

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 544

Introduced by Wayne, 13.

Read first time January 19, 2021

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 49-801.01, 50-1209, 77-2711, 77-27,119, 77-27,144, 77-5905, and
3 84-602.03, Revised Statutes Cumulative Supplement, 2020; to adopt
4 the Urban Redevelopment Act; to provide tax incentives as
5 prescribed; to change provisions relating to refunds of local option
6 sales and use taxes; to harmonize provisions; to provide an
7 operative date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 28 of this act shall be known and may be
2 cited as the Urban Redevelopment Act.

3 Sec. 2. For purposes of the Urban Redevelopment Act, the
4 definitions found in sections 3 to 18 of this act shall be used.

5 Sec. 3. Any term has the same meaning as used in the Nebraska
6 Revenue Act of 1967.

7 Sec. 4. Base year means the year immediately preceding the year of
8 application, except that if the year of application is 2021, the base
9 year is either 2019 or 2020, whichever year the applicant had the larger
10 number of equivalent employees at the qualified location.

11 Sec. 5. Base-year employee means any individual who was employed in
12 Nebraska and subject to the Nebraska income tax on compensation received
13 from the taxpayer or its predecessors during the base year and who is
14 employed at the qualified location.

15 Sec. 6. Economic redevelopment area means an area in the State of
16 Nebraska in which:

17 (1) The average rate of unemployment in the area during the period
18 covered by the most recent federal decennial census or American Community
19 Survey 5-Year Estimate by the United States Bureau of the Census is at
20 least one hundred fifty percent of the average rate of unemployment in
21 the state during the same period; and

22 (2) The average poverty rate in the area is twenty percent or more
23 for the federal census tract in the area.

24 Sec. 7. Equivalent employees means the number of employees computed
25 by dividing the total hours paid in a year to employees by the product of
26 forty times the number of weeks in a year. Only the hours paid to
27 employees who are residents of this state shall be included in such
28 computation. A salaried employee who receives a predetermined amount of
29 compensation each pay period on a weekly or less frequent basis is deemed
30 to have been paid for forty hours per week during the pay period.

31 Sec. 8. Investment means the value of qualified property

1 incorporated into or used at the qualified location. For qualified
2 property owned by the taxpayer, the value shall be the original cost of
3 the property. For qualified property rented by the taxpayer, the average
4 net annual rent shall be multiplied by the number of years of the lease
5 for which the taxpayer was originally bound, not to exceed ten years. The
6 rental of land included in and incidental to the leasing of a building
7 shall not be excluded from the computation. For purposes of this section,
8 original cost means the amount required to be capitalized for
9 depreciation, amortization, or other recovery under the Internal Revenue
10 Code of 1986, as amended. Any amount, including the labor of the
11 taxpayer, that is capitalized as a part of the cost of the qualified
12 property or that is written off under section 179 of the Internal Revenue
13 Code of 1986, as amended, shall be considered part of the original cost.

14 Sec. 9. Nebraska statewide average hourly wage for any year means
15 the most recent statewide average hourly wage paid by all employers in
16 all counties in Nebraska as calculated by the Office of Labor Market
17 Information of the Department of Labor using annual data from the
18 Quarterly Census of Employment and Wages by October 1 of the year prior
19 to application. Hourly wages shall be calculated by dividing the reported
20 average annual weekly wage by forty.

21 Sec. 10. Number of new employees means the number of equivalent
22 employees that are employed at the qualified location during a year that
23 are in excess of the number of base-year employees.

24 Sec. 11. Performance period means the year during which the
25 required increases in employment and investment were met or exceeded and
26 each year thereafter until the end of the third year after the year the
27 required increases were met or exceeded.

28 Sec. 12. Qualified location means any location in a city of the
29 metropolitan class or a city of the primary class that is used or will be
30 used by the taxpayer to conduct business activities and that is located
31 within an economic redevelopment area. More than one qualified location

1 may be part of the same project.

2 Sec. 13. Qualified property means any tangible property of a type
3 subject to depreciation, amortization, or other recovery under the
4 Internal Revenue Code of 1986, as amended, or the components of such
5 property, that will be located and used at the qualified location.
6 Qualified property does not include (1) aircraft, barges, motor vehicles,
7 railroad rolling stock, or watercraft or (2) property that is rented by
8 the taxpayer qualifying under the Urban Redevelopment Act to another
9 person.

10 Sec. 14. Ramp-up period means two years from the date the complete
11 application was filed with the Director of Economic Development.

12 Sec. 15. Related taxpayers shall include any corporations that are
13 part of a unitary business under the Nebraska Revenue Act of 1967 but are
14 not part of the same corporate taxpayer, any business entities that are
15 not corporations but which would be a part of the unitary business if
16 they were corporations, and any business entities if at least fifty
17 percent of such entities are owned by the same persons or related
18 taxpayers and family members as defined in the ownership attribution
19 rules of the Internal Revenue Code of 1986, as amended.

20 Sec. 16. Taxpayer means a corporate taxpayer or other person
21 subject to either an income tax imposed by the Nebraska Revenue Act of
22 1967 or a franchise tax under Chapter 77, article 38, or a partnership,
23 limited liability company, subchapter S corporation, cooperative,
24 including a cooperative exempt under section 521 of the Internal Revenue
25 Code of 1986, as amended, limited cooperative association, or joint
26 venture that is or would otherwise be a member of the same unitary group
27 if incorporated, which is, or whose partners, members, or owners
28 representing an ownership interest of at least ninety percent of the
29 control of such entity are, subject to or exempt from such taxes, and any
30 other partnership, limited liability company, subchapter S corporation,
31 cooperative, including a cooperative exempt under section 521 of the

1 Internal Revenue Code of 1986, as amended, limited cooperative
2 association, or joint venture when the partners, members, or owners
3 representing an ownership interest of at least ninety percent of the
4 control of such entity are subject to or exempt from such taxes.

5 Sec. 17. Wages means the wages and other payments subject to the
6 federal medicare tax.

7 Sec. 18. Year means the taxable year of the taxpayer.

8 Sec. 19. (1) To earn the incentives set forth in the Urban
9 Redevelopment Act, the taxpayer shall file an application for an
10 agreement with the Director of Economic Development.

11 (2) The application shall:

12 (a) Identify the taxpayer applying for incentives;

13 (b) Identify the location where the new investment and employment
14 will occur, including documentation to show that such location is a
15 qualified location;

16 (c) State the estimated, projected amount of new investment and the
17 estimated, projected number of new equivalent employees; and

18 (d) An application fee of five hundred dollars. The fee shall be
19 remitted to the State Treasurer for credit to the Nebraska Incentives
20 Fund.

21 (3) Subject to the limit in subsection (4) of this section, the
22 director shall approve the application and authorize the total amount of
23 incentives expected to be earned as a result of the project if he or she
24 is satisfied that the plan in the application defines a project that
25 meets the requirements established in section 20 of this act and such
26 requirements will be reached within the required time period.

27 (4) The director shall not approve further applications once the
28 expected incentives from the approved projects total eight million
29 dollars. All but one hundred dollars of the application fee shall be
30 refunded to the applicant if the application is not approved for any
31 reason.

1 (5) Applications for incentives shall be considered in the order in
2 which they are received.

3 (6) The director has ninety days to approve a complete application.

4 (7) After approval, the taxpayer and the director shall enter into a
5 written agreement. As part of such agreement, the taxpayer shall agree to
6 complete the project and the director, on behalf of the State of
7 Nebraska, shall designate the approved plans of the taxpayer as a project
8 and, in consideration of the taxpayer's agreement, agree to allow the
9 taxpayer to use the incentives contained in the Urban Redevelopment Act
10 up to the total amount that were authorized by the director at the time
11 of approval. The application and all supporting documentation, to the
12 extent approved, shall be considered a part of the agreement. The
13 agreement shall state:

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

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

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

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

21 (e) The maximum amount of incentives authorized.

