

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 401

Introduced by von Gillern, 4.

Read first time January 17, 2025

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2709, 77-2786, and 77-2796, Reissue Revised Statutes of Nebraska,
- 3 and sections 77-2708, 77-2727, 77-2734.01, and 77-2776, Revised
- 4 Statutes Cumulative Supplement, 2024; to change provisions relating
- 5 to the taxation of partnerships and small business corporations and
- 6 notices of deficiency determinations, deficiencies, and denials of
- 7 claims for refunds; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 77-2708, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 77-2708 (1)(a) The sales and use taxes imposed by the Nebraska
4 Revenue Act of 1967 shall be due and payable to the Tax Commissioner
5 monthly on or before the twentieth day of the month next succeeding each
6 monthly period unless otherwise provided pursuant to the Nebraska Revenue
7 Act of 1967.

8 (b)(i) On or before the twentieth day of the month following each
9 monthly period or such other period as the Tax Commissioner may require,
10 a return for such period, along with all taxes due, shall be filed with
11 the Tax Commissioner in such form and content as the Tax Commissioner may
12 prescribe and containing such information as the Tax Commissioner deems
13 necessary for the proper administration of the Nebraska Revenue Act of
14 1967. The Tax Commissioner, if he or she deems it necessary in order to
15 insure payment to or facilitate the collection by the state of the amount
16 of sales or use taxes due, may require returns and payment of the amount
17 of such taxes for periods other than monthly periods in the case of a
18 particular seller, retailer, or purchaser, as the case may be. The Tax
19 Commissioner shall by rule and regulation require reports and tax
20 payments from sellers, retailers, or purchasers depending on their yearly
21 tax liability. Except as required by the streamlined sales and use tax
22 agreement, annual returns shall be required if such sellers', retailers',
23 or purchasers' yearly tax liability is less than nine hundred dollars,
24 quarterly returns shall be required if their yearly tax liability is nine
25 hundred dollars or more and less than three thousand dollars, and monthly
26 returns shall be required if their yearly tax liability is three thousand
27 dollars or more. The Tax Commissioner shall have the discretion to allow
28 an annual return for seasonal retailers, even when their yearly tax
29 liability exceeds the amounts listed in this subdivision.

30 The Tax Commissioner may adopt and promulgate rules and regulations
31 to allow annual, semiannual, or quarterly returns for any retailer making

1 monthly remittances or payments of sales and use taxes by electronic
2 funds transfer or for any retailer remitting tax to the state pursuant to
3 the streamlined sales and use tax agreement. Such rules and regulations
4 may establish a method of determining the amount of the payment that will
5 result in substantially all of the tax liability being paid each quarter.
6 At least once each year, the difference between the amount paid and the
7 amount due shall be reconciled. If the difference is more than ten
8 percent of the amount paid, a penalty of fifty percent of the unpaid
9 amount shall be imposed.

10 (ii) For purposes of the sales tax, a return shall be filed by every
11 retailer liable for collection from a purchaser and payment to the state
12 of the tax, except that a combined sales tax return may be filed for all
13 licensed locations which are subject to common ownership. For purposes of
14 this subdivision, common ownership means the same person or persons own
15 eighty percent or more of each licensed location. For purposes of the use
16 tax, a return shall be filed by every retailer engaged in business in
17 this state and by every person who has purchased property, the storage,
18 use, or other consumption of which is subject to the use tax, but who has
19 not paid the use tax due to a retailer required to collect the tax.

20 (iii) The Tax Commissioner may require that returns be signed by the
21 person required to file the return or by his or her duly authorized agent
22 but need not be verified by oath.

23 (iv) A taxpayer who keeps his or her regular books and records on a
24 cash basis, an accrual basis, or any generally recognized accounting
25 basis which correctly reflects the operation of the business may file the
26 sales and use tax returns required by the Nebraska Revenue Act of 1967 on
27 the same accounting basis that is used for the regular books and records,
28 except that on credit, conditional, and installment sales, the retailer
29 who keeps his or her books on an accrual basis may report such sales on
30 the cash basis and pay the tax upon the collections made during each
31 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of

1 an account receivable, he or she shall be deemed to have received the
2 full balance of the consideration for the original sale and shall be
3 liable for the remittance of the sales tax on the balance of the total
4 sale price not previously reported, except that such transfer, sale,
5 assignment, or other disposition of an account receivable by a retailer
6 to a subsidiary shall not be deemed to require the retailer to pay the
7 sales tax on the credit sale represented by the account transferred prior
8 to the time the customer makes payment on such account. If the subsidiary
9 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a
10 surety bond in favor of the State of Nebraska to insure payment of the
11 tax and any interest and penalty imposed thereon under this section in an
12 amount not less than two times the amount of tax payable on outstanding
13 accounts receivable held by the subsidiary as of the end of the prior
14 calendar year. Failure to obtain either a sales tax permit or a surety
15 bond in accordance with this section shall result in the payment on the
16 next required filing date of all sales taxes not previously remitted.
17 When the retailer has adopted one basis or the other of reporting credit,
18 conditional, or installment sales and paying the tax thereon, he or she
19 will not be permitted to change from that basis without first having
20 notified the Tax Commissioner.

21 (c) Except as provided in the streamlined sales and use tax
22 agreement, the taxpayer required to file the return shall deliver or mail
23 any required return together with a remittance of the net amount of the
24 tax due to the office of the Tax Commissioner on or before the required
25 filing date. Failure to file the return, filing after the required filing
26 date, failure to remit the net amount of the tax due, or remitting the
27 net amount of the tax due after the required filing date shall be cause
28 for a penalty, in addition to interest, of ten percent of the amount of
29 tax not paid by the required filing date or twenty-five dollars,
30 whichever is greater, unless the penalty is being collected under
31 subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a

1 county treasurer or the Department of Motor Vehicles, in which case the
2 penalty shall be five dollars.

3 (d) The taxpayer shall deduct and withhold, from the taxes otherwise
4 due from him or her on his or her tax return, three percent of the first
5 five thousand dollars remitted each month to reimburse himself or herself
6 for the cost of collecting the tax. Taxpayers filing a combined return as
7 allowed by subdivision (1)(b)(ii) of this subsection shall compute such
8 collection fees on the basis of the receipts and liability of each
9 licensed location.

