

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 323**

Introduced by Cornett, 45; Schilz, 47.

Read first time January 12, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend section  
2 77-5723, Reissue Revised Statutes of Nebraska, and  
3 sections 77-5725, 77-5726, and 77-5735, Revised Statutes  
4 Cumulative Supplement, 2010; to change application  
5 procedures and local option sales and use tax refunds; to  
6 provide for applicability; and to repeal the original  
7 sections.

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

1                   Section 1. Section 77-5723, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   77-5723 (1) In order to utilize the incentives set forth  
4 in the Nebraska Advantage Act, the taxpayer shall file an  
5 application, on a form developed by the Tax Commissioner, requesting  
6 an agreement with the Tax Commissioner.

7                   (2) The application shall contain:

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

10                  (b) Sufficient documents, plans, and specifications as  
11 required by the Tax Commissioner to support the plan and to define a  
12 project;

13                  (c) If more than one location within this state is  
14 involved, sufficient documentation to show that the employment and  
15 investment at different locations are interdependent parts of the  
16 plan. A headquarters shall be presumed to be interdependent with each  
17 other location directly controlled by such headquarters. A showing  
18 that the parts of the plan would be considered parts of a unitary  
19 business for corporate income tax purposes shall not be sufficient to  
20 show interdependence for the purposes of this subdivision;

21                  (d) A nonrefundable application fee of one thousand  
22 dollars for a tier 1 project, two thousand five hundred dollars for a  
23 tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4  
24 project, and ten thousand dollars for a tier 6 project. The fee shall  
25 be credited to the Nebraska Incentives Fund; and

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

5           The application and all supporting information shall be  
6 confidential except for the name of the taxpayer, the location of the  
7 project, the amounts of increased employment and investment, and the  
8 information required to be reported by sections 77-5731 and 77-5734.

9           (3) An application must be complete to establish the date  
10 of the application. An application shall be considered complete once  
11 it contains the items listed in subsection (2) of this section,  
12 regardless of the Tax Commissioner's additional needs pertaining to  
13 information or clarification in order to approve or not approve the  
14 application. Upon receipt of a complete application, the Tax  
15 Commissioner shall notify any city, village, county, or municipal  
16 county which would be impacted by the granting of a local option  
17 sales and use tax refund for the project. Within thirty days after  
18 notification by the Tax Commissioner, the governing body of the city,  
19 village, county, or municipal county shall respond in writing to  
20 confirm receipt of the notice and indicate whether the city, village,  
21 county, or municipal county will refund the local option sales and  
22 use taxes paid by the applicant if the application is approved.

23           (4) Once satisfied that the plan in the application  
24 defines a project consistent with the purposes stated in the Nebraska  
25 Advantage Act in one or more qualified business activities within

1 this state, that the taxpayer and the plan will qualify for benefits  
2 under the act, and that the required levels of employment and  
3 investment for the project will be met prior to the end of the fourth  
4 year after the year in which the application was submitted for a tier  
5 1, tier 3, or tier 6 project or the end of the sixth year after the  
6 year in which the application was submitted for a tier 2, tier 4, or  
7 tier 5 project, the Tax Commissioner shall approve the application.

8 (5) After approval, the taxpayer and the Tax Commissioner  
9 shall enter into a written agreement. The taxpayer shall agree to  
10 complete the project, and the Tax Commissioner, on behalf of the  
11 State of Nebraska, shall designate the approved plan of the taxpayer  
12 as a project and, in consideration of the taxpayer's agreement, agree  
13 to allow the taxpayer to use the incentives contained in the Nebraska  
14 Advantage Act. The application, and all supporting documentation, to  
15 the extent approved, shall be considered a part of the agreement. The  
16 agreement shall state:

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

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

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

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

24 (e) A requirement that the company update the Department  
25 of Revenue annually on any changes in plans or circumstances which

1 affect the timetable of sales tax refunds as set out in the  
2 application. If the company fails to comply with this requirement,  
3 the Tax Commissioner may defer any pending sales tax refunds until  
4 the company does comply.

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

25           (7) A taxpayer and the Tax Commissioner may enter into

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

9 (8) The taxpayer may request that an agreement be  
10 modified if the modification is consistent with the purposes of the  
11 act and does not require a change in the description of the project.  
12 An agreement may not be modified to a tier that would grant a higher  
13 level of benefits to the taxpayer or to a tier 1 project. Once  
14 satisfied that the modification to the agreement is consistent with  
15 the purposes stated in the act, the Tax Commissioner and taxpayer may  
16 amend the agreement. For a tier 6 project, the taxpayer must agree to  
17 limit the project to qualified activities allowable under tier 2 and  
18 tier 4.

