LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1067

Final Reading

Introduced by Hadley, 37.

Read first time January 22, 2014

Committee: Revenue

A BILL

FOR AN ACT relating to revenue and taxation; to amend sections 77-5806 and 77-5905, Reissue Revised Statutes of Nebraska, sections 77-27,144, 77-6302, 77-6304, 77-6305, 77-6306, 77-6307, and 77-6309, Revised Statutes Cumulative Supplement, 2012, and section 77-5725, Revised Statutes Supplement, 2013; to change provisions relating to sales and use tax refunds; to extend sunset dates for tax incentives under the Nebraska Advantage Act, the Nebraska Advantage Research and Development Act, and the Nebraska Advantage Microenterprise Tax Credit Act; to change provisions of the Angel Investment Tax Credit Act; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska, Section 1. Section 77-27,144, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-27,144 (1) The Tax Commissioner shall collect the tax imposed by any incorporated municipality concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the incorporated municipalities levying the tax, after deducting the amount of refunds made and three percent of the remainder to be credited to the Municipal Equalization Fund.

(2) Deductions for a refund made pursuant to section 77-4105, 77-4106, ~~or~~ 77-5725, or 77-5726 shall be delayed for one year after the refund has been made to the taxpayer. The Department of Revenue shall notify the municipality liable for ~~the~~ a refund exceeding one thousand five hundred dollars of the pending refund, the amount of the refund, and the month in which the deduction will be made or begin, except that if the amount of a refund claimed under section 77-4105, 77-4106, ~~or~~ 77-5725, or 77-5726 exceeds twenty-five percent of the municipality's total sales and use tax receipts, net of any refunds or sales tax collection fees, for the municipality's prior fiscal year, the department shall deduct the refund over the period of one year in equal monthly amounts beginning after the one-year notification period required by this subsection. This subsection applies to refunds owed by cities of the first class, cities of the second class, and villages. This subsection applies to refunds beginning January 1, 2014.

(3) The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of the Local Option Revenue Act. When proceeds of a tax levy are received but the identity of the incorporated municipality which levied the tax is unknown and is not identified within six months after receipt, the amount shall be credited to the Municipal Equalization Fund. The municipality may request the names and addresses of the retailers which have collected the tax as provided in subsection (13) of section 77-2711 and may certify a municipal employee to request and review confidential sales tax returns and sales tax return information as provided in subsection (14) of section 77-2711.

Sec. 2. Section 77-5725, Revised Statutes Supplement, 2013, is amended to read:

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

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, ~~2015.~~ 2017. All complete project applications filed on or before December 31, ~~2015,~~ 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, ~~2015.~~ 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, (i) investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (ii) for a large data center project, investment in qualified property for the data center of at least two hundred million dollars and the hiring for the data center of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, ~~2015.~~ 2017. All complete project applications filed on or before December 31, ~~2015,~~ 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, ~~2015.~~ 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

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

(e) Tier 5, (i) investment in qualified property of at least thirty million dollars or (ii) for the production of electricity by using one or more sources of renewable energy to produce electricity for sale as described in subdivision (1)(j) of section 77-5715, investment in qualified property of at least twenty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, ~~2016.~~ 2018. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

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

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

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

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

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

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

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

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

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

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

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

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

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

shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

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

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

(8)(a) Property described in subdivisions (8)(c)(i) through (v) of this section used in connection with a project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed, shall constitute separate classes of property and are eligible for exemption under the conditions and for the time periods provided in subdivision (8)(b) of this section.

(b)(i) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer who has met the required levels of employment and investment for a tier 6 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), (iv), and

(v) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(ii) A taxpayer who has filed an application that describes a tier 2 large data center project or a project under tier 4 or tier 6 shall receive the exemption of property in subdivision (8)(c)(i) of this section beginning with the first January 1 following the acquisition of the property. The exemption shall continue through the end of the period property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(iii) A taxpayer who has filed an application that describes a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project for which the entitlement period has expired shall receive the exemption of all property in subdivision (8)(c) of this section beginning any January 1 after the acquisition of the property. Such property shall be eligible for exemption from the tax on personal property from the January 1 preceding the first claim for exemption approved under this subdivision through the ninth December 31 after the year the first claim for exemption is approved.

