

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 106**

Introduced by Schilz, 47.

Read first time January 06, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 13-318, 13-319, 13-322, 13-323, 13-324, 13-325, 13-326,  
3 13-804, 13-2504, 39-2510, 39-2520, 77-2703.01,  
4 77-2703.04, 77-2704.31, 77-2712.05, 77-4105, and 77-4106,  
5 Reissue Revised Statutes of Nebraska, and sections  
6 77-2711, 77-5725, and 77-5726, Revised Statutes  
7 Cumulative Supplement, 2010; to name the County Option  
8 Sales Tax Act; to authorize a county sales tax for  
9 capital improvements for public safety services and  
10 transportation infrastructure projects; to require  
11 planning; to harmonize provisions; and to repeal the  
12 original sections.

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

1           Section 1. Sections 1 to 7 of this act shall be known and  
2 may be cited as the County Option Sales Tax Act.

3           Sec. 2. Section 13-319, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           ~~13-319~~ (1) Any county by resolution of the governing body  
6 may impose a sales and use tax of one-half percent, one percent, or  
7 one and one-half percent upon the same transactions sourced as  
8 provided in sections 77-2703.01 to 77-2703.04 within the county, but  
9 outside any incorporated municipality which has adopted a local sales  
10 tax pursuant to section 77-27,142, on which the state is authorized  
11 to impose a tax pursuant to the Nebraska Revenue Act of 1967, as  
12 amended from time to time. Any sales and use tax imposed pursuant to  
13 this section must be used (a) to finance public services provided by  
14 a public safety commission, (b) ~~or~~ to provide the county share of  
15 funds required under any other agreement executed under the  
16 Interlocal Cooperation Act or Joint Public Agency Act, or (c) to  
17 finance capital improvements for public safety services and  
18 transportation infrastructure projects. A sales and use tax shall not  
19 be imposed pursuant to this section until an election has been held  
20 and a majority of the qualified electors have approved the tax  
21 pursuant to sections ~~13-322 and 13-323.~~ 3 and 4 of this act.

22           (2) For purposes of subdivision (1)(c) of this section:

23           (a) Public safety services includes crime prevention,  
24 offender detention, and firefighter, police, medical, ambulance, or  
25 other emergency services; and

1           (b) Transportation infrastructure projects includes  
2 construction, maintenance, operation, and improvement of collector  
3 roads, arterial roads, rural collector roads, and local roads.

4           Sec. 3. Section 13-322, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           ~~13-322~~ The powers granted by section ~~13-319-2~~ of this act  
7 shall not be exercised unless and until the question has been  
8 submitted at a primary, general, or special election held within the  
9 area which would be subject to the tax and in which all registered  
10 voters are entitled to vote on such question. The officials of the  
11 ~~incorporated municipality or county~~ shall order the submission of the  
12 question by submitting a certified copy of the resolution proposing  
13 the tax to the election commissioner or county clerk. The question  
14 may include any terms and conditions set forth in the resolution  
15 proposing the tax, such as a termination date or the specific ~~public~~  
16 ~~safety service use~~ for which the revenue received from the tax will  
17 be allocated, and shall include the following language: Shall the  
18 county impose a sales and use tax upon the same transactions within  
19 the county, other than in municipalities which impose a local option  
20 sales tax, on which the State of Nebraska is authorized to impose a  
21 tax to finance ~~public safety services?~~ (insert description of the  
22 proposed use)? If a majority of the votes cast upon the question are  
23 in favor of the tax, the governing body may impose the tax. If a  
24 majority of those voting on the question are opposed to the tax, the  
25 governing body shall not impose the tax. Any election under this

1 section shall be conducted in accordance with the procedures provided  
2 in the Election Act.

3 Sec. 4. Section 13-323, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 ~~13-323~~ The election commissioner or county clerk shall  
6 give notice of the submission of the question of imposing a tax under  
7 section ~~13-319-2~~ of this act not more than thirty days nor less than  
8 ten days before the election, by publication one time in one or more  
9 newspapers published in or of general circulation in the ~~municipality~~  
10 ~~or~~ county in which the question is to be submitted. This notice is in  
11 addition to any other notice required under the Election Act.

12 Sec. 5. Section 13-324, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 ~~13-324~~ (1) The Tax Commissioner shall administer all  
15 sales and use taxes adopted under section ~~13-319-2~~ of this act. The  
16 Tax Commissioner may prescribe forms and adopt and promulgate  
17 reasonable rules and regulations in conformity with the Nebraska  
18 Revenue Act of 1967, as amended, for the making of returns and for  
19 the ascertainment, assessment, and collection of taxes. The county  
20 shall furnish a certified copy of the adopting or repealing  
21 resolution to the Tax Commissioner in accordance with such rules and  
22 regulations. The tax shall begin the first day of the next calendar  
23 quarter which is at least one hundred twenty days following receipt  
24 by the Tax Commissioner of the certified copy of the adopted  
25 resolution. The Tax Commissioner shall provide at least sixty days'

1 notice of the adoption of the tax or a change in the rate to  
2 retailers. Notice shall be provided to retailers within the county.  
3 Notice to retailers may be provided through the web site of the  
4 Department of Revenue or by other electronic means.

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

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

1           (4) The Tax Commissioner shall collect the sales and use  
2 tax concurrently with collection of a state tax in the same manner as  
3 the state tax is collected. The Tax Commissioner shall remit monthly  
4 the proceeds of the tax to the counties imposing the tax, after  
5 deducting the amount of refunds made and three percent of the  
6 remainder as an administrative fee necessary to defray the cost of  
7 collecting the tax and the expenses incident thereto. The Tax  
8 Commissioner shall keep full and accurate records of all money  
9 received and distributed. All receipts from the three-percent  
10 administrative fee shall be deposited in the state General Fund.

11           (5) Upon any claim of illegal assessment and collection,  
12 the taxpayer has the same remedies provided for claims of illegal  
13 assessment and collection of the state tax. It is the intention of  
14 the Legislature that the provisions of law which apply to the  
15 recovery of state taxes illegally assessed and collected apply to the  
16 recovery of sales and use taxes illegally assessed and collected  
17 under section ~~13-319~~. 2 of this act.

18           (6) Boundary changes or the adoption of a sales and use  
19 tax by an incorporated municipality that affects any tax imposed by  
20 this section shall be governed as provided in subsections (3) through  
21 (10) of section 77-27,143.

22           Sec. 6. Section 13-325, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           ~~13-325~~ The proceeds of the sales and use tax imposed by a  
25 county under section ~~13-319~~. 2 of this act shall be distributed to the

1 county for deposit in its general fund. The proceeds which are  
2 deposited in the county general fund from a sales and use tax imposed  
3 by a county for the purposes of subdivision (1)(c) of such section  
4 shall only be used for such purposes.

5 Sec. 7. Section 13-326, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 ~~13-326~~ (1) All relevant provisions of the Nebraska  
8 Revenue Act of 1967, as amended, not inconsistent with ~~sections~~  
9 ~~13-319, 13-324, and 13-325,~~ the County Option Sales Tax Act, shall  
10 govern transactions, proceedings, and activities pursuant to any  
11 sales and use tax imposed by a county.