10 (e) A retailer that makes sales into Nebraska using a multivendor
11 marketplace platform is relieved of its obligation to collect and remit
12 sales taxes to Nebraska with regard to any sales taxes collected and
13 remitted by the multivendor marketplace platform. Such a retailer must
14 include all sales into Nebraska in its gross receipts in its return, but
15 may claim credit for any sales taxes collected and remitted by the
16 multivendor marketplace platform with respect to such retailer's sales.
17 Such retailer is liable for the sales tax due on sales into Nebraska as
18 provided in section 77-2704.35.

19 (f) A multivendor marketplace platform is relieved of its obligation
20 to collect and remit the correct amount of state and local sales taxes to
21 Nebraska to the extent that the multivendor marketplace platform can
22 establish that the error was due to insufficient or incorrect information
23 given to the multivendor marketplace platform by the seller and relied on
24 by the multivendor marketplace platform. This subdivision shall not apply
25 if the multivendor marketplace platform and the seller are related
26 persons under either section 267(b) or (c) or section 707(b) of the
27 Internal Revenue Code of 1986 or if the seller is also the multivendor
28 marketplace platform operator.

29 (2)(a) If the Tax Commissioner determines that any sales or use tax
30 amount, penalty, or interest has been paid more than once, has been
31 erroneously or illegally collected or computed, or has been paid and the

1 purchaser qualifies for a refund under section 77-2708.01, the Tax
2 Commissioner shall set forth that fact in his or her records and the
3 excess amount collected or paid may be credited on any sales, use, or
4 income tax amounts then due and payable from the person under the
5 Nebraska Revenue Act of 1967. Any balance may be refunded to the person
6 by whom it was paid or his or her successors, administrators, or
7 executors.

8 (b) No refund shall be allowed unless a claim therefor is filed with
9 the Tax Commissioner by the person who made the overpayment or his or her
10 attorney, executor, or administrator within three years from the required
11 filing date following the close of the period for which the overpayment
12 was made, within six months after any determination becomes final under
13 section 77-2709, or within six months from the date of overpayment with
14 respect to such determinations, whichever of these three periods expires
15 later, unless the credit relates to a period for which a waiver has been
16 given. Failure to file a claim within the time prescribed in this
17 subsection shall constitute a waiver of any demand against the state on
18 account of overpayment.

19 (c) Every claim shall be in writing on forms prescribed by the Tax
20 Commissioner and shall state the specific amount and grounds upon which
21 the claim is founded. No refund shall be made in any amount less than two
22 dollars.

23 (d) The Tax Commissioner shall allow or disallow a claim within one
24 hundred eighty days after it has been filed. A request for a hearing
25 shall constitute a waiver of the one-hundred-eighty-day period. The
26 claimant and the Tax Commissioner may also agree to extend the one-
27 hundred-eighty-day period. If a hearing has not been requested and the
28 Tax Commissioner has neither allowed nor disallowed a claim within either
29 the one hundred eighty days or the period agreed to by the claimant and
30 the Tax Commissioner, the claim shall be deemed to have been allowed.

31 (e) Within thirty days after disallowing any claim in whole or in

1 part, the Tax Commissioner shall serve notice of his or her action on the
2 claimant in the manner prescribed for service of notice of a deficiency
3 determination. The notice shall include a written statement containing
4 the details of the facts, circumstances, and reasons the Tax Commissioner
5 used to determine that the claimant did not make an overpayment.

6 (f) Within thirty days after the mailing of the notice of the Tax
7 Commissioner's action upon a claim filed pursuant to the Nebraska Revenue
8 Act of 1967, the action of the Tax Commissioner shall be final unless the
9 taxpayer seeks review of the Tax Commissioner's determination as provided
10 in section 77-27,127.

11 (g) Upon the allowance of a credit or refund of any sum erroneously
12 or illegally assessed or collected, of any penalty collected without
13 authority, or of any sum which was excessive or in any manner wrongfully
14 collected, interest shall be allowed and paid on the amount of such
15 credit or refund at the rate specified in section 45-104.02, as such rate
16 may from time to time be adjusted, from the date such sum was paid or
17 from the date the return was required to be filed, whichever date is
18 later, to the date of the allowance of the refund or, in the case of a
19 credit, to the due date of the amount against which the credit is
20 allowed, but in the case of a voluntary and unrequested payment in excess
21 of actual tax liability or a refund under section 77-2708.01, no interest
22 shall be allowed when such excess is refunded or credited.

23 (h) No suit or proceeding shall be maintained in any court for the
24 recovery of any amount alleged to have been erroneously or illegally
25 determined or collected unless a claim for refund or credit has been duly
26 filed.

27 (i) The Tax Commissioner may recover any refund or part thereof
28 which is erroneously made and any credit or part thereof which is
29 erroneously allowed by issuing a deficiency determination within one year
30 from the date of refund or credit or within the period otherwise allowed
31 for issuing a deficiency determination, whichever expires later.

1 (j)(i) Credit shall be allowed to the retailer, contractor, or
2 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue
3 Act of 1967 on any deduction taken that is attributed to bad debts not
4 including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as
5 such section existed on January 1, 2003. However, the amount calculated
6 pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges
7 or interest; sales or use taxes charged on the purchase price;
8 uncollectible amounts on property that remains in the possession of the
9 seller until the full purchase price is paid; and expenses incurred in
10 attempting to collect any debt and repossessed property.

11 (ii) Bad debts may be deducted on the return for the period during
12 which the bad debt is written off as uncollectible in the claimant's
13 books and records and is eligible to be deducted for federal income tax
14 purposes. A claimant who is not required to file federal income tax
15 returns may deduct a bad debt on a return filed for the period in which
16 the bad debt is written off as uncollectible in the claimant's books and
17 records and would be eligible for a bad debt deduction for federal income
18 tax purposes if the claimant was required to file a federal income tax
19 return.

20 (iii) If a deduction is taken for a bad debt and the debt is
21 subsequently collected in whole or in part, the tax on the amount so
22 collected must be paid and reported on the return filed for the period in
23 which the collection is made.

