 The employer or payor may elect or the Tax Commissioner may require  
5 the filing of returns and the payment of taxes on a quarterly  
6 basis.

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

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

1           (5) The employer or payor shall also file on or before  
2 ~~March 15~~ February 1 of the succeeding year a copy of each statement  
3 furnished by such employer or payor to each employee or payee  
4 with respect to taxes withheld on wages or payments subject to  
5 withholding. Any employer, payor, or agent who furnished more than  
6 ~~two hundred~~ fifty statements for a year shall file the required  
7 copies electronically in a manner approved by the Tax Commissioner  
8 that is compatible with federal electronic filing requirements or  
9 methods.

10           Sec. 12. Section 77-2789, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           77-2789 (1) In case of failure to file any income tax  
13 return required under the provisions of the Nebraska Revenue Act of  
14 1967 on the date prescribed therefor, determined with regard to any  
15 extension of time for filing, unless it is shown that such failure  
16 is the result of reasonable cause and not the result of willful  
17 neglect, the Tax Commissioner may add to the amount required to be  
18 shown as tax on such return, five percent of the amount of such tax  
19 if the failure is for not more than one month, with an additional  
20 five percent for each additional month or fraction thereof during  
21 which such failure continues, not exceeding twenty-five percent  
22 in the aggregate. For purposes of this section, the amount of  
23 tax required to be shown on the return shall be reduced by the  
24 amount of any part of the tax which is paid on or before the date  
25 prescribed for payment of the tax and by the amount of any credit

1 against the tax which may be claimed upon the return.

2 (2) In case of each failure to file a statement of  
3 payment to another person, including the duplicate statement of  
4 tax withheld on wages, on the date prescribed therefor, determined  
5 with regard to any extension of time for filing, unless it is  
6 shown that such failure is the result of reasonable cause and not  
7 willful neglect, the Tax Commissioner may assess a penalty against  
8 the person so failing to file the statement, in the amount of  
9 two dollars for each statement not so filed but the total amount  
10 imposed on the delinquent person for all such failure during any  
11 calendar year shall not exceed two thousand dollars.

12 (3) In case of failure to file any return for income tax  
13 withheld on the date prescribed therefor, determined with regard  
14 to any extension of time to file, the Tax Commissioner may add to  
15 the amount required to be shown as tax on such return twenty-five  
16 dollars or the amount determined under subsection (1) of this  
17 section, whichever is greater.

18 (4) All determinations made by the Tax Commissioner under  
19 subsection (3) of this section are due and payable at the time they  
20 become final. If they are not paid when final, a penalty of ten  
21 percent of the total amount due, exclusive of interest and other  
22 penalties, shall be added to the total amount due.

23 Sec. 13. Section 77-2790, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 77-2790 (1)(a) If any part of a deficiency is the result

1 of negligence or intentional disregard of rules and regulations but  
2 without intent to defraud, the Tax Commissioner may add to the tax  
3 an amount equal to five percent of the deficiency.

4 (b) If any part of a requested refund is overstated  
5 as a result of negligence, material misstatement, or intentional  
6 disregard of rules and regulations but without intent to defraud,  
7 the Tax Commissioner may add to the tax an amount equal to five  
8 percent of the overstatement of the refund.

9 (2)(a) If any part of a deficiency is the result of  
10 fraud, the Tax Commissioner may add to the tax an amount equal to  
11 fifty percent of the deficiency. This amount shall be in lieu of  
12 any amount determined under subsection (1) of this section.

13 (b) If any part of a requested refund is overstated as a  
14 result of fraud, the Tax Commissioner may add to the tax an amount  
15 equal to fifty percent of the overstatement of the refund. This  
16 amount shall be in lieu of any amount determined under subsection  
17 (1) of this section.

18 (3) If any taxpayer fails to pay all or any part of an  
19 installment of any tax due, he or she shall be deemed to have  
20 made an underpayment of estimated tax. The Tax Commissioner shall  
21 determine the amount of underpayment of estimated tax in accordance  
22 with the laws of the United States.

23 (4) If any taxpayer, with intent to evade or defeat any  
24 income tax imposed by the Nebraska Revenue Act of 1967 or the  
25 payment thereof, claims an excessive number of exemptions or in any

1 other manner overstates the amount of withholding, he or she shall  
2 be guilty of a Class II misdemeanor. If any employer or payor,  
3 without intent to evade or defeat any income tax imposed by the  
4 Nebraska Revenue Act of 1967 or the payment thereof, fails to make  
5 a return and pay a tax withheld by him or her at the time required  
6 by or under the act, such employer or payor shall be liable for  
7 such taxes and shall pay the same together with interest thereon  
8 and any addition to tax assessed pursuant to subsection (1) of this  
9 section. Such interest and addition to tax shall not be charged to  
10 or collected from the employee or payee by the employer or payor.  
11 The Tax Commissioner shall have the same rights and powers for  
12 the collection of such tax, interest, and addition to tax against  
13 such employer or payor as are now prescribed by the act for the  
14 collection of income tax against a taxpayer.

15 (5) If any person required to collect, withhold,  
16 truthfully account for, and pay over the income tax imposed by  
17 the Nebraska Revenue Act of 1967 willfully fails to collect or  
18 withhold such tax or truthfully account for and pay over such tax  
19 or willfully attempts in any manner to evade or defeat the tax or  
20 the payment thereof, the Tax Commissioner may, in addition to other  
21 penalties provided by law, impose, assess, and collect a penalty  
22 equal to the total amount of the tax evaded, not collected, not  
23 withheld, or not accounted for and paid over. No addition to tax  
24 under subsection (1) or (2) of this section shall be imposed for  
25 any offense to which this subsection applies.