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

16 Sec. 8. (1) Each county which imposes a sales and use tax  
17 pursuant to subdivision (1)(c) of section 2 of this act shall develop  
18 a one-year plan and a long-range three-year plan of proposed capital  
19 improvements for public safety services and transportation  
20 infrastructure projects. The first such plans shall be adopted by the  
21 county board by March 1 of the year immediately following the first  
22 imposition of the tax. The plans shall be reviewed and extended  
23 annually, by March 1 of each year, so that there shall always be a  
24 current one-year plan and three-year plan. A county board shall  
25 provide notice of the time when the plans are set for consideration

1 before the board. Such notice shall appear at least once a week for  
2 two weeks in a newspaper published or of general circulation in the  
3 county. The last publication of the notice shall be not less than  
4 five days nor more than two weeks prior to the time set for the  
5 public hearing on the adoption of the plans. A county board shall not  
6 take final action on the proposed plans until after at least one  
7 public hearing has been held thereon by the county board at which  
8 public comment regarding the proposed plans was permitted. Amendments  
9 to the plans shall be adopted in the same manner as the original  
10 plans. Within sixty days after the adoption, amendment, or extension  
11 of the plans, the county board shall determine whether the plans are  
12 consistent with the county's long-range capital improvement plans and  
13 shall resolve any inconsistency.

14 (2) For purposes of this section:

15 (a) Public safety services includes crime prevention,  
16 offender detention, and firefighter, police, medical, ambulance, or  
17 other emergency services; and

18 (b) Transportation infrastructure projects includes  
19 construction, maintenance, operation, and improvement of collector  
20 roads, arterial roads, rural collector roads, and local roads.

21 Sec. 9. Section 13-318, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 13-318 (1) Any county and any municipalities and fire  
24 protection districts within the county may provide for the joint  
25 financing and operation of public safety services pursuant to an



1 agreement under the Interlocal Cooperation Act or Joint Public Agency  
2 Act.

3 (2) Joint public safety services shall be operated by a  
4 public safety commission consisting of at least three members who  
5 represent the county and the participating municipalities and fire  
6 protection districts as provided in the agreement. Only elected  
7 officials are eligible to serve on the commission. In counties with  
8 more than one hundred thousand inhabitants, the county and  
9 participating municipalities and fire protection districts may  
10 appoint a separate fire protection and emergency services commission  
11 of at least three members to operate or coordinate fire protection or  
12 emergency services in the county and participating municipalities and  
13 fire protection districts. If the public safety services to be  
14 provided include fire protection, at least one representative of each  
15 fire protection district shall be a member of the commission. The  
16 commission may employ officers and other employees necessary to carry  
17 out its duties and responsibilities for public safety services or  
18 fire protection or emergency services and may enter into contracts,  
19 acquire and dispose of property, and receive funds appropriated to it  
20 by the county and any participating municipality or fire protection  
21 district, granted or appropriated to it by the state or federal  
22 government or an agency thereof, given to it by any individual, or  
23 collected from the sales and use tax authorized by ~~section 13-319.~~  
24 the County Option Sales Tax Act. If fire protection services or  
25 emergency services are to be provided, the commission shall appoint

1 an individual trained in fire protection or emergency services with  
2 at least five years of experience in providing such services who  
3 shall coordinate fire protection and financing of the services in the  
4 county. The individual shall serve at the pleasure of the commission.  
5 The commission shall have other powers as are granted to the county  
6 and any of the participating municipalities or fire protection  
7 districts acting independently except as limited by the agreement.

8           Sec. 10. Section 13-804, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           13-804 (1) Any power or powers, privileges, or authority  
11 exercised or capable of exercise by a public agency of this state may  
12 be exercised and enjoyed jointly with any other public agency of this  
13 state and jointly with any public agency of any other state or of the  
14 United States to the extent that laws of such other state or of the  
15 United States permit such joint exercise or enjoyment. Any agency of  
16 state government when acting jointly with any public agency may  
17 exercise and enjoy all of the powers, privileges, and authority  
18 conferred by the Interlocal Cooperation Act upon a public agency.

19           (2) Any two or more public agencies may enter into  
20 agreements with one another for joint or cooperative action pursuant  
21 to the Interlocal Cooperation Act. Appropriate action by ordinance,  
22 resolution, or otherwise pursuant to law of the governing bodies of  
23 the participating public agencies shall be necessary before any such  
24 agreement may enter into force.

25           (3) Any such agreement shall specify the following:

- 1           (a) Its duration;
- 2           (b) The general organization, composition, and nature of  
3 any separate legal or administrative entity created by the agreement  
4 together with the powers delegated to the entity;
- 5           (c) Its purpose or purposes;
- 6           (d) The manner of financing the joint or cooperative  
7 undertaking and of establishing and maintaining a budget;
- 8           (e) The permissible method or methods to be employed in  
9 accomplishing the partial or complete termination of the agreement  
10 and for disposing of property upon such partial or complete  
11 termination;
- 12           (f) The manner of levying, collecting, and accounting for  
13 any tax authorized under sections ~~13-318 to 13-326 or 13-2813~~ to  
14 13-2816 or the County Option Sales Tax Act; and
- 15           (g) Any other necessary and proper matters.
- 16           (4) In the event that the agreement does not establish a  
17 separate legal entity to conduct the joint or cooperative  
18 undertaking, the agreement shall, in addition to items enumerated in  
19 subsection (3) of this section, contain the following:
- 20           (a) Provision for an administrator or a joint board  
21 responsible for administering the joint or cooperative undertaking.  
22 In the case of a joint board, the public agencies party to the  
23 agreement shall be represented; and
- 24           (b) The manner of acquiring, holding, and disposing of  
25 real and personal property used in the joint or cooperative

1 undertaking.

2           (5) No agreement made pursuant to the Interlocal  
3 Cooperation Act shall relieve any public agency of any obligation or  
4 responsibility imposed upon it by law except to the extent of actual  
5 and timely performance by a joint board or other legal or  
6 administrative entity created by an agreement made pursuant to the  
7 act, which performance may be offered in satisfaction of the  
8 obligation or responsibility.

9           (6) In the event that an agreement made pursuant to this  
10 section creates a joint entity, such joint entity shall be subject to  
11 control by its members in accordance with the terms of the agreement;  
12 shall constitute a separate public body corporate and politic of this  
13 state, exercising public powers and acting on behalf of the public  
14 agencies which are parties to such agreement; and shall have power  
15 (a) to sue and be sued, (b) to have a seal and alter the same at  
16 pleasure or to dispense with its necessity, (c) to make and execute  
17 contracts and other instruments necessary or convenient to the  
18 exercise of its powers, and (d) from time to time, to make, amend,  
19 and repeal bylaws, rules, and regulations, not inconsistent with the  
20 Interlocal Cooperation Act and the agreement providing for its  
21 creation, to carry out and effectuate its powers and purposes.

22           (7) No entity created by local public agencies pursuant  
23 to the Interlocal Cooperation Act shall be considered a state agency,  
24 and no employee of such an entity shall be considered a state  
25 employee.

1           (8) Any governing body as defined in section 13-503 which  
2 is a party to an agreement made pursuant to the Interlocal  
3 Cooperation Act shall provide information to the Auditor of Public  
4 Accounts regarding such agreements as required in section 13-513.

5           Sec. 11. Section 13-2504, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           13-2504 (1) Any two or more public agencies may enter  
8 into agreements with one another for joint or cooperative action  
9 pursuant to the Joint Public Agency Act. Appropriate action by  
10 ordinance, resolution, or otherwise pursuant to law of the governing  
11 bodies of the participating public agencies shall be necessary before  
12 any such agreement may enter into force.

