

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 775

Introduced by Stuthman, 22.

Read first time January 07, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 39-2510, 39-2520, 77-2703.01, 77-2703.04, 77-2704.31,
3 77-2711, 77-2712.05, 77-4105, 77-4106, 77-5725, and
4 77-5726, Reissue Revised Statutes of Nebraska; to
5 authorize creation of transportation development
6 districts; to authorize a local sales tax; to harmonize
7 provisions; and to repeal the original sections.

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

1 Section 1. (1) A city council or county board may
2 create one or more transportation development districts for the
3 purpose of improving or constructing roads, streets, bridges, and
4 related structures within the district by adopting a resolution of
5 intention to establish a district. This shall be the only method
6 to establish a district. The resolution shall contain the following
7 information:

8 (a) A description of the boundaries of the proposed
9 district which shall only include territory within the boundaries
10 of the city or county proposing the district;

11 (b) The time and place of a hearing to be held by the
12 city council or county board to consider establishment of the
13 proposed district;

14 (c) The proposed public facilities and improvements to be
15 made or maintained within the proposed district; and

16 (d) The proposed or estimated costs for the facilities
17 and improvements and the sales tax rate to be submitted to the
18 registered voters under section 3 of this act.

19 (2) A notice of hearing shall be given by (a) one
20 publication of the resolution of intention in a newspaper of
21 general circulation in the city or county and (b) mailing a
22 complete copy of the resolution of intention to each owner
23 of taxable property within the proposed district as shown on
24 the latest tax rolls of the county treasurer for the county.
25 Publication and mailing shall be completed at least ten days prior

1 to the time of hearing.

2 (3) The city council or county board shall:

3 (a) Hear all protests and receive evidence for or against
4 the proposed district;

5 (b) Rule upon all written protests received prior to the
6 close of the hearing, which ruling shall be final; and

7 (c) Continue the hearing from time to time as the city
8 council or county board may deem necessary.

9 (4) If the city council or county board decides to change
10 the boundaries of the proposed district, the hearing shall be
11 continued to a time at least fifteen days after such decision
12 and notice shall be given as prescribed in this section showing
13 the boundary amendments, but no new or additional resolution of
14 intention shall be required.

15 Sec. 2. A city council or county board, following a
16 hearing pursuant to section 1 of this act, may accept or reject the
17 proposed establishment of a transportation development district. If
18 the city council or county board decides to establish the district,
19 it shall adopt an ordinance to that effect. The ordinance shall
20 contain the following information:

21 (1) The number, date, and title of the resolution of
22 intention pursuant to which it was adopted;

23 (2) The time and place the hearing was held concerning
24 the formation of the transportation development district;

25 (3) A statement that a transportation development

1 district has been established;

2 (4) The purposes of the district and the public
3 improvements and facilities to be included in the district;

4 (5) The description of the boundaries of the district
5 which shall only include territory within the boundaries of the
6 city or county establishing the district; and

7 (6) The sales tax rate to be submitted to the registered
8 voters under section 3 of this act.

9 Sec. 3. A city council or county board may impose a
10 sales and use tax of one-eighth percent, one-quarter percent, or
11 one-half percent upon the same transactions sourced as provided
12 in sections 77-2703.01 to 77-2703.04 within a transportation
13 development district on which the state is authorized to impose
14 a tax pursuant to the Nebraska Revenue Act of 1967, as amended.
15 Any sales and use tax imposed pursuant to this section shall be
16 used to finance the improvement or construction of roads, streets,
17 bridges, and related structures within the district. A city council
18 or county board may issue and sell its negotiable coupon bonds to
19 be known as transportation district development bonds in an amount
20 not exceeding the balance of the unpaid cost of such improvements
21 or construction. The bonds shall be payable in not to exceed twenty
22 years from date and bear interest payable annually or semiannually.
23 A sales and use tax shall not be imposed pursuant to this section
24 until an election has been held and a majority of the registered
25 voters in the district or a majority of the property owners within

1 the district have approved the tax as provided in section 4 of this
2 act.

3 Sec. 4. The powers granted by section 3 of this act
4 shall not be exercised unless and until the question has been
5 submitted at a primary, general, or special election held within
6 the transportation development district which would be subject
7 to the tax and in which all registered voters, or all property
8 owners if there are no registered voters within the district, are
9 entitled to vote on such question. The city council or county
10 board shall order the submission of the question by submitting a
11 certified copy of the resolution proposing the tax to the election
12 commissioner or county clerk. The question may include any terms
13 and conditions set forth in the resolution proposing the tax,
14 such as a termination date or the specific project for which the
15 revenue received from the tax will be allocated, and shall include
16 the following language: Shall the city or county impose a sales
17 and use tax upon the same transactions within the transportation
18 development district on which the State of Nebraska is authorized
19 to impose a tax to finance roads, streets, bridges, and related
20 structures within the district? If a majority of the votes cast
21 upon the question are in favor of the tax, the city council or
22 county board may impose the tax. If a majority of those voting on
23 the question are opposed to the tax, the city council or county
24 board shall not impose the tax. Any election under this section
25 shall be conducted in accordance with the procedures provided in

1 the Election Act.

2 Sec. 5. The election commissioner or county clerk shall
3 give notice of the submission of the question of imposing a tax
4 under section 3 of this act not more than thirty days nor less than
5 ten days before the election, by publication one time in one or
6 more newspapers published in or of general circulation in the city
7 or county in which the question is to be submitted. This notice is
8 in addition to any other notice required under the Election Act.

9 Sec. 6. (1) The Tax Commissioner shall administer all
10 sales and use taxes adopted under section 3 of this act. The
11 Tax Commissioner may prescribe forms and adopt and promulgate
12 reasonable rules and regulations in conformity with the Nebraska
13 Revenue Act of 1967, as amended, for the making of returns and
14 for the ascertainment, assessment, and collection of taxes. The
15 city or county shall furnish a certified copy of the adopting or
16 repealing resolution to the Tax Commissioner in accordance with
17 such rules and regulations. The tax shall begin the first day of
18 the next calendar quarter which is at least one hundred twenty days
19 following receipt by the Tax Commissioner of the certified copy of
20 the adopted resolution. The Tax Commissioner shall provide at least
21 sixty days' notice of the adoption of the tax or a change in the
22 rate to retailers. Notice shall be provided to retailers within
23 the transportation development district. Notice to retailers may be
24 provided through the web site of the Department of Revenue or by
25 other electronic means.

1 (2) For resolutions containing a termination date, the
2 termination date shall be the first day of a calendar quarter. The
3 county shall furnish a certified statement to the Tax Commissioner
4 no more than one hundred eighty days and at least one hundred
5 twenty days before the termination date that the termination date
6 stated in the resolution is still valid. If the certified statement
7 is not furnished within the prescribed time, the tax shall remain
8 in effect, and the Tax Commissioner shall continue to collect the
9 tax until the first day of the calendar quarter which is at least
10 one hundred twenty days after receipt of the certified statement
11 notwithstanding the termination date stated in the resolution. The
12 Tax Commissioner shall provide at least sixty days' notice of the
13 termination of the tax to retailers. Notice shall be provided to
14 retailers within the transportation development district. Notice to
15 retailers may be provided through the web site of the department or
16 other electronic means.

17 (3) In the rental or lease of automobiles, trucks,
18 trailers, semitrailers, and truck-tractors as defined in the Motor
19 Vehicle Registration Act, the tax shall be collected by the lessor
20 on the rental or lease price at the tax rate in effect on the date
21 the automobile, truck, trailer, semitrailer, or truck-tractor is
22 delivered to the lessee.

23 (4) The Tax Commissioner shall collect the sales and
24 use tax concurrently with collection of a state tax in the same
25 manner as the state tax is collected. The Tax Commissioner shall

1 remit monthly the proceeds of the tax to the cities and counties
2 imposing the tax for deposit in a special fund to be used to
3 finance the improvement or construction of roads, streets, bridges,
4 and related structures within the district, after deducting the
5 amount of refunds made and three percent of the remainder as
6 an administrative fee necessary to defray the cost of collecting
7 the tax and the expenses incident thereto. The Tax Commissioner
8 shall keep full and accurate records of all money received and
9 distributed. All receipts from the three-percent administrative fee
10 shall be deposited in the General Fund.