22 (8) The application, the agreement, all supporting information, and
23 all other information reported to the Director of Economic Development
24 shall be kept confidential by the director, except for the name of the
25 taxpayer, the location of the project, the estimated amounts of increased
26 employment and investment stated in the application, the date of the
27 complete application, the date the agreement was signed, and the
28 information required to be reported by section 28 of this act. The
29 application, the agreement, and all supporting information shall be
30 provided by the director to the Department of Revenue. The director shall
31 disclose, to any municipalities in which project locations exist, the

1 approval of an application and the execution of an agreement under this
2 section. The Tax Commissioner shall also notify each municipality of the
3 amount and taxpayer identity for each refund of local option sales and
4 use taxes of the municipality within thirty days after the refund is
5 allowed or approved. Disclosures shall be kept confidential by the
6 municipality unless publicly disclosed previously by the taxpayer or by
7 the State of Nebraska.

8 (9) There shall be no new applications for incentives filed under
9 this section after December 31, 2031.

10 Sec. 20. (1) A tax credit shall be allowed to any taxpayer who has
11 an approved application pursuant to the Urban Redevelopment Act if the
12 taxpayer:

13 (a) Attains a cumulative investment in qualified property of at
14 least one hundred fifty thousand dollars and hires at least five new
15 employees at the qualified location before the end of the ramp-up period;
16 and

17 (b) Pays a minimum qualifying wage of seventy percent of the
18 Nebraska statewide average hourly wage to the new equivalent employees
19 for whom tax incentives are sought under the Urban Redevelopment Act.

20 (2) A tax credit shall be allowed to any taxpayer who has an
21 approved application pursuant to the Urban Redevelopment Act if the
22 taxpayer attains a cumulative investment in qualified property of at
23 least fifty thousand dollars at the qualified location before the end of
24 the ramp-up period.

25 (3) Subject to subsection (5) of this section, the amount of the
26 credit allowed under subsection (1) of this section shall be:

27 (a) Three thousand dollars for each new equivalent employee, except
28 that such amount shall be increased by one thousand dollars for each
29 equivalent employee who lives in an economic redevelopment area; and

30 (b) Two thousand seven hundred fifty dollars for each fifty thousand
31 dollars of increased investment.

1 (4) Subject to subsection (5) of this section, the amount of the
2 credit allowed under subsection (2) of this section shall be five percent
3 of the investment.

4 (5) A taxpayer may qualify for a credit under either subsection (1)
5 or (2) of this section, but cannot qualify for a credit under both such
6 subsections. The credit shall not exceed fifty thousand dollars. The
7 taxpayer shall receive such credit for each year of the performance
8 period that the taxpayer is at or above the required levels of employment
9 and cumulative investment.

10 (6) A taxpayer shall not qualify for any credits under the Urban
11 Redevelopment Act if the taxpayer is receiving any benefits under any
12 other tax incentive program offered by the State of Nebraska.

13 (7) A teleworker working from his or her residence shall not be
14 considered an equivalent employee of the taxpayer for purposes of the
15 Urban Redevelopment Act unless the teleworker's residence is located in
16 the economic redevelopment area in which the taxpayer's qualified
17 location is located.

18 Sec. 21. (1)(a) If the taxpayer acquires an existing business, the
19 increases in investment and employment shall be computed as though the
20 taxpayer had owned the business for the entire taxable year preceding the
21 date of application.

22 (b) If the taxpayer disposes of an existing business and the new
23 owner maintains the minimum increases in investment and employment
24 required to create incentives, the taxpayer shall not be required to make
25 any repayment under section 23 of this act solely because of the
26 disposition of the business.

27 (2) If the structure of a business is reorganized, the taxpayer
28 shall compute the increases on a consistent basis for all periods.

29 (3) If the taxpayer moves a business from one qualified location to
30 another qualified location and the business was operated in a qualified
31 location during the taxable year preceding the date of application, the

1 increases in investment and employment shall be computed as though the
2 taxpayer had operated the business at the new location for the entire
3 taxable year preceding the date of application.

4 (4) If the taxpayer enters into any of the following transactions,
5 the transaction shall be presumed to be a transaction entered into for
6 the purpose of generating benefits under the Urban Redevelopment Act and
7 shall not be allowed in the computation of any benefit or the meeting of
8 any required levels under the agreement except as specifically provided
9 in this subsection:

10 (a) The purchase or lease of any property that was previously owned
11 by the taxpayer who filed the application or a related taxpayer unless
12 the first purchase by either the taxpayer who filed the application or a
13 related taxpayer was first placed in service at a qualified location
14 after the beginning of the taxable year the application was filed;

15 (b) The renegotiation of any lease in existence during the taxable
16 year the application was filed which does not materially change any of
17 the terms of the lease other than the expiration date;

18 (c) The purchase or lease of any property from a related taxpayer,
19 except that the taxpayer who filed the application will be allowed any
20 benefits under the act to which the related taxpayer would have been
21 entitled on the purchase or lease of the property if the related taxpayer
22 was considered the taxpayer; and

23 (d) Any transaction entered into primarily for the purpose of
24 receiving benefits under the act which is without a business purpose and
25 does not result in increased economic activity in the state.

26 Sec. 22. (1) The credits allowed under section 20 of this act may
27 be used:

28 (a) To obtain a refund of sales and use taxes paid under the Local
29 Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified
30 Judgment Payment Act, and sections 13-319, 13-324, and 13-2813;

31 (b) As a refundable income tax credit claimed on an income tax

1 return of the taxpayer. The return need not reflect any income tax
2 liability owed by the taxpayer;

3 (c) To reduce the taxpayer's income tax withholding employer or
4 payor tax liability under section 77-2756 or 77-2757. To the extent of
5 the credit used, such withholding shall not constitute public funds or
6 state tax revenue and shall not constitute a trust fund or be owned by
7 the state. The use by the taxpayer of the credit shall not change the
8 amount that otherwise would be reported by the taxpayer to the employee
9 under section 77-2754 as income tax withheld and shall not reduce the
10 amount that otherwise would be allowed by the state as a refundable
11 credit on an employee's income tax return as income tax withheld under
12 section 77-2755. The amount of credits used against income tax
13 withholding shall not exceed the withholding attributable to the number
14 of new equivalent employees employed by the taxpayer. If the amount of
15 credit used by the taxpayer against income tax withholding exceeds such
16 amount, the excess withholding shall be returned to the Department of
17 Revenue in the manner provided in section 77-2756, such excess amount
18 returned shall be considered unused, and the amount of unused credits may
19 be used as otherwise permitted in this section; and

20 (d) To obtain a payment from the state equal to the real property
21 taxes due after the year the required levels of employment and investment
22 were met, for real property at a qualified location that is acquired by
23 the taxpayer after the date the application was filed. The payment from
24 the state shall be made only after payment of the real property taxes
25 have been made to the county as required by law. Payments shall not be
26 allowed for any taxes paid on real property for which the taxes are
27 divided under section 18-2147 or 58-507.

28 (2) A claim for the credit may be filed quarterly for refund of the
29 sales and use taxes paid, either directly or indirectly, after the filing
30 of the income tax return for the taxable year in which the credit was
31 first allowed.

1 (3) Once the taxpayer attains the required levels of employment and
2 investment, the taxpayer shall be entitled to a refund of all sales and
3 use taxes paid, either directly or indirectly, under the Local Option
4 Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment
5 Payment Act, and sections 13-319, 13-324, and 13-2813 on the qualifying
6 investment.

7 (4) For purposes of subsections (2) and (3) of this section, the
8 taxpayer shall be deemed to have paid indirectly any sales or use taxes
9 paid by a contractor with a purchasing agent agreement on building
10 materials annexed to an improvement to real estate built for the
11 taxpayer. The contractor shall certify to the taxpayer the amount of the
12 sales and use taxes paid on the building materials, or the taxpayer, with
13 the permission of the Director of Economic Development and a
14 certification from the contractor that sales and use taxes were paid on
15 all building materials, may presume that fifty percent of the cost of the
16 improvement was for building materials annexed to real estate on which
17 the tax was paid.

18 (5) Credits distributed to a partner, limited liability company
19 member, shareholder, or beneficiary under section 25 of this act may be
20 used against the income tax liability of the partner, member,
21 shareholder, or beneficiary receiving the credits.

