

LEGISLATIVE BILL 523

Approved by the Governor June 3, 1987

Introduced by V. Johnson, 8

AN ACT relating to revenue and taxation; to amend sections 28-1107, 66-401, 66-418.03, 66-419, 66-420, 66-431, 66-432, 66-637, 77-2701, 77-2702 to 77-2704, 77-2708, 77-2711, 77-2714, 77-2717, 77-2734.01, 77-2761, 77-2768, 77-2772, 77-2773, 77-27,175, 77-27,180, and 77-3902 to 77-3905, Reissue Revised Statutes of Nebraska, 1943, sections 9-262, 9-352, and 9-434, Revised Statutes Supplement, 1986, sections 77-2715, 77-2716, and 77-2733, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 5, 9, and 16, respectively, Legislative Bill 773, Ninetieth Legislature, First Session, 1987, and section 77-2753, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 284, Ninetieth Legislature, First Session, 1987; to change certain penalty provisions relating to the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, and the Nebraska Lottery and Raffle Act; to change provisions relating to the offense of possession of a gambling device; to change penalty provisions relating to the reporting and collection of motor fuel taxes as prescribed; to define and redefine terms; to change certain collection provisions, certain exemptions, a provision relating to the filing of returns, and an enforcement provision relating to sales and use taxes as prescribed; to provide for personal liability for certain officers and employees; to change a provision relating to returns filed by trusts, small business corporations, and certain other persons and businesses as prescribed; to change provisions relating to the computation of and adjustments to income tax as prescribed; to change a provision relating to the withholding of wages; to change provisions relating to income tax records; to change a provision relating to setoffs as prescribed; to change provisions relating to assessment of

property, acquisition of a tax lien, fees, and actions to collect delinquencies; to provide additional refund procedures; to authorize the use of electronic filing and electronic fund transfers; to create a fund; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 9-262, Revised Statutes Supplement, 1986, be amended to read as follows:

9-262. (1) Except when another penalty is specifically provided, any person, distributor, licensed organization, other licensee, or employee or agent of any person or licensee who violates any provision of the Nebraska Bingo Act shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensed organization guilty of violating any provision of the Nebraska Bingo Act more than once in a twelve-month period shall have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Bingo Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of the state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operation except as authorized by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to such act;

(b) Employing or possessing any device to facilitate cheating in a bingo game or using any fraudulent scheme or technique in connection with any bingo game when the amount gained through the use of such items, schemes, or techniques results in a person obtaining over five hundred dollars;

(c) Causing, aiding, abetting, or conspiring with another to cause any person or organization to violate any provision of the Nebraska Bingo Act; or

(d) Knowingly filing a false report under the Nebraska Bingo Act.

(3) ~~(2)~~ In all proceedings initiated in any court or otherwise under the Nebraska Bingo Act, it

shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

{3} {4} The failure to do any act required by or under the Nebraska Bingo Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

{4} {5} In the enforcement and investigation of any offense committed under the Nebraska Bingo Act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Sec. 2. That section 9-352, Revised Statutes Supplement, 1986, be amended to read as follows:

9-352. (1) Except when another penalty is specifically provided, any person, licensed organization, distributor, manufacturer, sales agent, or pickle card operator, other licensee, or employee or agent of any person or licensee, who violates any provision of the Nebraska Pickle Card Lottery Act shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensed organization guilty of violating any provision of the act more than once in a twelve-month period shall have its license canceled or revoked. Such matters shall also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or non-opaque

pickle cards, pull tabs, break opens, punch boards, jar tickets, or any other similar card, board, or ticket, or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with:

(d) Employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or technique in connection with any lottery by the sale of pickle cards when the amount gained through the use of such items, schemes, or techniques results in a person obtaining over five hundred dollars:

(e) Causing, aiding, abetting, or conspiring with another to cause any person or organization to violate any provision of the Nebraska Pickle Card Lottery Act; or

(f) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act.