11 (5) Upon any claim of illegal assessment and collection,
12 the taxpayer has the same remedies provided for claims of illegal
13 assessment and collection of the state tax. It is the intention
14 of the Legislature that the provisions of law which apply to the
15 recovery of state taxes illegally assessed and collected apply
16 to the recovery of sales and use taxes illegally assessed and
17 collected under section 3 of this act.

18 (6) Boundary changes that affect any tax imposed by this
19 section shall be governed as provided in subsections (3) through
20 (9) of section 77-27,143.

21 Sec. 7. (1) All relevant provisions of the Nebraska
22 Revenue Act of 1967, as amended, not inconsistent with sections
23 3 to 6 of this act, shall govern transactions, proceedings, and
24 activities pursuant to any sales and use tax imposed by a city or
25 county under such sections.

1 (2) For the purposes of the sales and use tax imposed by
 2 a city or county, all retail sales, rentals, and leases, as defined
 3 and described in the Nebraska Revenue Act of 1967, are sourced as
 4 provided in sections 77-2703.01 to 77-2703.04.

5 Sec. 8. A city council or county board may disestablish
 6 a transportation development district by ordinance after a hearing
 7 before the city council or county board. The city council or
 8 county board shall adopt a resolution of intention to disestablish
 9 the area at least fifteen days prior to the hearing required by
 10 this section. The resolution shall give the time and place of the
 11 hearing. Upon disestablishment of a district, any proceeds of the
 12 sales tax shall be subject to disposition as the city council or
 13 county board shall determine.

14 Sec. 9. Section 39-2510, Reissue Revised Statutes of
 15 Nebraska, is amended to read:

16 39-2510 (1) All money derived from fees, excises, or
 17 license fees relating to registration, operation, or use of
 18 vehicles on the public highways, or to fuels used for the
 19 propulsion of such vehicles, shall be expended for payment
 20 of highway obligations, cost of construction, reconstruction,
 21 maintenance, and repair of public highways and bridges and county,
 22 city, township, and village roads, streets, and bridges, and
 23 all facilities, appurtenances, and structures deemed necessary in
 24 connection with such highways, bridges, roads, and streets, or may
 25 be pledged to secure bonded indebtedness issued for such purposes,

1 except for (a) the cost of administering laws under which such
2 money is derived, (b) statutory refunds and adjustments provided
3 therein, and (c) money derived from the motor vehicle operators'
4 license fees or money received from parking meter proceeds, fines,
5 and penalties.

6 (2) The requirements of subsection (1) of this section
7 also apply to sales and use taxes imposed on motor vehicles,
8 trailers, and semitrailers pursuant to sections 13-319 and
9 77-27,142 and section 6 of this act, except that such provisions
10 shall not apply in a county or municipal county that has issued
11 bonds (a) the proceeds of which were used for purposes listed in
12 subsection (1) of this section and for which revenue other than
13 sales and use taxes on motor vehicles, trailers, and semitrailers
14 is pledged for payment or (b) approved by a vote that required the
15 use of sales and use taxes imposed on motor vehicles, trailers,
16 and semitrailers for a specific purpose other than those listed
17 in subsection (1) of this section, until all such bonds issued
18 prior to January 1, 2006, have been paid or retired. The county
19 or municipal county shall include a certification with the report
20 under section 39-2120 showing the amount of revenue other than
21 sales and use tax revenue derived from motor vehicles, trailers,
22 or semitrailers that is to be expended for the purposes listed
23 in subsection (1) of this section and the amount of sales and
24 use taxes expected to be collected from sales of motor vehicles,
25 trailers, and semitrailers for that year.

1 Sec. 10. Section 39-2520, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 39-2520 (1) All money derived from fees, excises, or
4 license fees relating to registration, operation, or use of
5 vehicles on the public highways, or to fuels used for the
6 propulsion of such vehicles, shall be expended for payment
7 of highway obligations, cost of construction, reconstruction,
8 maintenance, and repair of public highways and bridges and county,
9 city, township, and village roads, streets, and bridges, and
10 all facilities, appurtenances, and structures deemed necessary in
11 connection with such highways, bridges, roads, and streets, or may
12 be pledged to secure bonded indebtedness issued for such purposes,
13 except for (a) the cost of administering laws under which such
14 money is derived, (b) statutory refunds and adjustments provided
15 therein, and (c) money derived from the motor vehicle operators'
16 license fees or money received from parking meter proceeds, fines,
17 and penalties.

18 (2) The requirements of subsection (1) of this section
19 also apply to sales and use taxes imposed on motor vehicles,
20 trailers, and semitrailers pursuant to sections 13-319 and
21 77-27,142 and section 6 of this act, except that such provisions
22 shall not apply in a municipality that has issued bonds (a) the
23 proceeds of which were used for purposes listed in subsection (1)
24 of this section and for which revenue other than sales and use
25 taxes on motor vehicles, trailers, and semitrailers is pledged for

1 payment or (b) approved by a vote that required the use of sales
2 and use taxes imposed on motor vehicles, trailers, and semitrailers
3 for a specific purpose other than those listed in subsection (1)
4 of this section, until all such bonds issued prior to January 1,
5 2006, have been paid or retired. The municipality shall include a
6 certification with the report under section 39-2120 showing the
7 amount of revenue other than sales and use tax revenue derived from
8 motor vehicles, trailers, or semitrailers that is to be expended
9 for the purposes listed in subsection (1) of this section and the
10 amount of sales and use taxes expected to be collected from sales
11 of motor vehicles, trailers, and semitrailers for that year.

12 Sec. 11. Section 77-2703.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2703.01 (1) The determination of whether a sale or use
15 of property or the provision of services is in this state, in a
16 municipality that has adopted a tax under the Local Option Revenue
17 Act or section 3 of this act, or in a county that has adopted a tax
18 under section 13-319 or section 3 of this act shall be governed by
19 the sourcing rules in sections 77-2703.01 to 77-2703.04.

20 (2) When the property or service is received by the
21 purchaser at a business location of the retailer, the sale is
22 sourced to that business location.

23 (3) When the property or service is not received by the
24 purchaser at a business location of the retailer, the sale is
25 sourced to the location where receipt by the purchaser or the

1 purchaser's donee, designated as such by the purchaser, occurs,
2 including the location indicated by instructions for delivery to
3 the purchaser or donee, known to the retailer.

4 (4) When subsection (2) or (3) of this section does not
5 apply, the sale is sourced to the location indicated by an address
6 or other information for the purchaser that is available from
7 the business records of the retailer that are maintained in the
8 ordinary course of the retailer's business when use of this address
9 does not constitute bad faith.

10 (5) When subsection (2), (3), or (4) of this section does
11 not apply, the sale is sourced to the location indicated by an
12 address for the purchaser obtained during the consummation of the
13 sale, including the address of a purchaser's payment instrument, if
14 no other address is available, when use of this address does not
15 constitute bad faith.

16 (6) When subsection (2), (3), (4), or (5) of this section
17 does not apply, including the circumstance in which the retailer
18 is without sufficient information to apply the rules in any such
19 subsection, then the location will be determined by the address
20 from which property was shipped, from which the digital good was
21 first available for transmission by the retailer, or from which the
22 service was provided disregarding for these purposes any location
23 that merely provided the digital transfer of the product sold.

24 (7) The lease or rental of tangible personal property,
25 other than property identified in subsection (8) or (9) of this

1 section, shall be sourced as follows:

2 (a) For a lease or rental that requires recurring
3 periodic payments, the first periodic payment is sourced the same
4 as a retail sale in accordance with the provisions of subsections
5 (2) through (6) of this section. Periodic payments made subsequent
6 to the first payment are sourced to the primary property location
7 for each period covered by the payment. The primary property
8 location shall be as indicated by an address for the property
9 provided by the lessee that is available to the lessor from its
10 records maintained in the ordinary course of business when use of
11 this address does not constitute bad faith. The property location
12 shall not be altered by intermittent use at different locations,
13 such as use of business property that accompanies employees on
14 business trips and service calls; and

15 (b) For a lease or rental that does not require recurring
16 periodic payments, the payment is sourced the same as a retail sale
17 in accordance with the provisions of subsections (2) through (6) of
18 this section.