19 Sec. 2. Section 77-5725, Revised Statutes Cumulative  
20 Supplement, 2010, is amended to read:

21 77-5725 (1) Applicants may qualify for benefits under the  
22 Nebraska Advantage Act in one of six tiers:

23 (a) Tier 1, investment in qualified property of at least  
24 one million dollars and the hiring of at least ten new employees.  
25 There shall be no new project applications for benefits under this

1 tier filed after December 31, 2015, without further authorization of  
2 the Legislature. All complete project applications filed on or before  
3 December 31, 2015, shall be considered by the Tax Commissioner and  
4 approved if the project and taxpayer qualify for benefits. Agreements  
5 may be executed with regard to completed project applications filed  
6 on or before December 31, 2015. All project agreements pending,  
7 approved, or entered into before such date shall continue in full  
8 force and effect;

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

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

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

25 (e) Tier 5, investment in qualified property of at least

1 thirty million dollars. Failure to maintain an average number of  
2 equivalent employees as defined in section 77-5727 greater than or  
3 equal to the number of equivalent employees in the base year shall  
4 result in a partial recapture of benefits; and

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

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

17 (a) A refund of all sales and use taxes for a tier 2,  
18 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
19 sales and use taxes for a tier 1 project paid under the Local Option  
20 Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319,  
21 13-324, and 13-2813 from the date of the application through the  
22 meeting of the required levels of employment and investment for all  
23 purchases, including rentals, of:

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

25 (ii) Property, excluding motor vehicles, based in this



1 state and used in both this state and another state in connection  
2 with the project except when any such property is to be used for  
3 fundraising for or for the transportation of an elected official;

4 (iii) Tangible personal property by a contractor or  
5 repairperson after appointment as a purchasing agent of the owner of  
6 the improvement to real estate when such property is incorporated  
7 into real estate as a part of a project. The refund shall be based on  
8 fifty percent of the contract price, excluding any land, as the cost  
9 of materials subject to the sales and use tax;

10 (iv) Tangible personal property by a contractor or  
11 repairperson after appointment as a purchasing agent of the taxpayer  
12 when such property is annexed to, but not incorporated into, real  
13 estate as a part of a project. The refund shall be based on the cost  
14 of materials subject to the sales and use tax that were annexed to  
15 real estate; and

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

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

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

6 The refund of local option sales and use taxes shall only  
7 be applicable in cities, villages, counties, and municipal counties  
8 which have agreed to refund as part of the application process in  
9 subsection (3) of section 77-5723.

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

1 the Nebraska average annual wage for the year of application. For  
2 computation of such credit:

3 (a) Average annual wage means the total compensation paid  
4 to employees during the year at the project who are not base-year  
5 employees and who are paid wages equal to at least sixty percent of  
6 the Nebraska average weekly wage for the year of application,  
7 excluding any compensation in excess of one million dollars paid to  
8 any one employee during the year, divided by the number of equivalent  
9 employees making up such total compensation;

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

16 (c) Nebraska average annual wage means the Nebraska  
17 average weekly wage times fifty-two.

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

23 (5) Any taxpayer who has met the required levels of  
24 employment and investment for a tier 2 or tier 4 project shall  
25 receive a credit equal to ten percent of the investment made in

1 qualified property at the project. Any taxpayer who has met the  
2 required levels of investment and employment for a tier 1 project  
3 shall receive a credit equal to three percent of the investment made  
4 in qualified property at the project. Any taxpayer who has met the  
5 required levels of investment and employment for a tier 6 project  
6 shall receive a credit equal to fifteen percent of the investment  
7 made in qualified property at the project.

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

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

18 (8)(a) A taxpayer who has met the required levels of  
19 employment and investment for a tier 4 or tier 6 project shall  
20 receive the incentive provided in this subsection. A taxpayer who has  
21 a project for an Internet web portal or a data center and who has met  
22 the required levels of employment and investment for a tier 2 project  
23 or the required level of investment for a tier 5 project shall  
24 receive the incentive provided in this subsection for property in  
25 subdivision (8)(b)(ii) of this section. Such investment and hiring of

1 new employees shall be considered a required level of investment and  
2 employment for this subsection and for the recapture of benefits  
3 under this subsection only.

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

8 (i) Turbine-powered aircraft, including turboprop,  
9 turbojet, and turbofan aircraft, except when any such aircraft is  
10 used for fundraising for or for the transportation of an elected  
11 official;

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

24 (iii) Depreciable personal property used for a  
25 distribution facility, including, but not limited to, storage racks,

1 conveyor mechanisms, forklifts, and other property used to store or  
2 move products;

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

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

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

1 the applicant is requesting exemption. The Tax Commissioner shall  
2 determine the eligibility of each item listed for exemption and, on  
3 or before August 1, certify such to the taxpayer and to the affected  
4 county assessor. In determining the eligibility of items of personal  
5 property for exemption, the Tax Commissioner is limited to the  
6 question of whether the property claimed as exempt by the taxpayer  
7 falls within the classes of property described in subdivision (8)(b)  
8 of this section. The determination of whether a taxpayer is eligible  
9 to obtain exemption for personal property based on meeting the  
10 required levels of investment and employment is the responsibility of  
11 the Tax Commissioner.