1           (6) If any person with fraudulent intent fails to pay,  
2 or to deduct or withhold and pay, any income tax, to make, render,  
3 sign, or certify any return of estimated tax, or to supply any  
4 information within the time required, the Tax Commissioner may  
5 impose, assess, and collect a penalty of not more than one thousand  
6 dollars, in addition to any other amounts required under the income  
7 tax provisions of the Nebraska Revenue Act of 1967.

8           (7) If any person for frivolous or groundless reasons  
9 or with the intent to delay or impede the administration of the  
10 Nebraska Revenue Act of 1967 (a) fails to pay over any tax due  
11 and owing under such act, (b) fails to file any return required  
12 under such act, or (c) files what purports to be a return but which  
13 does not contain sufficient information from which to determine  
14 the correctness of the self-assessment of tax or which contains  
15 information that indicates that the self-assessment of tax is  
16 substantially incorrect, such person shall pay a penalty of five  
17 hundred dollars for each occurrence. The penalty provided by this  
18 subsection shall be in addition to any other penalties provided by  
19 law.

20           (8) Any person who aids, procures, advises, or assists  
21 in the preparation of any return, affidavit, refund claim, or  
22 other document with the knowledge that its use will result in the  
23 material understatement of the tax liability of another person or  
24 the material overstatement of the amount of a refund of another  
25 person shall, in addition to other penalties provided by law, pay



1 a penalty of one thousand dollars with respect to each separate  
2 return or other document.

3 (a) For the purposes of this subsection, a person  
4 furnishing typing, reproducing, or other mechanical assistance  
5 shall not be treated as having aided or assisted in the preparation  
6 of such document.

7 (b) A determination of a material deficiency shall not  
8 be sufficient to show that a person has aided or assisted in a  
9 material understatement of the tax liability of another person.

10 (c) The penalty in this subsection shall not be imposed  
11 more than once on any person for having aided or assisted in the  
12 preparation of documents for the same taxpayer, the same tax, and  
13 the same tax period regardless of the number of documents involved.

14 (d) Such penalty shall apply whether or not the  
15 understatement is with the consent of the person authorized to  
16 present the return, affidavit, refund claim, or other document.

17 (9) The additions to the income tax and penalties  
18 relating thereto provided by the Nebraska Revenue Act of 1967  
19 shall be paid upon notice and demand and shall be assessed,  
20 collected, and paid in the same manner as taxes, and any reference  
21 in such act to income tax or the tax imposed by the act shall be  
22 deemed also to refer to additions to the tax and penalties provided  
23 by this section. For purposes of the deficiency procedures provided  
24 in section 77-2776, this subsection shall not apply to:

25 (a) Any addition to tax under subsection (1) or (4)

1 of section 77-2789 except as to that portion attributable to a  
2 deficiency;

3 (b) Any addition to tax for underpayment of estimated tax  
4 as provided in subsection (3) of this section; or

5 (c) Any additional penalty under subsection (6), (7), or  
6 (8) of this section.

7 (10) For purposes of subsections (1) and (2) of this  
8 section relating to deficiencies resulting from negligence or  
9 fraud, the amount shown as the tax by the taxpayer upon his or her  
10 return shall be taken into account in determining the amount of the  
11 deficiency only if such return was filed on or before the last day  
12 prescribed for the filing of such return determined with regard to  
13 any extension of time for such filing.

14 (11) For purposes of subsections (5) and (6) of this  
15 section, the term person shall include an individual, corporation,  
16 partnership, or limited liability company, or an officer or  
17 employee of any corporation, including a dissolved corporation,  
18 or a member or employee of any partnership or limited liability  
19 company, who as such officer, employee, or member is under a duty  
20 to perform the act in respect of which the violation occurs.

21 (12) If any person fails to comply with the reporting or  
22 filing requirements of sections 77-2772, 77-2775, and 77-2786 or  
23 the rules and regulations adopted and promulgated thereunder, the  
24 Tax Commissioner may impose, assess, and collect a penalty against  
25 such person for each instance of noncompliance of twenty-five

1 percent of the tax due. Such amount shall be in addition to any  
2 other penalty, tax, or interest otherwise imposed by law for such  
3 noncompliance.

4 (13) If any nonresident individual provides false  
5 information or statements to an employer or payor regarding the  
6 portion of his or her wages or payments that are subject to  
7 withholding for this state which if used would result in the  
8 amount withheld being less than seventy-five percent of his or  
9 her income tax liability on such wages or payments or if any  
10 employer or payor uses such information when the employer or payor  
11 knows such information is false or maintains records which show  
12 such information is false, the Tax Commissioner may, in addition  
13 to other penalties provided by law, impose, assess, and collect  
14 from such individual, payor, or employer the penalties provided in  
15 subsections (5) and (6) of this section.

16 (14) If any employer or payor employing twenty-five or  
17 more employees who is required to withhold and pay over income  
18 tax imposed by the Nebraska Revenue Act of 1967 fails to either  
19 (a) withhold at least one and one-half percent of the wages of  
20 any employee or (b) obtain satisfactory evidence from the employee  
21 justifying a lower withholding amount as required by subdivision  
22 (1)(b) of section 77-2753, the Tax Commissioner may impose, assess,  
23 and collect a penalty of not more than one thousand dollars per  
24 violation.

25 Sec. 14. Section 77-2794, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-2794 (1) Under regulations prescribed by the Tax  
3 Commissioner interest shall be allowed and paid at the rate  
4 specified in section 45-104.02, as such rate may from time to time  
5 be adjusted, upon any overpayment in respect to the income tax  
6 imposed by the Nebraska Revenue Act of 1967.