24 (iv) When the amount of bad debt exceeds the amount of taxable sales
25 for the period during which the bad debt is written off, a refund claim
26 may be filed within the otherwise applicable statute of limitations for
27 refund claims. The statute of limitations shall be measured from the due
28 date of the return on which the bad debt could first be claimed.

29 (v) If filing responsibilities have been assumed by a certified
30 service provider, the service provider may claim, on behalf of the
31 retailer, any bad debt allowance provided by this section. The certified

1 service provider shall credit or refund the full amount of any bad debt
2 allowance or refund received to the retailer.

3 (vi) For purposes of reporting a payment received on a previously
4 claimed bad debt, any payments made on a debt or account are applied
5 first proportionally to the taxable price of the property or service and
6 the sales tax thereon, and secondly to interest, service charges, and any
7 other charges.

8 (vii) In situations in which the books and records of the party
9 claiming the bad debt allowance support an allocation of the bad debts
10 among the member states in the streamlined sales and use tax agreement,
11 the state shall permit the allocation.

12 (3) Beginning July 1, 2020, if a refund claim under this section
13 involves a refund of a tax imposed under the Local Option Revenue Act or
14 section 13-319, 13-2813, or 77-6403 and the amount of such tax to be
15 refunded is at least five thousand dollars, the Tax Commissioner shall
16 notify the affected city, village, county, or municipal county of such
17 claim within twenty days after receiving the claim. If the Tax
18 Commissioner allows the claim and the refund of such tax is at least five
19 thousand dollars, the Tax Commissioner shall notify the affected city,
20 village, county, or municipal county of such refund and shall give the
21 city, village, county, or municipal county the option of having such
22 refund deducted from its tax proceeds in one lump sum or in twelve equal
23 monthly installments. The city, village, county, or municipal county
24 shall make its selection and shall certify the selection to the Tax
25 Commissioner within twenty days after receiving notice of the refund. The
26 Tax Commissioner shall then deduct such refund from the applicable tax
27 proceeds in accordance with the selection when he or she deducts refunds
28 pursuant to section 13-324, 13-2814, or 77-6403 or subsection (1) of
29 section 77-27,144, whichever is applicable. This subsection shall not
30 apply to any refund that is subject to subdivision (2)(a) or (2)(b)(ii)
31 or subsection (3) or (4) of section 77-27,144.

1 **Sec. 2.** Section 77-2709, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2709 (1) If the Tax Commissioner is not satisfied with the return
4 or returns of the tax or the amount of tax required to be paid to the
5 state by any person, he or she may compute and determine the amount
6 required to be paid upon the basis of the facts contained in the return
7 or returns or upon the basis of any information within his or her
8 possession or which may come into his or her possession. One or more
9 deficiency determinations of the amount due for one or more than one
10 period may be made. To the amount of the deficiency determination for
11 each period shall be added a penalty equal to ten percent thereof or
12 twenty-five dollars, whichever is greater. In making a determination, the
13 Tax Commissioner may offset overpayments for a period or periods,
14 together with interest on the overpayments, against underpayments for
15 other period or periods, against penalties, and against the interest on
16 the underpayments.

17 The interest on underpayments and overpayments shall be computed in
18 the manner set forth hereinafter.

19 (2) If any person fails to make a return, the Tax Commissioner shall
20 make an estimate of the amount of the gross receipts of the person or, as
21 the case may be, of the amount of the total sales, rent, or lease price
22 of property sold, rented, or leased or purchased, by the person, the
23 storage, use, or consumption of which in this state is subject to the use
24 tax. The estimate shall be made for the period or periods in respect to
25 which the person failed to make a return and shall be based upon any
26 information which is in the Tax Commissioner's possession or may come
27 into his or her possession. Upon the basis of this estimate, the Tax
28 Commissioner shall compute and determine the amount required to be paid
29 to the state, adding to the sum thus arrived at a penalty equal to ten
30 percent thereof or twenty-five dollars, whichever is greater. One or more
31 determinations may be made for one or more than one period.

1 (3) The amount of the determination of any deficiency exclusive of
2 penalties shall bear interest at the rate specified in section 45-104.02,
3 as such rate may from time to time be adjusted, from the twentieth of the
4 month following the period for which the amount should have been returned
5 until the date of payment.

6 (4) If any part of a deficiency for which a deficiency determination
7 is made is the result of fraud or an intent to evade the Nebraska Revenue
8 Act of 1967 or authorized rules and regulations, a penalty of twenty-five
9 percent of the amount of the determination or fifty dollars, whichever is
10 greater, shall be added thereto.

11 (5)(a) Promptly after making his or her determination, the Tax
12 Commissioner shall give to the person written notice of his or her
13 determination that includes a written statement containing the details of
14 the facts, circumstances, and reasons the Tax Commissioner used to
15 determine that the return or returns of the tax or the amount of tax
16 required to be paid to the state by the person are not satisfactory.

17 (b) The notice may be served personally or by mail, and if by mail
18 the notice shall be addressed to the person at his or her address as it
19 appears in the records of the Tax Commissioner. In case of service by
20 mail of any notice required by the Nebraska Revenue Act of 1967, the
21 service is complete at the time of deposit in the United States post
22 office.

23 (c) Every notice of a deficiency determination shall be personally
24 served or mailed within three years after the last day of the calendar
25 month following the period for which the amount is proposed to be
26 determined or within three years after the return is filed, whichever
27 period expires the later. In the case of a person failing to make a
28 return, filing a false or fraudulent return with the intent to evade the
29 sales or use tax, or omitting from a return an amount properly includable
30 therein which is in excess of twenty-five percent of the amount of tax
31 stated in the return, every notice of determination shall be mailed or

1 personally served within six years after the last day of the calendar
2 month following the period for which the amount is proposed to be
3 determined.

4 (d) When, before the expiration of the time prescribed in this
5 section for the mailing of a notice of deficiency determination, both the
6 Tax Commissioner and the taxpayer have consented in writing to its
7 mailing after such time, the notice of the deficiency determination may
8 be mailed at any time prior to the expiration of the period agreed upon.
9 The agreed-upon period may be extended by subsequent agreement, in
10 writing, made before the expiration of the period previously agreed upon.

