

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 967**

Introduced by Schilz, 47.

Read first time January 19, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-4106 and 77-5726, Reissue Revised Statutes of  
3 Nebraska; to change provisions relating to refunds of  
4 local sales and use taxes under certain tax incentive  
5 laws; to create a fund; and to repeal the original  
6 sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-4106, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

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

13           (b) The credits may be used as allowed in subdivision  
14 (a) of this subsection and shall be applied in the order in which  
15 they were first allowed. Any decision on how part of the credit is  
16 applied shall not limit how the remaining credit could be applied  
17 under this section.

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

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

23           (b) Refund claims shall be filed no more than once each  
24 quarter for refunds under the Employment and Investment Growth  
25 Act, except that any claim for a refund in excess of twenty-five

1 thousand dollars may be filed at any time.

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

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

20 (e) Interest shall not be allowed on any sales and use  
21 taxes refunded under the Employment and Investment Growth Act.

22 (3) The appointment of purchasing agents shall be  
23 recognized for the purpose of changing the status of a contractor  
24 or repairperson as the ultimate consumer of tangible personal  
25 property purchased after the date of the appointment which is

1 physically incorporated into the project and becomes the property  
2 of the owner of the improvement to real estate. The purchasing  
3 agent shall be jointly liable for the payment of the sales and use  
4 tax on the purchases with the owner of the improvement to real  
5 estate.

6 (4) If the three-year average for the three previous  
7 calendar years of the total amount of refund claims of local option  
8 sales and use taxes for a city of the first class, city of the  
9 second class, or village pursuant to the Employment and Investment  
10 Growth Act and the Nebraska Advantage Act exceeds ten percent of  
11 the city's or village's sales and use tax revenue in a calendar  
12 year, the refunds in excess of such ten-percent amount for that  
13 calendar year shall be made from the Local Option Sales Tax Refund  
14 Fund if the fund has sufficient money to make such refunds.

15 Sec. 2. Section 77-5726, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

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

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

22           For a tier 1, tier 2, tier 3, or tier 4 project, the  
23 amount of credits used against income tax withholding shall not  
24 exceed the withholding attributable to new employees employed at  
25 the project, excluding any compensation in excess of one million

1 dollars paid to any one employee during the year.

2 For a tier 6 project, the amount of credits used  
3 against income tax withholding shall not exceed the withholding  
4 attributable to all employees employed at the project, other than  
5 base-year employees and excluding any compensation in excess of one  
6 million dollars paid to any one employee during the year.

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

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

20 (d) The credits earned for a tier 6 project may be used  
21 to obtain a payment from the state equal to the real property  
22 taxes due after the year the required levels of employment and  
23 investment were met and before the end of the carryover period,  
24 for real property that is included in such project and acquired  
25 by the taxpayer, whether by lease or purchase, after the date the

1 application was filed. The payment from the state shall be made  
2 only after payment of the real property taxes have been made to the  
3 county as required by law. Payments shall not be allowed for any  
4 taxes paid on real property for which the taxes are divided under  
5 section 18-2147 or 58-507.

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

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

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

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

1 paid to Nebraska after appointment as purchasing agent.

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

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

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

25 (3) The appointment of purchasing agents shall be



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

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

21 (5) If the three-year average for the three previous  
22 calendar years of the total amount of refund claims of local option  
23 sales and use taxes for a city of the first class, city of the  
24 second class, or village pursuant to the Nebraska Advantage Act and  
25 the Employment and Investment Growth Act exceeds ten percent of the

1 city's or village's sales and use tax revenue in a calendar year,  
2 the refunds in excess of such ten-percent amount for that calendar  
3 year shall be made from the Local Option Sales Tax Refund Fund if  
4 the fund has sufficient money to make such refunds.

5           Sec. 3. (1) The Local Option Sales Tax Refund Fund is  
6 created. Each city of the first class, city of the second class,  
7 and village making refunds of local option sales and use taxes  
8 pursuant to the Employment and Investment Growth Act and the  
9 Nebraska Advantage Act shall be eligible to have such refunds made  
10 from the fund as provided in this section and sections 77-4106 and  
11 77-5726 and shall make payments to the fund as provided in this  
12 section.

13           (2) If the three-year average for the three previous  
14 calendar years of the total amount of refund claims of local option  
15 sales and use taxes for such a city of the first class, city of  
16 the second class, or village exceeds ten percent of the city's or  
17 village's sales and use tax revenue in a calendar year, the refunds  
18 in excess of such ten-percent amount for that calendar year shall  
19 be made from the fund if the fund has sufficient money to make such  
20 refunds.

21           (3) If the three-year average of refund claims of local  
22 option sales and use taxes for such a city of the first class,  
23 city of the second class, or village is less than ten percent of  
24 the affected city's or village's sales and use tax revenue in a  
25 calendar year, the affected city or village shall pay to the fund

1 an amount representing the difference between the actual amount of  
2 such calendar year's refund claims of sales and use taxes and such  
3 ten-percent amount.

4 (4) Any money in the fund available for investment  
5 shall be invested by the state investment officer pursuant to  
6 the Nebraska Capital Expansion Act and the Nebraska State Funds  
7 Investment Act.

8 Sec. 4. Original sections 77-4106 and 77-5726, Reissue  
9 Revised Statutes of Nebraska, are repealed.