13           (2) Any such agreement shall specify the following:

14           (a) Its duration;

15           (b) The general organization, composition, and nature of  
16 any joint public agency created by the agreement together with the  
17 powers delegated to the entity;

18           (c) Its purpose or purposes;

19           (d) The manner of financing the joint undertaking and of  
20 establishing and maintaining a budget;

21           (e) The permissible method or methods to be employed in  
22 amending the agreement or accomplishing the partial or complete  
23 termination of the agreement and for disposing of property upon such  
24 partial or complete termination consistent with section 13-2518;

25           (f) The manner of levying, collecting, and accounting for

1 any tax authorized under sections ~~13-318 to 13-326 or 13-2813~~ to  
2 13-2816 or the County Option Sales Tax Act and any allocation of tax  
3 authority under section 13-2507; and

4 (g) Any other necessary and proper matters.

5 (3) No agreement made pursuant to the Joint Public Agency  
6 Act shall relieve any public agency of any obligation or  
7 responsibility imposed upon it by law except to the extent of actual  
8 and timely performance by a joint public agency created by an  
9 agreement made pursuant to the act, which performance may be offered  
10 in satisfaction of the obligation or responsibility.

11 (4) Participating public agencies may transfer property,  
12 other assets, and employees to a joint public agency as provided in  
13 the agreement. Notwithstanding other provisions of law, if employees  
14 are transferred any vested employment rights shall be transferred  
15 with the employee and the employee shall be vested with the joint  
16 public agency at the time of transfer.

17 (5) Any governing body as defined in section 13-503 which  
18 is a party to an agreement made pursuant to the Joint Public Agency  
19 Act shall provide information to the Auditor of Public Accounts  
20 regarding such agreements as required in section 13-513.

21 Sec. 12. Section 39-2510, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 39-2510 (1) All money derived from fees, excises, or  
24 license fees relating to registration, operation, or use of vehicles  
25 on the public highways, or to fuels used for the propulsion of such

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

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

1 amount of revenue other than sales and use tax revenue derived from  
2 motor vehicles, trailers, or semitrailers that is to be expended for  
3 the purposes listed in subsection (1) of this section and the amount  
4 of sales and use taxes expected to be collected from sales of motor  
5 vehicles, trailers, and semitrailers for that year.

6 Sec. 13. Section 39-2520, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

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

22 (2) The requirements of subsection (1) of this section  
23 also apply to sales and use taxes imposed on motor vehicles,  
24 trailers, and semitrailers pursuant to ~~sections 13-319 and section~~  
25 77-27,142 and section 2 of this act, except that such provisions



1 shall not apply in a municipality that has issued bonds (a) the  
2 proceeds of which were used for purposes listed in subsection (1) of  
3 this section and for which revenue other than sales and use taxes on  
4 motor vehicles, trailers, and semitrailers is pledged for payment or  
5 (b) approved by a vote that required the use of sales and use taxes  
6 imposed on motor vehicles, trailers, and semitrailers for a specific  
7 purpose other than those listed in subsection (1) of this section,  
8 until all such bonds issued prior to January 1, 2006, have been paid  
9 or retired. The municipality shall include a certification with the  
10 report under section 39-2120 showing the amount of revenue other than  
11 sales and use tax revenue derived from motor vehicles, trailers, or  
12 semitrailers that is to be expended for the purposes listed in  
13 subsection (1) of this section and the amount of sales and use taxes  
14 expected to be collected from sales of motor vehicles, trailers, and  
15 semitrailers for that year.

16           Sec. 14. Section 77-2703.01, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           77-2703.01 (1) The determination of whether a sale or use  
19 of property or the provision of services is in this state, in a  
20 municipality that has adopted a tax under the Local Option Revenue  
21 Act, or in a county that has adopted a tax under ~~section 13-319~~ the  
22 County Option Sales Tax Act shall be governed by the sourcing rules  
23 in sections 77-2703.01 to 77-2703.04.

24           (2) When the property or service is received by the  
25 purchaser at a business location of the retailer, the sale is sourced

1 to that business location.

2 (3) When the property or service is not received by the  
3 purchaser at a business location of the retailer, the sale is sourced  
4 to the location where receipt by the purchaser or the purchaser's  
5 donee, designated as such by the purchaser, occurs, including the  
6 location indicated by instructions for delivery to the purchaser or  
7 donee, known to the retailer.

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

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

20 (6) When subsection (2), (3), (4), or (5) of this section  
21 does not apply, including the circumstance in which the retailer is  
22 without sufficient information to apply the rules in any such  
23 subsection, then the location will be determined by the address from  
24 which property was shipped, from which the digital good was first  
25 available for transmission by the retailer, or from which the service

1 was provided disregarding for these purposes any location that merely  
2 provided the digital transfer of the product sold.

3 (7) The lease or rental of tangible personal property,  
4 other than property identified in subsection (8) or (9) of this  
5 section, shall be sourced as follows:

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

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

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

1           (8) The lease or rental of motor vehicles, trailers,  
2 semitrailers, or aircraft that do not qualify as transportation  
3 equipment under subsection (9) of this section shall be sourced as  
4 follows:

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

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

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

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

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

1                   (b) Trucks and truck-tractors with a gross vehicle weight  
2 rating of ten thousand one pounds or greater, trailers, semitrailers,  
3 or passenger buses that are (i) registered through the International  
4 Registration Plan and (ii) operated under authority of a carrier  
5 authorized and certificated by the United States Department of  
6 Transportation or another federal authority to engage in the carriage  
7 of persons or property in interstate commerce;

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

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

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

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

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

10                   Sec. 15. Section 77-2703.04, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

22           (B) If such data base is not provided, a home service  
23 provider may rely on an enhanced zip code for identifying the proper  
24 taxing jurisdictions and shall be held harmless for any tax that  
25 otherwise would result from any errors or omissions attributable to

1 reliance on such enhanced zip code if the home service provider  
2 identified the taxing jurisdiction through the exercise of due  
3 diligence and complied with any procedures that may be adopted by the  
4 Tax Commissioner. Any such procedure shall be in accordance with 4  
5 U.S.C. 120, as such section existed on July 20, 2002; and

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

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

16 (d) For purposes of this subsection:

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

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



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

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

17           (v) Tax means the sales taxes levied under sections  
18 ~~13-319, 77-2703,~~ and 77-27,142 and section 2 of this act, the  
19 surcharges levied under the Enhanced Wireless 911 Services Act, the  
20 Nebraska Telecommunications Universal Service Fund Act, and the  
21 Telecommunications Relay System Act, and any other tax levied against  
22 the customer based on the amount charged to the customer. Tax does  
23 not mean an income tax, property tax, franchise tax, or any other tax  
24 levied on the home service provider that is not based on the amount  
25 charged to the customer.

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

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

13                   (6) A sale of a private communication service is sourced  
14 as follows:

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

18                   (b) Service where all customer termination points are  
19 located entirely within one jurisdiction or levels of jurisdiction is  
20 sourced in such jurisdiction in which the customer channel  
21 termination points are located;

22                   (c) Service for segments of a channel between two  
23 customer channel termination points located in different  
24 jurisdictions and which segments of channel are separately charged is  
25 sourced fifty percent in each level of jurisdiction in which the

1 customer channel termination points are located; and

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

8 (7) For purposes of this section:

9 (a) 800 service means a telecommunications service that  
10 allows a caller to dial a toll-free number without incurring a charge  
11 for the call. The service is typically marketed under the name 800,  
12 855, 866, 877, and 888 toll-free calling, and any subsequent numbers  
13 designated by the Federal Communications Commission;

14 (b) 900 service means an inbound toll telecommunications  
15 service purchased by a subscriber that allows the subscriber's  
16 customers to call in to the subscriber's prerecorded announcement or  
17 live service. 900 service does not include the charge for collection  
18 services provided by the seller of the telecommunications services to  
19 the subscriber or service or product sold by the subscriber to the  
20 subscriber's customer. The service is typically marketed under the  
21 name 900 service, and any subsequent numbers designated by the  
22 Federal Communications Commission;