7           (2) For purposes of this section:

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

10           (b) Any return filed before the last day prescribed for  
11 the filing thereof, determined without regard to any extension of  
12 time to file the return, shall be considered as filed on such last  
13 day;

14           (c) Any tax paid by the taxpayer before the last day  
15 prescribed for its payment, any income tax withheld from the  
16 taxpayer during any calendar year, and any amount paid by the  
17 taxpayer as estimated income tax for a taxable year shall be deemed  
18 to have been paid on the last day prescribed for filing the return  
19 for the taxable year to which such amount constitutes a credit or  
20 payment, determined without regard to any extension of time granted  
21 the taxpayer;

22           (d) If at the time an overpayment is to be refunded,  
23 the taxpayer also has a reported underpayment of the same tax  
24 in another year: (i) If the overpayment is for a taxable year  
25 ending before the year of underpayment, the overpayment shall be

1 applied to reduce such underpayment as of the last day prescribed  
2 for filing the original return of such tax for the year of  
3 underpayment; (ii) if the overpayment is for a taxable year ending  
4 after the year of underpayment, the overpayment shall be applied to  
5 reduce such underpayment as of the last day prescribed for filing  
6 the original return of such tax for the year of overpayment; or  
7 (iii) if the overpayment is one for which interest is not allowed  
8 under this section, the overpayment shall be applied as of the  
9 date of the filing of the claim for refund; and interest shall be  
10 allowed for any remaining overpayment as provided in subdivision  
11 (a) of this subsection;

12 (e) The period of overpayment during which interest  
13 shall be allowed shall not include any period during which the  
14 overpayment continued due to the unreasonable delay by the taxpayer  
15 in filing the claim for refund. For this purpose, the burden of  
16 proof shall be on the taxpayer to show that a delay of more than  
17 ninety days after all of the facts required to prepare a correct  
18 claim for refund are available is not unreasonable; and

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

24 ~~(3)~~ If (3)(a) Except as provided in subdivision (b) of  
25 this subsection, if any overpayment of income tax imposed by the

1 Nebraska Revenue Act of 1967 is refunded within ninety days after  
2 the last date prescribed, or permitted by extension of time, for  
3 filing the return of such tax or within ninety days after any  
4 original return, and any amended return filed to carry back a loss,  
5 was filed, whichever is later, no interest shall be allowed under  
6 this section on overpayment.

7 (b) If the Tax Commissioner approves and implements an  
8 electronic form or method for filing the return and the return is  
9 not filed electronically, no interest shall be allowed under this  
10 section on overpayment.

11 (c) In the case of amended returns filed for any reason  
12 other than to carry back a loss, interest shall be allowed as  
13 provided in subsection (1) of this section.

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

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

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

25 77-27,100 The action authorized in section 77-2798 shall

1 be filed within three years from the last date prescribed for  
2 filing the return or within one year from the date the tax was  
3 paid, or within ~~sixty~~ thirty days after the denial of a claim for  
4 refund by the Tax Commissioner.

5           Sec. 17. Section 77-27,119, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           77-27,119 (1) The Tax Commissioner shall administer and  
8 enforce the income tax imposed by sections 77-2714 to 77-27,135,  
9 and he or she is authorized to conduct hearings, to adopt and  
10 promulgate such rules and regulations, and to require such facts  
11 and information to be reported as he or she may deem necessary to  
12 enforce the income tax provisions of such sections, except that  
13 such rules, regulations, and reports shall not be inconsistent with  
14 the laws of this state or the laws of the United States. The Tax  
15 Commissioner may for enforcement and administrative purposes divide  
16 the state into a reasonable number of districts in which branch  
17 offices may be maintained.

18           (2)(a) The Tax Commissioner may prescribe the form and  
19 contents of any return or other document required to be filed under  
20 the income tax provisions. Such return or other document shall  
21 be compatible as to form and content with the return or document  
22 required by the laws of the United States. The form shall have a  
23 place where the taxpayer shall designate the high school district  
24 in which he or she lives and the county in which the high school  
25 district is headquartered. The Tax Commissioner shall adopt and

1 promulgate such rules and regulations as may be necessary to insure  
2 compliance with this requirement.

3 (b) The State Department of Education, with the  
4 assistance and cooperation of the Department of Revenue, shall  
5 develop a uniform system for numbering all school districts in the  
6 state. Such system shall be consistent with the data processing  
7 needs of the Department of Revenue and shall be used for the  
8 school district identification required by subdivision (a) of this  
9 subsection.

10 (c) The proper filing of an income tax return shall  
11 consist of the submission of such form as prescribed by the  
12 Tax Commissioner or an exact facsimile thereof with sufficient  
13 information provided by the taxpayer on the face of the form from  
14 which to compute the actual tax liability. Each taxpayer shall  
15 include such taxpayer's correct social security number or state  
16 identification number and the school district identification number  
17 of the school district in which the taxpayer resides on the face of  
18 the form. A filing is deemed to occur when the required information  
19 is provided.

20 (3) The Tax Commissioner, for the purpose of ascertaining  
21 the correctness of any return or other document required to  
22 be filed under the income tax provisions, for the purpose of  
23 determining corporate income, individual income, and withholding  
24 tax due, or for the purpose of making an estimate of taxable income  
25 of any person, shall have the power to examine or to cause to have



1 examined, by any agent or representative designated by him or her  
2 for that purpose, any books, papers, records, or memoranda bearing  
3 upon such matters and may by summons require the attendance of  
4 the person responsible for rendering such return or other document  
5 or remitting any tax, or any officer or employee of such person,  
6 or the attendance of any other person having knowledge in the  
7 premises, and may take testimony and require proof material for his  
8 or her information, with power to administer oaths or affirmations  
9 to such person or persons.

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

16 (5) No taxpayer shall be subjected to unreasonable or  
17 unnecessary examinations or investigations.