11 (6) When a business is discontinued, a determination may be made at
12 any time thereafter within the periods specified in this section as to
13 liability arising out of that business, irrespective of whether the
14 determination is issued prior to the due date of the liability as
15 otherwise specified in the Nebraska Revenue Act of 1967.

16 (7) Any person against whom a determination is made under
17 subsections (1) and (2) of this section or any person directly interested
18 may petition for a redetermination within sixty days after service upon
19 the person of notice thereof. For the purposes of this subsection, a
20 person is directly interested in a deficiency determination when such
21 deficiency could be collected from such person. If a petition for
22 redetermination is not filed within the sixty-day period, the
23 determination becomes final at the expiration of the period.

24 (8) If a petition for redetermination is filed within the sixty-day
25 period, the Tax Commissioner shall reconsider the determination and, if
26 the person has so requested in his or her petition, shall grant the
27 person an oral hearing and shall give him or her ten days' notice of the
28 time and place of the hearing. The Tax Commissioner may continue the
29 hearing from time to time as may be necessary.

30 (9) The Tax Commissioner may decrease or increase the amount of the
31 determination before it becomes final, but the amount may be increased

1 only if a claim for the increase is asserted by the Tax Commissioner at
2 or before the hearing, upon which assertion the petitioner shall be
3 entitled to a thirty-day continuance of the hearing to allow him or her
4 to obtain and produce further evidence applicable to the items upon which
5 the increase is based.

6 (10) The order or decision of the Tax Commissioner upon a petition
7 for redetermination shall become final thirty days after service upon the
8 petitioner of notice thereof.

9 (11) All determinations made by the Tax Commissioner under the
10 provisions of subsections (1) and (2) of this section are due and payable
11 at the time they become final. If they are not paid when due and payable,
12 a penalty of ten percent of the amount of the determination, exclusive of
13 interest and penalties, shall be added thereto.

14 (12) Any notice required by this section shall be served personally
15 or by mail in the manner prescribed in subsection (5) of this section.

16 **Sec. 3.** Section 77-2727, Revised Statutes Cumulative Supplement,
17 2024, is amended to read:

18 77-2727 (1) Except as provided in subsection (6) of this section and
19 subsection (5) of section 77-2775, a partnership as such shall not be
20 subject to the income tax imposed by the Nebraska Revenue Act of 1967.
21 Persons or their authorized representatives carrying on business as
22 partners shall be liable for the income tax imposed by the Nebraska
23 Revenue Act of 1967 only in their separate or individual capacities.

24 (2) The partners of such partnership who are residents of this state
25 or corporations shall include in their incomes their proportionate share
26 of such partnership's income.

27 (3) If any partner of such partnership is a nonresident individual
28 during any part of the partnership's reporting year, he or she shall file
29 a Nebraska income tax return which shall include in Nebraska adjusted
30 gross income that portion of the partnership's Nebraska income, as
31 determined under the provisions of sections 77-2728 and 77-2729,

1 allocable to his or her interest in the partnership and shall execute and
2 forward to the partnership, on or before the original due date of the
3 Nebraska partnership return, an agreement which states that he or she
4 will file a Nebraska income tax return and pay income tax on all income
5 derived from or attributable to sources in this state, and such agreement
6 shall be attached to the partnership's Nebraska return for such reporting
7 year.

8 (4)(a) Except as provided in subdivision (c) of this subsection, in
9 the absence of the nonresident individual partner's executed agreement
10 being attached to the Nebraska partnership return, the partnership shall
11 remit a portion of such partner's income which was derived from or
12 attributable to Nebraska sources with its Nebraska return for the
13 reporting year. For tax years beginning or deemed to begin before January
14 1, 2013, the amount of remittance, in such instance, shall be the highest
15 individual income tax rate determined under section 77-2715.02 multiplied
16 by the nonresident individual partner's share of the partnership income
17 which was derived from or attributable to sources within this state. For
18 tax years beginning or deemed to begin on or after January 1, 2013, the
19 amount of remittance, in such instance, shall be the highest individual
20 income tax rate determined under section 77-2715.03 multiplied by the
21 nonresident individual partner's share of the partnership income which
22 was derived from or attributable to sources within this state.

23 (b) Any amount remitted on behalf of any partner shall be allowed as
24 a credit against the Nebraska income tax liability of the partner.

25 (c) Subdivision (a) of this subsection does not apply to a publicly
26 traded partnership as defined by section 7704(b) of the Internal Revenue
27 Code of 1986, as amended, that is treated as a partnership for the
28 purposes of the code and that has agreed to file an annual information
29 return with the Department of Revenue reporting the name, address,
30 taxpayer identification number, and other information requested by the
31 department of each unit holder with an income in the state in excess of

1 five hundred dollars.

2 (5) The Tax Commissioner may allow a nonresident individual partner
3 to not file a Nebraska income tax return if the nonresident individual
4 partner's only source of Nebraska income was his or her share of the
5 partnership's income which was derived from or attributable to sources
6 within this state, the nonresident did not file an agreement to file a
7 Nebraska income tax return, and the partnership has remitted the amount
8 required by subsection (4) of this section on behalf of such nonresident
9 individual partner. The amount remitted shall be retained in satisfaction
10 of the Nebraska income tax liability of the nonresident individual
11 partner.