23 (c) Air-to-ground radiotelephone service means a radio  
24 telecommunication service, as that term is defined in 47 C.F.R.  
25 22.99, as such regulation existed on January 1, 2007, in which common

1 carriers are authorized to offer and provide radio telecommunications  
2 service for hire to subscribers in aircraft;

3 (d) Ancillary services means services that are associated  
4 with or incidental to the provision of telecommunications services,  
5 including, but not limited to, detailed telecommunications billings,  
6 directory assistance, vertical service, and voice mail services;

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

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

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

16 (h) Conference bridging service means an ancillary  
17 service that links two or more participants of an audio or video  
18 conference call and may include the provision of a telephone number.  
19 Conference bridging service does not include the telecommunications  
20 services used to reach the conference bridge;

21 (i) Customer means the person or entity that contracts  
22 with the seller of telecommunications service. If the end user of  
23 telecommunications service is not the contracting party, the end user  
24 of the telecommunications service is the customer of the  
25 telecommunications service, but this sentence only applies for the

1 purpose of sourcing sales of telecommunications service under this  
2 section. Customer does not include a reseller of telecommunications  
3 service or for mobile telecommunications service of a serving carrier  
4 under an agreement to serve the customer outside the home service  
5 provider's licensed service area;

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

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

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

13 (m) End user means the person who utilizes the  
14 telecommunications service. In the case of an entity, end user means  
15 the individual who utilizes the service on behalf of the entity;

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

18 (o) International means a telecommunications service that  
19 originates or terminates in the United States and terminates or  
20 originates outside the United States, respectively. United States  
21 includes the District of Columbia or a United States territory or  
22 possession;

23 (p) Interstate means a telecommunications service that  
24 originates in one state of the United States, or a territory or  
25 possession of the United States, and terminates in a different state,

1 territory, or possession of the United States;

2 (q) Intrastate means a telecommunications service that  
3 originates in one state of the United States, or a territory or  
4 possession of the United States, and terminates in the same state,  
5 territory, or possession of the United States;

6 (r) Mobile wireless service means a telecommunications  
7 service that is transmitted, conveyed, or routed regardless of the  
8 technology used, whereby the origination and termination points of  
9 the transmission, conveyance, or routing are not fixed, including, by  
10 way of example only, telecommunications services that are provided by  
11 a commercial mobile radio service provider;

12 (s) Paging service means a telecommunications service  
13 that provides transmission of coded radio signals for the purpose of  
14 activating specific pagers. Such transmission may include messages  
15 and sounds;

16 (t) Pay telephone services means a telecommunications  
17 service provided through pay telephones;

18 (u) Post-paid calling service means the  
19 telecommunications service obtained by making a payment on a call-by-  
20 call basis either through the use of a credit card or payment  
21 mechanism, such as a bank card, travel card, credit card, or debit  
22 card, or by a charge made to a telephone number which is not  
23 associated with the origination or termination of the  
24 telecommunications service. A post-paid calling service includes a  
25 telecommunications service, except a prepaid wireless calling

1 service, that would be a prepaid calling service except it is not  
2 exclusively a telecommunications service;

3 (v) Prepaid calling service means the right to access  
4 exclusively telecommunications service, which is paid for in advance  
5 and which enables the origination of calls using an access number or  
6 authorization code, whether manually or electronically dialed, and  
7 that is sold in predetermined units or dollars of which the number  
8 declines with use in a known amount;

9 (w) Prepaid wireless calling service means a  
10 telecommunications service that provides the right to utilize mobile  
11 wireless service as well as other nontelecommunications services,  
12 including the download of digital products delivered electronically,  
13 content, and ancillary services, which must be paid for in advance,  
14 that is sold in predetermined units of dollars or which the number  
15 declines with use in a known amount;

16 (x) Private communication service means a  
17 telecommunications service that entitles the customer to exclusive or  
18 priority use of a communications channel or group of channels between  
19 or among termination points, regardless of the manner in which such  
20 channel or channels are connected, and includes switching capacity,  
21 extension lines, stations, and any other associated services that are  
22 provided in connection with the use of such channel or channels;

23 (y) Residential telecommunications service means a  
24 telecommunications service or ancillary services provided to an  
25 individual for personal use at a residential address, including an

1 individual dwelling unit such as an apartment. In the case of  
2 institutions where individuals reside, such as schools or nursing  
3 homes, telecommunications service is considered residential if it is  
4 provided to and paid for by an individual resident rather than the  
5 institution;

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

17 (aa) Telecommunications service means the electronic  
18 transmission, conveyance, or routing of voice, data, audio, video, or  
19 any other information or signals to a point, or between or among  
20 points. Telecommunications service includes such transmission,  
21 conveyance, or routing in which computer processing applications are  
22 used to act on the form, code, or protocol of the content for  
23 purposes of transmission, conveyance, or routing without regard to  
24 whether such service is referred to as voice over Internet protocol  
25 services or is classified by the Federal Communications Commission as



1 enhanced or value-added. Telecommunications service does not include:

2 (i) Data processing and information services that allow  
3 data to be generated, acquired, stored, processed, or retrieved and  
4 delivered by an electronic transmission to a purchaser when such  
5 purchaser's primary purpose for the underlying transaction is the  
6 processed data or information;

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

9 (iii) Tangible personal property;

10 (iv) Advertising, including, but not limited to,  
11 directory advertising;

12 (v) Billing and collection services provided to third  
13 parties;

14 (vi) Internet access service;

15 (vii) Radio and television audio and video programming  
16 services, regardless of the medium, including the furnishing of  
17 transmission, conveyance, and routing of such services by the  
18 programming service provider. Radio and television audio and video  
19 programming services shall include, but not be limited to, cable  
20 service as defined in 47 U.S.C. 522, as such section existed on  
21 January 1, 2007, and audio and video programming services delivered  
22 by providers of commercial mobile radio service as defined in 47  
23 C.F.R. 20.3, as such regulation existed on January 1, 2007;

24 (viii) Ancillary services; or

25 (ix) Digital products delivered electronically,

1 including, but not limited to, software, music, video, reading  
2 materials, or ringtones;

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

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

13 (dd) Voice mail service means an ancillary service that  
14 enables the customer to store, send, or receive recorded messages.  
15 Voice mail service does not include any vertical services that the  
16 customer may be required to have in order to utilize the voice mail  
17 service.

18 Sec. 16. Section 77-2704.31, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-2704.31 If any person who causes property or service  
21 to be brought into this state has already paid a tax in another state  
22 with respect to the sale or use of such property or service in an  
23 amount less than the tax imposed by sections ~~13-319~~, 13-2813,  
24 77-2703, and 77-27,142 and section 2 of this act, the provisions of  
25 subsection (2) of section 77-2703 shall apply, but at a rate measured

1 by the difference only between the rate imposed by such sections and  
2 the rate by which the previous tax on the sale or use was computed.  
3 If such tax imposed and paid in such other state is equal to or more  
4 than the tax imposed by such sections, then no use tax shall be due  
5 in this state on such property if such other state, territory, or  
6 possession grants a reciprocal exclusion or exemption to similar  
7 transactions in this state.

8           Sec. 17. Section 77-2711, Revised Statutes Cumulative  
9 Supplement, 2010, is amended to read:

10           77-2711 (1)(a) The Tax Commissioner shall enforce  
11 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce  
12 rules and regulations relating to the administration and enforcement  
13 of such sections.

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

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

23           (3)(a) Every seller, every retailer, and every person  
24 storing, using, or otherwise consuming in this state property  
25 purchased from a retailer shall keep such records, receipts,

1 invoices, and other pertinent papers in such form as the Tax  
2 Commissioner may reasonably require.