18 (6) Except in accordance with proper judicial order or  
19 as otherwise provided by law, it shall be unlawful for the Tax  
20 Commissioner, any officer or employee of the Tax Commissioner,  
21 any person engaged or retained by the Tax Commissioner on an  
22 independent contract basis, any person who pursuant to this section  
23 is permitted to inspect any report or return or to whom a copy, an  
24 abstract, or a portion of any report or return is furnished, any  
25 employee of the State Treasurer or the Department of Administrative

1 Services, or any other person to divulge, make known, or use in  
2 any manner the amount of income or any particulars set forth or  
3 disclosed in any report or return required except for the purpose  
4 of enforcing sections 77-2714 to 77-27,135. The officers charged  
5 with the custody of such reports and returns shall not be required  
6 to produce any of them or evidence of anything contained in them  
7 in any action or proceeding in any court, except on behalf of the  
8 Tax Commissioner in an action or proceeding under the provisions  
9 of the tax law to which he or she is a party or on behalf of  
10 any party to any action or proceeding under such sections when the  
11 reports or facts shown thereby are directly involved in such action  
12 or proceeding, in either of which events the court may require the  
13 production of, and may admit in evidence, so much of such reports  
14 or of the facts shown thereby as are pertinent to the action or  
15 proceeding and no more. Nothing in this section shall be construed  
16 (a) to prohibit the delivery to a taxpayer, his or her duly  
17 authorized representative, or his or her successors, receivers,  
18 trustees, personal representatives, administrators, assignees, or  
19 guarantors, if directly interested, of a certified copy of any  
20 return or report in connection with his or her tax, (b) to  
21 prohibit the publication of statistics so classified as to prevent  
22 the identification of particular reports or returns and the items  
23 thereof, (c) to prohibit the inspection by the Attorney General,  
24 other legal representatives of the state, or a county attorney of  
25 the report or return of any taxpayer who brings an action to review

1 the tax based thereon, against whom an action or proceeding for  
2 collection of tax has been instituted, or against whom an action,  
3 proceeding, or prosecution for failure to comply with the Nebraska  
4 Revenue Act of 1967 is being considered or has been commenced, (d)  
5 to prohibit furnishing to the Nebraska Workers' Compensation Court  
6 the names, addresses, and identification numbers of employers,  
7 and such information shall be furnished on request of the court,  
8 (e) to prohibit the disclosure of information and records to a  
9 collection agency contracting with the Tax Commissioner pursuant to  
10 sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of  
11 information pursuant to section 77-27,195, 77-4110, or 77-5731, (g)  
12 to prohibit the disclosure to the Public Employees Retirement Board  
13 of the addresses of individuals who are members of the retirement  
14 systems administered by the board, and such information shall be  
15 furnished to the board solely for purposes of its administration  
16 of the retirement systems upon written request, which request shall  
17 include the name and social security number of each individual  
18 for whom an address is requested, (h) to prohibit the disclosure  
19 of information to the Department of Labor necessary for the  
20 administration of the Employment Security Law or the Contractor  
21 Registration Act, to prohibit the disclosure to the Department  
22 of Labor of tax return information pertaining to individuals,  
23 corporations, and businesses determined by the Department of Labor  
24 to be delinquent in the payment of combined tax or in the repayment  
25 of benefit overpayments, and such disclosure shall be strictly

1 ~~limited to information necessary for the administration of the~~  
2 ~~Employment Security Law,~~ (i) to prohibit the disclosure to the  
3 Department of Motor Vehicles of tax return information pertaining  
4 to individuals, corporations, and businesses determined by the  
5 Department of Motor Vehicles to be delinquent in the payment of  
6 amounts due under agreements pursuant to the International Fuel  
7 Tax Agreement Act, and such disclosure shall be strictly limited  
8 to information necessary for the administration of the act, or (j)  
9 to prohibit the disclosure under section 42-358.08, 43-512.06, or  
10 43-3327 to any court-appointed individuals, the county attorney,  
11 any authorized attorney, or the Department of Health and Human  
12 Services of an absent parent's address, social security number,  
13 amount of income, health insurance information, and employer's  
14 name and address for the exclusive purpose of establishing and  
15 collecting child, spousal, or medical support. Information so  
16 obtained shall be used for no other purpose. Any person who  
17 violates this subsection shall be guilty of a felony and shall upon  
18 conviction thereof be fined not less than one hundred dollars nor  
19 more than five hundred dollars, or be imprisoned not more than five  
20 years, or be both so fined and imprisoned, in the discretion of  
21 the court and shall be assessed the costs of prosecution. If the  
22 offender is an officer or employee of the state, he or she shall be  
23 dismissed from office and be ineligible to hold any public office  
24 in this state for a period of two years thereafter.

25 (7) Reports and returns required to be filed under income

1 tax provisions of sections 77-2714 to 77-27,135 shall be preserved  
2 until the Tax Commissioner orders them to be destroyed.

3 (8) Notwithstanding the provisions of subsection (6) of  
4 this section, the Tax Commissioner may permit the Secretary of the  
5 Treasury of the United States or his or her delegates or the proper  
6 officer of any state imposing an income tax, or the authorized  
7 representative of either such officer, to inspect the income tax  
8 returns of any taxpayer or may furnish to such officer or his or  
9 her authorized representative an abstract of the return of income  
10 of any taxpayer or supply him or her with information concerning an  
11 item of income contained in any return or disclosed by the report  
12 of any investigation of the income or return of income of any  
13 taxpayer, but such permission shall be granted only if the statutes  
14 of the United States or of such other state, as the case may be,  
15 grant substantially similar privileges to the Tax Commissioner of  
16 this state as the officer charged with the administration of the  
17 income tax imposed by sections 77-2714 to 77-27,135.

