LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 389

Introduced by Cornett, 45; at the request of the Governor.

Read first time January 13, 2011

Committee: Revenue

A BILL

FOR AN ACT relating to revenue and taxation; to amend sections 49-801.01, 77-2715.07, 77-2717, 77-27,187.02, and 77-5905, Reissue Revised Statutes of Nebraska; to adopt the Angel Investment Tax Credit Act; to provide income tax credits; to provide funding; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska, Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Angel Investment Tax Credit Act.

Sec. 2. For purposes of the Angel Investment Tax Credit Act:

(1) Director means the Director of Economic Development;

(2) Family means a family member within the meaning of section 267(c)(4) of the Internal Revenue Code of 1986, as amended;

(3) Pass-through entity means an organization that for the applicable taxable year is a subchapter S corporation, general partnership, limited partnership, limited liability partnership, trust, or limited liability company and that for the applicable taxable year is not taxed as a corporation;

(4) Qualified fund means a fund that has been certified by the director under section 4 of this act;

(5) Qualified high-technology field includes, but is not limited to, aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biosolutions, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields;

(6) Qualified investment means a cash investment in a qualified small business made in exchange for common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or an equivalent ownership interest

as determined by the director of a minimum of:

(a) Twenty-five thousand dollars in a calendar year by a qualified investor; or

(b) Fifty thousand dollars in a calendar year by a qualified fund;

(7) Qualified investor means an individual, trust, or pass-through entity which has been certified by the director under section 5 of this act; and

(8) Qualified small business means a business that has been certified by the director under section 3 of this act.

Sec. 3. (1) A business may apply to the director for certification as a qualified small business. The application shall be in the form and be made under the procedures specified by the director.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the business as satisfying the conditions required of a qualified small business, request additional information, or deny the application. If the director requests additional information, the director shall certify the business or deny the application within thirty days after receiving the additional information. If the director neither certifies the business nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved. A business that applies for

certification and is denied may reapply.

(3) To be certified, a business shall:

(a) Have its headquarters in Nebraska;

(b) Have at least fifty-one percent of its employees employed in Nebraska and have at least fifty-one percent of its total payroll paid or incurred in Nebraska;

(c) Be engaged in, or committed to engage in, innovation in Nebraska in one or more of the following activities as its primary business activity:

(i) Using proprietary technology to add value to a product, process, or service in a qualified high-technology field; or

(ii) Researching, developing, or producing a proprietary product, process, or service in a qualified high-technology field;

(d) Except for activities listed in subdivision (3)(c) of this section, not be engaged in political consulting, leisure, hospitality, or professional services provided by attorneys, accountants, physicians, or health care consultants; and

(e) Have twenty-five or fewer employees at the time the investment is made.

(4) In order for a qualified investment in a qualified small business to be eligible for tax credits, the business shall have applied for and received certification for the calendar year in which the investment was made prior to the date on which the qualified investment was made.

Sec. 4. (1) A pass-through entity may apply to the director for certification as a qualified fund for a calendar year. The application shall be in the form and be made under the procedures specified by the director. The application shall be accompanied by an application fee of five hundred dollars.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the fund as satisfying the conditions required of a qualified fund, request additional information, or deny the application. If the director requests additional information, the director shall certify the fund or deny the application within thirty days after receiving the additional information. If the director neither certifies the fund nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved. A fund that applies for certification and is denied may reapply.

(3) To be certified, a fund shall:

(a) Invest or intend to invest in qualified small businesses; and

(b) Have at least three separate investors and all the investors satisfy the conditions in subsection (3) of section 5 of this act;

(4) Investments in the fund may consist of equity investments or notes that pay interest or other fixed amounts, or any combination of both.

(5) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified fund that makes the investment shall have applied for and received certification for the calendar year in which the investment was made prior to making the qualified investment.