19 This subsection does not affect the imposition or
20 computation of sales or use tax on leases or rentals based on a
21 lump-sum or accelerated basis or on the acquisition of property
22 for lease.

23 (8) The lease or rental of motor vehicles, trailers,
24 semitrailers, or aircraft that do not qualify as transportation
25 equipment under subsection (9) of this section shall be sourced as

1 follows:

2 (a) For a lease or rental that requires recurring
3 periodic payments, each periodic payment is sourced to the primary
4 property location. The primary property location shall be as
5 indicated by an address for the property provided by the lessee
6 that is available to the lessor from its records maintained in
7 the ordinary course of business when use of this address does
8 not constitute bad faith. This location shall not be altered by
9 intermittent use at different locations; and

10 (b) For a lease or rental that does not require recurring
11 periodic payments, the payment is sourced the same as a retail sale
12 in accordance with the provisions of subsections (2) through (6) of
13 this section.

14 This subsection does not affect the imposition or
15 computation of sales or use tax on leases or rentals based on a
16 lump-sum or accelerated basis or on the acquisition of property
17 for lease.

18 (9) The retail sale, including lease or rental, of
19 transportation equipment shall be sourced the same as a retail sale
20 in accordance with subsections (2) through (6) of this section.
21 Transportation equipment means any of the following:

22 (a) Locomotives and railcars that are utilized for the
23 carriage of persons or property in interstate commerce;

24 (b) Trucks and truck-tractors with a gross vehicle
25 weight rating of ten thousand one pounds or greater, trailers,

1 semitrailers, or passenger buses that are (i) registered through
2 the International Registration Plan as defined in section 60-334.01
3 and (ii) operated under authority of a carrier authorized and
4 certificated by the United States Department of Transportation or
5 another federal authority to engage in the carriage of persons or
6 property in interstate commerce;

7 (c) Aircraft operated by air carriers authorized and
8 certificated by the United States Department of Transportation or
9 another federal authority or a foreign authority to engage in the
10 carriage of persons or property in interstate or foreign commerce;
11 and

12 (d) Containers designed for use on and component parts
13 attached or secured on the items set forth in subdivisions (9)(a)
14 through (c) of this section.

15 (10) For purposes of this section, receive and receipt
16 mean taking possession of tangible personal property, making first
17 use of services, or taking possession or making first use of
18 digital goods, whichever comes first. The terms receive and receipt
19 do not include possession by a shipping company on behalf of the
20 purchaser. For purposes of sourcing detective services subject to
21 tax under subdivision (4)(h) of section 77-2701.16, making first
22 use of a service shall be deemed to be at the individual's
23 residence, in the case of a customer who is an individual, or
24 at the principal place of business, in the case of a business
25 customer.

1 (11) The sale, not including lease or rental, of a motor
2 vehicle, semitrailer, or trailer as defined in the Motor Vehicle
3 Registration Act shall be sourced to the place of registration of
4 the motor vehicle, semitrailer, or trailer for operation upon the
5 highways of this state.

6 (12) The sale or lease for one year or more of motorboats
7 shall be sourced to the place of registration of the motorboat. The
8 lease of motorboats for less than one year shall be sourced to the
9 point of delivery.

10 Sec. 12. Section 77-2703.04, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2703.04 (1) Except for the telecommunications
13 service defined in subsection (3) of this section, the sale of
14 telecommunications service sold on a call-by-call basis shall be
15 sourced to (a) each level of taxing jurisdiction where the call
16 originates and terminates in that jurisdiction or (b) each level of
17 taxing jurisdiction where the call either originates or terminates
18 and in which the service address is also located.

19 (2) Except for the telecommunications service defined
20 in subsection (3) of this section, a sale of telecommunications
21 service sold on a basis other than a call-by-call basis and
22 ancillary services are sourced to the customer's place of primary
23 use.

24 (3)(a) For mobile telecommunications service and
25 ancillary services provided and billed to a customer by a home

1 service provider:

2 (i) Notwithstanding any other provision of law or any
3 local ordinance or resolution, such mobile telecommunications
4 service is deemed to be provided by the customer's home service
5 provider;

6 (ii) All taxable charges for such mobile
7 telecommunications service and ancillary services shall be subject
8 to tax by the state or other taxing jurisdiction in this state
9 whose territorial limits encompass the customer's place of primary
10 use regardless of where the mobile telecommunications service
11 originates, terminates, or passes through; and

12 (iii) No taxes, charges, or fees may be imposed on a
13 customer with a place of primary use outside this state.

14 (b) In accordance with the federal Mobile
15 Telecommunications Sourcing Act, as such act existed on July 20,
16 2002, the Tax Commissioner may, but is not required to:

17 (i) Provide or contract for a tax assignment data base
18 based upon standards identified in 4 U.S.C. 119, as such section
19 existed on July 20, 2002, with the following conditions:

20 (A) If such data base is provided, a home service
21 provider shall be held harmless for any tax that otherwise would
22 result from any errors or omissions attributable to reliance on
23 such data base; or

24 (B) If such data base is not provided, a home service
25 provider may rely on an enhanced zip code for identifying the

1 proper taxing jurisdictions and shall be held harmless for any
2 tax that otherwise would result from any errors or omissions
3 attributable to reliance on such enhanced zip code if the home
4 service provider identified the taxing jurisdiction through the
5 exercise of due diligence and complied with any procedures that may
6 be adopted by the Tax Commissioner. Any such procedure shall be in
7 accordance with 4 U.S.C. 120, as such section existed on July 20,
8 2002; and

9 (ii) Adopt procedures for correcting errors in the
10 assignment of primary use that are consistent with 4 U.S.C.
11 121, as such section existed on July 20, 2002.

12 (c) If charges for mobile telecommunications service that
13 are not subject to tax are aggregated with and not separately
14 stated on the bill from charges that are subject to tax, the total
15 charge to the customer shall be subject to tax unless the home
16 service provider can reasonably separate charges not subject to tax
17 using the records of the home service provider that are kept in the
18 regular course of business.

19 (d) For purposes of this subsection:

20 (i) Customer means an individual, business, organization,
21 or other person contracting to receive mobile telecommunications
22 service from a home service provider. Customer does not include a
23 reseller of mobile telecommunications service or a serving carrier
24 under an arrangement to serve the customer outside the home service
25 provider's service area;

1 (ii) Home service provider means a telecommunications
2 company as defined in section 86-322 that has contracted with a
3 customer to provide mobile telecommunications service;

4 (iii) Mobile telecommunications service means a wireless
5 communication service carried on between mobile stations or
6 receivers and land stations, and by mobile stations communicating
7 among themselves, and includes (A) both one-way and two-way
8 wireless communication services, (B) a mobile service which
9 provides a regularly interacting group of base, mobile, portable,
10 and associated control and relay stations, whether on an
11 individual, cooperative, or multiple basis for private one-way or
12 two-way land mobile radio communications by eligible users over
13 designated areas of operation, and (C) any personal communication
14 service;

15 (iv) Place of primary use means the street address
16 representative of where the customer's use of mobile
17 telecommunications service primarily occurs. The place of
18 primary use shall be the residential street address or the primary
19 business street address of the customer and shall be within the
20 service area of the home service provider; and

21 (v) Tax means the sales taxes levied under sections
22 13-319, 77-2703, and 77-27,142 and section 3 of this act, the
23 surcharges levied under the Enhanced Wireless 911 Services Act,
24 the Nebraska Telecommunications Universal Service Fund Act, and
25 the Telecommunications Relay System Act, and any other tax levied

1 against the customer based on the amount charged to the customer.
2 Tax does not mean an income tax, property tax, franchise tax, or
3 any other tax levied on the home service provider that is not based
4 on the amount charged to the customer.

5 (4) A sale of post-paid calling service is sourced to
6 the origination point of the telecommunications signal as first
7 identified by either (a) the seller's telecommunications system, or
8 (b) information received by the seller from its service provider,
9 where the system used to transport such signals is not that of the
10 seller.

11 (5) A sale of prepaid calling service or a sale of a
12 prepaid wireless calling service is sourced in accordance with
13 section 77-2703.01, except that in the case of a sale of a prepaid
14 wireless calling service, the rule provided in section 77-2703.01
15 shall include as an option the location associated with the mobile
16 telephone number.