18 (9) Notwithstanding the provisions of subsection (6) of  
19 this section, the Tax Commissioner may permit the Postal Inspector  
20 of the United States Postal Service or his or her delegates to  
21 inspect the reports or returns of any person filed pursuant to the  
22 Nebraska Revenue Act of 1967 when information on the reports or  
23 returns is relevant to any action or proceeding instituted or being  
24 considered by the United States Postal Service against such person  
25 for the fraudulent use of the mails to carry and deliver false and

1 fraudulent tax returns to the Tax Commissioner with the intent to  
2 defraud the State of Nebraska or to evade the payment of Nebraska  
3 state taxes.

4           (10)(a) Notwithstanding the provisions of subsection (6)  
5 of this section, the Tax Commissioner shall, upon written request  
6 by the Auditor of Public Accounts or the Legislative Performance  
7 Audit Committee, make tax returns and tax return information  
8 open to inspection by or disclosure to officers and employees  
9 of the Auditor of Public Accounts or Legislative Performance  
10 Audit Section employees for the purpose of and to the extent  
11 necessary in making an audit of the Department of Revenue pursuant  
12 to section 50-1205 or 84-304. The Auditor of Public Accounts  
13 or Legislative Performance Audit Section shall statistically and  
14 randomly select the tax returns and tax return information to  
15 be audited based upon a computer tape provided by the Department  
16 of Revenue which contains only total population documents without  
17 specific identification of taxpayers. The Tax Commissioner shall  
18 have the authority to approve the statistical sampling method used  
19 by the Auditor of Public Accounts or Legislative Performance Audit  
20 Section. Confidential tax returns and tax return information shall  
21 be audited only upon the premises of the Department of Revenue.  
22 All audit workpapers pertaining to the audit of the Department of  
23 Revenue shall be stored in a secure place in the Department of  
24 Revenue.

25           (b) No officer or employee of the Auditor of Public

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

9 (c) Any person who violates the provisions of this  
10 subsection shall be guilty of a Class IV felony and, in the  
11 discretion of the court, may be assessed the costs of prosecution.  
12 The guilty officer or employee shall be dismissed from employment  
13 and be ineligible to hold any position of employment with the State  
14 of Nebraska for a period of two years thereafter. For purposes of  
15 this subsection, officer or employee shall include a former officer  
16 or employee of the Auditor of Public Accounts or former Legislative  
17 Performance Audit Section employee.

18 (11) For purposes of subsections (10) through (13) of  
19 this section:

20 (a) Tax returns shall mean any tax or information return  
21 or claim for refund required by, provided for, or permitted  
22 under sections 77-2714 to 77-27,135 which is filed with the Tax  
23 Commissioner by, on behalf of, or with respect to any person  
24 and any amendment or supplement thereto, including supporting  
25 schedules, attachments, or lists which are supplemental to or part

1 of the filed return;

2 (b) Return information shall mean:

3 (i) A taxpayer's identification number and (A) the  
4 nature, source, or amount of his or her income, payments, receipts,  
5 deductions, exemptions, credits, assets, liabilities, net worth,  
6 tax liability, tax withheld, deficiencies, overassessments, or tax  
7 payments, whether the taxpayer's return was, is being, or will be  
8 examined or subject to other investigation or processing or (B) any  
9 other data received by, recorded by, prepared by, furnished to, or  
10 collected by the Tax Commissioner with respect to a return or the  
11 determination of the existence or possible existence of liability  
12 or the amount of liability of any person for any tax, penalty,  
13 interest, fine, forfeiture, or other imposition or offense; and

14 (ii) Any part of any written determination or any  
15 background file document relating to such written determination;  
16 and

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

19 (12) The Auditor of Public Accounts or the Legislative  
20 Auditor of the Legislative Performance Audit Section shall (a)  
21 notify the Tax Commissioner in writing thirty days prior to the  
22 beginning of an audit of his or her intent to conduct an audit, (b)  
23 provide an audit plan, and (c) provide a list of the tax returns  
24 and tax return information identified for inspection during the  
25 audit.



1                   (13) The Auditor of Public Accounts or the Legislative  
2 Performance Audit Section shall, as a condition for receiving tax  
3 returns and tax return information: (a) Subject employees involved  
4 in the audit to the same confidential information safeguards  
5 and disclosure procedures as required of Department of Revenue  
6 employees; (b) establish and maintain a permanent system of  
7 standardized records with respect to any request for tax returns  
8 or tax return information, the reason for such request, and the  
9 date of such request and any disclosure of the tax return or  
10 tax return information; (c) establish and maintain a secure area  
11 or place in the Department of Revenue in which the tax returns,  
12 tax return information, or audit workpapers shall be stored; (d)  
13 restrict access to the tax returns or tax return information only  
14 to persons whose duties or responsibilities require access; (e)  
15 provide such other safeguards as the Tax Commissioner determines  
16 to be necessary or appropriate to protect the confidentiality of  
17 the tax returns or tax return information; (f) provide a report  
18 to the Tax Commissioner which describes the procedures established  
19 and utilized by the Auditor of Public Accounts or Legislative  
20 Performance Audit Section for insuring the confidentiality of tax  
21 returns, tax return information, and audit workpapers; and (g) upon  
22 completion of use of such returns or tax return information, return  
23 to the Tax Commissioner such returns or tax return information,  
24 along with any copies.

25                   (14) The Tax Commissioner may permit other tax officials

1 of this state to inspect the tax returns and reports filed  
2 under sections 77-2714 to 77-27,135, but such inspection shall be  
3 permitted only for purposes of enforcing a tax law and only to  
4 the extent and under the conditions prescribed by the rules and  
5 regulations of the Tax Commissioner.

6 (15) The Tax Commissioner shall compile the school  
7 district information required by subsection (2) of this section.  
8 Insofar as it is possible, such compilation shall include, but  
9 not be limited to, the total adjusted gross income of each school  
10 district in the state. The Tax Commissioner shall adopt and  
11 promulgate such rules and regulations as may be necessary to insure  
12 that such compilation does not violate the confidentiality of any  
13 individual income tax return nor conflict with any other provisions  
14 of state or federal law.