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

7 (4) The Tax Commissioner or any person authorized in  
8 writing by him or her may examine the books, papers, records, and  
9 equipment of any person selling property and any person liable for  
10 the use tax and may investigate the character of the business of the  
11 person in order to verify the accuracy of any return made or, if no  
12 return is made by the person, to ascertain and determine the amount  
13 required to be paid. In the examination of any person selling  
14 property or of any person liable for the use tax, an inquiry shall be  
15 made as to the accuracy of the reporting of city sales and use taxes  
16 for which the person is liable under the County Option Sales Tax Act,  
17 the Local Option Revenue Act, or ~~sections 13-319, 13-324, and section~~  
18 13-2813 and the accuracy of the allocation made between the various  
19 counties, cities, villages, and municipal counties of the tax due.  
20 The Tax Commissioner may make or cause to be made copies of resale or  
21 exemption certificates and may pay a reasonable amount to the person  
22 having custody of the records for providing such copies.

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

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

10           (7) It shall be a Class I misdemeanor for the Tax  
11 Commissioner or any official or employee of the Tax Commissioner, the  
12 State Treasurer, or the Department of Administrative Services to make  
13 known in any manner whatever the business affairs, operations, or  
14 information obtained by an investigation of records and activities of  
15 any retailer or any other person visited or examined in the discharge  
16 of official duty or the amount or source of income, profits, losses,  
17 expenditures, or any particular thereof, set forth or disclosed in  
18 any return, or to permit any return or copy thereof, or any book  
19 containing any abstract or particulars thereof to be seen or examined  
20 by any person not connected with the Tax Commissioner. Nothing in  
21 this section shall be construed to prohibit (a) the delivery to a  
22 taxpayer, his or her duly authorized representative, or his or her  
23 successors, receivers, trustees, executors, administrators,  
24 assignees, or guarantors, if directly interested, of a certified copy  
25 of any return or report in connection with his or her tax, (b) the

1 publication of statistics so classified as to prevent the  
2 identification of particular reports or returns and the items  
3 thereof, (c) the inspection by the Attorney General, other legal  
4 representative of the state, or county attorney of the reports or  
5 returns of any taxpayer when either (i) information on the reports or  
6 returns is considered by the Attorney General to be relevant to any  
7 action or proceeding instituted by the taxpayer or against whom an  
8 action or proceeding is being considered or has been commenced by any  
9 state agency or the county or (ii) the taxpayer has instituted an  
10 action to review the tax based thereon or an action or proceeding  
11 against the taxpayer for collection of tax or failure to comply with  
12 the Nebraska Revenue Act of 1967 is being considered or has been  
13 commenced, (d) the furnishing of any information to the United States  
14 Government or to states allowing similar privileges to the Tax  
15 Commissioner, (e) the disclosure of information and records to a  
16 collection agency contracting with the Tax Commissioner pursuant to  
17 sections 77-377.01 to 77-377.04, (f) the disclosure to another party  
18 to a transaction of information and records concerning the  
19 transaction between the taxpayer and the other party, (g) the  
20 disclosure of information pursuant to section 77-27,195 or 77-5731,  
21 or (h) the disclosure of information to the Department of Labor  
22 necessary for the administration of the Employment Security Law, the  
23 Contractor Registration Act, or the Employee Classification Act.

24 (8) Notwithstanding the provisions of subsection (7) of  
25 this section, the Tax Commissioner may permit the Postal Inspector of

1 the United States Postal Service or his or her delegates to inspect  
2 the reports or returns of any person filed pursuant to the Nebraska  
3 Revenue Act of 1967 when information on the reports or returns is  
4 relevant to any action or proceeding instituted or being considered  
5 by the United States Postal Service against such person for the  
6 fraudulent use of the mails to carry and deliver false and fraudulent  
7 tax returns to the Tax Commissioner with the intent to defraud the  
8 State of Nebraska or to evade the payment of Nebraska state taxes.

9 (9) Notwithstanding the provisions of subsection (7) of  
10 this section, the Tax Commissioner may permit other tax officials of  
11 this state to inspect the tax returns, reports, and applications  
12 filed under sections 77-2701.04 to 77-2713, but such inspection shall  
13 be permitted only for purposes of enforcing a tax law and only to the  
14 extent and under the conditions prescribed by the rules and  
15 regulations of the Tax Commissioner.

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

24 The information provided by the Tax Commissioner shall  
25 indicate only the names and addresses of the hotels located within

1 the requesting county for which lodging sales tax returns have been  
2 filed for a specified period and the fact that lodging sales taxes  
3 remitted by or on behalf of the hotel have constituted a portion of  
4 the total sum remitted by the state to the county for a specified  
5 period under the provisions of the Nebraska Visitors Development Act.  
6 No additional information shall be revealed.

7 (11)(a) Notwithstanding the provisions of subsection (7)  
8 of this section, the Tax Commissioner shall, upon written request by  
9 the Auditor of Public Accounts or the Legislative Performance Audit  
10 Committee, make tax returns and tax return information open to  
11 inspection by or disclosure to Auditor of Public Accounts or  
12 Legislative Performance Audit Section employees for the purpose of  
13 and to the extent necessary in making an audit of the Department of  
14 Revenue pursuant to section 50-1205 or 84-304. Confidential tax  
15 returns and tax return information shall be audited only upon the  
16 premises of the Department of Revenue. All audit workpapers  
17 pertaining to the audit of the Department of Revenue shall be stored  
18 in a secure place in the Department of Revenue.

19 (b) No employee of the Auditor of Public Accounts or  
20 Legislative Performance Audit Section shall disclose to any person,  
21 other than another Auditor of Public Accounts or Legislative  
22 Performance Audit Section employee whose official duties require such  
23 disclosure or as provided in subsections (2) and (3) of section  
24 50-1213, any return or return information described in the Nebraska  
25 Revenue Act of 1967 in a form which can be associated with or



1 otherwise identify, directly or indirectly, a particular taxpayer.

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

6 (12) For purposes of this subsection and subsection (11)  
7 of this section:

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

10 (b) Return information means:

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

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

24 (c) Tax return or return means any tax or information  
25 return or claim for refund required by, provided for, or permitted

1 under sections 77-2701 to 77-2713 which is filed with the Tax  
2 Commissioner by, on behalf of, or with respect to any person and any  
3 amendment or supplement thereto, including supporting schedules,  
4 attachments, or lists which are supplemental to or part of the filed  
5 return.

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

18 (14) In all proceedings under the Nebraska Revenue Act of  
19 1967, the Tax Commissioner may act for and on behalf of the people of  
20 the State of Nebraska. The Tax Commissioner in his or her discretion  
21 may waive all or part of any penalties provided by the provisions of  
22 such act or interest on delinquent taxes specified in section  
23 45-104.02, as such rate may from time to time be adjusted.

24 (15)(a) The purpose of this subsection is to set forth  
25 the state's policy for the protection of the confidentiality rights

1 of all participants in the system operated pursuant to the  
2 streamlined sales and use tax agreement and of the privacy interests  
3 of consumers who deal with model 1 sellers.

4 (b) For purposes of this subsection:

5 (i) Anonymous data means information that does not  
6 identify a person;

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

10 (iii) Personally identifiable information means  
11 information that identifies a person.

12 (c) The state agrees that a fundamental precept for model  
13 1 sellers is to preserve the privacy of consumers by protecting their  
14 anonymity. With very limited exceptions, a certified service provider  
15 shall perform its tax calculation, remittance, and reporting  
16 functions without retaining the personally identifiable information  
17 of consumers.