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

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

23 (c) For tier 6, beginning October 1, 2008, and each  
24 October 1 thereafter, the average Producer Price Index for all  
25 commodities, published by the United States Department of Labor,

1 Bureau of Labor Statistics, for the most recent twelve available  
2 periods shall be divided by the Producer Price Index for the first  
3 quarter of 2008 and the result multiplied by the applicable  
4 investment threshold. The investment thresholds shall be adjusted for  
5 cumulative inflation since 2008.

6 (d) If the resulting amount is not a multiple of one  
7 million dollars, the amount shall be rounded to the next lowest one  
8 million dollars.

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

14 Sec. 3. Section 77-5726, Revised Statutes Cumulative  
15 Supplement, 2010, is amended to read:

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

25 (b) The taxpayer may use the credit provided in



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

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

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

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

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

19           The refund of local option sales and use taxes shall only  
20 be applicable in cities, villages, counties, and municipal counties  
21 which have agreed to refund as part of the application process in  
22 subsection (3) of section 77-5723.

23           (d) The credits earned for a tier 6 project may be used  
24 to obtain a payment from the state equal to the real property taxes  
25 due after the year the required levels of employment and investment

1 were met and before the end of the carryover period, for real  
2 property that is included in such project and acquired by the  
3 taxpayer, whether by lease or purchase, after the date the  
4 application was filed. The payment from the state shall be made only  
5 after payment of the real property taxes have been made to the county  
6 as required by law. Payments shall not be allowed for any taxes paid  
7 on real property for which the taxes are divided under section  
8 18-2147 or 58-507.

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

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

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

21 (c) Refund claims for materials purchased by a purchasing  
22 agent shall include:

23 (i) A copy of the purchasing agent appointment;

24 (ii) The contract price; and

25 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)

1 (a)(v) of section 77-5725, a certification by the contractor or  
2 repairperson of the percentage of the materials incorporated into or  
3 annexed to the project on which sales and use taxes were paid to  
4 Nebraska after appointment as purchasing agent; or

5 (B) For refunds under subdivision (2)(a)(iv) of section  
6 77-5725, a certification by the contractor or repairperson of the  
7 percentage of the contract price that represents the cost of  
8 materials annexed to the project and the percentage of the materials  
9 annexed to the project on which sales and use taxes were paid to  
10 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 Nebraska Advantage Act shall  
14 be deemed to be overpayments and shall be refunded notwithstanding  
15 any limitation in subdivision (2)(a) of section 77-2708. The refund  
16 may be allowed if the claim is filed within three calendar years from  
17 the end of the year the required levels of employment and investment  
18 are met or within the period set forth in section 77-2708.

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

1 city, village, county, or municipal county of the amount of refund  
2 claims of sales and use taxes under the Local Option Revenue Act or  
3 sections 13-319, 13-324, and 13-2813 that are in excess of twenty-  
4 five thousand dollars on or before July 1 of the year before the  
5 claims will be paid under this section.

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

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

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

1 within thirty days after the issuance of the order.

2           Sec. 4. Section 77-5735, Revised Statutes Cumulative  
3 Supplement, 2010, is amended to read:

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

11           (2) The changes made in sections 77-5725 and 77-5726 by  
12 Laws 2010, LB879, apply to all applications filed on or after July  
13 15, 2010. For all applications filed prior to such date, the taxpayer  
14 may make a one-time election, within the time period prescribed by  
15 the Tax Commissioner, to have the changes made in sections 77-5725  
16 and 77-5726 by Laws 2010, LB879, apply to such taxpayer's  
17 application, or in the absence of such an election, the provisions of  
18 the Nebraska Advantage Act as they existed immediately prior to July  
19 15, 2010, apply to such application.

20           (3) The changes made in sections 77-5707, 77-5715,  
21 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications  
22 filed on or after July 15, 2010. For all applications filed prior to  
23 such date, the provisions of the Nebraska Advantage Act as they  
24 existed immediately prior to such date apply.

25           (4) The changes made in sections 77-5723, 77-5725, and

1 77-5726 by this legislative bill apply to all applications filed on  
2 or after the effective date of this act. For all applications filed  
3 prior to such date, the provisions of the Nebraska Advantage Act as  
4 they existed immediately prior to such date apply.

5           Sec. 5. Original section 77-5723, Reissue Revised  
6 Statutes of Nebraska, and sections 77-5725, 77-5726, and 77-5735,  
7 Revised Statutes Cumulative Supplement, 2010, are repealed.