15 Sec. 18. Section 77-5725, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 77-5725 (1) Applicants may qualify for benefits under the  
18 Nebraska Advantage Act in one of six tiers:

19 (a) Tier 1, investment in qualified property of at least  
20 one million dollars and the hiring of at least ten new employees.  
21 There shall be no new project applications for benefits under this  
22 tier filed after December 31, 2015, without further authorization  
23 of the Legislature. All complete project applications filed on  
24 or before December 31, 2015, shall be considered by the Tax  
25 Commissioner and approved if the project and taxpayer qualify

1 for benefits. Agreements may be executed with regard to completed  
2 project applications filed on or before December 31, 2015. All  
3 project agreements pending, approved, or entered into before such  
4 date shall continue in full force and effect;

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

8 (c) Tier 3, the hiring of at least thirty new employees.  
9 There shall be no new project applications for benefits under this  
10 tier filed after December 31, 2015, without further authorization  
11 of the Legislature. All complete project applications filed on  
12 or before December 31, 2015, shall be considered by the Tax  
13 Commissioner and approved if the project and taxpayer qualify  
14 for benefits. Agreements may be executed with regard to completed  
15 project applications filed on or before December 31, 2015. All  
16 project agreements pending, approved, or entered into before such  
17 date shall continue in full force and effect;

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

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

1           (f) Tier 6, investment in qualified property of at least  
2 ten million dollars and the hiring of at least seventy-five new  
3 employees or the investment in qualified property of at least  
4 one hundred million dollars and the hiring of at least fifty new  
5 employees. Agreements may be executed with regard to completed  
6 project applications filed before January 1, 2016. All project  
7 agreements pending, approved, or entered into before such date  
8 shall continue in full force and effect.

9           (2) When the taxpayer has met the required levels of  
10 employment and investment contained in the agreement for a tier 1,  
11 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be  
12 entitled to the following incentives:

13           (a) A refund of all sales and use taxes for a tier 2,  
14 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
15 sales and use taxes for a tier 1 project paid under the Local  
16 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections  
17 13-319, 13-324, and 13-2813 from the date of the application  
18 through the meeting of the required levels of employment and  
19 investment for all purchases, including rentals, of:

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

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

25           (iii) Tangible personal property by a contractor or

1 repairperson after appointment as a purchasing agent of the owner  
2 of the improvement to real estate that when such property is  
3 incorporated into real estate as a part of a project. The refund  
4 shall be based on fifty percent of the contract price, excluding  
5 any land, as the cost of materials subject to the sales and use  
6 tax; and

7 (iv) Tangible personal property by a contractor or  
8 repairperson after appointment as a purchasing agent of the ~~owner~~  
9 ~~of the improvement to real estate.~~ taxpayer when such property is  
10 annexed to, but not incorporated into, real estate as a part of a  
11 project. The refund shall be based on fifty percent of the contract  
12 price, excluding any land, as the cost of materials subject to the  
13 sales and use tax that were annexed to real estate; and

14 (v) Tangible personal property by a contractor or  
15 repairperson after appointment as a purchasing agent of the  
16 taxpayer when such property is both (A) incorporated into real  
17 estate as a part of a project and (B) annexed to, but not  
18 incorporated into, real estate as a part of a project. The refund  
19 shall be based on fifty percent of the contract price, excluding  
20 any land, as the cost of materials subject to the sales and use  
21 tax; and

22 (b) A refund of all sales and use taxes for a tier 2,  
23 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
24 sales and use taxes for a tier 1 project paid under the Local  
25 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections

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

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

24 (a) Average annual wage means the total compensation paid  
25 to employees during the year at the project who are not base-year

1 employees and who are paid wages equal to at least sixty percent  
2 of the Nebraska average weekly wage for the year of application,  
3 excluding any compensation in excess of one million dollars paid  
4 to any one employee during the year, divided by the number of  
5 equivalent employees making up such total compensation;

6 (b) Average wage of new employees means the average  
7 annual wage paid to employees during the year at the project who  
8 are not base-year employees and who are paid wages equal to at  
9 least sixty percent of the Nebraska average weekly wage for the  
10 year of application, excluding any compensation in excess of one  
11 million dollars paid to any one employee during the year; and

12 (c) Nebraska average annual wage means the Nebraska  
13 average weekly wage times fifty-two.

14 (4) Any taxpayer who qualifies for a tier 6 project shall  
15 be entitled to a credit equal to ten percent times the total  
16 compensation paid to all employees, other than base-year employees,  
17 excluding any compensation in excess of one million dollars paid to  
18 any one employee during the year, employed at the project.

19 (5) Any taxpayer who has met the required levels of  
20 employment and investment for a tier 2 or tier 4 project shall  
21 receive a credit equal to ten percent of the investment made in  
22 qualified property at the project. Any taxpayer who has met the  
23 required levels of investment and employment for a tier 1 project  
24 shall receive a credit equal to three percent of the investment  
25 made in qualified property at the project. Any taxpayer who has

1 met the required levels of investment and employment for a tier  
2 6 project shall receive a credit equal to fifteen percent of the  
3 investment made in qualified property at the project.

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

9 (7) The credit prescribed in subsection (5) of this  
10 section shall also be allowable during the first year of the  
11 entitlement period for investment in qualified property at the  
12 project after the date of the application and before the required  
13 levels of employment and investment were met.