(iv) A taxpayer who has a project for an Internet web portal or a data center and who has met the required levels of employment and investment for a tier 2 project or the required level of investment for a tier 5 project, taking into account only the employment and investment at the web portal or data center project, shall receive the exemption of property in subdivision (8)(c)(ii) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year any property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(v) Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

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

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

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

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

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

(v) For a tier 2 large data center project or tier 6 project, any other personal property located at the project.

(d) In order to receive the property tax exemptions allowed by subdivision (8)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(9)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection, except that the investment threshold for a tier 5 project described in subdivision (1)(e)(ii) of this section shall not be adjusted.

(b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier 5 projects described in subdivision (1)(e)(ii) of this section, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006.

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

(d) For a tier 2 large data center project, beginning October 1, 2012, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2012 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2012.

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

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

Sec. 3. Section 77-5806, Reissue Revised Statutes of Nebraska, is amended to read:

77-5806 The Nebraska Advantage Research and Development Act shall be operative for all tax years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended. No business firm shall be allowed to first claim the credit for any tax year beginning or deemed to begin after December 31, ~~2015,~~ 2017, under the Internal Revenue Code of 1986, as amended.

Sec. 4. 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.~~ 2017. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. 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. 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.

Sec. 5. Section 77-6302, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-6302 For purposes of the Angel Investment Tax Credit Act:

(1) Director means the Director of Economic Development;

(2) Distressed area means a municipality, a county with a population of fewer than one hundred thousand inhabitants according to the most recent federal decennial census, an unincorporated area within a county, or a census tract in Nebraska that (a) has an unemployment rate which exceeds the statewide average unemployment rate, (b) has a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;

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

<u>(4) Investment date means the latest of the following:</u>

<u>(a) The date of a fully executed investor subscription agreement or underlying transaction document pertaining to the applicable qualified investment;</u>

(b) The date on a check made out to a qualified small business for the applicable qualified investment or the date a wire transfer is completed for the applicable qualified investment; or

(c) The date the qualified small business deposits a check made out to such qualified small business for the applicable qualified investment or receives a wire transfer for the applicable qualified investment, as documented on the deposit slip or bank statement of the qualified small business;

~~(4)~~ (5) 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;

~~(5)~~ (6) Qualified fund means a fund that has been certified by the director under section 77-6304;

~~(6)~~ (7) 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;

~~(7)~~ (8) 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;

~~(8)~~ (9) Qualified investor means an individual, trust, or pass-through entity which has been certified by the director under section 77-6305; and

~~(9)~~ (10) Qualified small business means a business that has been certified by the director under section 77-6303.

Sec. 6. Section 77-6304, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-6304 (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.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the pass-through entity 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 pass-through entity or deny the application within thirty days after receiving the additional information. If the director neither certifies the pass-through

entity 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 if the pass-through entity meets the qualifications in subsection (3) of this section. A pass-through entity that applies for certification and is denied may reapply.

(3) To be certified, a pass-through entity shall:

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

(b) Have at least three separate investors ~~and all the investors~~ who satisfy the conditions in ~~subsection (3) of~~ section 77-6305.

(4) A qualified 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 qualified investment shall have applied for and received certification for the calendar year in which the qualified investment was made prior to making the qualified investment.

Sec. 7. Section 77-6305, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-6305 (1) An individual, trust, or pass-through entity may apply to the director for certification as a qualified investor for a calendar year. The application shall be in the form and be made under the procedures specified by the director. The director shall not certify the following types of individuals, trusts, or pass-through entities as qualified investors:

(a) An individual who controls fifty percent or more of the qualified small business receiving the qualified 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 individual, trust, or pass-through entity 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 individual, trust, or pass-through entity or deny the application within thirty days after receiving the additional information. If the director neither certifies the individual, trust, or pass-through entity 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 if the individual, trust, or pass-through entity meets the qualifications in subsection (1) of this section. An individual, trust, or pass-through entity which 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 qualified investment shall have applied for and received certification for the calendar year in which the qualified 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 existed on January 1, 2011, application for certification may be made within thirty days after making the qualified investment.~~