~~(3)~~ ~~(2)~~ In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

~~(3)~~ ~~(4)~~ The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

~~(4)~~ ~~(5)~~ In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Sec. 3. That section 9-434, Revised Statutes Supplement, 1986, be amended to read as follows:

9-434. ~~(1)~~ Except when another penalty is specifically provided, any person, licensed organization, other licensee, permittee, or employee or agent of any person, licensee, or permittee who violates any provision of the Nebraska Lottery and Raffle Act shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensed organization guilty of violating any provision of the act more than once in a twelve-month period shall have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Lottery and Raffle Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or

provide, directly or indirectly, to any public official or employee or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities authorized under Chapter 9 in consideration for obtaining any license, authorization, permission, or privileges to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Employing or possessing any device to facilitate cheating in any lottery or raffle or using any fraudulent scheme or technique in connection with any lottery or raffle when the amount gained through the use of items, schemes, or techniques results in a person obtaining over five hundred dollars;

(c) Causing, aiding, abetting, or conspiring with another to cause any person or organization to violate any provision of the Nebraska Lottery and Raffle Act; or

(d) Knowingly filing a false report under the Nebraska Lottery and Raffle Act.

(3) (2) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(3) (4) The failure to do any act required by or under the Nebraska Lottery and Raffle Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(4) (5) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Sec. 4. That section 28-1107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1107. (1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) This section shall not apply to any coin-operated mechanical game designed and manufactured

to be played gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding free games, which is intended to be played and is in fact played for amusement only, and which may allow the player the right to replay such mechanical game gaming device at no additional cost, which right to replay shall not be considered money or property, except that such mechanical game (a) can accumulate no more than fifteen free replays at one time; (b) can be discharged of accumulated free replays only by reactivating the game for one additional play for each accumulated free replay; and (c) (b) makes no permanent record directly or indirectly of free replays so awarded. Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of sections 4461 and 4462 of Title 26, United States Code, amended July 1, 1965, by Public Law 89-44, are hereby declared to be illegal and excluded from the exemption granted in this section.

(3) Possession of a gambling device is a Class II misdemeanor.

Sec. 5. That section 66-401, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-401. As used in sections 66-401 to ~~66-425~~ 66-424:

(1) Motor vehicles shall include all automotive or self-propelled vehicles, engines, or machines, movable or immovable, except farm tractors, which are operated or propelled in whole or in part by internal combustion of one or more of the motor vehicle fuels defined in this section;

(2) Motor vehicle fuels shall include all products and fuels commonly or commercially known as gasoline, including casing head or natural gas, benzol, naphtha, and benzine with an initial boiling point under two hundred degrees Fahrenheit, except any petroleum product having an initial boiling point under two hundred degrees Fahrenheit, a ninety-five per cent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit and having an American Society of Testing Materials research method octane number less than seventy and end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum, shall not be included as motor vehicle fuels,

and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of or as may be used for operating or propelling motor vehicles, motor boats, or aircraft, or as an ingredient in the manufacture of such fuels, except the products commonly known as kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, or smudge oil, and further except any petroleum product having an initial boiling point under two hundred degrees Fahrenheit, a ninety-five per cent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit and having an American Society of Testing Materials research method octane number less than seventy and end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum, shall not be included as motor vehicle fuels. It shall not include the domestic alcohol content of any of the foregoing, it being specifically provided that domestic alcohol shall not be deemed to be a motor vehicle fuel for the purpose of such sections, except that agricultural ethyl alcohol produced in the State of Nebraska for use as a motor vehicle fuel shall be considered a motor vehicle fuel. The term domestic alcohol means ethyl alcohol produced from agricultural commodities grown within the continental United States, and for the purpose of such sections the volume of domestic alcohol blend with gasoline for motor vehicle fuel shall include the volume of any denaturant, other than gasoline, required pursuant to law. The term alcohol blend shall mean a blend of domestic ethyl alcohol in gasoline or other motor vehicle fuel, such blends to contain not less than five per cent by volume of alcohol;