14 (8)(a) A taxpayer who has met the required levels of  
15 employment and investment for a tier 4 or tier 6 project shall  
16 receive the incentive provided in this subsection. A taxpayer who  
17 has a project for an Internet web portal and who has met the  
18 required level of investment for a tier 5 project shall receive the  
19 incentive provided in this subsection for property in subdivision  
20 (8)(b)(ii) of this section. Such investment and hiring of new  
21 employees shall be considered a required level of investment and  
22 employment for this subsection and for the recapture of benefits  
23 under this subsection only.

24 (b) The following property used in connection with such  
25 project or projects and acquired by the taxpayer, whether by



1 lease or purchase, after the date the application was filed shall  
2 constitute separate classes of personal property:

3 (i) Turbine-powered aircraft, including turboprop,  
4 turbojet, and turbofan aircraft, except when any such aircraft is  
5 used for fundraising for or for the transportation of an elected  
6 official;

7 (ii) Computer systems, made up of equipment that is  
8 interconnected in order to enable the acquisition, storage,  
9 manipulation, management, movement, control, display, transmission,  
10 or reception of data involving computer software and hardware, used  
11 for business information processing which require environmental  
12 controls of temperature and power and which are capable of  
13 simultaneously supporting more than one transaction and more than  
14 one user. A computer system includes peripheral components which  
15 require environmental controls of temperature and power connected  
16 to such computer systems. Peripheral components shall be limited to  
17 additional memory units, tape drives, disk drives, power supplies,  
18 cooling units, data switches, and communication controllers;

19 (iii) Depreciable personal property used for a  
20 distribution facility, including, but not limited to, storage  
21 racks, conveyor mechanisms, forklifts, and other property used to  
22 store or move products;

23 (iv) Personal property which is business equipment  
24 located in a single project if the business equipment is involved  
25 directly in the manufacture or processing of agricultural products;

1 and

2 (v) For a tier 6 project, any other personal property  
3 located at the project.

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

1 exemption, the Tax Commissioner is limited to the question of  
2 whether the property claimed as exempt by the taxpayer falls  
3 within the classes of property described in subdivision (8)(b) of  
4 this section. The determination of whether a taxpayer is eligible  
5 to obtain exemption for personal property based on meeting the  
6 required levels of investment and employment is the responsibility  
7 of the Tax Commissioner.

8 (9)(a) The investment thresholds in this section for a  
9 particular year of application shall be adjusted by the method  
10 provided in this subsection.

11 (b) For tier 1, tier 2, tier 4, and tier 5, beginning  
12 October 1, 2006, and each October 1 thereafter, the average  
13 Producer Price Index for all commodities, published by the United  
14 States Department of Labor, Bureau of Labor Statistics, for the  
15 most recent twelve available periods shall be divided by the  
16 Producer Price Index for the first quarter of 2006 and the result  
17 multiplied by the applicable investment threshold. The investment  
18 thresholds shall be adjusted for cumulative inflation since 2006.

19 (c) For tier 6, beginning October 1, 2008, and each  
20 October 1 thereafter, the average Producer Price Index for all  
21 commodities, published by the United States Department of Labor,  
22 Bureau of Labor Statistics, for the most recent twelve available  
23 periods shall be divided by the Producer Price Index for the  
24 first quarter of 2008 and the result multiplied by the applicable  
25 investment threshold. The investment thresholds shall be adjusted

1 for cumulative inflation since 2008.

2 (d) If the resulting amount is not a multiple of one  
3 million dollars, the amount shall be rounded to the next lowest one  
4 million dollars.

5 (e) The investment thresholds established by this  
6 subsection apply for purposes of project qualifications for all  
7 applications filed on or after January 1 of the following year for  
8 all years of the project. Adjustments do not apply to projects  
9 after the year of application.

10 Sec. 19. Section 77-5726, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

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

21 (b) The taxpayer may use the credit provided in  
22 subsection (3) of section 77-5725 to reduce the taxpayer's income  
23 tax withholding employer or payor tax liability under section  
24 77-2756 or 77-2757 to the extent such liability is attributable  
25 to the number of new employees at the project, excluding any

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

17 For a tier 1, tier 2, tier 3, or tier 4 project, the  
18 amount of credits used against income tax withholding shall not  
19 exceed the withholding attributable to new employees employed at  
20 the project, excluding any compensation in excess of one million  
21 dollars paid to any one employee during the year.

22 For a tier 6 project, the amount of credits used  
23 against income tax withholding shall not exceed the withholding  
24 attributable to all employees employed at the project, other than  
25 base-year employees and excluding any compensation in excess of one

1 million dollars paid to any one employee during the year.

2           If the amount of credit used by the taxpayer against  
3 income tax withholding exceeds this amount, the excess withholding  
4 shall be returned to the Department of Revenue in the manner  
5 provided in section 77-2756, such excess amount returned shall be  
6 considered unused, and the amount of unused credits may be used  
7 as otherwise permitted in this section or shall carry over to the  
8 extent authorized in subdivision ~~(1)(d)~~ (1)(e) of this section.

9           (c) Credits may be used to obtain a refund of sales and  
10 use taxes under the Local Option Revenue Act, the Nebraska Revenue  
11 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not  
12 otherwise refundable that are paid on purchases, including rentals,  
13 for use at the project for a tier 1, tier 2, tier 3, or tier 4  
14 project or for use within this state for a tier 6 project.

15           (d) The credits earned for a tier 6 project may be used  
16 to obtain a payment from the state equal to the real property  
17 taxes due after the year the required levels of employment and  
18 investment were met and before the end of the carryover period,  
19 for real property that is included in such project and acquired  
20 by the taxpayer, whether by lease or purchase, after the date the  
21 application was filed. The payment from the state shall be made  
22 only after payment of the real property taxes have been made to the  
23 county as required by law. Payments shall not be allowed for any  
24 taxes paid on real property for which the taxes are divided under  
25 section 18-2147 or 58-507.