Sec. 8. Section 77-6306, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-6306 (1) For taxable years beginning or deemed to begin on or after January 1, 2011, under the Internal Revenue Code of 1986, as amended, a qualified investor or qualified fund is eligible for a refundable tax credit equal to thirty-five percent of its qualified investment in a qualified small business, except that if the qualified small business is located in a distressed area the qualified investor or qualified fund is eligible for a refundable tax credit equal to forty percent of its qualified investment in the qualified small business. The director shall not allocate more than three million dollars in tax credits to all qualified investors or qualified funds in a calendar year. If the director does not allocate the entire three million dollars of tax credits in a calendar year, the tax credits that are not allocated shall not carry forward to subsequent years. The director shall not allocate any amount for tax credits for calendar years after ~~2017.~~ 2019.

(2) The director shall not allocate more than a total maximum amount in tax credits for a calendar 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 tax credits for qualified investments in any one qualified small business.

(3) The director shall not allocate a tax 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 family member of an individual disqualified by this subsection is not eligible for a tax 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 tax credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the qualified investment specified within ninety days <u>after allocation of the tax credits. Qualified investors and qualified funds shall notify the director no later than thirty days after the expiration of the ninety-day period that the qualified investment has been made</u>. If the qualified investment is not made within ninety days <u>after allocation of the tax credits, or the director has not, within thirty days following expiration of the ninety-day period, received notification that the qualified investment was made</u>, the tax 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 tax 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 tax credit allocation requests exceeds the aggregate limit of tax credits under this section or the lesser amount of tax credits that remain unallocated on that day, then the tax 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 tax credit allocation request filed on behalf of a qualified investor or qualified fund and the denominator of which is the total of all tax credit allocation requests filed on behalf of all applicants on that day, by the amount of tax 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 tax credits were allocated has been made and ~~the date the investment was made.~~ shall furnish the director with documentation of the investment date. 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 qualified investment was made, the director shall issue tax credit certificates for the taxable year in which the qualified investment was made to the qualified investor or, for a qualified 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 calendar years. The three-year holding period does not apply if:

(a) The qualified 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; or ~~.~~

(e) In the case of an individual qualified investor, such investor becomes deceased 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. 9. Section 77-6307, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-6307 (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 of Economic Development 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, at the discretion of the director, be subject to a fine of two hundred dollars, revocation of its certification, or both.

Sec. 10. Section 77-6309, Revised Statutes Cumulative Supplement, 2012, is amended to read:

77-6309 (1) By November 15 of each odd-numbered year, the Department of Economic Development shall submit a report to the Legislature and the Governor that includes:

~~(1)~~ (a) The number and geographic location of qualified investors;

~~(2)~~ (b) The number, geographic location, and amount of qualified investment made into each qualified small business;

~~(3)~~ (c) A breakdown of the industry sectors in which qualified small businesses are involved;

~~(4)~~ (d) The number of actual tax credits issued by project under the Angel Investment Tax Credit Act on an annual basis; and

~~(5)~~ (e) The number of jobs created at each qualified small business.

The report submitted to the Legislature shall be submitted electronically.

(2) Information received, developed, created, or otherwise maintained by the Department of Economic Development and the Department of Revenue in administering and enforcing the Angel Investment Tax Credit Act, other than information required to be included in the report to be submitted by the Department of Economic Development pursuant to this section, may be deemed confidential by the respective departments and not subject to public disclosure.

Sec. 11. Sections 5, 6, 7, 8, 9, 10, and 12 of this act become operative for all taxable years beginning or deemed to begin on or after January 1, 2014, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on their effective date.

Sec. 12. Original sections 77-6302, 77-6304, 77-6305, 77-6306, 77-6307, and 77-6309, Revised Statutes Cumulative Supplement, 2012, are repealed.

Sec. 13. Original sections 77-5806 and 77-5905, Reissue Revised Statutes of Nebraska, section 77-27,144, Revised Statutes Cumulative Supplement, 2012, and section 77-5725, Revised Statutes Supplement, 2013, are repealed.

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