22 Sec. 23. (1) If the taxpayer fails to maintain employment and
23 investment levels at or above the levels required in the agreement for
24 the entire performance period, any refunds or reduction in tax allowed
25 under the Urban Redevelopment Act shall be partially recaptured from the
26 taxpayer. The amount of the recapture for each incentive shall be a
27 percentage equal to the number of years the taxpayer did not maintain the
28 required levels of investment or employment divided by the number of
29 years of the performance period, with such percentage then multiplied by
30 the refunds or reductions in tax allowed.

31 (2) Any refund or reduction in tax due, to the extent required to be

1 recaptured, shall be deemed to be an underpayment of the tax and shall be
2 immediately due and payable. When tax incentives were received in more
3 than one year, the incentives received in the most recent year shall be
4 recovered first and then the incentives received in earlier years up to
5 the extent of the required recapture.

6 (3) Notwithstanding any other limitations contained in the laws of
7 this state, collection of any taxes deemed to be underpayments by this
8 section shall be allowed for a period of three years after the end of the
9 performance period or three calendar years after the incentive was
10 allowed, whichever is later.

11 (4) The recapture required by this section shall not occur if the
12 failure to maintain the required levels of employment or investment was
13 caused by an act of God or a national emergency.

14 Sec. 24. (1) The Director of Economic Development shall not approve
15 or grant to any person any tax incentive under the Urban Redevelopment
16 Act unless the taxpayer provides evidence satisfactory to the director
17 that the taxpayer electronically verified the work eligibility status of
18 all newly hired employees employed in Nebraska.

19 (2) For purposes of calculating any tax incentive available under
20 the act, the director shall exclude hours worked and compensation paid to
21 an employee that is not eligible to work in Nebraska as verified under
22 subsection (1) of this section.

23 Sec. 25. The incentives allowed under the Urban Redevelopment Act
24 shall not be transferable except in the following situations:

25 (1) Any credit allowable to a partnership, a limited liability
26 company, a subchapter S corporation, a cooperative, including a
27 cooperative exempt under section 521 of the Internal Revenue Code of
28 1986, as amended, a limited cooperative association, or an estate or
29 trust may be distributed to the partners, limited liability company
30 members, shareholders, patrons, limited cooperative association members,
31 or beneficiaries. Any credit distributed shall be distributed in the same

1 manner as income is distributed. A credit distributed shall be considered
2 a credit used and the partnership, limited liability company, subchapter
3 S corporation, cooperative, limited cooperative association, estate, or
4 trust shall be liable for any repayment under section 23 of this act;

5 (2) The incentives previously allowed and the future allowance of
6 incentives may be transferred when a project covered by an agreement is
7 transferred by sale or lease to another taxpayer or in an acquisition of
8 assets qualifying under section 381 of the Internal Revenue Code of 1986,
9 as amended. The acquiring taxpayer, as of the date of notification of the
10 Director of Economic Development of the completed transfer, shall be
11 entitled to any unused credits and to any future incentives allowable
12 under the act. The acquiring taxpayer shall be liable for any repayment
13 that becomes due after the date of the transfer with respect to any
14 benefits received either before or after the transfer; and

15 (3) If a taxpayer allowed a credit under section 20 of this act dies
16 and there is credit remaining after the filing of the final return for
17 the taxpayer, the personal representative shall determine the
18 distribution of the credit with the initial fiduciary return filed for
19 the estate. The determination of the distribution of the credit may be
20 changed only after obtaining the permission of the director.

21 Sec. 26. Interest shall not be allowable on any refunds paid
22 because of benefits earned under the Urban Redevelopment Act.

23 Sec. 27. (1) The taxpayer may request the Tax Commissioner to
24 review and certify the taxpayer's base year employment levels. Upon a
25 request for such review, the Tax Commissioner shall be given access to
26 the employment and business records of the taxpayer and must complete the
27 review within ninety days after the request. If the Tax Commissioner
28 requests, by mail or by electronic means, additional information or
29 clarification from the taxpayer in order to make his or her
30 determination, the ninety-day period shall be tolled from the time the
31 Tax Commissioner makes the request to the time he or she receives the

1 requested information or clarification from the taxpayer. The taxpayer
2 and the Tax Commissioner may also agree to extend the ninety-day period.
3 If the Tax Commissioner fails to make his or her determination within the
4 prescribed ninety-day period, the certification is deemed approved.

5 (2) Upon review, the Tax Commissioner may approve or amend the
6 taxpayer's base year employment levels based upon the employment and
7 business records provided by the taxpayer. Once the Tax Commissioner
8 certifies the employment levels, the certification is binding on the
9 Department of Revenue when the taxpayer claims benefits on a return to
10 the extent the information provided by the taxpayer was accurate and to
11 the extent such information is not affected by any of the situations
12 described in section 21 of this act.

13 (3) If the taxpayer does not request review and certification of
14 employment levels under this section, such levels are subject to later
15 audit by the Department of Revenue.

16 Sec. 28. (1) On or before July 15, 2024, and on or before July 15
17 of each year thereafter, the Director of Economic Development shall
18 prepare a report that includes:

19 (a) The total amount of investment at qualified locations in the
20 previous calendar year by taxpayers who are receiving incentives pursuant
21 to the Urban Redevelopment Act;

22 (b) The total number of equivalent employees added in the previous
23 calendar year by taxpayers who are receiving incentives pursuant to the
24 act; and

25 (c) The total amount of credits claimed and refunds approved in the
26 previous calendar year under the act.

27 (2) The report shall also provide information on project-specific
28 total incentives used every two years for each approved project,
29 including (a) the identity of the taxpayer, (b) the qualified location of
30 the project, and (c) the total credits used and refunds approved during
31 the immediately preceding two years expressed as a single, aggregated

1 total. The incentive information required to be reported under this
2 subsection shall not be reported for the first year the taxpayer attains
3 the required employment and investment thresholds. The information on
4 first-year incentives used shall be combined with and reported as part of
5 the second year. Thereafter, the information on incentives used for
6 succeeding years shall be reported for each project every two years and
7 shall include information on two years of credits used and refunds
8 approved. The incentives used shall include incentives that have been
9 approved by the Director of Economic Development, but not necessarily
10 received, during the previous two calendar years.

11 (3) On or before September 1, 2024, and on or before September 1 of
12 each year thereafter, the Department of Economic Development shall
13 present the report electronically to the Appropriations Committee of the
14 Legislature. Any supplemental information requested by three or more
15 committee members shall be presented within thirty days after the
16 request.

17 (4) No information shall be provided in the report that is protected
18 by state or federal confidentiality laws.

19 Sec. 29. Section 49-801.01, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 49-801.01 Except as provided by Article VIII, section 1B, of the
22 Constitution of Nebraska and in sections 77-1106, 77-1108, 77-1109,
23 77-1117, 77-1119, 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-2902,
24 77-2906, 77-2908, 77-2909, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515,
25 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802,
26 77-5803, 77-5806, 77-5903, 77-6302, 77-6306, 77-6509, 77-6513, 77-6519,
27 77-6811, 77-6815, 77-6819, 77-6821, 77-6822, 77-6831, 77-6834, and
28 77-6842 and sections 8, 13, 15, 16, and 25 of this act, any reference to
29 the Internal Revenue Code refers to the Internal Revenue Code of 1986 as
30 it exists on April 12, 2018.

31 Sec. 30. Section 50-1209, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 50-1209 (1) Tax incentive performance audits shall be conducted by
3 the office pursuant to this section on the following tax incentive
4 programs:

5 (a) The Beginning Farmer Tax Credit Act;

6 (b) The Imagine Nebraska Act;

7 (c) The Nebraska Advantage Act;

8 (d) The Nebraska Advantage Microenterprise Tax Credit Act;

9 (e) The Nebraska Advantage Research and Development Act;

10 (f) The Nebraska Advantage Rural Development Act;

11 (g) The Nebraska Job Creation and Mainstreet Revitalization Act;

12 (h) The New Markets Job Growth Investment Act; ~~and~~

13 (i) The Urban Redevelopment Act; and

14 (j) ~~(i)~~ Any other tax incentive program created by the Legislature
15 for the purpose of recruitment or retention of businesses in Nebraska. In
16 determining whether a future tax incentive program is enacted for the
17 purpose of recruitment or retention of businesses, the office shall
18 consider legislative intent, including legislative statements of purpose
19 and goals, and may also consider whether the tax incentive program is
20 promoted as a business incentive by the Department of Economic
21 Development or other relevant state agency.