17 (6) A sale of a private communication service is sourced
18 as follows:

19 (a) Service for a separate charge related to a customer
20 channel termination point is sourced to each level of jurisdiction
21 in which such customer channel termination point is located;

22 (b) Service where all customer termination points are
23 located entirely within one jurisdiction or levels of jurisdiction
24 is sourced in such jurisdiction in which the customer channel
25 termination points are located;

1 (c) Service for segments of a channel between two
2 customer channel termination points located in different
3 jurisdictions and which segments of channel are separately charged
4 is sourced fifty percent in each level of jurisdiction in which the
5 customer channel termination points are located; and

6 (d) Service for segments of a channel located in more
7 than one jurisdiction or levels of jurisdiction and which segments
8 are not separately billed is sourced in each jurisdiction based
9 on the percentage determined by dividing the number of customer
10 channel termination points in such jurisdiction by the total number
11 of customer channel termination points.

12 (7) For purposes of this section:

13 (a) 800 service means a telecommunications service that
14 allows a caller to dial a toll-free number without incurring a
15 charge for the call. The service is typically marketed under
16 the name 800, 855, 866, 877, and 888 toll-free calling, and
17 any subsequent numbers designated by the Federal Communications
18 Commission;

19 (b) 900 service means an inbound toll telecommunications
20 service purchased by a subscriber that allows the subscriber's
21 customers to call in to the subscriber's prerecorded announcement
22 or live service. 900 service does not include the charge
23 for collection services provided by the seller of the
24 telecommunications services to the subscriber or service or product
25 sold by the subscriber to the subscriber's customer. The service is

1 typically marketed under the name 900 service, and any subsequent
2 numbers designated by the Federal Communications Commission;

3 (c) Air-to-ground radiotelephone service means a radio
4 telecommunication service, as that term is defined in 47 C.F.R.
5 22.99, as such regulation existed on January 1, 2007, in which
6 common carriers are authorized to offer and provide radio
7 telecommunications service for hire to subscribers in aircraft;

8 (d) Ancillary services means services that are associated
9 with or incidental to the provision of telecommunications services,
10 including, but not limited to, detailed telecommunications
11 billings, directory assistance, vertical service, and voice mail
12 services;

13 (e) Call-by-call basis means any method of charging
14 for telecommunications service where the price is measured by
15 individual calls;

16 (f) Coin-operated telephone service means a
17 telecommunications service paid for by inserting money into a
18 telephone accepting direct deposits of money to operate;

19 (g) Communications channel means a physical or virtual
20 path of communications over which signals are transmitted between
21 or among customer channel termination points;

22 (h) Conference bridging service means an ancillary
23 service that links two or more participants of an audio or
24 video conference call and may include the provision of a
25 telephone number. Conference bridging service does not include the

1 telecommunications services used to reach the conference bridge;

2 (i) Customer means the person or entity that contracts
3 with the seller of telecommunications service. If the end user
4 of telecommunications service is not the contracting party, the
5 end user of the telecommunications service is the customer of the
6 telecommunications service, but this sentence only applies for the
7 purpose of sourcing sales of telecommunications service under this
8 section. Customer does not include a reseller of telecommunications
9 service or for mobile telecommunications service of a serving
10 carrier under an agreement to serve the customer outside the home
11 service provider's licensed service area;

12 (j) Customer channel termination point means the location
13 where the customer either inputs or receives the communications;

14 (k) Detailed telecommunications billing service means an
15 ancillary service of separately stating information pertaining to
16 individual calls on a customer's billing statement;

17 (l) Directory assistance means an ancillary service of
18 providing telephone number information and address information;

19 (m) End user means the person who utilizes the
20 telecommunications service. In the case of an entity, end user
21 means the individual who utilizes the service on behalf of the
22 entity;

23 (n) Fixed wireless service means a telecommunications
24 service that provides radio communication between fixed points;

25 (o) International means a telecommunications service that

1 originates or terminates in the United States and terminates or
2 originates outside the United States, respectively. United States
3 includes the District of Columbia or a United States territory or
4 possession;

5 (p) Interstate means a telecommunications service that
6 originates in one state of the United States, or a territory or
7 possession of the United States, and terminates in a different
8 state, territory, or possession of the United States;

9 (q) Intrastate means a telecommunications service that
10 originates in one state of the United States, or a territory or
11 possession of the United States, and terminates in the same state,
12 territory, or possession of the United States;

13 (r) Mobile wireless service means a telecommunications
14 service that is transmitted, conveyed, or routed regardless of the
15 technology used, whereby the origination and termination points of
16 the transmission, conveyance, or routing are not fixed, including,
17 by way of example only, telecommunications services that are
18 provided by a commercial mobile radio service provider;

19 (s) Paging service means a telecommunications service
20 that provides transmission of coded radio signals for the purpose
21 of activating specific pagers. Such transmission may include
22 messages and sounds;

23 (t) Pay telephone services means a telecommunications
24 service provided through pay telephones;

25 (u) Post-paid calling service means the

1 telecommunications service obtained by making a payment on a
2 call-by-call basis either through the use of a credit card or
3 payment mechanism, such as a bank card, travel card, credit card,
4 or debit card, or by a charge made to a telephone number which
5 is not associated with the origination or termination of the
6 telecommunications service. A post-paid calling service includes
7 a telecommunications service, except a prepaid wireless calling
8 service, that would be a prepaid calling service except it is not
9 exclusively a telecommunications service;

10 (v) Prepaid calling service means the right to access
11 exclusively telecommunications service, which is paid for in
12 advance and which enables the origination of calls using an access
13 number or authorization code, whether manually or electronically
14 dialed, and that is sold in predetermined units or dollars of which
15 the number declines with use in a known amount;

16 (w) Prepaid wireless calling service means a
17 telecommunications service that provides the right to utilize
18 mobile wireless service as well as other nontelecommunications
19 services, including the download of digital products delivered
20 electronically, content, and ancillary services, which must be paid
21 for in advance, that is sold in predetermined units of dollars or
22 which the number declines with use in a known amount;

23 (x) Private communication service means a
24 telecommunications service that entitles the customer to exclusive
25 or priority use of a communications channel or group of channels

1 between or among termination points, regardless of the manner
2 in which such channel or channels are connected, and includes
3 switching capacity, extension lines, stations, and any other
4 associated services that are provided in connection with the use of
5 such channel or channels;

6 (y) Residential telecommunications service means a
7 telecommunications service or ancillary services provided to an
8 individual for personal use at a residential address, including
9 an individual dwelling unit such as an apartment. In the case of
10 institutions where individuals reside, such as schools or nursing
11 homes, telecommunications service is considered residential if it
12 is provided to and paid for by an individual resident rather than
13 the institution;

14 (z) Service address means the location of the
15 telecommunications equipment to which a customer's call is charged
16 and from which the call originates or terminates, regardless of
17 where the call is billed or paid. If this location is not known,
18 service address means the origination point of the signal of the
19 telecommunications service first identified either by the seller's
20 telecommunications system, or in information received by the seller
21 from its service provider, where the system used to transport such
22 signals is not that of the seller. If both locations are not known,
23 the service address means the location of the customer's place of
24 primary use;

25 (aa) Telecommunications service means the electronic

1 transmission, conveyance, or routing of voice, data, audio, video,
2 or any other information or signals to a point, or between or among
3 points. Telecommunications service includes such transmission,
4 conveyance, or routing in which computer processing applications
5 are used to act on the form, code, or protocol of the content for
6 purposes of transmission, conveyance, or routing without regard to
7 whether such service is referred to as voice over Internet protocol
8 services or is classified by the Federal Communications Commission
9 as enhanced or value-added. Telecommunications service does not
10 include:

11 (i) Data processing and information services that allow
12 data to be generated, acquired, stored, processed, or retrieved and
13 delivered by an electronic transmission to a purchaser when such
14 purchaser's primary purpose for the underlying transaction is the
15 processed data or information;

16 (ii) Installation or maintenance of wiring or equipment
17 on a customer's premises;

18 (iii) Tangible personal property;

19 (iv) Advertising, including, but not limited to,
20 directory advertising;

21 (v) Billing and collection services provided to third
22 parties;