12 (6) Notwithstanding any provision of this section to the contrary:

13 (a) For tax years beginning or deemed to begin on or after January
14 1, 2018, a partnership may annually make an irrevocable election to pay
15 the taxes, interest, or penalties levied by the Nebraska Revenue Act of
16 1967 at the entity level for the taxable period covered by such return.
17 For tax years beginning on or after January 1, 2023, such election may be
18 made on the applicable income tax return and shall ~~must~~ be made on or
19 before the due date for filing the applicable income tax return,
20 including any extensions that have been granted;

21 (b) An electing partnership with respect to a taxable period shall
22 pay an income tax equivalent to the highest individual income tax rate
23 provided in section 77-2715.03 multiplied by the electing partnership's
24 net income as apportioned or allocated to this state in accordance with
25 the Nebraska Revenue Act of 1967, for such taxable period;

26 (c) An electing partnership shall be treated as a corporation with
27 respect to the requirements of section 77-2769 for payments of estimated
28 tax. The requirement for payment of estimated tax under section 77-2769
29 shall not apply for tax years beginning prior to January 1, 2024.
30 Payments of estimated tax made by an eligible partnership that does not
31 make an election under this subsection shall be treated as income tax

1 withholding on behalf of the partners;

2 (d) Except as provided in subdivision (e) of this subsection, the
3 partners of an electing partnership shall ~~must~~ file a Nebraska return to
4 report their pro rata or distributive share of the income of the electing
5 partnership in accordance with the Nebraska Revenue Act of 1967, as
6 applicable. In determining the sum of its pro rata or distributive share
7 and computing the tax under this subsection, an electing partnership
8 shall add back any amount of Nebraska income tax imposed under the
9 Nebraska Revenue Act of 1967 and deducted by the electing partnership for
10 federal income tax purposes under section 164 of the Internal Revenue
11 Code;

12 (e) A nonresident individual who is a partner of an electing
13 partnership shall not be required to file a Nebraska tax return for a
14 taxable year if, for such taxable year, the only source of income derived
15 from or connected with sources within this state for such partner, or for
16 the partner and the partner's spouse if a joint federal income tax return
17 is filed, is from one or more electing partnerships or electing small
18 business corporations as defined in subdivision (9)(a) of section
19 77-2734.01 for such taxable year and such nonresident individual
20 partner's tax under the Nebraska Revenue Act of 1967 would be fully
21 satisfied by the credit allowed to such partner under subdivision (g) of
22 this subsection;

23 (f) If the amount calculated under subdivision (a) of this
24 subsection results in a net operating loss, such net operating loss may
25 not be carried forward to succeeding taxable years;

26 (g)(i) A refundable credit shall be available to the partners in an
27 amount equal to their pro rata or distributive share of the Nebraska
28 income tax paid by the electing partnership. For tax returns filed for
29 taxable years beginning or deemed to begin on or after January 1, 2022,
30 such credit shall be allowed for the same taxable year for which the
31 election is made, without regard to the year in which the tax is paid to

1 Nebraska or deducted on a federal income tax return;

2 (ii) In the case of a partnership or small business corporation that
3 is a partner of an electing partnership, the refundable credit under this
4 subdivision (g) shall (A) be allowed to its partners or shareholders in
5 accordance with the determination of income and distributive share of the
6 Nebraska income tax paid by the electing partnership or (B) be applied
7 against the partner's tax, interest, and penalty. Any excess credit
8 deemed an overpayment may be refunded or applied to the subsequent tax
9 year;

10 (iii) If a partnership making the election under this subsection is
11 a partner of another electing partnership, net income shall be computed
12 as provided in subsection (1) of this section. The upper tier electing
13 partnership shall claim a credit for the tax paid by the lower tier
14 electing partnership. The upper tier electing partnership shall
15 distribute out the pro rata or distributive share of the credits to its
16 partners for tax paid under this subsection by all tiers of electing
17 partnerships. As used in this subdivision, the term lower tier electing
18 partnership means an electing partnership in which some or all of the
19 partners are an electing partnership. The term upper tier electing
20 partnership means an electing partnership that is a partner of a lower
21 tier electing partnership. An electing partnership may have two or more
22 tiers; and

23 (h)(i) For tax years beginning or deemed to begin on or after
24 January 1, 2018, but prior to January 1, 2023, the electing partnership
25 shall ~~must~~ make the election under this subsection on or after January 1,
26 2023, but before December 31, 2025, in the form and manner prescribed by
27 the Tax Commissioner for all years for which the election under this
28 subsection is made on behalf of the electing partnership. The Tax
29 Commissioner shall establish the form and manner, which shall not include
30 any changes to the past returns other than those that are directly
31 related to the election under this subsection.

1 (ii) Notwithstanding any other provision of law, if an electing
2 partnership files in the form and manner as specified in subdivision (h)
3 (i) of this subsection, the deadline for filing a claim for credit or
4 refund prescribed in section 77-2793 shall be extended for affected
5 partners of the electing partnership until the timeframe specified in
6 section 77-2793 or January 31, 2026, whichever is later. The resulting
7 claim of refund for tax years beginning prior to January 1, 2023, shall
8 be submitted in the form and manner as prescribed by the Tax
9 Commissioner. Neither the electing partnership nor its partners shall
10 incur any penalties for late filing nor owe interest on such amounts. The
11 Tax Commissioner shall not be required to pay interest on any amounts
12 owed to the partners resulting from such refund claims.

13 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
14 this subsection, the Tax Commissioner shall have one year from the date
15 an electing partnership files in the form and manner as specified in
16 subdivision (h)(i) of this subsection to review and make a written
17 proposed deficiency determination in accordance with section 77-2786. Any
18 notice of deficiency determination made as specified in this subdivision
19 may be enforced at any time within six years from the date of the notice
20 of deficiency determination.

21 (7) For purposes of this section:

22 (a) Electing partnership means, with respect to a taxable period, an
23 eligible partnership that has made an election pursuant to subsection (6)
24 of this section with respect to such taxable period; and

25 (b) Eligible partnership means any partnership as provided for in
26 section 7701(a)(2) of the Internal Revenue Code that has a filing
27 requirement under the Nebraska Revenue Act of 1967 other than a publicly
28 traded partnership as defined in section 7704 of the Internal Revenue
29 Code. An eligible partnership includes any entity, including a limited
30 liability company, treated as a partnership for federal income tax
31 purposes that otherwise meets the requirements of this subdivision.

1 (8) For purposes of this section, any partner that is a grantor
2 trust of a nonresident shall be disregarded and this section shall apply
3 as though the nonresident grantor was the partner.