22 (2) The office shall develop a schedule for conducting tax incentive
23 performance audits and shall update the schedule annually. The schedule
24 shall ensure that each tax incentive program is reviewed at least once
25 every five years.

26 (3) Each tax incentive performance audit conducted by the office
27 pursuant to this section shall include the following:

28 (a) An analysis of whether the tax incentive program is meeting the
29 following goals:

30 (i) Strengthening the state's economy overall by:

31 (A) Attracting new business to the state;

1 (B) Expanding existing businesses;

2 (C) Increasing employment, particularly employment of full-time
3 workers. The analysis shall consider whether the job growth in those
4 businesses receiving tax incentives is at least ten percent above
5 industry averages;

6 (D) Creating high-quality jobs; and

7 (E) Increasing business investment;

8 (ii) Revitalizing rural areas and other distressed areas of the
9 state;

10 (iii) Diversifying the state's economy and positioning Nebraska for
11 the future by stimulating entrepreneurial firms, high-tech firms, and
12 renewable energy firms; and

13 (iv) Any other program-specific goals found in the statutes for the
14 tax incentive program being evaluated;

15 (b) An analysis of the economic and fiscal impacts of the tax
16 incentive program. The analysis may take into account the following
17 considerations in addition to other relevant factors:

18 (i) The costs per full-time worker. When practical and applicable,
19 such costs shall be considered in at least the following two ways:

20 (A) By an estimation including the minimum investment required to
21 qualify for benefits; and

22 (B) By an estimation including all investment;

23 (ii) The extent to which the tax incentive changes business
24 behavior;

25 (iii) The results of the tax incentive for the economy of Nebraska
26 as a whole. This consideration includes both direct and indirect impacts
27 generally and any effects on other Nebraska businesses; and

28 (iv) A comparison to the results of other economic development
29 strategies with similar goals, other policies, or other incentives;

30 (c) An assessment of whether adequate protections are in place to
31 ensure the fiscal impact of the tax incentive does not increase

1 substantially beyond the state's expectations in future years;

2 (d) An assessment of the fiscal impact of the tax incentive on the
3 budgets of local governments, if applicable; and

4 (e) Recommendations for any changes to statutes or rules and
5 regulations that would allow the tax incentive program to be more easily
6 evaluated in the future, including changes to data collection, reporting,
7 sharing of information, and clarification of goals.

8 (4) For purposes of this section:

9 (a) Distressed area means an area of substantial unemployment as
10 determined by the Department of Labor pursuant to the Nebraska Workforce
11 Innovation and Opportunity Act;

12 (b) Full-time worker means an individual (i) who usually works
13 thirty-five hours per week or more, (ii) whose employment is reported to
14 the Department of Labor on two consecutive quarterly wage reports, and
15 (iii) who earns wages equal to or exceeding the state minimum wage;

16 (c) High-quality job means a job that:

17 (i) Averages at least thirty-five hours of employment per week;

18 (ii) Is reported to the Department of Labor on two consecutive
19 quarterly wage reports; and

20 (iii) Earns wages that are at least ten percent higher than the
21 statewide industry sector average and that equal or exceed:

22 (A) One hundred ten percent of the Nebraska average weekly wage if
23 the job is in a county with a population of less than one hundred
24 thousand inhabitants; or

25 (B) One hundred twenty percent of the Nebraska average weekly wage
26 if the job is in a county with a population of one hundred thousand
27 inhabitants or more;

28 (d) High-tech firm means a person or unitary group that has a
29 location with any of the following four-digit code designations under the
30 North American Industry Classification System as assigned by the
31 Department of Labor: 2111, 3254, 3341, 3342, 3344, 3345, 3364, 5112,

1 5173, 5179, 5182, 5191, 5413, 5415, or 5417;

2 (e) Nebraska average weekly wage means the most recent average
3 weekly wage paid by all employers in all counties in Nebraska as reported
4 by the Department of Labor by October 1 of each year;

5 (f) New business means a person or unitary group participating in a
6 tax incentive program that did not pay income taxes or wages in the state
7 more than two years prior to submitting an application under the tax
8 incentive program. For any tax incentive program without an application
9 process, new business means a person or unitary group participating in
10 the program that did not pay income taxes or wages in the state more than
11 two years prior to the first day of the first tax year for which a tax
12 benefit was earned;

13 (g) Renewable energy firm means a person or unitary group that has a
14 location with any of the following six-digit code designations under the
15 North American Industry Classification System as assigned by the
16 Department of Labor: 111110, 111120, 111130, 111140, 111150, 111160,
17 111191, 111199, 111211, 111219, 111310, 111320, 111331, 111332, 111333,
18 111334, 111335, 111336, 111339, 111411, 111419, 111930, 111991, 113310,
19 221111, 221114, 221115, 221116, 221117, 221118, 221330, 237130, 237210,
20 237990, 325193, 325199, 331512, 331513, 331523, 331524, 331529, 332111,
21 332112, 333414, 333415, 333511, 333611, 333612, 333613, 334519, 485510,
22 541330, 541360, 541370, 541620, 541690, 541713, 541714, 541715, 561730,
23 or 562213;

24 (h) Rural area means any village or city of the second class in this
25 state or any county in this state with fewer than twenty-five thousand
26 residents; and

27 (i) Unitary group has the same meaning as in section 77-2734.04.

28 Sec. 31. Section 77-2711, Revised Statutes Cumulative Supplement,
29 2020, is amended to read:

30 77-2711 (1)(a) The Tax Commissioner shall enforce sections
31 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and

1 regulations relating to the administration and enforcement of such
2 sections.

3 (b) The Tax Commissioner may prescribe the extent to which any
4 ruling or regulation shall be applied without retroactive effect.

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

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

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

17 (4) The Tax Commissioner or any person authorized in writing by him
18 or her may examine the books, papers, records, and equipment of any
19 person selling property and any person liable for the use tax and may
20 investigate the character of the business of the person in order to
21 verify the accuracy of any return made or, if no return is made by the
22 person, to ascertain and determine the amount required to be paid. In the
23 examination of any person selling property or of any person liable for
24 the use tax, an inquiry shall be made as to the accuracy of the reporting
25 of city and county sales and use taxes for which the person is liable
26 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
27 and 77-6403 and the accuracy of the allocation made between the various
28 counties, cities, villages, and municipal counties of the tax due. The
29 Tax Commissioner may make or cause to be made copies of resale or
30 exemption certificates and may pay a reasonable amount to the person
31 having custody of the records for providing such copies.

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

4 (6) In administration of the use tax, the Tax Commissioner may
5 require the filing of reports by any person or class of persons having in
6 his, her, or their possession or custody information relating to sales of
7 property, the storage, use, or other consumption of which is subject to
8 the tax. The report shall be filed when the Tax Commissioner requires and
9 shall set forth the names and addresses of purchasers of the property,
10 the sales price of the property, the date of sale, and such other
11 information as the Tax Commissioner may require.

12 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
13 any official or employee of the Tax Commissioner, the State Treasurer, or
14 the Department of Administrative Services to make known in any manner
15 whatever the business affairs, operations, or information obtained by an
16 investigation of records and activities of any retailer or any other
17 person visited or examined in the discharge of official duty or the
18 amount or source of income, profits, losses, expenditures, or any
19 particular thereof, set forth or disclosed in any return, or to permit
20 any return or copy thereof, or any book containing any abstract or
21 particulars thereof to be seen or examined by any person not connected
22 with the Tax Commissioner. Nothing in this section shall be construed to
23 prohibit (a) the delivery to a taxpayer, his or her duly authorized
24 representative, or his or her successors, receivers, trustees, executors,
25 administrators, assignees, or guarantors, if directly interested, of a
26 certified copy of any return or report in connection with his or her tax,
27 (b) the publication of statistics so classified as to prevent the
28 identification of particular reports or returns and the items thereof,
29 (c) the inspection by the Attorney General, other legal representative of
30 the state, or county attorney of the reports or returns of any taxpayer
31 when either (i) information on the reports or returns is considered by

1 the Attorney General to be relevant to any action or proceeding
2 instituted by the taxpayer or against whom an action or proceeding is
3 being considered or has been commenced by any state agency or the county
4 or (ii) the taxpayer has instituted an action to review the tax based
5 thereon or an action or proceeding against the taxpayer for collection of
6 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
7 considered or has been commenced, (d) the furnishing of any information
8 to the United States Government or to states allowing similar privileges
9 to the Tax Commissioner, (e) the disclosure of information and records to
10 a collection agency contracting with the Tax Commissioner pursuant to
11 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
12 transaction of information and records concerning the transaction between
13 the taxpayer and the other party, (g) the disclosure of information
14 pursuant to section 77-27,195, 77-5731, 77-6837, or 77-6839 or section 28
15 of this act, or (h) the disclosure of information to the Department of
16 Labor necessary for the administration of the Employment Security Law,
17 the Contractor Registration Act, or the Employee Classification Act.