23 (vi) Internet access service;

24 (vii) Radio and television audio and video programming
25 services, regardless of the medium, including the furnishing of

1 transmission, conveyance, and routing of such services by the
2 programming service provider. Radio and television audio and video
3 programming services shall include, but not be limited to, cable
4 service as defined in 47 U.S.C. 522, as such section existed on
5 January 1, 2007, and audio and video programming services delivered
6 by providers of commercial mobile radio service as defined in 47
7 C.F.R. 20.3, as such regulation existed on January 1, 2007;

8 (viii) Ancillary services; or

9 (ix) Digital products delivered electronically,
10 including, but not limited to, software, music, video, reading
11 materials, or ringtones;

12 (bb) Value-added, nonvoice data service means a service
13 that otherwise meets the definition of telecommunications services
14 in which computer processing applications are used to act on
15 the form, content, code, or protocol of the information or data
16 primarily for a purpose other than transmission, conveyance, or
17 routing;

18 (cc) Vertical service means an ancillary service that is
19 offered in connection with one or more telecommunications services,
20 which offers advanced calling features that allow customers to
21 identify callers and to manage multiple calls and call connections,
22 including conference bridging services; and

23 (dd) Voice mail service means an ancillary service that
24 enables the customer to store, send, or receive recorded messages.
25 Voice mail service does not include any vertical services that the

1 customer may be required to have in order to utilize the voice mail
2 service.

3 Sec. 13. Section 77-2704.31, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-2704.31 If any person who causes property or service
6 to be brought into this state has already paid a tax in another
7 state with respect to the sale or use of such property or service
8 in an amount less than the tax imposed by sections 13-319, 13-2813,
9 77-2703, and 77-27,142 and section 3 of this act, the provisions
10 of subsection (2) of section 77-2703 shall apply, but at a rate
11 measured by the difference only between the rate imposed by such
12 sections and the rate by which the previous tax on the sale or use
13 was computed. If such tax imposed and paid in such other state is
14 equal to or more than the tax imposed by such sections, then no
15 use tax shall be due in this state on such property if such other
16 state, territory, or possession grants a reciprocal exclusion or
17 exemption to similar transactions in this state.

18 Sec. 14. Section 77-2711, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2711 (1)(a) The Tax Commissioner shall enforce
21 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
22 enforce rules and regulations relating to the administration and
23 enforcement of such sections.

24 (b) The Tax Commissioner may prescribe the extent to
25 which any ruling or regulation shall be applied without retroactive

1 effect.

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

8 (3)(a) Every seller, every retailer, and every person
9 storing, using, or otherwise consuming in this state property
10 purchased from a retailer shall keep such records, receipts,
11 invoices, and other pertinent papers in such form as the Tax
12 Commissioner may reasonably require.

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

17 (4) The Tax Commissioner or any person authorized in
18 writing by him or her may examine the books, papers, records, and
19 equipment of any person selling property and any person liable for
20 the use tax and may investigate the character of the business of
21 the person in order to verify the accuracy of any return made or,
22 if no return is made by the person, to ascertain and determine
23 the amount required to be paid. In the examination of any person
24 selling property or of any person liable for the use tax, an
25 inquiry shall be made as to the accuracy of the reporting of

1 city sales and use taxes for which the person is liable under the
2 Local Option Revenue Act or sections 13-319, 13-324, and 13-2813
3 and section 3 of this act and the accuracy of the allocation
4 made between the various counties, cities, villages, and municipal
5 counties of the tax due. The Tax Commissioner may make or cause to
6 be made copies of resale or exemption certificates and may pay a
7 reasonable amount to the person having custody of the records for
8 providing such copies.

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

12 (6) In administration of the use tax, the Tax
13 Commissioner may require the filing of reports by any person or
14 class of persons having in his, her, or their possession or custody
15 information relating to sales of property, the storage, use, or
16 other consumption of which is subject to the tax. The report shall
17 be filed when the Tax Commissioner requires and shall set forth the
18 names and addresses of purchasers of the property, the sales price
19 of the property, the date of sale, and such other information as
20 the Tax Commissioner may require.

21 (7) It shall be a Class I misdemeanor for the Tax
22 Commissioner or any official or employee of the Tax Commissioner,
23 the State Treasurer, or the Department of Administrative Services
24 to make known in any manner whatever the business affairs,
25 operations, or information obtained by an investigation of records

1 and activities of any retailer or any other person visited
2 or examined in the discharge of official duty or the amount
3 or source of income, profits, losses, expenditures, or any
4 particular thereof, set forth or disclosed in any return, or
5 to permit any return or copy thereof, or any book containing
6 any abstract or particulars thereof to be seen or examined by
7 any person not connected with the Tax Commissioner. Nothing in
8 this section shall be construed to prohibit (a) the delivery to
9 a taxpayer, his or her duly authorized representative, or his
10 or her successors, receivers, trustees, executors, administrators,
11 assignees, or guarantors, if directly interested, of a certified
12 copy of any return or report in connection with his or her tax,
13 (b) the publication of statistics so classified as to prevent
14 the identification of particular reports or returns and the items
15 thereof, (c) the inspection by the Attorney General, other legal
16 representative of the state, or county attorney of the reports
17 or returns of any taxpayer when either (i) information on the
18 reports or returns is considered by the Attorney General to be
19 relevant to any action or proceeding instituted by the taxpayer
20 or against whom an action or proceeding is being considered or
21 has been commenced by any state agency or the county or (ii) the
22 taxpayer has instituted an action to review the tax based thereon
23 or an action or proceeding against the taxpayer for collection of
24 tax or failure to comply with the Nebraska Revenue Act of 1967 is
25 being considered or has been commenced, (d) the furnishing of any

1 information to the United States Government or to states allowing
2 similar privileges to the Tax Commissioner, (e) the disclosure of
3 information and records to a collection agency contracting with the
4 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
5 the disclosure to another party to a transaction of information
6 and records concerning the transaction between the taxpayer and
7 the other party, or (g) the disclosure of information pursuant to
8 section 77-27,195 or 77-5731.

9 (8) Notwithstanding the provisions of subsection (7) of
10 this section, the Tax Commissioner may permit the Postal Inspector
11 of the United States Postal Service or his or her delegates to
12 inspect the reports or returns of any person filed pursuant to the
13 Nebraska Revenue Act of 1967 when information on the reports or
14 returns is relevant to any action or proceeding instituted or being
15 considered by the United States Postal Service against such person
16 for the fraudulent use of the mails to carry and deliver false and
17 fraudulent tax returns to the Tax Commissioner with the intent to
18 defraud the State of Nebraska or to evade the payment of Nebraska
19 state taxes.

20 (9) Notwithstanding the provisions of subsection (7) of
21 this section, the Tax Commissioner may permit other tax officials
22 of this state to inspect the tax returns, reports, and applications
23 filed under sections 77-2701.04 to 77-2713, but such inspection
24 shall be permitted only for purposes of enforcing a tax law and
25 only to the extent and under the conditions prescribed by the rules

1 and regulations of the Tax Commissioner.

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

10 The information provided by the Tax Commissioner shall
11 indicate only the names and addresses of the hotels located within
12 the requesting county for which lodging sales tax returns have been
13 filed for a specified period and the fact that lodging sales taxes
14 remitted by or on behalf of the hotel have constituted a portion of
15 the total sum remitted by the state to the county for a specified
16 period under the provisions of the Nebraska Visitors Development
17 Act. No additional information shall be revealed.

18 (11)(a) Notwithstanding the provisions of subsection (7)
19 of this section, the Tax Commissioner shall, upon written request
20 by the Auditor of Public Accounts or the Legislative Performance
21 Audit Committee, make tax returns and tax return information open
22 to inspection by or disclosure to Auditor of Public Accounts or
23 Legislative Performance Audit Section employees for the purpose of
24 and to the extent necessary in making an audit of the Department
25 of Revenue pursuant to section 50-1205 or 84-304. Confidential

1 tax returns and tax return information shall be audited only upon
2 the premises of the Department of Revenue. All audit workpapers
3 pertaining to the audit of the Department of Revenue shall be
4 stored in a secure place in the Department of Revenue.

