

LEGISLATIVE BILL 977

Approved by the Governor March 16, 1994

Introduced by Revenue Committee: Warner, 25, Chairperson; Coordsen, 32; Hartnett, 45; Landis, 46; Schellpeper, 18; Wickersham, 49; Will, 8

AN ACT relating to revenue and taxation; to amend sections 77-2706.01 and 77-2724, Reissue Revised Statutes of Nebraska, 1943, section 77-2717, Revised Statutes Supplement, 1992, and sections 77-2702.07, 77-2702.13, 77-2704.12, 77-2704.13, 77-2704.15, 77-2704.30, 77-2706, 77-2710, 77-2715, 77-2715.02, 77-2715.07, 77-2716, 77-2777, 77-2778, and 77-2780, Revised Statutes Supplement, 1993; to redefine terms relating to sales and use tax; to change sales and use tax exemption provisions; to change certain references to property; to provide for an income tax on estates and trusts; to provide an income tax rate schedule for estates and trusts; to provide for a tax credit for estates and trusts as prescribed; to change provisions relating to the taxation of nonresident estates and trusts; to change protest filing provisions relating to income tax deficiencies; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 77-2702.07, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2702.07. (1) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(c) The cost of transportation of the property; ~~prior to its sale to the purchaser;~~

(d) The amount of any excise or property tax levied against the property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

(2) Gross receipts of every person engaged as a public utility specified in this subsection or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section shall mean:

(a) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. Gross receipts shall not mean the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands, manufacturing purposes, and the care of animal life, the products of which ordinarily constitute food for human consumption, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the

provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property shall mean:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller. Gross receipts shall not mean the amount charged for training customers in the use of computer software if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the computer software; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967.

(4) Gross receipts shall not include any of the following:

(a) Cash discounts allowed and taken on sales;

(b) The amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle;

(c) Sales price of property returned by customers when the full sales price is refunded either in cash or credit;

(d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property;

(e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;

(f) The value of a motor vehicle taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle; or

(g) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the property prior to June 1, 1967, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration.

Sec. 2. That section 77-2702.13, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2702.13. (1) Retail sale or sale at retail shall mean:

(a) A sale for any purpose other than for resale in the regular course of business of property;

(b) A sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal. The advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly;

(c) The delivery in this state of property by an owner or former owner thereof or by a factor or agent of such owner, former owner, or factor, if the delivery is to a customer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery in such cases shall include the delivery person's selling price of the property in his or her gross receipts;

(d) The sale of admissions which shall mean the right or privilege to have access to or to use a place or location. When an admission to an activity is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. Admissions shall not include (i) fees charged by elementary or secondary schools, public or private, (ii) fees charged by school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities in an elementary or secondary school, public or private, during

the regular school day or at an approved function of any such school, or (iii) fees charged by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act;

(e) A sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate; and

(f) A sale of any property annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2702.05 except when such annexation is incidental to the transfer of an improvement upon real estate or the real estate.

(2) Retail sale or sale at retail shall not mean:

(a) The sale of property which will enter into and become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail;

(b) The sale of:

(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall include live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or any person engaged in the business of bartering, buying, or selling live poultry or livestock on the hoof;

(ii) Feed for any form of animal life or water which is supplied for consumption by animal life or which is otherwise used in caring for animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel. Feed shall include all grains, minerals, salts, proteins, fats, fibers, vitamins, grit, and antibiotics commonly used as feed or feed supplements;

(iii) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products, and seed legumes, seed grasses, and seed grains when sold to be used exclusively for agricultural purposes;

(iv) Agricultural chemicals for use in agriculture and applied to land or crops. Agricultural chemicals shall not mean chemicals applied to harvested grains stored in commercial elevators; or

(v) Oxygen for use in aquaculture as defined in section 2-3804.01;

(c) The sale of:

(i) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(ii) Containers when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(iii) Returnable containers when sold with contents in connection with a retail sale of the contents or when resold for refilling.

The term returnable containers shall mean containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) The sale of property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale;

(e) The sale of property the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States of America when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state;

(f) The purchase in this state or the purchase outside this state, with title passing in this state, of materials and replacement parts used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers of persons or property. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that their certificate will expire and be null and void as

of such date;

(g) The sale of railroad rolling stock whether purchased by a railroad or by any other person; or

(h) The sale of property annexed to real estate.