Sec. 5. (1) An individual, trust, or pass-through entity may apply to the director for certification as a qualified investor for a taxable year. The application shall be in the form and be made under the procedures specified by the director. The application shall be accompanied by an application fee of two hundred fifty dollars. The director shall not certify the following types of investors as qualified investors:

(a) An individual who controls fifty percent or more of the qualified business receiving the investment;

(b) A venture capital company; or

(c) Any bank, savings and loan association, insurance company, or similar entity whose normal business activities include venture capital investments.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the investor as satisfying the conditions required of a qualified investor, request additional information, or deny the application. If the director requests additional information, the director shall certify the investor or deny the application within thirty days after receiving the additional information. If the director neither

certifies the investor nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved. An investor who applies for certification and is denied may reapply.

(3) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified investor who makes the investment shall have applied for and received certification for the calendar year in which the investment was made prior to making the qualified investment, except that in the case of an investor who is an accredited investor within the meaning of Regulation D of the Securities and Exchange Commission, 17 C.F.R. 230.501(a), as such regulation exists on January 1, 2011, application for certification may be made within thirty days after making the qualified investment.

Sec. 6. (1) A qualified investor or qualified fund is eligible for a refundable credit equal to forty percent of its qualified investment in a qualified small business. The director shall not allocate more than five million dollars in credits to all qualified investors or qualified funds in a calendar year. If the director does not allocate the entire five million dollars of credits in a calendar year, the credits that are not allocated shall not carry forward to subsequent years.

(2) The director shall not allocate more than a total maximum amount in credits for a taxable year to a qualified investor

for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund as provided in this subsection. For married couples filing joint returns the maximum is three hundred fifty thousand dollars, and for all other filers the maximum is three hundred thousand dollars. The director shall not allocate more than a total of one million dollars in credits over all taxable years for qualified investments in any one qualified small business.

(3) The director shall not allocate a credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than forty-nine percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. A member of the family of an individual disqualified by this subsection is not eligible for a credit under this section. For a married couple filing a joint return, the limitations in this subsection apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this subsection, the rules under section 267(c) and (e) of the Internal Revenue Code of 1986, as amended, apply.

(4) Tax credits shall be allocated to qualified investors or qualified funds in the order that the tax credit applications are filed with the director. Once credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the investment specified within ninety days. If

the investment is not made within ninety days, the credit allocation is canceled and available for reallocation. A qualified investor or qualified fund that fails to invest as specified in the application within ninety days after allocation of the credits shall notify the director of the failure to invest within five business days after the expiration of the ninety-day investment period.

(5) All tax credit applications filed with the director on the same day shall be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit applications on the same day and the aggregate amount of credit allocation requests exceeds the aggregate limit of credits under this section or the lesser amount of credits that remain unallocated on that day, then the credits shall be allocated among the qualified investors or qualified funds who filed on that day on a pro-rata basis with respect to the amounts requested. The pro-rata allocation for any one qualified investor or qualified fund shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation request filed on behalf of a qualified investor and the denominator of which is the total of all credit allocation requests filed on behalf of all applicants on that day, by the amount of credits that remain unallocated on that day for the taxable year.

(6) A qualified investor or qualified fund, or a qualified small business acting on behalf of the investor or fund, shall notify the director when an investment for which credits were

allocated has been made and the taxable year in which the investment was made. A qualified fund shall also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the investment was made, the director shall issue tax credit certificates for the taxable year in which the investment was made to the qualified investor or, for an investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate shall state that the tax credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following years. The three-year holding period does not apply if:

(a) The investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(b) Eighty percent or more of the assets of the qualified small business are sold before the end of the three-year period;

(c) The qualified small business is sold or merges with another business before the end of the three-year period; or

(d) The qualified small business's common stock begins trading on a public exchange before the end of the three-year period.

(7) The director shall notify the Tax Commissioner that tax credit certificates have been issued, including the amount of tax

credits and all other pertinent tax information.

Sec. 7. (1) Beginning July 1, 2012, each qualified small business, qualified investor, and qualified fund shall submit an annual report to the director by July 1 of each year identifying the amount of money that has been invested by or in it in the previous calendar year under the Angel Investment Tax Credit Act.

(2) The report shall certify that the business, investor, and fund satisfies the requirements of the act.

(3) A qualified small business that ceases all operations and becomes insolvent shall file a final report with the director in the form required by the director documenting its insolvency.