5 (b) No employee of the Auditor of Public Accounts or
6 Legislative Performance Audit Section shall disclose to any person,
7 other than another Auditor of Public Accounts or Legislative
8 Performance Audit Section employee whose official duties require
9 such disclosure or as provided in subsections (2) and (3) of
10 section 50-1213, any return or return information described in the
11 Nebraska Revenue Act of 1967 in a form which can be associated
12 with or otherwise identify, directly or indirectly, a particular
13 taxpayer.

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

18 (12) For purposes of this subsection and subsection (11)
19 of this section:

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

22 (b) Return information means:

23 (i) A taxpayer's identification number and (A) the
24 nature, source, or amount of his or her income, payments, receipts,
25 deductions, exemptions, credits, assets, liabilities, net worth,

1 tax liability, tax withheld, deficiencies, overassessments, or tax
2 payments, whether the taxpayer's return was, is being, or will be
3 examined or subject to other investigation or processing or (B) any
4 other data received by, recorded by, prepared by, furnished to, or
5 collected by the Tax Commissioner with respect to a return or the
6 determination of the existence or possible existence of liability
7 or the amount of liability of any person for any tax, penalty,
8 interest, fine, forfeiture, or other imposition or offense; and

9 (ii) Any part of any written determination or any
10 background file document relating to such written determination;
11 and

12 (c) Tax return or return means any tax or information
13 return or claim for refund required by, provided for, or permitted
14 under sections 77-2701 to 77-2713 which is filed with the Tax
15 Commissioner by, on behalf of, or with respect to any person
16 and any amendment or supplement thereto, including supporting
17 schedules, attachments, or lists which are supplemental to or part
18 of the filed return.

19 (13) Notwithstanding the provisions of subsection (7) of
20 this section, the Tax Commissioner shall, upon request, provide any
21 municipality which has adopted the local option sales tax under
22 the Local Option Revenue Act or section 3 of this act with a list
23 of the names and addresses of the retailers which have collected
24 the local option sales tax for the municipality. The request may
25 be made annually and shall be submitted to the Tax Commissioner on

1 or before June 30 of each year. The information provided by the
2 Tax Commissioner shall indicate only the names and addresses of the
3 retailers. The Tax Commissioner may provide additional information
4 to a municipality so long as the information does not include any
5 data detailing the specific revenue, expenses, or operations of any
6 particular business.

7 (14) In all proceedings under the Nebraska Revenue Act
8 of 1967, the Tax Commissioner may act for and on behalf of the
9 people of the State of Nebraska. The Tax Commissioner in his or her
10 discretion may waive all or part of any penalties provided by the
11 provisions of such act or interest on delinquent taxes specified in
12 section 45-104.02, as such rate may from time to time be adjusted.

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

18 (b) For purposes of this subsection:

19 (i) Anonymous data means information that does not
20 identify a person;

21 (ii) Confidential taxpayer information means all
22 information that is protected under a member state's laws,
23 regulations, and privileges; and

24 (iii) Personally identifiable information means
25 information that identifies a person.

1 (c) The state agrees that a fundamental precept for model
2 1 sellers is to preserve the privacy of consumers by protecting
3 their anonymity. With very limited exceptions, a certified service
4 provider shall perform its tax calculation, remittance, and
5 reporting functions without retaining the personally identifiable
6 information of consumers.

7 (d) The governing board of the member states in the
8 streamlined sales and use tax agreement may certify a certified
9 service provider only if that certified service provider certifies
10 that:

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

13 (ii) Personally identifiable information is only used and
14 retained to the extent necessary for the administration of model 1
15 with respect to exempt purchasers;

16 (iii) It provides consumers clear and conspicuous
17 notice of its information practices, including what information
18 it collects, how it collects the information, how it uses the
19 information, how long, if at all, it retains the information, and
20 whether it discloses the information to member states. Such notice
21 shall be satisfied by a written privacy policy statement accessible
22 by the public on the web site of the certified service provider;

23 (iv) Its collection, use, and retention of personally
24 identifiable information is limited to that required by the member
25 states to ensure the validity of exemptions from taxation that are

1 claimed by reason of a consumer's status or the intended use of the
2 goods or services purchased; and

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

6 (e) The state shall provide public notification to
7 consumers, including exempt purchasers, of the state's practices
8 relating to the collection, use, and retention of personally
9 identifiable information.

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

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

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

24 (i) This privacy policy is subject to enforcement by the
25 Attorney General.

1 (j) All other laws and regulations regarding the
2 collection, use, and maintenance of confidential taxpayer
3 information remain fully applicable and binding. Without
4 limitation, this subsection does not enlarge or limit the state's
5 authority to:

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

8 (ii) Provide records pursuant to the federal Freedom of
9 Information Act, disclosure laws with governmental agencies, or
10 other regulations;

11 (iii) Prevent, consistent with state law, disclosure of
12 confidential taxpayer information;

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

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

18 Sec. 15. Section 77-2712.05, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2712.05 By agreeing to the terms of the streamlined
21 sales and use tax agreement, this state agrees to abide by the
22 following requirements:

23 (1) Uniform state rate. The state shall comply with
24 restrictions to achieve over time more uniform state rates through
25 the following:

1 (a) Limiting the number of state rates;

2 (b) Limiting the application of maximums on the amount of
3 state tax that is due on a transaction; and

4 (c) Limiting the application of thresholds on the
5 application of state tax;

6 (2) Uniform standards. The state hereby establishes
7 uniform standards for the following:

8 (a) Sourcing of transactions to taxing jurisdictions as
9 provided in sections 77-2703.01 to 77-2703.04;

10 (b) Administration of exempt sales as set out by the
11 agreement and using procedures as determined by the governing
12 board;

13 (c) Allowances a seller can take for bad debts as
14 provided in section 77-2708; and

15 (d) Sales and use tax returns and remittances. To comply
16 with the agreement, the Tax Commissioner shall:

17 (i) Require only one remittance for each return except
18 as provided in this subdivision. If any additional remittance is
19 required, it may only be required from retailers that collect more
20 than thirty thousand dollars in sales and use taxes in the state
21 during the preceding calendar year as provided in this subdivision.
22 The amount of any additional remittance may be determined through
23 a calculation method rather than actual collections. Any additional
24 remittance shall not require the filing of an additional return;

25 (ii) Require, at his or her discretion, all remittances

1 from sellers under models 1, 2, and 3 to be remitted
2 electronically;

3 (iii) Allow for electronic payments by both automated
4 clearinghouse credit and debit;

5 (iv) Provide an alternative method for making same day
6 payments if an electronic funds transfer fails;

7 (v) Provide that if a due date falls on a legal banking
8 holiday, the taxes are due to that state on the next succeeding
9 business day; and

10 (vi) Require that any data that accompanies a remittance
11 be formatted using uniform tax type and payment type codes approved
12 by the governing board of the member states to the streamlined
13 sales and use tax agreement;

14 (3) Uniform definitions. (a) The state shall utilize the
15 uniform definitions of sales and use tax terms as provided in the
16 agreement. The definitions enable Nebraska to preserve its ability
17 to make taxability and exemption choices not inconsistent with the
18 uniform definitions.

19 (b) The state may enact a product-based exemption without
20 restriction if the agreement does not have a definition for the
21 product or for a term that includes the product. If the agreement
22 has a definition for the product or for a term that includes
23 the product, the state may exempt all items included within the
24 definition but shall not exempt only part of the items included
25 within the definition unless the agreement sets out the exemption

1 for part of the items as an acceptable variation.

2 (c) The state may enact an entity-based or a use-based
3 exemption without restriction if the agreement does not have a
4 definition for the product whose use or purchase by a specific
5 entity is exempt or for a term that includes the product. If the
6 agreement has a definition for the product whose use or specific
7 purchase is exempt, states may enact an entity-based or a use-based
8 exemption that applies to that product as long as the exemption
9 utilizes the agreement definition of the product. If the agreement
10 does not have a definition for the product whose use or specific
11 purchase is exempt but has a definition for a term that includes
12 the product, states may enact an entity-based or a use-based
13 exemption for the product without restriction.