4 **Sec. 4.** Section 77-2734.01, Revised Statutes Cumulative Supplement,
5 2024, is amended to read:

6 77-2734.01 (1) Residents of Nebraska who are shareholders of a small
7 business corporation having an election in effect under subchapter S of
8 the Internal Revenue Code or who are members of a limited liability
9 company organized pursuant to the Nebraska Uniform Limited Liability
10 Company Act shall include in their Nebraska taxable income, to the extent
11 includable in federal gross income, their proportionate share of such
12 corporation's or limited liability company's federal income adjusted
13 pursuant to this section. Income or loss from such corporation or limited
14 liability company conducting a business, trade, profession, or occupation
15 shall be included in the Nebraska taxable income of a shareholder or
16 member who is a resident of this state to the extent of such
17 shareholder's or member's proportionate share of the net income or loss
18 from the conduct of such business, trade, profession, or occupation
19 within this state, determined under subsection (2) of this section. A
20 resident of Nebraska shall include in Nebraska taxable income fair
21 compensation for services rendered to such corporation or limited
22 liability company. Compensation actually paid shall be presumed to be
23 fair unless it is apparent to the Tax Commissioner that such compensation
24 is materially different from fair value for the services rendered or has
25 been manipulated for tax avoidance purposes.

26 (2) The income of any small business corporation having an election
27 in effect under subchapter S of the Internal Revenue Code or limited
28 liability company organized pursuant to the Nebraska Uniform Limited
29 Liability Company Act that is derived from or connected with Nebraska
30 sources shall be determined in the following manner:

31 (a) If the small business corporation is a member of a unitary

1 group, the small business corporation shall be deemed to be doing
2 business within this state if any part of its income is derived from
3 transactions with other members of the unitary group doing business
4 within this state, and such corporation shall apportion its income by
5 using the apportionment factor determined for the entire unitary group,
6 including the small business corporation, under sections 77-2734.05 to
7 77-2734.15;

8 (b) If the small business corporation or limited liability company
9 is not a member of a unitary group and is subject to tax in another
10 state, it shall apportion its income under sections 77-2734.05 to
11 77-2734.15; and

12 (c) If the small business corporation or limited liability company
13 is not subject to tax in another state, all of its income is derived from
14 or connected with Nebraska sources.

15 (3) Nonresidents of Nebraska who are shareholders of such
16 corporations or members of such limited liability companies shall file a
17 Nebraska income tax return and shall include in Nebraska adjusted gross
18 income their proportionate share of the corporation's or limited
19 liability company's Nebraska income as determined under subsection (2) of
20 this section.

21 (4) The nonresident shareholder or member shall execute and forward
22 to the corporation or limited liability company before the filing of the
23 corporation's or limited liability company's return an agreement which
24 states he or she will file a Nebraska income tax return and pay the tax
25 on the income derived from or connected with sources in this state, and
26 such agreement shall be attached to the corporation's or limited
27 liability company's Nebraska return for such taxable year.

28 (5) For taxable years beginning or deemed to begin before January 1,
29 2013, in the absence of the nonresident shareholder's or member's
30 executed agreement being attached to the Nebraska return, the corporation
31 or limited liability company shall remit with the return an amount equal

1 to the highest individual income tax rate determined under section
2 77-2715.02 multiplied by the nonresident shareholder's or member's share
3 of the corporation's or limited liability company's income which was
4 derived from or attributable to this state. For taxable years beginning
5 or deemed to begin on or after January 1, 2013, in the absence of the
6 nonresident shareholder's or member's executed agreement being attached
7 to the Nebraska return, the corporation or limited liability company
8 shall remit with the return an amount equal to the highest individual
9 income tax rate determined under section 77-2715.03 multiplied by the
10 nonresident shareholder's or member's share of the corporation's or
11 limited liability company's income which was derived from or attributable
12 to this state. The amount remitted shall be allowed as a credit against
13 the Nebraska income tax liability of the shareholder or member.

14 (6) The Tax Commissioner may allow a nonresident individual
15 shareholder or member to not file a Nebraska income tax return if the
16 nonresident individual shareholder's or member's only source of Nebraska
17 income was his or her share of the small business corporation's or
18 limited liability company's income which was derived from or attributable
19 to sources within this state, the nonresident did not file an agreement
20 to file a Nebraska income tax return, and the small business corporation
21 or limited liability company has remitted the amount required by
22 subsection (5) of this section on behalf of such nonresident individual
23 shareholder or member. The amount remitted shall be retained in
24 satisfaction of the Nebraska income tax liability of the nonresident
25 individual shareholder or member.

26 (7) A small business corporation or limited liability company return
27 shall be filed if the small business corporation or limited liability
28 company has income derived from Nebraska sources.

29 (8) Notwithstanding any provision of this section to the contrary:

30 (a) For tax years beginning or deemed to begin on or after January
31 1, 2018, a small business corporation may annually make an irrevocable

1 election to pay the taxes, interest, or penalties levied by the Nebraska
2 Revenue Act of 1967 at the entity level for the taxable period covered by
3 such return. For tax years beginning on or after January 1, 2023, such
4 election may be made on the applicable income tax return and shall ~~must~~
5 be made on or before the due date for filing the applicable income tax
6 return, including any extensions that have been granted;

7 (b) An electing small business corporation with respect to a taxable
8 period shall pay an income tax equivalent to the highest individual
9 income tax rate provided in section 77-2715.03 multiplied by the electing
10 small business corporation's net income as apportioned or allocated to
11 this state in accordance with the Nebraska Revenue Act of 1967, for such
12 taxable period;

13 (c) An electing small business corporation shall be treated as a
14 corporation with respect to the requirements of section 77-2769 for
15 payments of estimated tax. The requirement for payment of estimated tax
16 under section 77-2769 shall not apply for tax years beginning prior to
17 January 1, 2024. Payments of estimated tax made by an eligible small
18 business corporation that does not make an election under this subsection
19 shall be treated as income tax withholding on behalf of the shareholders;

20 (d) Except as provided in subdivision (e) of this subsection, the
21 shareholders of an electing small business corporation shall ~~must~~ file a
22 Nebraska return to report their pro rata or distributive share of the
23 income of the electing small business corporation in accordance with the
24 Nebraska Revenue Act of 1967, as applicable. In determining the sum of
25 its pro rata or distributive share and computing the tax under this
26 subsection, an electing small business corporation shall add back any
27 amount of Nebraska income tax imposed under the Nebraska Revenue Act of
28 1967 and deducted by the electing small business corporation for federal
29 income tax purposes under section 164 of the Internal Revenue Code;