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

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

24 (ii) Personally identifiable information is only used and  
25 retained to the extent necessary for the administration of model 1

1 with respect to exempt purchasers;

2 (iii) It provides consumers clear and conspicuous notice  
3 of its information practices, including what information it collects,  
4 how it collects the information, how it uses the information, how  
5 long, if at all, it retains the information, and whether it discloses  
6 the information to member states. Such notice shall be satisfied by a  
7 written privacy policy statement accessible by the public on the web  
8 site of the certified service provider;

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

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

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

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

25 (g) When personally identifiable information regarding an

1 individual is retained by or on behalf of the state, it shall provide  
2 reasonable access by such individual to his or her own information in  
3 the state's possession and a right to correct any inaccurately  
4 recorded information.

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

10 (i) This privacy policy is subject to enforcement by the  
11 Attorney General.

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

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

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

21 (iii) Prevent, consistent with state law, disclosure of  
22 confidential taxpayer information;

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

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

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

5           77-2712.05 By agreeing to the terms of the streamlined  
6 sales and use tax agreement, this state agrees to abide by the  
7 following requirements:

8           (1) Uniform state rate. The state shall comply with  
9 restrictions to achieve over time more uniform state rates through  
10 the following:

11           (a) Limiting the number of state rates;

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

14           (c) Limiting the application of thresholds on the  
15 application of state tax;

16           (2) Uniform standards. The state hereby establishes  
17 uniform standards for the following:

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

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

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

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

1           (i) Require only one remittance for each return except as  
2 provided in this subdivision. If any additional remittance is  
3 required, it may only be required from retailers that collect more  
4 than thirty thousand dollars in sales and use taxes in the state  
5 during the preceding calendar year as provided in this subdivision.  
6 The amount of any additional remittance may be determined through a  
7 calculation method rather than actual collections. Any additional  
8 remittance shall not require the filing of an additional return;

9           (ii) Require, at his or her discretion, all remittances  
10 from sellers under models 1, 2, and 3 to be remitted electronically;

11           (iii) Allow for electronic payments by both automated  
12 clearinghouse credit and debit;

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

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

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

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

1 uniform definitions.

2 (b) The state may enact a product-based exemption without  
3 restriction if the agreement does not have a definition for the  
4 product or for a term that includes the product. If the agreement has  
5 a definition for the product or for a term that includes the product,  
6 the state may exempt all items included within the definition but  
7 shall not exempt only part of the items included within the  
8 definition unless the agreement sets out the exemption for part of  
9 the items as an acceptable variation.

10 (c) The state may enact an entity-based or a use-based  
11 exemption without restriction if the agreement does not have a  
12 definition for the product whose use or purchase by a specific entity  
13 is exempt or for a term that includes the product. If the agreement  
14 has a definition for the product whose use or specific purchase is  
15 exempt, states may enact an entity-based or a use-based exemption  
16 that applies to that product as long as the exemption utilizes the  
17 agreement definition of the product. If the agreement does not have a  
18 definition for the product whose use or specific purchase is exempt  
19 but has a definition for a term that includes the product, states may  
20 enact an entity-based or a use-based exemption for the product  
21 without restriction.

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

25 (4) Central registration. The state shall participate in



1 an electronic central registration system that allows a seller to  
2 register to collect and remit sales and use taxes for all member  
3 states. Under the system:

4 (a) A retailer registering under the agreement is  
5 registered in this state;

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

9 (c) A written signature from the retailer is not  
10 required;

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

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

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

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

25 (ii) Model 2, wherein a seller selects a certified

1 automated system to use which calculates the amount of tax due on a  
2 transaction; and

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

6 (g) Sellers who register within twelve months after this  
7 state's first approval of a certified service provider are relieved  
8 from liability, including the local option tax, for tax not collected  
9 or paid if the seller was not registered between October 1, 2004, and  
10 September 30, 2005. Such relief from liability shall be in accordance  
11 with the terms of the agreement;

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

17 (6) Local sales and use taxes. The agreement requires the  
18 reduction of the burdens of complying with local sales and use taxes  
19 as provided in the County Option Sales Tax Act and sections 13-319,  
20 ~~13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144~~ that  
21 require the following:

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

23 (b) Statewide administration of all sales and use taxes  
24 levied by local jurisdictions within the state so that sellers  
25 collecting and remitting these taxes will not have to register or

1 file returns with, remit funds to, or be subject to independent  
2 audits from local taxing jurisdictions;

3 (c) Limitations on the frequency of changes in the local  
4 sales and use tax rates and setting effective dates for the  
5 application of local jurisdictional boundary changes to local sales  
6 and use taxes; and

7 (d) Uniform notice of changes in local sales and use tax  
8 rates and of changes in the boundaries of local taxing jurisdictions;

9 (7) Complete a taxability matrix approved by the  
10 governing board. (a) Notice of changes in the taxability of the  
11 products or services listed will be provided as required by the  
12 governing board.

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

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

25 (d) Purchasers are relieved from liability for penalty

1 for having failed to pay the correct amount of tax resulting from the  
2 purchaser's reliance on erroneous data provided by the member state  
3 in the taxability matrix or rates and boundaries data bases or for  
4 relying on product-based classifications that have been reviewed and  
5 approved by the state;

6 (8) Monetary allowances. The state agrees to allow any  
7 monetary allowances that are to be provided by the states to sellers  
8 or certified service providers in exchange for collecting sales and  
9 use taxes as provided in Article VI of the agreement;

10 (9) State compliance. The agreement requires the state to  
11 certify compliance with the terms of the agreement prior to joining  
12 and to maintain compliance, under the laws of the member state, with  
13 all provisions of the agreement while a member;

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

18 (11) Advisory councils. The state agrees to the  
19 recognition of an advisory council of private-sector representatives  
20 and an advisory council of member and nonmember state representatives  
21 to consult with in the administration of the agreement.

22 Sec. 19. Section 77-4105, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 77-4105 (1) A taxpayer who has signed an agreement under  
25 section 77-4104 may elect to determine taxable income for purposes of

1 the Nebraska income tax using the sales factor only. The election may  
2 be made for the year during which the application was filed and for  
3 each year thereafter through the eighth year after the end of the  
4 entitlement period. The election shall be made for the year of the  
5 election by computing taxable income using the sales factor only on  
6 the tax return.

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

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

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

24 (b) Computer systems, made up of equipment that is  
25 interconnected in order to enable the acquisition, storage,

1 manipulation, management, movement, control, display, transmission,  
2 or reception of data involving computer software and hardware, used  
3 for business information processing which require environmental  
4 controls of temperature and power and which are capable of  
5 simultaneously supporting more than one transaction and more than one  
6 user. A computer system includes peripheral components which require  
7 environmental controls of temperature and power connected to such  
8 computers. Peripheral components shall be limited to additional  
9 memory units, tape drives, disk drives, power supplies, cooling  
10 units, data switches, and communication controllers; and

11 (c) Personal property which is business equipment located  
12 in a single project if (i) the business equipment is involved  
13 directly in the manufacture or processing of agricultural products  
14 and (ii) the investment in the single project exceeds ten million  
15 dollars.