Sec. 3. That section 77-2704.12, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2704.12. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under Chapter 79, article 17, any private college or university established under Chapter 85, article 11, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives funds under the Urban Health Initiative Program or the Rural Health Initiative Program of the United States Public Health Service, skilled nursing facility, intermediate care facility, or nursing facility licensed under sections 71-2017 to 71-2029 and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of property which is physically annexed to the structure and becomes the property of which subsequently belongs to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to property being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the property physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming property in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which property is annexed to real estate and becomes the property of which subsequently belongs to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the property physically annexed to real estate in the construction, improvement, or repair.

Sec. 4. That section 77-2704.13, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2704.13. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than fifty percent of the amount purchased is for use directly in irrigation or farming; and

(2) Sales and purchases of such energy sources or fuels made before April 1, 1993, or after March 31, 1994, when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining property, in the generation of electricity, or by any hospital. The state tax paid on purchases of such energy sources or fuels during the period

beginning April 1, 1993, and ending March 31, 1994, shall not exceed one hundred thousand dollars for any one location when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining of property or by any hospital. All purchases of such energy sources or fuels for use in the generation of electricity during the period beginning April 1, 1993, and ending March 31, 1994, shall be taxable. Any taxpayer who has paid the limit of state tax on such energy sources or fuels at one location shall be exempt on all other qualifying purchases at such location. Such taxpayer shall be entitled to a refund of any amount of state or local option tax paid on an energy source or fuel exempt under this subdivision. A refund shall be made pursuant to section 77-2708.

Sec. 5. That section 77-2704.15, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2704.15. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of property which is physically annexed to the structure and becomes the property of which subsequently belongs to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to property being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the property physically annexed to real estate in the construction, improvement, or repair.

Sec. 6. That section 77-2704.30, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2704.30. The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(1) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers; of persons or property; and

(2) The storage, use, or consumption of property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

Sec. 7. That section 77-2706, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2706. (1) A resale certificate may be given by a purchaser who at the time of purchasing the property intends to sell, lease, or rent it in the regular course of business. A seller making repeated sales of the same type to the same purchaser shall not be required to take a separate resale certificate for each individual sale, but may, at his or her own risk, take a blanket certificate covering all such sales made to the same purchaser.

(2) The resale certificate shall be on such form and require the furnishing of such information as the Tax Commissioner may require by rule and regulation.

(3) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, the use shall be taxable to the purchaser as of the time when the property is first so used and the sales price of the property to him or her shall be deemed the measure of the tax.

(4) Any person who gives a resale certificate to the seller for property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business and each officer of any corporation which so gives a resale certificate shall be guilty of a misdemeanor.

(5) If a purchaser gives a resale certificate with respect to the purchase of tangible goods and thereafter commingles such goods with other tangible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

(6) Any person, firm, or corporation engaged in multistate operations and engaged as a common or contract carrier of persons or property may apply to the Tax Commissioner for an exemption certificate which will permit such person or corporation to make purchases of any nature within this state or without this state and bring such purchases into this state for use both within and without this state, for storage in this state, and when withdrawn from storage to be used within or without the state without paying the sales or use tax thereon, until such articles, materials, or supplies or finished products are placed in use within this state. When such articles, materials, supplies, or finished products are used within this state, a person to whom such exemption certificate has been issued shall, on the last day of the first following month after which such articles, materials, supplies, or finished products are put to use within this state, make a report to the Tax Commissioner as to the amount of use or sales tax, if any, which is due the state and make the payments to the state at the time of making the return. If the Tax Commissioner, after investigation, finds that the applicant maintains satisfactory books of account and that granting such exemption would not result in the evasion or avoidance of any tax otherwise properly due, he or she shall issue such exemption certificate. Any person granted such an exemption certificate shall furnish a copy thereof to any vendor from whom purchases are made and such vendor may deliver any such purchases to the holder of any such certificate without collection of any such sales tax. The fee for such exemption certificate shall be ten dollars. The revenue from such fees shall be placed in the General Fund.

(7) If any person, firm, corporation, association, or the agent thereof presents a resale certificate to the seller for property which is purchased for a use other than for resale, lease, or rental by him or her in the regular course of business, the Tax Commissioner may impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of a resale certificate. This amount shall be in addition to any tax, interest, or penalty otherwise imposed.

Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

Sec. 8. That section 77-2706.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2706.01. (1) Any retailer of aircraft, in lieu of paying tax pursuant to subsection (3) of section 77-2706, may elect to pay a use tax measured by the current sales and use tax rate applied against the total gross receipts realized from the use of such aircraft, except the receipts realized from the transportation of persons or property for hire as a common or contract carrier. If such election is made, it shall be made pursuant to the following conditions:

(a) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all of the conditions of this section and all rules and regulations of the Tax Commissioner;

(b) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the retailer elects to terminate the election;

(c) Such election shall apply to all aircraft in inventory;

(d) When an aircraft to which such election is applicable is sold, destroyed, or otherwise removed from inventory, no deduction, credit, or refund of use tax paid pursuant to this section shall be taken or allowed; and

(e) The use tax imposed pursuant to this section is a tax upon the retailer so electing.