30 (e) A nonresident individual who is a shareholder of an electing
31 small business corporation shall not be required to file a Nebraska tax

1 return for a taxable year if, for such taxable year, the only source of
2 income derived from or connected with sources within this state for such
3 shareholder, or for the shareholder and the shareholder's spouse if a
4 joint federal income tax return is filed, is from one or more electing
5 small business corporations or electing partnerships as defined in
6 subdivision (7)(a) of section 77-2727 for such taxable year and such
7 nonresident individual shareholder's tax under the Nebraska Revenue Act
8 of 1967 would be fully satisfied by the credit allowed to such
9 shareholder under subdivision (g) of this subsection;

10 (f) If the amount calculated under subdivision (a) of this
11 subsection results in a net operating loss, such net operating loss may
12 not be carried forward to succeeding taxable years;

13 (g) A refundable credit shall be available to the shareholders in an
14 amount equal to their pro rata or distributive share of the Nebraska
15 income tax paid by the electing small business corporation. For tax
16 returns filed for taxable years beginning or deemed to begin on or after
17 January 1, 2022, such credit shall be allowed for the same taxable year
18 for which the election is made, without regard to the year in which the
19 tax is paid to Nebraska or deducted on a federal income tax return; and

20 (h)(i) For tax years beginning or deemed to begin on or after
21 January 1, 2018, but prior to January 1, 2023, the electing small
22 business corporation shall ~~must~~ make the election under this subsection
23 on or after January 1, 2023, but before December 31, 2025, in the form
24 and manner prescribed by the Tax Commissioner for all years for which the
25 election under this subsection is made on behalf of the electing small
26 business corporation. The Tax Commissioner shall establish the form and
27 manner, which shall not include any changes to the past returns other
28 than those that are directly related to the election under this
29 subsection.

30 (ii) Notwithstanding any other provision of law, if an electing
31 small business corporation files in the form and manner as specified in

1 subdivision (h)(i) of this subsection, the deadline for filing a claim
2 for credit or refund prescribed in section 77-2793 shall be extended for
3 affected shareholders of the electing small business corporation until
4 the timeframe specified in section 77-2793 or January 31, 2026, whichever
5 is later. The resulting claim of refund for tax years beginning prior to
6 January 1, 2023, shall be submitted in the form and manner as prescribed
7 by the Tax Commissioner. Neither the electing small business corporation
8 nor its shareholders shall incur any penalties for late filing nor owe
9 interest on such amounts. The Tax Commissioner shall not be required to
10 pay interest on any amounts owed to the shareholders resulting from such
11 refund claims.

12 (iii) Notwithstanding the dates provided in subdivision (h)(i) of
13 this subsection, the Tax Commissioner shall have one year from the date
14 an electing small business corporation files in the form and manner as
15 specified in subdivision (h)(i) of this subsection to review and make a
16 written proposed deficiency determination in accordance with section
17 77-2786. Any notice of deficiency determination made as specified in this
18 subdivision may be enforced at any time within six years from the date of
19 the notice of deficiency determination.

20 (9) For purposes of this section:

21 (a) Electing small business corporation means, with respect to a
22 taxable period, an eligible small business corporation having an election
23 in effect under subchapter S of the Internal Revenue Code that has made
24 an election pursuant to subsection (8) of this section with respect to
25 such taxable period; and

26 (b) Eligible small business corporation means an entity subject to
27 taxation under subchapter S of the Internal Revenue Code and the
28 regulations thereunder.

29 (10) For purposes of this section, any shareholder or member of the
30 corporation or limited liability company that is a grantor trust of a
31 nonresident shall be disregarded and this section shall apply as though

1 the nonresident grantor was the shareholder or member.

2 **Sec. 5.** Section 77-2776, Revised Statutes Cumulative Supplement,
3 2024, is amended to read:

4 77-2776 (1) As soon as practical after an income tax return is
5 filed, the Tax Commissioner shall examine it to determine the correct
6 amount of tax. If the Tax Commissioner finds that the amount of tax shown
7 on the return is less than the correct amount, he or she shall notify the
8 taxpayer of the amount of the deficiency proposed to be assessed. If the
9 Tax Commissioner finds that the tax paid is more than the correct amount,
10 he or she shall credit the overpayment against any taxes due by the
11 taxpayer and refund the difference. The Tax Commissioner shall, upon
12 request, make prompt assessment of taxes due as provided by the laws of
13 the United States for federal income tax purposes.

14 (2) If the taxpayer fails to file an income tax return, the Tax
15 Commissioner shall estimate the taxpayer's tax liability from any
16 available information and notify the taxpayer of the amount proposed to
17 be assessed as in the case of a deficiency.

18 (3) A notice of deficiency shall set forth the reason for the
19 proposed assessment or for the change in the amount of credit or loss to
20 be carried over to another year. The notice shall include a written
21 statement containing the details of the facts, circumstances, and reasons
22 the Tax Commissioner used to determine that the taxpayer did not report
23 the correct amount of tax. The notice may be mailed to the taxpayer at
24 his or her last-known address. In the case of a joint return, the notice
25 of deficiency may be a single joint notice, except that if the Tax
26 Commissioner is notified by either spouse that separate residences have
27 been established, the Tax Commissioner shall mail joint notices to each
28 spouse. If the taxpayer is deceased or under a legal disability, a notice
29 of deficiency may be mailed to his or her last-known address unless the
30 Tax Commissioner has received notice of the existence of a fiduciary
31 relationship with respect to such taxpayer.

1 (4) A notice of deficiency regarding an item of entity income may be
2 mailed to the entity at its last-known address or to the address of the
3 entity's tax matters person for federal income tax purposes. Such notice
4 shall be deemed to have been received by each partner, shareholder, or
5 member of such entity, but only for items of entity income reported by
6 the partner, shareholder, or member. The actions taken thereon on behalf
7 of the partnership, limited liability company, small business
8 corporation, estate, or trust are binding on the partners, members,
9 shareholders, or beneficiaries.