14 (d) For purposes of complying with the requirements in
15 this section, the inclusion of a product within the definition of
16 tangible personal property is disregarded;

17 (4) Central registration. The state shall participate in
18 an electronic central registration system that allows a seller to
19 register to collect and remit sales and use taxes for all member
20 states. Under the system:

21 (a) A retailer registering under the agreement is
22 registered in this state;

23 (b) The state agrees not to require the payment of any
24 registration fees or other charges for a retailer to register in
25 the state if the retailer has no legal requirement to register;

1 (c) A written signature from the retailer is not
2 required;

3 (d) An agent may register a retailer under uniform
4 procedures adopted by the member states pursuant to the agreement;

5 (e) A retailer may cancel its registration under the
6 system at any time under uniform procedures adopted by the
7 governing board. Cancellation does not relieve the retailer of its
8 liability for remitting to the proper states any taxes collected;

9 (f) When registering, the retailer that is registered
10 under the agreement may select one of the following methods of
11 remittances or other method allowed by state law to remit the taxes
12 collected:

13 (i) Model 1, wherein a seller selects a certified service
14 provider as an agent to perform all the seller's sales or use tax
15 functions, other than the seller's obligation to remit tax on its
16 own purchases;

17 (ii) Model 2, wherein a seller selects a certified
18 automated system to use which calculates the amount of tax due on a
19 transaction; and

20 (iii) Model 3, wherein a seller utilizes its own
21 proprietary automated sales tax system that has been certified
22 as a certified automated system; and

23 (g) Sellers who register within twelve months after this
24 state's first approval of a certified service provider are relieved
25 from liability, including the local option tax, for tax not

1 collected or paid if the seller was not registered between October
2 1, 2004, and September 30, 2005. Such relief from liability shall
3 be in accordance with the terms of the agreement;

4 (5) No nexus attribution. The state agrees that
5 registration with the central registration system and the
6 collection of sales and use taxes in the state will not be used as
7 a factor in determining whether the seller has nexus with the state
8 for any tax at any time;

9 (6) Local sales and use taxes. The agreement requires
10 the reduction of the burdens of complying with local sales and use
11 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,
12 77-27,142, 77-27,143, and 77-27,144 and section 3 of this act that
13 require the following:

14 (a) No variation between the state and local tax bases;

15 (b) Statewide administration of all sales and use taxes
16 levied by local jurisdictions within the state so that sellers
17 collecting and remitting these taxes will not have to register or
18 file returns with, remit funds to, or be subject to independent
19 audits from local taxing jurisdictions;

20 (c) Limitations on the frequency of changes in the local
21 sales and use tax rates and setting effective dates for the
22 application of local jurisdictional boundary changes to local sales
23 and use taxes; and

24 (d) Uniform notice of changes in local sales and use
25 tax rates and of changes in the boundaries of local taxing

1 jurisdictions;

2 (7) Complete a taxability matrix approved by the
3 governing board. (a) Notice of changes in the taxability of the
4 products or services listed will be provided as required by the
5 governing board.

6 (b) The entries in the matrix shall be provided and
7 maintained in a data base that is in a downloadable format approved
8 by the governing board.

9 (c) Sellers, model 2 sellers, and certified service
10 providers are relieved from liability, including the local option
11 tax, for having charged and collected the incorrect amount of sales
12 or use tax resulting from the seller or certified service provider
13 relying on erroneous data provided by the member state in the
14 taxability matrix or for relying on product-based classifications
15 that have been reviewed and approved by the state. The state shall
16 notify the certified service provider or model 2 seller if an item
17 or transaction is incorrectly classified as to its taxability.

18 (d) Purchasers are relieved from liability for penalty
19 for having failed to pay the correct amount of tax resulting from
20 the purchaser's reliance on erroneous data provided by the member
21 state in the taxability matrix or rates and boundaries data bases
22 or for relying on product-based classifications that have been
23 reviewed and approved by the state;

24 (8) Monetary allowances. The state agrees to allow any
25 monetary allowances that are to be provided by the states to

1 sellers or certified service providers in exchange for collecting
2 sales and use taxes as provided in Article VI of the agreement;

3 (9) State compliance. The agreement requires the state to
4 certify compliance with the terms of the agreement prior to joining
5 and to maintain compliance, under the laws of the member state,
6 with all provisions of the agreement while a member;

7 (10) Consumer privacy. The state hereby adopts a uniform
8 policy for certified service providers that protects the privacy of
9 consumers and maintains the confidentiality of tax information as
10 provided in section 77-2711; and

11 (11) Advisory councils. The state agrees to
12 the recognition of an advisory council of private-sector
13 representatives and an advisory council of member and nonmember
14 state representatives to consult with in the administration of the
15 agreement.

16 Sec. 16. Section 77-4105, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-4105 (1) A taxpayer who has signed an agreement under
19 section 77-4104 may elect to determine taxable income for purposes
20 of the Nebraska income tax using the sales factor only. The
21 election may be made for the year during which the application was
22 filed and for each year thereafter through the eighth year after
23 the end of the entitlement period. The election shall be made for
24 the year of the election by computing taxable income using the
25 sales factor only on the tax return.

1 (2) A taxpayer who has signed an agreement under section
2 77-4104 shall receive the incentive provided in this subsection
3 if the agreement contains one or more projects which together
4 will result in the investment in qualified property of at least
5 ten million dollars and the hiring of at least one hundred new
6 employees. Such ten-million-dollar investment and hiring of at
7 least one hundred new employees shall be considered a required
8 level of investment and employment for this subsection and for the
9 recapture of personal property tax only.

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

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

18 (b) Computer systems, made up of equipment that is
19 interconnected in order to enable the acquisition, storage,
20 manipulation, management, movement, control, display, transmission,
21 or reception of data involving computer software and hardware, used
22 for business information processing which require environmental
23 controls of temperature and power and which are capable of
24 simultaneously supporting more than one transaction and more than
25 one user. A computer system includes peripheral components which

1 require environmental controls of temperature and power connected
2 to such computers. Peripheral components shall be limited to
3 additional memory units, tape drives, disk drives, power supplies,
4 cooling units, data switches, and communication controllers; and

5 (c) Personal property which is business equipment located
6 in a single project if (i) the business equipment is involved
7 directly in the manufacture or processing of agricultural products
8 and (ii) the investment in the single project exceeds ten million
9 dollars.

10 Such property shall be eligible for exemption from the
11 tax on personal property from the first January 1 following the
12 date of acquisition for property in subdivision (2)(a) of this
13 section, or from the first January 1 following the end of the
14 year during which the required levels were exceeded for property
15 in subdivisions (2)(b) and (2)(c) of this section, through the
16 sixteenth December 31 after the filing of the application. In order
17 to receive the property tax exemptions allowed by subdivisions
18 (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall
19 annually file a claim for exemption with the Tax Commissioner on or
20 before May 1. The form and supporting schedules shall be prescribed
21 by the Tax Commissioner and shall list all property for which
22 exemption is being sought under this section. A separate claim
23 for exemption must be filed for each project and each county in
24 which property is claimed to be exempt. A copy of this form must
25 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,
3 on or before August 1, certify such to the taxpayer and to the
4 affected county assessor.

5 (3) When the taxpayer has met the required levels of
6 employment and investment contained in the agreement, the taxpayer
7 shall also be entitled to the following incentives:

8 (a) A refund of all sales and use taxes paid under
9 the Nebraska Revenue Act of 1967, the Local Option Revenue
10 Act, and sections 13-319, 13-324, and 13-2813 from the date of
11 the application through the meeting of the required levels of
12 employment and investment for all purchases, including rentals, of:

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

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

18 (iii) Tangible personal property by the owner of the
19 improvement to real estate that is incorporated into real estate as
20 a part of a project; and

21 (iv) Tangible personal property by a contractor or
22 repairperson after appointment as a purchasing agent of the owner
23 of the improvement to real estate. The refund shall be based on
24 fifty percent of the contract price, excluding any land, as the
25 cost of materials subject to the sales and use tax; and

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

8 (4) Any taxpayer who qualifies for the incentives
9 contained in subsections (1) and (3) of this section and who has
10 added at least thirty new employees at the project shall also be
11 entitled to:

12 (a) A credit equal to five percent of the amount by which
13 the total compensation paid during the year to employees who are
14 either Nebraska employees or base-year employees while employed at
15 the project exceeds the average compensation paid at the project
16 multiplied by the number of equivalent base-year employees.