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

28 (9) Notwithstanding the provisions of subsection (7) of this
29 section, the Tax Commissioner may permit other tax officials of this
30 state to inspect the tax returns, reports, and applications filed under
31 sections 77-2701.04 to 77-2713, but such inspection shall be permitted

1 only for purposes of enforcing a tax law and only to the extent and under
2 the conditions prescribed by the rules and regulations of the Tax
3 Commissioner.

4 (10) Notwithstanding the provisions of subsection (7) of this
5 section, the Tax Commissioner may, upon request, provide the county board
6 of any county which has exercised the authority granted by section
7 81-3716 with a list of the names and addresses of the hotels located
8 within the county for which lodging sales tax returns have been filed or
9 for which lodging sales taxes have been remitted for the county's County
10 Visitors Promotion Fund under the Nebraska Visitors Development Act.

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

19 (11)(a) Notwithstanding the provisions of subsection (7) of this
20 section, the Tax Commissioner shall, upon written request by the Auditor
21 of Public Accounts or the office of Legislative Audit, make tax returns
22 and tax return information open to inspection by or disclosure to the
23 Auditor of Public Accounts or employees of the office of Legislative
24 Audit for the purpose of and to the extent necessary in making an audit
25 of the Department of Revenue pursuant to section 50-1205 or 84-304.
26 Confidential tax returns and tax return information shall be audited only
27 upon the premises of the Department of Revenue. All audit workpapers
28 pertaining to the audit of the Department of Revenue shall be stored in a
29 secure place in the Department of Revenue.

30 (b) No employee of the Auditor of Public Accounts or the office of
31 Legislative Audit shall disclose to any person, other than another

1 Auditor of Public Accounts or office employee whose official duties
2 require such disclosure, any return or return information described in
3 the Nebraska Revenue Act of 1967 in a form which can be associated with
4 or otherwise identify, directly or indirectly, a particular taxpayer.

5 (c) Any person who violates the provisions of this subsection shall
6 be guilty of a Class I misdemeanor. For purposes of this subsection,
7 employee includes a former Auditor of Public Accounts or office of
8 Legislative Audit employee.

9 (12) For purposes of this subsection and subsections (11) and (14)
10 of this section:

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

13 (b) Return information means:

14 (i) A taxpayer's identification number and (A) the nature, source,
15 or amount of his or her income, payments, receipts, deductions,
16 exemptions, credits, assets, liabilities, net worth, tax liability, tax
17 withheld, deficiencies, overassessments, or tax payments, whether the
18 taxpayer's return was, is being, or will be examined or subject to other
19 investigation or processing or (B) any other data received by, recorded
20 by, prepared by, furnished to, or collected by the Tax Commissioner with
21 respect to a return or the determination of the existence or possible
22 existence of liability or the amount of liability of any person for any
23 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
24 and

25 (ii) Any part of any written determination or any background file
26 document relating to such written determination; and

27 (c) Tax return or return means any tax or information return or
28 claim for refund required by, provided for, or permitted under sections
29 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf
30 of, or with respect to any person and any amendment or supplement
31 thereto, including supporting schedules, attachments, or lists which are

1 supplemental to or part of the filed return.

2 (13) Notwithstanding the provisions of subsection (7) of this
3 section, the Tax Commissioner shall, upon request, provide any
4 municipality which has adopted the local option sales tax under the Local
5 Option Revenue Act with a list of the names and addresses of the
6 retailers which have collected the local option sales tax for the
7 municipality. The request may be made annually and shall be submitted to
8 the Tax Commissioner on or before June 30 of each year. The information
9 provided by the Tax Commissioner shall indicate only the names and
10 addresses of the retailers. The Tax Commissioner may provide additional
11 information to a municipality so long as the information does not include
12 any data detailing the specific revenue, expenses, or operations of any
13 particular business.

14 (14)(a) Notwithstanding the provisions of subsection (7) of this
15 section, the Tax Commissioner shall, upon written request, provide an
16 individual certified under subdivision (b) of this subsection
17 representing a municipality which has adopted the local option sales and
18 use tax under the Local Option Revenue Act with confidential sales and
19 use tax returns and sales and use tax return information regarding
20 taxpayers that possess a sales tax permit and the amounts remitted by
21 such permitholders at locations within the boundaries of the requesting
22 municipality or with confidential business use tax returns and business
23 use tax return information regarding taxpayers that file a Nebraska and
24 Local Business Use Tax Return and the amounts remitted by such taxpayers
25 at locations within the boundaries of the requesting municipality. Any
26 written request pursuant to this subsection shall provide the Department
27 of Revenue with no less than ten business days to prepare the sales and
28 use tax returns and sales and use tax return information requested. The
29 individual certified under subdivision (b) of this subsection shall
30 review such returns and return information only upon the premises of the
31 department, except that such limitation shall not apply if the certifying

1 municipality has an agreement in effect under the Nebraska Advantage
2 Transformational Tourism and Redevelopment Act. In such case, the
3 individual certified under subdivision (b) of this subsection may request
4 that copies of such returns and return information be sent to him or her
5 by electronic transmission, secured in a manner as determined by the Tax
6 Commissioner.

7 (b) Each municipality that seeks to request information under
8 subdivision (a) of this subsection shall certify to the Department of
9 Revenue one individual who is authorized by such municipality to make
10 such request and review the documents described in subdivision (a) of
11 this subsection. The individual may be a municipal employee or an
12 individual who contracts with the requesting municipality to provide
13 financial, accounting, or other administrative services.

14 (c) No individual certified by a municipality pursuant to
15 subdivision (b) of this subsection shall disclose to any person any
16 information obtained pursuant to a review under this subsection. An
17 individual certified by a municipality pursuant to subdivision (b) of
18 this subsection shall remain subject to this subsection after he or she
19 (i) is no longer certified or (ii) is no longer in the employment of or
20 under contract with the certifying municipality.

21 (d) Any person who violates the provisions of this subsection shall
22 be guilty of a Class I misdemeanor.

23 (e) The Department of Revenue shall not be held liable by any person
24 for an impermissible disclosure by a municipality or any agent or
25 employee thereof of any information obtained pursuant to a review under
26 this subsection.

27 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
28 Tax Commissioner may act for and on behalf of the people of the State of
29 Nebraska. The Tax Commissioner in his or her discretion may waive all or
30 part of any penalties provided by the provisions of such act or interest
31 on delinquent taxes specified in section 45-104.02, as such rate may from

1 time to time be adjusted.

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

7 (b) For purposes of this subsection:

8 (i) Anonymous data means information that does not identify a
9 person;

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

12 (iii) Personally identifiable information means information that
13 identifies a person.

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

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

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

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

27 (iii) It provides consumers clear and conspicuous notice of its
28 information practices, including what information it collects, how it
29 collects the information, how it uses the information, how long, if at
30 all, it retains the information, and whether it discloses the information
31 to member states. Such notice shall be satisfied by a written privacy

1 policy statement accessible by the public on the web site of the
2 certified service provider;

3 (iv) Its collection, use, and retention of personally identifiable
4 information is limited to that required by the member states to ensure
5 the validity of exemptions from taxation that are claimed by reason of a
6 consumer's status or the intended use of the goods or services purchased;
7 and

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

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

14 (f) When any personally identifiable information that has been
15 collected and retained is no longer required for the purposes set forth
16 in subdivision (16)(d)(iv) of this section, such information shall no
17 longer be retained by the member states.