10 **Sec. 6.** Section 77-2786, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 77-2786 (1) Except as otherwise provided in the Nebraska Revenue Act
13 of 1967, a notice of a proposed deficiency determination shall be mailed
14 to the taxpayer within three years after the return was filed. Except as
15 otherwise provided in the Nebraska Revenue Act of 1967, no deficiency
16 shall be assessed or collected with respect to the year for which the
17 return was filed unless a notice of a proposed deficiency determination
18 is mailed within three years after the return was filed or the period
19 otherwise fixed. The notice of proposed deficiency determination shall
20 include a written statement containing the details of the facts,
21 circumstances, and reasons the Tax Commissioner used to determine that
22 the taxpayer did not report the correct amount of tax.

23 (2) If the taxpayer omits from Nebraska taxable income an amount
24 properly includable therein which is in excess of twenty-five percent of
25 the amount of taxable income stated in the return or a corporate return
26 omits a properly includable member of the unitary group as defined in
27 section 77-2734.04, a notice of a deficiency determination may be mailed
28 to the taxpayer within six years after the return was filed. A notice of
29 deficiency determination based on the omission of a member of a unitary
30 group shall be limited to the increase in the tax caused by including the
31 omitted member. For purposes of this subsection, there shall not be taken

1 into account any amount which is omitted in the return if such amount is
2 disclosed in the return, or in a statement attached to the return, in a
3 manner adequate to apprise the Tax Commissioner of the nature and amount
4 of such item and the manner in which such item would affect the
5 computation of Nebraska taxable income.

6 (3) If no return is filed or a false and fraudulent return is filed
7 with intent to evade the income tax imposed by the Nebraska Revenue Act
8 of 1967, a notice of deficiency determination may be mailed to the
9 taxpayer at any time.

10 (4) If a taxpayer fails to comply with the requirement of section
11 77-2775 by not reporting a change or correction increasing his or her
12 federal adjusted gross income, taxable income, or tax liability or a
13 change or correction which is treated in the same manner as if it were a
14 deficiency determination for federal income tax purposes, or by not
15 reporting a change or correction in income taxable in or tax credit
16 allowable by any state to the extent required by the Tax Commissioner by
17 regulation, or in not filing an amended return, a notice of deficiency
18 determination based on a complete examination of the tax liability for
19 the tax years involved may be mailed to the taxpayer at any time.

20 (5) If the taxpayer, pursuant to section 77-2775, reports a federal
21 change or correction or a state change or correction, files an amended
22 return increasing his or her federal adjusted gross income, taxable
23 income, or tax liability, or reports a change or correction which is
24 treated in the same manner as if it were a deficiency for federal income
25 tax purposes, a notice of a deficiency determination based on a
26 redetermination of Nebraska tax liability to reflect the change or
27 correction may be mailed at any time within two years after such report
28 or amended return was filed.

29 (6) When, before the expiration of the time prescribed in this
30 section for the mailing of a notice of deficiency determination, both the
31 Tax Commissioner and the taxpayer have consented in writing to the

1 mailing after such time, the notice of deficiency determination may be
2 mailed at any time prior to the expiration of the period agreed upon. The
3 period so agreed may be extended by subsequent agreement in writing made
4 before the expiration of the period previously agreed upon.

5 An agreement between the taxpayer and the Internal Revenue Service
6 providing for the extension of the period for the mailing of a notice of
7 deficiency determination of federal income taxes shall constitute an
8 agreement with the Tax Commissioner to extend the period for assessment
9 of income taxes under the Nebraska Revenue Act of 1967 through the ending
10 date shown on the federal agreement. A copy of all such agreements and
11 extensions thereof shall be filed with the Tax Commissioner within thirty
12 days after their execution. If the copy of the extension agreement with
13 the Internal Revenue Service is not filed pursuant to this subsection,
14 the notice of deficiency determination for such taxable year may be
15 mailed at any time within one year of the discovery of the extension by
16 the Tax Commissioner.

17 (7) For purposes of this section, an income tax return filed before
18 the last day prescribed by the Nebraska Revenue Act of 1967 for the
19 filing thereof, determined without regard to any extension of time to
20 file the return, shall be deemed to be filed on such last day. If a
21 return or withholding tax for any period ending with or within a calendar
22 year is filed before April 15 of the succeeding calendar year, such
23 return shall be deemed to be filed on April 15 of such succeeding
24 calendar year.

25 (8) When it becomes necessary for the Tax Commissioner to apply for
26 a court order under subsection (2) of section 77-27,109 for the
27 production of books, papers, records, or memoranda or the testimony of
28 any person, the period for the mailing of a notice of deficiency
29 determination shall be tolled from the date the Tax Commissioner first
30 applies to the appropriate court for the order until the last date on
31 which the information or testimony contained in the application for the

1 court order is obtained by the Tax Commissioner.

2 This subsection shall not apply if the court finds that the
3 information is not relevant to the determination of the tax liability,
4 the information was provided prior to the filing of the application, or
5 the application was not filed within the time period otherwise provided
6 in this section for the mailing of a notice of deficiency determination.

7 (9) Any extension for an item of entity income that is signed on
8 behalf of the entity or by the entity's tax matters person for federal
9 income tax purposes shall extend the time period during which a notice of
10 deficiency could be mailed to the partners, shareholders, or members of
11 the entity with respect to any item of entity income.

12 **Sec. 7.** Section 77-2796, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 77-2796 If the Tax Commissioner disallows a claim for refund, he or
15 she shall notify the taxpayer accordingly. The notice shall include a
16 written statement containing the details of the facts, circumstances, and
17 reasons the Tax Commissioner used to determine that the taxpayer did not
18 make an overpayment. The action of the Tax Commissioner denying a claim
19 for refund is final upon the expiration of thirty days after the date
20 when he or she mails notice of his or her action to the taxpayer unless
21 within this period the taxpayer seeks review of the Tax Commissioner's
22 determination as hereinafter provided.

23 **Sec. 8.** Original sections 77-2709, 77-2786, and 77-2796, Reissue
24 Revised Statutes of Nebraska, and sections 77-2708, 77-2727, 77-2734.01,
25 and 77-2776, Revised Statutes Cumulative Supplement, 2024, are repealed.