16 Such property shall be eligible for exemption from the  
17 tax on personal property from the first January 1 following the date  
18 of acquisition for property in subdivision (2)(a) of this section, or  
19 from the first January 1 following the end of the year during which  
20 the required levels were exceeded for property in subdivisions (2)(b)  
21 and (2)(c) of this section, through the sixteenth December 31 after  
22 the filing of the application. In order to receive the property tax  
23 exemptions allowed by subdivisions (2)(a), (2)(b), and (2)(c) of this  
24 section, the taxpayer shall annually file a claim for exemption with  
25 the Tax Commissioner on or before May 1. The form and supporting

1 schedules shall be prescribed by the Tax Commissioner and shall list  
2 all property for which exemption is being sought under this section.  
3 A separate claim for exemption must be filed for each project and  
4 each county in which property is claimed to be exempt. A copy of this  
5 form must also be filed with the county assessor in each county in  
6 which the applicant is requesting exemption. The Tax Commissioner  
7 shall determine the eligibility of each item listed for exemption  
8 and, on or before August 1, certify such to the taxpayer and to the  
9 affected county assessor.

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

13 (a) A refund of all sales and use taxes paid under the  
14 County Option Sales Tax Act, the Nebraska Revenue Act of 1967, the  
15 Local Option Revenue Act, and ~~sections 13-319, 13-324, and section~~  
16 13-2813 from the date of the application through the meeting of the  
17 required levels of employment and investment for all purchases,  
18 including rentals, of:

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

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

24 (iii) Tangible personal property by the owner of the  
25 improvement to real estate that is incorporated into real estate as a

1 part of a project; and

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

7 (b) A refund of the sales and use taxes paid under the  
8 County Option Sales Tax Act, the Nebraska Revenue Act of 1967, the  
9 Local Option Revenue Act, and ~~sections 13-319, 13-324, and section~~  
10 13-2813 on the types of purchases, including rentals, listed in  
11 subdivision (a) of this subsection for such taxes paid during each  
12 year of the entitlement period in which the taxpayer is at or above  
13 the required levels of employment and investment.

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

18 (a) A credit equal to five percent of the amount by which  
19 the total compensation paid during the year to employees who are  
20 either Nebraska employees or base-year employees while employed at  
21 the project exceeds the average compensation paid at the project  
22 multiplied by the number of equivalent base-year employees.

23 For the computation of such credit, average compensation  
24 shall mean the total compensation paid at the project divided by the  
25 total number of equivalent employees at the project; and



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

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

8           The credit prescribed in subdivision (b) of this  
9 subsection shall also be allowable during the first year of the  
10 entitlement period for investment in qualified property at the  
11 project after the date of the application and before the required  
12 levels of employment and investment were met.

13           Sec. 20. Section 77-4106, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           77-4106 (1)(a) The credits prescribed in section 77-4105  
16 shall be established by filing the forms required by the Tax  
17 Commissioner with the income tax return for the year. The credits may  
18 be used after any other nonrefundable credits to reduce the  
19 taxpayer's income tax liability imposed by sections 77-2714 to  
20 77-27,135. The credits may be used to obtain a refund of sales and  
21 use taxes under the County Option Sales Tax Act, the Nebraska Revenue  
22 Act of 1967, the Local Option Revenue Act, and ~~sections 13-319,~~  
23 ~~13-324, and section 13-2813~~ which are not otherwise refundable that  
24 are paid on purchases, including rentals, for use at the project.

25           (b) The credits may be used as allowed in subdivision (a)

1 of this subsection and shall be applied in the order in which they  
2 were first allowed. Any decision on how part of the credit is applied  
3 shall not limit how the remaining credit could be applied under this  
4 section.

5 (c) The credit may be carried over until fully utilized,  
6 except that such credit may not be carried over more than eight years  
7 after the end of the entitlement period.

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

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

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

23 (d) All refund claims shall be filed, processed, and  
24 allowed as any other claim under section 77-2708, except that the  
25 amounts allowed to be refunded under the Employment and Investment

1 Growth Act shall be deemed to be overpayments and shall be refunded  
2 notwithstanding any limitation in subdivision (2)(a) of section  
3 77-2708. The refund may be allowed if the claim is filed within three  
4 calendar years from the end of the year the required levels of  
5 employment and investment are met or within the period set forth in  
6 section 77-2708.

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

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

17 Sec. 21. Section 77-5725, Revised Statutes Cumulative  
18 Supplement, 2010, is amended to read:

19 77-5725 (1) Applicants may qualify for benefits under the  
20 Nebraska Advantage Act in one of six tiers:

21 (a) Tier 1, investment in qualified property of at least  
22 one million dollars and the hiring of at least ten new employees.  
23 There shall be no new project applications for benefits under this  
24 tier filed after December 31, 2015, without further authorization of  
25 the Legislature. All complete project applications filed on or before

1 December 31, 2015, shall be considered by the Tax Commissioner and  
2 approved if the project and taxpayer qualify for benefits. Agreements  
3 may be executed with regard to completed project applications filed  
4 on or before December 31, 2015. All project agreements pending,  
5 approved, or entered into before such date shall continue in full  
6 force and effect;

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

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

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

23 (e) Tier 5, investment in qualified property of at least  
24 thirty million dollars. Failure to maintain an average number of  
25 equivalent employees as defined in section 77-5727 greater than or

1 equal to the number of equivalent employees in the base year shall  
2 result in a partial recapture of benefits; and

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

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

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

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

23 (ii) Property, excluding motor vehicles, based in this  
24 state and used in both this state and another state in connection  
25 with the project except when any such property is to be used for

1 fundraising for or for the transportation of an elected official;

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

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

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

21 (b) A refund of all sales and use taxes for a tier 2,  
22 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
23 sales and use taxes for a tier 1 project paid under the County Option  
24 Sales Tax Act, the Local Option Revenue Act, the Nebraska Revenue Act  
25 of 1967, and ~~sections 13-319, 13-324, and section 13-2813~~ on the

1 types of purchases, including rentals, listed in subdivision (a) of  
2 this subsection for such taxes paid during each year of the  
3 entitlement period in which the taxpayer is at or above the required  
4 levels of employment and investment.

5 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier  
6 3, or tier 4 project shall be entitled to a credit equal to three  
7 percent times the average wage of new employees times the number of  
8 new employees if the average wage of the new employees equals at  
9 least sixty percent of the Nebraska average annual wage for the year  
10 of application. The credit shall equal four percent times the average  
11 wage of new employees times the number of new employees if the  
12 average wage of the new employees equals at least seventy-five  
13 percent of the Nebraska average annual wage for the year of  
14 application. The credit shall equal five percent times the average  
15 wage of new employees times the number of new employees if the  
16 average wage of the new employees equals at least one hundred percent  
17 of the Nebraska average annual wage for the year of application. The  
18 credit shall equal six percent times the average wage of new  
19 employees times the number of new employees if the average wage of  
20 the new employees equals at least one hundred twenty-five percent of  
21 the Nebraska average annual wage for the year of application. For  
22 computation of such credit:

23 (a) Average annual wage means the total compensation paid  
24 to employees during the year at the project who are not base-year  
25 employees and who are paid wages equal to at least sixty percent of

1 the Nebraska average weekly wage for the year of application,  
2 excluding any compensation in excess of one million dollars paid to  
3 any one employee during the year, divided by the number of equivalent  
4 employees making up such total compensation;

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

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

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

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



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

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

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

13 (8)(a) A taxpayer who has met the required levels of  
14 employment and investment for a tier 4 or tier 6 project shall  
15 receive the incentive provided in this subsection. A taxpayer who has  
16 a project for an Internet web portal or a data center and who has met  
17 the required levels of employment and investment for a tier 2 project  
18 or the required level of investment for a tier 5 project shall  
19 receive the incentive provided in this subsection for property in  
20 subdivision (8)(b)(ii) of this section. Such investment and hiring of  
21 new employees shall be considered a required level of investment and  
22 employment for this subsection and for the recapture of benefits  
23 under this subsection only.