1           (e) Credits may be carried over until fully utilized,  
2 except that such credits may not be carried over more than nine  
3 years after the year of application for a tier 1 or tier 3 project,  
4 fourteen years after the year of application for a tier 2 or tier  
5 4 project, or more than one year past the end of the entitlement  
6 period for a tier 6 project.

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

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

13           (c) ~~Any refund claim for sales and use taxes on materials~~  
14 ~~incorporated into real estate as a part of the project shall be~~  
15 ~~filed by and the refund paid to the owner of the improvement~~  
16 ~~to real estate. A refund claim Refund claims for such materials~~  
17 purchased by a purchasing agent shall include: a

18           (i) A copy of the purchasing agent appointment; ~~the~~

19           (ii) The contract price; ~~and~~

20           (iii) (A) For refunds under subdivision (2) (a) (iii) or  
21 (2) (a) (v) of section 77-5725, a certification by the contractor or  
22 repairperson of the percentage of the materials incorporated into  
23 or annexed to the project on which sales and use taxes were paid to  
24 Nebraska after appointment as purchasing agent; or ~~or~~

25           (B) For refunds under subdivision (2) (a) (iv) of section

1 77-5725, a certification by the contractor or repairperson of  
2 the percentage of the contract price that represents the cost  
3 of materials annexed to the project and the percentage of the  
4 materials annexed to the project on which sales and use taxes were  
5 paid to Nebraska after appointment as purchasing agent.

6 (d) All refund claims shall be filed, processed, and  
7 allowed as any other claim under section 77-2708, except that  
8 the amounts allowed to be refunded under the Nebraska Advantage  
9 Act shall be deemed to be overpayments and shall be refunded  
10 notwithstanding any limitation in subdivision (2)(a) of section  
11 77-2708. The refund may be allowed if the claim is filed within  
12 three calendar years from the end of the year the required levels  
13 of employment and investment are met or within the period set forth  
14 in section 77-2708.

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



1 the year before the claims will be paid under this section.

2 (f) Interest shall not be allowed on any taxes refunded  
3 under the Nebraska Advantage Act.

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

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

25 Sec. 20. Section 77-5735, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-5735 (1) The changes made in sections 77-5703,  
3 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726,  
4 77-5727, and 77-5731 by Laws 2008, LB 895, and sections 77-5707.01,  
5 77-5719.01, and 77-5719.02 apply to all applications filed on and  
6 after April 18, 2008. For all applications filed prior to such  
7 date, the provisions of the Nebraska Advantage Act as they existed  
8 immediately prior to such date apply.

9           (2) The changes made in sections 77-5725 and 77-5726 by  
10 this legislative bill apply to all applications filed on or after  
11 the operative date of this section. For all applications filed  
12 prior to such date, the taxpayer may make a one-time election,  
13 within the time period prescribed by the Tax Commissioner, to  
14 have the changes made in sections 77-5725 and 77-5726 by this  
15 legislative bill apply to such taxpayer's application, or in  
16 the absence of such an election, the provisions of the Nebraska  
17 Advantage Act as they existed immediately prior to the operative  
18 date of this section apply to such application.

19           Sec. 21. Section 81-8,128, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           81-8,128 There is hereby established the position of  
22 State Athletic Commissioner. The commissioner shall be appointed  
23 by the Governor and shall hold office for a term of two years  
24 commencing the first Thursday after the first Tuesday of January  
25 in each odd-numbered year. The commissioner shall receive such

1 salary as the Governor may elect and shall be bonded or insured as  
2 required by section 11-201. The commissioner may be reappointed for  
3 successive terms.

4           The office of the commissioner shall be located within  
5 the Charitable Gaming Division of the Department of Revenue.  
6 The commissioner may exercise and perform his or her powers and  
7 duties at any location in the state. The commissioner may employ  
8 assistants and fix their compensation in conjunction with the  
9 Charitable Gaming Division. The compensation of assistants ~~shall be~~  
10 paid through the Charitable Gaming Operations Fund, and expenses  
11 of the office of the commissioner shall be paid through the State  
12 Athletic Commissioner's Cash Fund.

13           Sec. 22. The Revisor of Statutes shall assign section 5  
14 of this act to Chapter 77, article 3.

15           Sec. 23. Sections 2, 22, 23, 28, and 30 of this act  
16 become operative on their effective date. Sections 1, 21, and 27 of  
17 this act become operative on July 1, 2010. Sections 8, 10, 15, 16,  
18 and 26 of this act become operative on October 1, 2010. Sections 7,  
19 11, 12, 13, 14, 24, and 29 of this act become operative on January  
20 1, 2011. The other sections of this act become operative three  
21 calendar months after the adjournment of this legislative session.

22           Sec. 24. Original sections 77-1784, 77-2756, 77-2789,  
23 77-2790, and 77-2794, Reissue Revised Statutes of Nebraska, are  
24 repealed.

25           Sec. 25. Original sections 66-719, 77-2711, 77-27,119,

1 77-5725, 77-5726, and 77-5735, Reissue Revised Statutes of  
2 Nebraska, and section 60-484, Revised Statutes Cumulative  
3 Supplement, 2008, are repealed.

4           Sec. 26. Original sections 77-2701.38, 77-2712.03,  
5 77-2796, and 77-27,100, Reissue Revised Statutes of Nebraska, are  
6 repealed.

7           Sec. 27. Original sections 9-1,101 and 81-8,128, Reissue  
8 Revised Statutes of Nebraska, are repealed.

9           Sec. 28. Original section 49-801.01, Revised Statutes  
10 Supplement, 2009, is repealed.

11           Sec. 29. The following section is outright repealed:  
12 Section 77-2769.02, Reissue Revised Statutes of Nebraska.

13           Sec. 30. Since an emergency exists, this act takes effect  
14 when passed and approved according to law.