(2) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, the method and manner for

terminating such election, and such other rules and regulations as may be necessary for the proper administration of this section.

Sec. 9. That section 77-2710, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2710. (1) If the Tax Commissioner finds that a taxpayer is about to depart from the State of Nebraska, remove his or her personal property therefrom, conceal himself or herself or his or her personal property therein, or do any other act tending to delay, prejudice, or render wholly or partially ineffectual any proceedings to collect the sales or use tax for the preceding or current taxable year unless such proceedings be brought without delay, the Tax Commissioner shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for immediate payment of any such tax due for this period, whether or not the time otherwise allowed by law for filing returns and paying such tax has expired. Such tax shall thereupon become immediately due and payable. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, such findings of the Tax Commissioner, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(2) The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to the provisions of section 77-2709. He or she shall file the petition for redetermination with the Tax Commissioner within ten days after the service upon him or her of notice of determination or the determination shall become final at the expiration of the ten-day period and the Tax Commissioner shall not reconsider the determination. The person shall also within the ten-day period deposit with the Tax Commissioner such security as the Tax Commissioner may deem necessary to insure compliance with the Nebraska Revenue Act of 1967. The security may, if necessary, be sold by the Tax Commissioner in the manner prescribed by the provisions of section 77-27,131.

(3) A taxpayer who is not in default in making any return or paying any sales or use taxes assessed under the Nebraska Revenue Act of 1967 may furnish to the Tax Commissioner, under regulations to be prescribed by the Tax Commissioner, security that he or she will duly make the return next thereafter required to be filed and pay such tax next thereafter required to be paid. The Tax Commissioner may approve and accept in like manner security for return and payment of sales or use taxes made due and payable by virtue of this section.

(4) If security is approved and accepted and such further or other security with respect to the tax or taxes covered thereby is given as the Tax Commissioner shall from time to time find necessary, the requirement for payment of such taxes shall not be enforced by any proceedings under this section prior to the expiration of the time otherwise allowed for paying such taxes.

(5) In the case of a bona fide resident of Nebraska about to depart from the state the Tax Commissioner may waive any or all of the requirements placed upon the taxpayer by this section.

(6) If a taxpayer violates or attempts to violate any provision of this section there shall, in addition to all other penalties, be added as part of the tax twenty-five percent of the total amount due or fifty dollars, whichever is greater.

(7) If the taxpayer ignores all demands for payment the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Sec. 10. That section 77-2715, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each taxable year on the entire income of every resident individual and on the income of every nonresident individual and partial-year resident individual which is derived from sources within this state, except that any individual who has additions to adjusted gross income pursuant to section 77-2716 of less than five thousand dollars shall not have an individual income tax liability after nonrefundable credits under the Nebraska Revenue Act of 1967 that exceeds his or her individual income tax liability before credits under the Internal Revenue Code of 1986.

(2) The tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (a) substituting Nebraska taxable income for federal taxable income, (b)

calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (c) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the act, shall be allowed as a reduction in the income tax due.

(3) The tax for each nonresident individual and partial-year resident individual shall be the portion of the tax imposed on resident individuals which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by subtracting from the liability to this state for a resident individual with the same total income the credit for personal exemptions and multiplying the result by a fraction, the numerator of which is the nonresident individual's or partial-year resident individual's Nebraska adjusted gross income as determined by section 77-2733 or 77-2733.01 and the denominator of which is his or her total federal adjusted gross income, after first adjusting each by the amounts provided in section 77-2716. If this determination attributes more or less tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for or the Tax Commissioner may require the employment of any other method to attribute an amount of tax which is reasonable and equitable in the circumstances.

(4) The tax for each estate and trust, other than trusts taxed as corporations under the Internal Revenue Code of 1986, shall be as determined under section 77-2717.

(5) A refund shall be allowed to the extent that the income tax paid by the individual, estate, or trust for the taxable year exceeds the income tax payable, except that no refund shall be made in any amount less than two dollars.

Sec. 11. That section 77-2715.02, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2715.02. (1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) The income amounts for columns A and E shall be:

(i) \$0, \$2,400, \$17,000, and \$26,500, for single returns;

(ii) \$0, \$4,000, \$30,000, and \$46,750, for married filing joint returns;

(iii) \$0, \$3,800, \$24,000, and \$35,000, for head-of-household returns; ~~and~~

(iv) \$0, \$2,000, \$15,000, and \$23,375, for married filing separate returns; ~~and~~

(v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(b) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(c) The amount in column D shall be the rate on the income in excess of the amount in column E;

(d) The primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .708, .986, 1.415, and 1.89;

(e) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and

(f) One rate schedule shall be established for each federal filing status.