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

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

27 (i) This privacy policy is subject to enforcement by the Attorney
28 General.

29 (j) All other laws and regulations regarding the collection, use,
30 and maintenance of confidential taxpayer information remain fully
31 applicable and binding. Without limitation, this subsection does not

1 enlarge or limit the state's authority to:

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

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

6 (iii) Prevent, consistent with state law, disclosure of confidential
7 taxpayer information;

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

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

13 Sec. 32. Section 77-27,119, Revised Statutes Cumulative Supplement,
14 2020, is amended to read:

15 77-27,119 (1) The Tax Commissioner shall administer and enforce the
16 income tax imposed by sections 77-2714 to 77-27,135, and he or she is
17 authorized to conduct hearings, to adopt and promulgate such rules and
18 regulations, and to require such facts and information to be reported as
19 he or she may deem necessary to enforce the income tax provisions of such
20 sections, except that such rules, regulations, and reports shall not be
21 inconsistent with the laws of this state or the laws of the United
22 States. The Tax Commissioner may for enforcement and administrative
23 purposes divide the state into a reasonable number of districts in which
24 branch offices may be maintained.

25 (2)(a) The Tax Commissioner may prescribe the form and contents of
26 any return or other document required to be filed under the income tax
27 provisions. Such return or other document shall be compatible as to form
28 and content with the return or document required by the laws of the
29 United States. The form shall have a place where the taxpayer shall
30 designate the high school district in which he or she lives and the
31 county in which the high school district is headquartered. The Tax

1 Commissioner shall adopt and promulgate such rules and regulations as may
2 be necessary to insure compliance with this requirement.

3 (b) The State Department of Education, with the assistance and
4 cooperation of the Department of Revenue, shall develop a uniform system
5 for numbering all school districts in the state. Such system shall be
6 consistent with the data processing needs of the Department of Revenue
7 and shall be used for the school district identification required by
8 subdivision (a) of this subsection.

9 (c) The proper filing of an income tax return shall consist of the
10 submission of such form as prescribed by the Tax Commissioner or an exact
11 facsimile thereof with sufficient information provided by the taxpayer on
12 the face of the form from which to compute the actual tax liability. Each
13 taxpayer shall include such taxpayer's correct social security number or
14 state identification number and the school district identification number
15 of the school district in which the taxpayer resides on the face of the
16 form. A filing is deemed to occur when the required information is
17 provided.

18 (3) The Tax Commissioner, for the purpose of ascertaining the
19 correctness of any return or other document required to be filed under
20 the income tax provisions, for the purpose of determining corporate
21 income, individual income, and withholding tax due, or for the purpose of
22 making an estimate of taxable income of any person, shall have the power
23 to examine or to cause to have examined, by any agent or representative
24 designated by him or her for that purpose, any books, papers, records, or
25 memoranda bearing upon such matters and may by summons require the
26 attendance of the person responsible for rendering such return or other
27 document or remitting any tax, or any officer or employee of such person,
28 or the attendance of any other person having knowledge in the premises,
29 and may take testimony and require proof material for his or her
30 information, with power to administer oaths or affirmations to such
31 person or persons.

1 (4) The time and place of examination pursuant to this section shall
2 be such time and place as may be fixed by the Tax Commissioner and as are
3 reasonable under the circumstances. In the case of a summons, the date
4 fixed for appearance before the Tax Commissioner shall not be less than
5 twenty days from the time of service of the summons.

6 (5) No taxpayer shall be subjected to unreasonable or unnecessary
7 examinations or investigations.

8 (6) Except in accordance with proper judicial order or as otherwise
9 provided by law, it shall be unlawful for the Tax Commissioner, any
10 officer or employee of the Tax Commissioner, any person engaged or
11 retained by the Tax Commissioner on an independent contract basis, any
12 person who pursuant to this section is permitted to inspect any report or
13 return or to whom a copy, an abstract, or a portion of any report or
14 return is furnished, any employee of the State Treasurer or the
15 Department of Administrative Services, or any other person to divulge,
16 make known, or use in any manner the amount of income or any particulars
17 set forth or disclosed in any report or return required except for the
18 purpose of enforcing sections 77-2714 to 77-27,135. The officers charged
19 with the custody of such reports and returns shall not be required to
20 produce any of them or evidence of anything contained in them in any
21 action or proceeding in any court, except on behalf of the Tax
22 Commissioner in an action or proceeding under the provisions of the tax
23 law to which he or she is a party or on behalf of any party to any action
24 or proceeding under such sections when the reports or facts shown thereby
25 are directly involved in such action or proceeding, in either of which
26 events the court may require the production of, and may admit in
27 evidence, so much of such reports or of the facts shown thereby as are
28 pertinent to the action or proceeding and no more. Nothing in this
29 section shall be construed (a) to prohibit the delivery to a taxpayer,
30 his or her duly authorized representative, or his or her successors,
31 receivers, trustees, personal representatives, administrators, assignees,

1 or guarantors, if directly interested, of a certified copy of any return
2 or report in connection with his or her tax, (b) to prohibit the
3 publication of statistics so classified as to prevent the identification
4 of particular reports or returns and the items thereof, (c) to prohibit
5 the inspection by the Attorney General, other legal representatives of
6 the state, or a county attorney of the report or return of any taxpayer
7 who brings an action to review the tax based thereon, against whom an
8 action or proceeding for collection of tax has been instituted, or
9 against whom an action, proceeding, or prosecution for failure to comply
10 with the Nebraska Revenue Act of 1967 is being considered or has been
11 commenced, (d) to prohibit furnishing to the Nebraska Workers'
12 Compensation Court the names, addresses, and identification numbers of
13 employers, and such information shall be furnished on request of the
14 court, (e) to prohibit the disclosure of information and records to a
15 collection agency contracting with the Tax Commissioner pursuant to
16 sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of
17 information pursuant to section 77-27,195, 77-4110, 77-5731, 77-6521,
18 77-6837, or 77-6839 or section 28 of this act, (g) to prohibit the
19 disclosure to the Public Employees Retirement Board of the addresses of
20 individuals who are members of the retirement systems administered by the
21 board, and such information shall be furnished to the board solely for
22 purposes of its administration of the retirement systems upon written
23 request, which request shall include the name and social security number
24 of each individual for whom an address is requested, (h) to prohibit the
25 disclosure of information to the Department of Labor necessary for the
26 administration of the Employment Security Law, the Contractor
27 Registration Act, or the Employee Classification Act, (i) to prohibit the
28 disclosure to the Department of Motor Vehicles of tax return information
29 pertaining to individuals, corporations, and businesses determined by the
30 Department of Motor Vehicles to be delinquent in the payment of amounts
31 due under agreements pursuant to the International Fuel Tax Agreement

1 Act, and such disclosure shall be strictly limited to information
2 necessary for the administration of the act, (j) to prohibit the
3 disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-
4 appointed individuals, the county attorney, any authorized attorney, or
5 the Department of Health and Human Services of an absent parent's
6 address, social security number, amount of income, health insurance
7 information, and employer's name and address for the exclusive purpose of
8 establishing and collecting child, spousal, or medical support, (k) to
9 prohibit the disclosure of information to the Department of Insurance,
10 the Nebraska State Historical Society, or the State Historic Preservation
11 Officer as necessary to carry out the Department of Revenue's
12 responsibilities under the Nebraska Job Creation and Mainstreet
13 Revitalization Act, or (l) to prohibit the disclosure to the Department
14 of Insurance of information pertaining to authorization for, and use of,
15 tax credits under the New Markets Job Growth Investment Act. Information
16 so obtained shall be used for no other purpose. Any person who violates
17 this subsection shall be guilty of a felony and shall upon conviction
18 thereof be fined not less than one hundred dollars nor more than five
19 hundred dollars, or be imprisoned not more than five years, or be both so
20 fined and imprisoned, in the discretion of the court and shall be
21 assessed the costs of prosecution. If the offender is an officer or
22 employee of the state, he or she shall be dismissed from office and be
23 ineligible to hold any public office in this state for a period of two
24 years thereafter.