17 For the computation of such credit, average compensation
18 shall mean the total compensation paid at the project divided by
19 the total number of equivalent employees at the project; and

20 (b) A credit equal to ten percent of the investment made
21 in qualified property at the project.

22 The credits prescribed in subdivisions (a) and (b) of
23 this subsection shall be allowable for compensation paid and
24 investments made during each year of the entitlement period that
25 the taxpayer is at or above the required levels of employment and

1 investment.

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

7 Sec. 17. Section 77-4106, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-4106 (1) (a) The credits prescribed in section 77-4105
10 shall be established by filing the forms required by the Tax
11 Commissioner with the income tax return for the year. The credits
12 may be used after any other nonrefundable credits to reduce the
13 taxpayer's income tax liability imposed by sections 77-2714 to
14 77-27,135. The credits may be used to obtain a refund of sales and
15 use taxes under the Nebraska Revenue Act of 1967, the Local Option
16 Revenue Act, and sections 13-319, 13-324, and 13-2813 and section
17 3 of this act which are not otherwise refundable that are paid on
18 purchases, including rentals, for use at the project.

19 (b) The credits may be used as allowed in subdivision
20 (a) of this subsection and shall be applied in the order in which
21 they were first allowed. Any decision on how part of the credit is
22 applied shall not limit how the remaining credit could be applied
23 under this section.

24 (c) The credit may be carried over until fully utilized,
25 except that such credit may not be carried over more than eight

1 years after the end of the entitlement period.

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

4 (b) Refund claims shall be filed no more than once each
5 quarter for refunds under the Employment and Investment Growth
6 Act, except that any claim for a refund in excess of twenty-five
7 thousand dollars may be filed at any time.

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

17 (d) All refund claims shall be filed, processed, and
18 allowed as any other claim under section 77-2708, except that the
19 amounts allowed to be refunded under the Employment and Investment
20 Growth Act shall be deemed to be overpayments and shall be refunded
21 notwithstanding any limitation in subdivision (2) (a) of section
22 77-2708. The refund may be allowed if the claim is filed within
23 three calendar years from the end of the year the required levels
24 of employment and investment are met or within the period set forth
25 in section 77-2708.

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

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

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

14 77-5725 (1) Applicants may qualify for benefits under the
15 Nebraska Advantage Act in one of six tiers:

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

1 date shall continue in full force and effect;

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

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

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

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

23 (f) Tier 6, investment in qualified property of at least
24 ten million dollars and the hiring of at least seventy-five new
25 employees or the investment in qualified property of at least

1 one hundred million dollars and the hiring of at least fifty new
2 employees. Agreements may be executed with regard to completed
3 project applications filed before January 1, 2016. All project
4 agreements pending, approved, or entered into before such date
5 shall continue in full force and effect.

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

10 (a) A refund of all sales and use taxes for a tier 2,
11 tier 4, tier 5, or tier 6 project or a refund of one-half of all
12 sales and use taxes for a tier 1 project paid under the Local
13 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
14 13-319, 13-324, and 13-2813 and section 3 of this act from the date
15 of the application through the meeting of the required levels of
16 employment and investment for all purchases, including rentals, of:

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

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

22 (iii) Tangible personal property by the owner of the
23 improvement to real estate that is incorporated into real estate as
24 a part of a project; and

25 (iv) Tangible personal property by a contractor or

1 repairperson after appointment as a purchasing agent of the owner
2 of the improvement to real estate. The refund shall be based on
3 fifty percent of the contract price, excluding any land, as the
4 cost of materials subject to the sales and use tax; and

5 (b) A refund of all sales and use taxes for a tier 2,
6 tier 4, tier 5, or tier 6 project or a refund of one-half of all
7 sales and use taxes for a tier 1 project paid under the Local
8 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
9 13-319, 13-324, and 13-2813 and section 3 of this act on the types
10 of purchases, including rentals, listed in subdivision (a) of this
11 subsection for such taxes paid during each year of the entitlement
12 period in which the taxpayer is at or above the required levels of
13 employment and investment.

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

1 hundred percent of the Nebraska average annual wage for the year of
2 application. The credit shall equal six percent times the average
3 wage of new employees times the number of new employees if the
4 average wage of the new employees equals at least one hundred
5 twenty-five percent of the Nebraska average annual wage for the
6 year of application. For computation of such credit:

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

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

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

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

1 any one employee during the year, employed at the project.

2 (5) Any taxpayer who has met the required levels of
3 employment and investment for a tier 2 or tier 4 project shall
4 receive a credit equal to ten percent of the investment made in
5 qualified property at the project. Any taxpayer who has met the
6 required levels of investment and employment for a tier 1 project
7 shall receive a credit equal to three percent of the investment
8 made in qualified property at the project. Any taxpayer who has
9 met the required levels of investment and employment for a tier
10 6 project shall receive a credit equal to fifteen percent of the
11 investment made in qualified property at the project.

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

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

22 (8)(a) A taxpayer who has met the required levels of
23 employment and investment for a tier 4 or tier 6 project shall
24 receive the incentive provided in this subsection. A taxpayer who
25 has a project for an Internet web portal and who has met the

1 required level of investment for a tier 5 project shall receive the
2 incentive provided in this subsection for property in subdivision
3 (8)(b)(ii) of this section. Such investment and hiring of new
4 employees shall be considered a required level of investment and
5 employment for this subsection and for the recapture of benefits
6 under this subsection only.

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

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

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

1 cooling units, data switches, and communication controllers;

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

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

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

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

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

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

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

1 thresholds shall be adjusted for cumulative inflation since 2006.

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

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

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

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

20 77-5726 (1) (a) The credits prescribed in section 77-5725
21 shall be established by filing the forms required by the Tax
22 Commissioner with the income tax return for the year. The credits
23 may be used and shall be applied in the order in which they
24 were first allowed. The credits may be used after any other
25 nonrefundable credits to reduce the taxpayer's income tax liability

1 imposed by sections 77-2714 to 77-27,135. Any decision on how part
2 of the credit is applied shall not limit how the remaining credit
3 could be applied under this section.

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

25 For a tier 1, tier 2, tier 3, or tier 4 project, the

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

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

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

17 (c) Credits may be used to obtain a refund of sales and
18 use taxes under the Local Option Revenue Act, the Nebraska Revenue
19 Act of 1967, and sections 13-319, 13-324, and 13-2813 and section
20 3 of this act which are not otherwise refundable that are paid on
21 purchases, including rentals, for use at the project for a tier 1,
22 tier 2, tier 3, or tier 4 project or for use within this state for
23 a tier 6 project.

24 (d) The credits earned for a tier 6 project may be used
25 to obtain a payment from the state equal to the real property

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

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

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

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

22 (c) Any refund claim for sales and use taxes on materials
23 incorporated into real estate as a part of the project shall be
24 filed by and the refund paid to the owner of the improvement
25 to real estate. A refund claim for such materials purchased

1 by a purchasing agent shall include a copy of the purchasing
2 agent appointment, the contract price, and a certification by
3 the contractor or repairperson of the percentage of the materials
4 incorporated into the project on which sales and use taxes were
5 paid to Nebraska after appointment as purchasing agent.

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

15 (e) If a claim for a refund of sales and use taxes
16 under the Local Option Revenue Act or sections 13-319, 13-324, and
17 13-2813 and section 3 of this act of more than twenty-five thousand
18 dollars is filed by June 15 of a given year, the refund shall be
19 made on or after November 15 of the same year. If such a claim is
20 filed on or after June 16 of a given year, the refund shall not
21 be made until on or after November 15 of the following year. The
22 Tax Commissioner shall notify the affected city, village, county,
23 or municipal county of the amount of refund claims of sales and
24 use taxes under the Local Option Revenue Act or sections 13-319,
25 13-324, and 13-2813 and section 3 of this act that are in excess of

1 twenty-five thousand dollars on or before July 1 of the year before
2 the claims will be paid under this section.

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

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

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

LB 775

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1 Sec. 20. Original sections 39-2510, 39-2520, 77-2703.01,
2 77-2703.04, 77-2704.31, 77-2711, 77-2712.05, 77-4105, 77-4106,
3 77-5725, and 77-5726, Reissue Revised Statutes of Nebraska, are
4 repealed.