24 (b) The following property used in connection with such  
25 project or projects and acquired by the taxpayer, whether by lease or

1 purchase, after the date the application was filed shall constitute  
2 separate classes of personal property:

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

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

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

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

1 and

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

4 (c) Such property shall be eligible for exemption from  
5 the tax on personal property from the first January 1 following the  
6 date of acquisition for property in subdivision (8)(b)(i) of this  
7 section, or from the first January 1 following the end of the year  
8 during which the required levels were exceeded for property in  
9 subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section,  
10 through the ninth December 31 after the first year any property  
11 included in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this  
12 section qualifies for the exemption. In order to receive the property  
13 tax exemptions allowed by subdivision (8)(b) of this section, the  
14 taxpayer shall annually file a claim for exemption with the Tax  
15 Commissioner on or before May 1. The form and supporting schedules  
16 shall be prescribed by the Tax Commissioner and shall list all  
17 property for which exemption is being sought under this section. A  
18 separate claim for exemption must be filed for each project and each  
19 county in which property is claimed to be exempt. A copy of this form  
20 must also be filed with the county assessor in each county in which  
21 the applicant is requesting exemption. The Tax Commissioner shall  
22 determine the eligibility of each item listed for exemption and, on  
23 or before August 1, certify such to the taxpayer and to the affected  
24 county assessor. In determining the eligibility of items of personal  
25 property for exemption, the Tax Commissioner is limited to the

1 question of whether the property claimed as exempt by the taxpayer  
2 falls within the classes of property described in subdivision (8)(b)  
3 of this section. The determination of whether a taxpayer is eligible  
4 to obtain exemption for personal property based on meeting the  
5 required levels of investment and employment is the responsibility of  
6 the Tax Commissioner.

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

10 (b) For tier 1, tier 2, tier 4, and tier 5, beginning  
11 October 1, 2006, and each October 1 thereafter, the average Producer  
12 Price Index for all commodities, published by the United States  
13 Department of Labor, Bureau of Labor Statistics, for the most recent  
14 twelve available periods shall be divided by the Producer Price Index  
15 for the first quarter of 2006 and the result multiplied by the  
16 applicable investment threshold. The investment thresholds shall be  
17 adjusted for cumulative inflation since 2006.

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

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

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

9           Sec. 22. Section 77-5726, Revised Statutes Cumulative  
10 Supplement, 2010, is amended to read:

11           77-5726 (1)(a) The credits prescribed in section 77-5725  
12 shall be established by filing the forms required by the Tax  
13 Commissioner with the income tax return for the year. The credits may  
14 be used and shall be applied in the order in which they were first  
15 allowed. The credits may be used after any other nonrefundable  
16 credits to reduce the taxpayer's income tax liability imposed by  
17 sections 77-2714 to 77-27,135. Any decision on how part of the credit  
18 is applied shall not limit how the remaining credit could be applied  
19 under this section.

20           (b) The taxpayer may use the credit provided in  
21 subsection (3) of section 77-5725 to reduce the taxpayer's income tax  
22 withholding employer or payor tax liability under section 77-2756 or  
23 77-2757 to the extent such liability is attributable to the number of  
24 new employees at the project, excluding any compensation in excess of  
25 one million dollars paid to any one employee during the year. The

1 taxpayer may use the credit provided in subsection (4) of section  
2 77-5725 to reduce the taxpayer's income tax withholding employer or  
3 payor tax liability under section 77-2756 or 77-2757 to the extent  
4 such liability is attributable to all employees employed at the  
5 project, other than base-year employees and excluding any  
6 compensation in excess of one million dollars paid to any one  
7 employee during the year. To the extent of the credit used, such  
8 withholding shall not constitute public funds or state tax revenue  
9 and shall not constitute a trust fund or be owned by the state. The  
10 use by the taxpayer of the credit shall not change the amount that  
11 otherwise would be reported by the taxpayer to the employee under  
12 section 77-2754 as income tax withheld and shall not reduce the  
13 amount that otherwise would be allowed by the state as a refundable  
14 credit on an employee's income tax return as income tax withheld  
15 under section 77-2755.

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

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

1           If the amount of credit used by the taxpayer against  
2 income tax withholding exceeds this amount, the excess withholding  
3 shall be returned to the Department of Revenue in the manner provided  
4 in section 77-2756, such excess amount returned shall be considered  
5 unused, and the amount of unused credits may be used as otherwise  
6 permitted in this section or shall carry over to the extent  
7 authorized in subdivision (1)(e) of this section.

8           (c) Credits may be used to obtain a refund of sales and  
9 use taxes under the County Option Sales Tax Act, the Local Option  
10 Revenue Act, the Nebraska Revenue Act of 1967, and ~~sections 13-319,~~  
11 ~~13-324,~~ and section 13-2813 which are not otherwise refundable that  
12 are paid on purchases, including rentals, for use at the project for  
13 a tier 1, tier 2, tier 3, or tier 4 project or for use within this  
14 state for a tier 6 project.

15           (d) The credits earned for a tier 6 project may be used  
16 to obtain a payment from the state equal to the real property taxes  
17 due after the year the required levels of employment and investment  
18 were met and before the end of the carryover period, for real  
19 property that is included in such project and acquired by the  
20 taxpayer, whether by lease or purchase, after the date the  
21 application was filed. The payment from the state shall be made only  
22 after payment of the real property taxes have been made to the county  
23 as required by law. Payments shall not be allowed for any taxes paid  
24 on real property for which the taxes are divided under section  
25 18-2147 or 58-507.

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

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

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

13          (c) Refund claims for materials purchased by a purchasing  
14    agent shall include:

15           (i) A copy of the purchasing agent appointment;

16           (ii) The contract price; and

17           (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)  
18    (a)(v) of section 77-5725, a certification by the contractor or  
19    repairperson of the percentage of the materials incorporated into or  
20    annexed to the project on which sales and use taxes were paid to  
21    Nebraska after appointment as purchasing agent; or

22           (B) For refunds under subdivision (2)(a)(iv) of section  
23    77-5725, a certification by the contractor or repairperson of the  
24    percentage of the contract price that represents the cost of  
25    materials annexed to the project and the percentage of the materials



1 annexed to the project on which sales and use taxes were paid to  
2 Nebraska after appointment as purchasing agent.

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

11 (e) If a claim for a refund of sales and use taxes under  
12 the County Option Sales Tax Act, the Local Option Revenue Act, or  
13 ~~sections 13-319, 13-324, and section 13-2813~~ of more than twenty-five  
14 thousand dollars is filed by June 15 of a given year, the refund  
15 shall be made on or after November 15 of the same year. If such a  
16 claim is filed on or after June 16 of a given year, the refund shall  
17 not be made until on or after November 15 of the following year. The  
18 Tax Commissioner shall notify the affected city, village, county, or  
19 municipal county of the amount of refund claims of sales and use  
20 taxes under the County Option Sales Tax Act, the Local Option Revenue  
21 Act, or ~~sections 13-319, 13-324, and section 13-2813~~ that are in  
22 excess of twenty-five thousand dollars on or before July 1 of the  
23 year before the claims will be paid under this section.

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

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

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

20           Sec. 23. Original sections 13-318, 13-319, 13-322,  
21 13-323, 13-324, 13-325, 13-326, 13-804, 13-2504, 39-2510, 39-2520,  
22 77-2703.01, 77-2703.04, 77-2704.31, 77-2712.05, 77-4105, and 77-4106,  
23 Reissue Revised Statutes of Nebraska, and sections 77-2711, 77-5725,  
24 and 77-5726, Revised Statutes Cumulative Supplement, 2010, are  
25 repealed.