(4) To maintain the confidentiality of the qualified investor and qualified small business, the department shall use a designated number to identify such persons or businesses.

(5) A qualified small business, qualified investor, or qualified fund that fails to file an annual report by July 1 shall be subject to a fine of two hundred dollars.

Sec. 8. (1) If, at any time within six years after the allocation of credits is made, the director determines that a qualified investor or qualified fund did not meet the three-year holding period required in section 6 of this act, any tax credit allocated and certified to the investor or fund shall be recaptured by the Department of Economic Development.

(2) The director shall, to the extent possible, assure that the distribution of such tax credits provides equitable access

to the benefits provided by the Angel Investment Tax Credit Act by all geographic areas of the state.

(3) The director may engage in contractual relationships with a statewide public or private nonprofit organization which shall serve as the agent for the department in order to effect the purposes and fulfill the requirements of the act.

Sec. 9. The Department of Economic Development may adopt and promulgate rules and regulations to carry out the Angel Investment Tax Credit Act.

Sec. 10. Section 49-801.01, Reissue Revised Statutes of Nebraska, is amended to read:

49-801.01 Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, and 77-5903 and sections 2 and 6 of this act, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on April 6, 2010.

Sec. 11. Section 77-2715.07, Reissue Revised Statutes of Nebraska, is amended to read:

77-2715.07 (1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income; and

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Sec. 12. Section 77-2717, Reissue Revised Statutes of Nebraska, is amended to read:

77-2717 (1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under <u>the Angel Investment Tax Credit Act,</u> the Nebraska Advantage Microenterprise Tax Credit Act<u>,</u> and the Nebraska Advantage Research and Development Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under <u>the Angel Investment Tax Credit Act,</u> the Nebraska Advantage Microenterprise Tax Credit Act<u>,</u> and the Nebraska Advantage Research and Development Act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in <u>the Angel Investment Tax Credit Act,</u> the Nebraska Advantage Microenterprise Tax Credit Act<u>,</u> and the

Nebraska Advantage Research and Development Act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources

with its Nebraska return for the taxable year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

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

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

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

Sec. 13. Section 77-27,187.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,187.02 (1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

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

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county, city, or village.

(b) The Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million five hundred thousand dollars in each of fiscal years 2004-05 and 2005-06, three million dollars in each of fiscal years 2006-07 through 2008-09, and four million dollars in fiscal year 2009-10. For applications filed in calendar ~~year~~ <u>years</u> 2010 ~~and each calendar year thereafter,~~ <u>and 2011,</u> the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total four million dollars. <u>For applications filed in calendar year 2012 and each year thereafter, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million dollars.</u> Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts. <u>It is the intent of the Legislature that all tax credits deemed unallocated for this section for calendar year 2011 shall be used for purposes of the Angel Investment Tax Credit Act.</u>

(c) Applications for benefits shall be considered in the order in which they are received.

(d) Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

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

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

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

(d) The date the application was filed; and

(e) The maximum amount of credits authorized.

Sec. 14. Section 77-5905, Reissue Revised Statutes of Nebraska, is amended to read:

77-5905 (1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the majority of the assets of the microbusiness are located in a distressed area or will be upon its establishment, (c) the applicant will make new investment or employment in the microbusiness, and (d) the new investment or employment will create new income or jobs in the distressed area, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2015. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. ~~The~~ Until January 1, 2012, the adjusted limit in a given year is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. Beginning January 1, 2012, the adjusted limit in a given year is one million dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment

Growth Act, the Nebraska Advantage Act, or the Nebraska Advantage Rural Development Act. <u>It is the intent of the Legislature that all tax credits deemed unallocated for this section for calendar year 2011 shall be used for purposes of the Angel Investment Tax Credit Act.</u>

Sec. 15. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, and 16 of this act are operative for all taxable years beginning or deemed to begin on or after January 1, 2011, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on their effective date.

Sec. 16. Original sections 77-2715.07 and 77-2717, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 17. Original sections 49-801.01, 77-27,187.02, and 77-5905, Reissue Revised Statutes of Nebraska, are repealed.