25 (7) Reports and returns required to be filed under income tax
26 provisions of sections 77-2714 to 77-27,135 shall be preserved until the
27 Tax Commissioner orders them to be destroyed.

28 (8) Notwithstanding the provisions of subsection (6) of this
29 section, the Tax Commissioner may permit the Secretary of the Treasury of
30 the United States or his or her delegates or the proper officer of any
31 state imposing an income tax, or the authorized representative of either

1 such officer, to inspect the income tax returns of any taxpayer or may
2 furnish to such officer or his or her authorized representative an
3 abstract of the return of income of any taxpayer or supply him or her
4 with information concerning an item of income contained in any return or
5 disclosed by the report of any investigation of the income or return of
6 income of any taxpayer, but such permission shall be granted only if the
7 statutes of the United States or of such other state, as the case may be,
8 grant substantially similar privileges to the Tax Commissioner of this
9 state as the officer charged with the administration of the income tax
10 imposed by sections 77-2714 to 77-27,135.

11 (9) Notwithstanding the provisions of subsection (6) of this
12 section, the Tax Commissioner may permit the Postal Inspector of the
13 United States Postal Service or his or her delegates to inspect the
14 reports or returns of any person filed pursuant to the Nebraska Revenue
15 Act of 1967 when information on the reports or returns is relevant to any
16 action or proceeding instituted or being considered by the United States
17 Postal Service against such person for the fraudulent use of the mails to
18 carry and deliver false and fraudulent tax returns to the Tax
19 Commissioner with the intent to defraud the State of Nebraska or to evade
20 the payment of Nebraska state taxes.

21 (10)(a) Notwithstanding the provisions of subsection (6) of this
22 section, the Tax Commissioner shall, upon written request by the Auditor
23 of Public Accounts or the office of Legislative Audit, make tax returns
24 and tax return information open to inspection by or disclosure to
25 officers and employees of the Auditor of Public Accounts or employees of
26 the office of Legislative Audit for the purpose of and to the extent
27 necessary in making an audit of the Department of Revenue pursuant to
28 section 50-1205 or 84-304. The Auditor of Public Accounts or office of
29 Legislative Audit shall statistically and randomly select the tax returns
30 and tax return information to be audited based upon a computer tape
31 provided by the Department of Revenue which contains only total

1 population documents without specific identification of taxpayers. The
2 Tax Commissioner shall have the authority to approve the statistical
3 sampling method used by the Auditor of Public Accounts or office of
4 Legislative Audit. Confidential tax returns and tax return information
5 shall be audited only upon the premises of the Department of Revenue. All
6 audit workpapers pertaining to the audit of the Department of Revenue
7 shall be stored in a secure place in the Department of Revenue.

8 (b) When selecting tax returns or tax return information for a
9 performance audit of a tax incentive program, the office of Legislative
10 Audit shall select the tax returns or tax return information for either
11 all or a statistically and randomly selected sample of taxpayers who have
12 applied for or who have qualified for benefits under the tax incentive
13 program that is the subject of the audit. When the office of Legislative
14 Audit reports on its review of tax returns and tax return information, it
15 shall comply with subdivision (10)(c) of this section.

16 (c) No officer or employee of the Auditor of Public Accounts or
17 office of Legislative Audit employee shall disclose to any person, other
18 than another officer or employee of the Auditor of Public Accounts or
19 office of Legislative Audit whose official duties require such
20 disclosure, any return or return information described in the Nebraska
21 Revenue Act of 1967 in a form which can be associated with or otherwise
22 identify, directly or indirectly, a particular taxpayer.

23 (d) Any person who violates the provisions of this subsection shall
24 be guilty of a Class IV felony and, in the discretion of the court, may
25 be assessed the costs of prosecution. The guilty officer or employee
26 shall be dismissed from employment and be ineligible to hold any position
27 of employment with the State of Nebraska for a period of two years
28 thereafter. For purposes of this subsection, officer or employee shall
29 include a former officer or employee of the Auditor of Public Accounts or
30 former employee of the office of Legislative Audit.

31 (11) For purposes of subsections (10) through (13) of this section:

1 (a) Tax returns shall mean any tax or information return or claim
2 for refund required by, provided for, or permitted under sections 77-2714
3 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of,
4 or with respect to any person and any amendment or supplement thereto,
5 including supporting schedules, attachments, or lists which are
6 supplemental to or part of the filed return;

7 (b) Return information shall mean:

8 (i) A taxpayer's identification number and (A) the nature, source,
9 or amount of his or her income, payments, receipts, deductions,
10 exemptions, credits, assets, liabilities, net worth, tax liability, tax
11 withheld, deficiencies, overassessments, or tax payments, whether the
12 taxpayer's return was, is being, or will be examined or subject to other
13 investigation or processing or (B) any other data received by, recorded
14 by, prepared by, furnished to, or collected by the Tax Commissioner with
15 respect to a return or the determination of the existence or possible
16 existence of liability or the amount of liability of any person for any
17 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
18 and

19 (ii) Any part of any written determination or any background file
20 document relating to such written determination; and

21 (c) Disclosures shall mean the making known to any person in any
22 manner a return or return information.

23 (12) The Auditor of Public Accounts shall (a) notify the Tax
24 Commissioner in writing thirty days prior to the beginning of an audit of
25 his or her intent to conduct an audit, (b) provide an audit plan, and (c)
26 provide a list of the tax returns and tax return information identified
27 for inspection during the audit. The office of Legislative Audit shall
28 notify the Tax Commissioner of the intent to conduct an audit and of the
29 scope of the audit as provided in section 50-1209.

30 (13) The Auditor of Public Accounts or the office of Legislative
31 Audit shall, as a condition for receiving tax returns and tax return

1 information: (a) Subject employees involved in the audit to the same
2 confidential information safeguards and disclosure procedures as required
3 of Department of Revenue employees; (b) establish and maintain a
4 permanent system of standardized records with respect to any request for
5 tax returns or tax return information, the reason for such request, and
6 the date of such request and any disclosure of the tax return or tax
7 return information; (c) establish and maintain a secure area or place in
8 the Department of Revenue in which the tax returns, tax return
9 information, or audit workpapers shall be stored; (d) restrict access to
10 the tax returns or tax return information only to persons whose duties or
11 responsibilities require access; (e) provide such other safeguards as the
12 Tax Commissioner determines to be necessary or appropriate to protect the
13 confidentiality of the tax returns or tax return information; (f) provide
14 a report to the Tax Commissioner which describes the procedures
15 established and utilized by the Auditor of Public Accounts or office of
16 Legislative Audit for insuring the confidentiality of tax returns, tax
17 return information, and audit workpapers; and (g) upon completion of use
18 of such returns or tax return information, return to the Tax Commissioner
19 such returns or tax return information, along with any copies.

20 (14) The Tax Commissioner may permit other tax officials of this
21 state to inspect the tax returns and reports filed under sections 77-2714
22 to 77-27,135, but such inspection shall be permitted only for purposes of
23 enforcing a tax law and only to the extent and under the conditions
24 prescribed by the rules and regulations of the Tax Commissioner.

25 (15) The Tax Commissioner shall compile the school district
26 information required by subsection (2) of this section. Insofar as it is
27 possible, such compilation shall include, but not be limited to, the
28 total adjusted gross income of each school district in the state. The Tax
29 Commissioner shall adopt and promulgate such rules and regulations as may
30 be necessary to insure that such compilation does not violate the
31 confidentiality of any individual income tax return nor conflict with any

1 other provisions of state or federal law.

2 Sec. 33. Section 77-27,144, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by
5 any incorporated municipality concurrently with collection of a state tax
6 in the same manner as the state tax is collected. The Tax Commissioner
7 shall remit monthly the proceeds of the tax to the incorporated
8 municipalities levying the tax, after deducting the amount of refunds
9 made and three percent of the remainder to be credited to the Municipal
10 Equalization Fund.