(3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income	but not	pay	plus	of the
over	over			amount over

(4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal

exemption credit and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Sec. 12. That section 77-2715.07, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2715.07. (1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the tax imposed by sections 77-2714 to 77-27,123:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code;

(b) A credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code; and

(c) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to all individuals as a nonrefundable credit against the tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01; and

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income.

(3) There shall be allowed as a credit against the tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730; and

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act.

(4) There shall be allowed to any health care provider a nonrefundable credit equal to the amount of tax paid under the Health Care Provider Income Tax Act.

Sec. 13. That section 77-2716, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2716. (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to include the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

Sec. 14. That section 77-2717, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2717. (1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, shall be allowed as a reduction in the income tax due.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. and the computation of the tax for individuals shall apply to the tax liability of all estates and trusts except those trusts taxed as a corporation under the

Internal Revenue Code-

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

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

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

Sec. 15. That section 77-2724, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2724. (1) For purposes of taxation of nonresident estates or trusts:

(a) Items of income, gain, loss, and deduction shall mean those derived from or connected with sources in this state items entering into the definition of federal distributable income;

(b) Items of income, gain, loss, and deduction entering into the definition of federal distributable net income shall include such items from another estate or trust of which the estate or trust is a beneficiary; and

(c) The source of items of income, gain, loss, or deduction shall be determined under regulations prescribed by the Tax Commissioner in accordance with the general rules in section 77-2733 as if the estate or trust were a nonresident individual.

(2) The taxable income of an estate or trust, before the proration required in subdivision (1)(b) of section 77-2717 to determine the tax attributable to income from sources within this state, shall consist of its share of items of income, gain, loss, and deduction which enter into the federal definition of distributable net income (a) increased or reduced by the amount of any items of income, gain, loss, or deduction which are recognized

for federal income tax purposes but excluded from the federal definition of distributable net income of the estate or trust, (b) less the amount of the deduction for its federal exemption, and (c) increased or reduced by the modifications contained in section 77-2716 which relate to an item of estate or trust income.

Sec. 16. That section 77-2777, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2777. Ninety days after the date on which it was mailed, one hundred fifty days if the taxpayer is outside the United States, or thirty days if the amount of the deficiency relates to tax withheld or required to be withheld by an employer or payor or thirty days if the amount of the deficiency relates to tax withheld or required to be withheld by an employer or payor, a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax, and penalties except only for such amounts as to which the taxpayer has filed a protest with the Tax Commissioner.

Sec. 17. That section 77-2778, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2778. Within ninety days after the mailing of a deficiency notice after the mailing of a deficiency notice, one hundred fifty days if the taxpayer is outside the United States, or thirty days if the amount of the deficiency relates to tax withheld or required to be withheld by an employer or payor, the taxpayer or any person directly interested or thirty days if the amount of the deficiency relates to tax withheld or required to be withheld by an employer or payor, the taxpayer or any person directly interested may file with the Tax Commissioner a written protest against the proposed assessment in which he or she shall set forth the grounds on which the protest is based. If a protest is filed, the Tax Commissioner shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his or her authorized representative an oral hearing. For purposes of this section, a person shall be directly interested in a deficiency determination when such deficiency could be collected from such person. For purposes of this section, a person shall be directly interested in a deficiency determination when such deficiency could be collected from such person.

Sec. 18. That section 77-2780, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2780. The action of the Tax Commissioner on the taxpayer's protest shall be final upon the expiration of ninety days, or thirty days if the amount assessed relates to tax withheld or required to be withheld by an employer or payor, from the date when the Tax Commissioner mails notice of his or her or thirty days if the amount assessed relates to tax withheld or required to be withheld by an employer or payor, from the date when the Tax Commissioner mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as provided in the Nebraska Revenue Act of 1967.

Sec. 19. That original sections 77-2706.01 and 77-2724, Reissue Revised Statutes of Nebraska, 1943, section 77-2717, Revised Statutes Supplement, 1992, and sections 77-2702.07, 77-2702.13, 77-2704.12, 77-2704.13, 77-2704.15, 77-2704.30, 77-2706, 77-2710, 77-2715, 77-2715.02, 77-2715.07, 77-2716, 77-2777, 77-2778, and 77-2780, Revised Statutes Supplement, 1993, are repealed.