11 (2) Deductions for a refund made pursuant to section 77-4105,
12 77-4106, 77-5725, or 77-5726 shall be delayed for one year after the
13 refund has been made to the taxpayer. The Department of Revenue shall
14 notify the municipality liable for a refund exceeding one thousand five
15 hundred dollars of the pending refund, the amount of the refund, and the
16 month in which the deduction will be made or begin, except that if the
17 amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or
18 77-5726 exceeds twenty-five percent of the municipality's total sales and
19 use tax receipts, net of any refunds or sales tax collection fees, for
20 the municipality's prior fiscal year, the department shall deduct the
21 refund over the period of one year in equal monthly amounts beginning
22 after the one-year notification period required by this subsection. This
23 subsection applies to refunds owed by cities of the first class, cities
24 of the second class, and villages. This subsection applies to refunds
25 beginning January 1, 2014.

26 (3) Deductions for a refund made pursuant to the Imagine Nebraska
27 Act shall be delayed as provided in this subsection after the refund has
28 been made to the taxpayer. The Department of Revenue shall notify each
29 municipality liable for a refund exceeding one thousand five hundred
30 dollars of the pending refund and the amount of the refund claimed under
31 the Imagine Nebraska Act. The notification shall be made by March 1 of

1 each year beginning in 2021 and shall be used to establish the refund
2 amount for the following calendar year. The notification shall include
3 any excess or underpayment from the prior calendar year. The department
4 shall deduct the refund over a period of one year in equal monthly
5 amounts beginning in January following the notification. This subsection
6 applies to total annual refunds exceeding one million dollars or twenty-
7 five percent of the municipality's total sales and use tax receipts for
8 the prior fiscal year, whichever is the lesser amount.

9 (4) Deductions for a refund made pursuant to the Urban Redevelopment
10 Act shall be delayed as provided in this subsection after the refund has
11 been made to the taxpayer. The Department of Revenue shall notify each
12 municipality liable for a refund exceeding one thousand five hundred
13 dollars of the pending refund and the amount of the refund claimed under
14 the Urban Redevelopment Act. The notification shall be made by March 1 of
15 each year beginning in 2022 and shall be used to establish the refund
16 amount for the following calendar year. The notification shall include
17 any excess or underpayment from the prior calendar year. The department
18 shall deduct the refund over a period of one year in equal monthly
19 amounts beginning in January following the notification. This subsection
20 applies to total annual refunds exceeding one million dollars or twenty-
21 five percent of the municipality's total sales and use tax receipts for
22 the prior fiscal year, whichever is the lesser amount.

23 (5) (4) The Tax Commissioner shall keep full and accurate records of
24 all money received and distributed under the provisions of the Local
25 Option Revenue Act. When proceeds of a tax levy are received but the
26 identity of the incorporated municipality which levied the tax is unknown
27 and is not identified within six months after receipt, the amount shall
28 be credited to the Municipal Equalization Fund. The municipality may
29 request the names and addresses of the retailers which have collected the
30 tax as provided in subsection (13) of section 77-2711 and may certify an
31 individual to request and review confidential sales and use tax returns

1 and sales and use tax return information as provided in subsection (14)
2 of section 77-2711.

3 (6)(a) ~~(5)(a)~~ Every qualifying business that has filed an
4 application to receive tax incentives under the Employment and Investment
5 Growth Act, the Nebraska Advantage Act, ~~or the Imagine Nebraska Act,~~ or
6 the Urban Redevelopment Act shall, with respect to such acts, provide
7 annually to each municipality, in aggregate data, the maximum amount the
8 qualifying business is eligible to receive in the current year in refunds
9 of local sales and use taxes of the municipality and exemptions for the
10 previous year, and the estimate of annual refunds of local sales and use
11 taxes of the municipality and exemptions such business intends to claim
12 in each future year. Such information shall be kept confidential by the
13 municipality unless publicly disclosed previously by the taxpayer or by
14 the State of Nebraska.

15 (b) For purposes of this subsection, municipality means a
16 municipality that has adopted the local option sales and use tax under
17 the Local Option Revenue Act and to which the qualifying business has
18 paid such sales and use tax.

19 (c) The qualifying business shall provide the information to the
20 municipality on or before June 30 of each year.

21 (d) Any amounts held by a municipality to make sales and use tax
22 refunds under the Employment and Investment Growth Act, the Nebraska
23 Advantage Act, ~~and the Imagine Nebraska Act,~~ and the Urban Redevelopment
24 Act shall not count toward any budgeted restricted funds limitation as
25 provided in section 13-519 or toward any cash reserve limitation as
26 provided in section 13-504.

27 Sec. 34. Section 77-5905, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 77-5905 (1) If the Department of Revenue determines that an
30 application meets the requirements of section 77-5904 and that the
31 investment or employment is eligible for the credit and (a) the applicant

1 is actively engaged in the operation of the microbusiness or will be
2 actively engaged in the operation upon its establishment, (b) the
3 applicant will make new investment or employment in the microbusiness,
4 and (c) the new investment or employment will create new income or jobs,
5 the department shall approve the application and authorize tentative tax
6 credits to the applicant within the limits set forth in this section and
7 certify the amount of tentative tax credits approved for the applicant.
8 Applications for tax credits shall be considered in the order in which
9 they are received.

10 (2) The department may approve applications up to the adjusted limit
11 for each calendar year beginning January 1, 2006, through December 31,
12 2022. After applications totaling the adjusted limit have been approved
13 for a calendar year, no further applications shall be approved for that
14 year. The adjusted limit in a given year is two million dollars plus
15 tentative tax credits that were not granted by the end of the preceding
16 year. Tax credits shall not be allowed for a taxpayer receiving benefits
17 under the Employment and Investment Growth Act, the Nebraska Advantage
18 Act, the Nebraska Advantage Rural Development Act, ~~or~~ the Imagine
19 Nebraska Act, or the Urban Redevelopment Act.

20 Sec. 35. Section 84-602.03, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

22 84-602.03 For purposes of the Taxpayer Transparency Act:

23 (1)(a) Expenditure of state funds means all expenditures of state
24 receipts, whether appropriated or nonappropriated, by a state entity in
25 forms including, but not limited to:

26 (i) Grants;

27 (ii) Contracts;

28 (iii) Subcontracts;

29 (iv) State aid to political subdivisions;

30 (v) Tax refunds or credits that may be disclosed pursuant to the
31 Nebraska Advantage Act, the Nebraska Advantage Microenterprise Tax Credit

1 Act, the Nebraska Advantage Research and Development Act, the Nebraska
2 Advantage Rural Development Act, ~~or~~ the Imagine Nebraska Act, or the
3 Urban Redevelopment Act; and

4 (vi) Any other disbursement of state receipts by a state entity in
5 the performance of its functions;

6 (b) Expenditure of state funds includes expenditures authorized by
7 the Board of Regents of the University of Nebraska, the Board of Trustees
8 of the Nebraska State Colleges, or a public corporation pursuant to
9 sections 85-403 to 85-411; and

10 (c) Expenditure of state funds does not include the transfer of
11 funds between two state entities, payments of state, federal, or other
12 assistance to an individual, or the expenditure of pass-through funds;

13 (2) Pass-through funds means any funds received by a state entity if
14 the state entity is acting only as an intermediary or custodian with
15 respect to such funds and is obligated to pay or otherwise return such
16 funds to the person entitled thereto;

17 (3) State entity means (a) any agency, board, commission, or
18 department of the state and (b) any other body created by state statute
19 that includes a person appointed by the Governor, the head of any state
20 agency or department, an employee of the State of Nebraska, or any
21 combination of such persons and that is empowered pursuant to such
22 statute to collect and disburse state receipts; and

23 (4) State receipts means revenue or other income received by a state
24 entity from tax receipts, fees, charges, interest, or other sources which
25 is (a) used by the state entity to pay the expenses necessary to perform
26 the state entity's functions and (b) reported to the State Treasurer in
27 total amounts by category of income. State receipts does not include
28 pass-through funds.

29 Sec. 36. This act becomes operative on January 1, 2022.

30 Sec. 37. Original sections 49-801.01, 50-1209, 77-2711, 77-27,119,
31 77-27,144, 77-5905, and 84-602.03, Revised Statutes Cumulative

1 Supplement, 2020, are repealed.