(3) The term dealers ~~includes~~ shall include any person, firm, copartnership, company, agency, association, corporation, state, county, municipality, or subdivision of either thereof, who imports or causes to be imported into the State of Nebraska, and also any person, firm, copartnership, company, agency, association, corporation, state, county, municipality, or subdivision of either thereof, who produces, refines, manufactures, or compounds such motor vehicle fuel as herein defined, any part of which is for use, distribution, sale, or delivery in the State of Nebraska, except ; ~~PROVIDED~~; that a refinery or pipeline terminal or barge terminal shall not be deemed a dealer as to any motor fuel sold to licensed dealers in

Nebraska, or sold or delivered for use in a state other than Nebraska; and

(4) Capacity of container with respect to any tank vehicle shall mean the internal volume, less reasonable space for expansion, of all the compartments of the cargo tank thereof in which any liquid is carried. When the vehicle is loaded by meter approved by the Tax Commissioner, the Tax Commissioner may accept as the capacity the metered gallons invoiced as recorded at the place of loading and shown on the loading ticket, waybill, or manifest.

Sec. 6. That section 66-418.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-418.03. Cancellation of security, failure to provide additional security as required, failure to report or pay taxes due within the time provided, filing of any false statement or affidavit, or violation of any of the provisions of sections 66-401 to 66-425 ~~66-424~~ shall be grounds for suspension of any license or permit issued by the Tax Commissioner in accordance with sections 66-401 to 66-470.

The Tax Commissioner may, by notice either by registered or certified mail, return receipt requested, to the address of the licensee or permitholder as shown on the records of the Tax Commissioner, suspend any license or permit ~~theretefore~~ granted pursuant to sections 66-401 to 66-470. Such licensee or permitholder may, within thirty days after the mailing of the notice of such suspension, petition the Tax Commissioner in writing for a hearing and reconsideration of such suspension. If a petition is not filed within the thirty-day period, the suspended license shall be canceled by the Tax Commissioner at the expiration of that period. If a petition is filed with the Tax Commissioner, he or she shall, within ten days of receipt of the petition, grant a hearing at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled and shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Upon conclusion of the hearing, the Tax Commissioner shall, within a reasonable time, issue a finding and order either reinstating or canceling such license.

Sec. 7. That section 66-419, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-419. Any dealer, person, firm, copartnership, company, agency, association, or

corporation who shall violate any provisions of sections 66-401 to ~~66-425~~ 66-424, or who shall fail or refuse to pay such tax when due, or who shall knowingly make any false statement in any statement or report required by said such sections, or any person, firm, copartnership, company, agency, association, or corporation making any false statement in connection with an application for the refund of any money or tax as provided in said such sections, or collecting, or causing to be repaid to him or her or to any person, any tax without being entitled to it under the provisions of said such sections, or any dealer, person, firm, copartnership, company, agency, association, or corporation who shall knowingly aid or abet any person in the violation of such sections, shall be deemed guilty of a Class ~~III~~ misdemeanor IV felony for each offense. An offense committed under such sections shall be deemed an act committed in part in the principal office of the Tax Commissioner. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of such offenses which may be conducted in any county in which the offender resides or has a place of business or in which the crime was committed. Failing to report or pay taxes due pursuant to sections 66-401 to 66-424 shall constitute a separate offense for each reporting period.

Sec. 8. That section 66-420, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-420. The provisions of sections 66-401 to ~~66-425~~ 66-424 shall not apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be permitted under the provisions of the Constitution and laws of the United States.

Sec. 9. That section 66-431, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-431. Any person, firm, copartnership, association, or corporation that shall fail or refuse to pay the tax imposed by section 66-428 when due, or who shall knowingly make any false statements in any statement or report required by section 66-429, or in any statement in connection with an application for the refund of any money paid as a tax under the provisions of section 66-428, or who shall collect or cause to be repaid to him or her or to any person, firm, or corporation, any tax without being entitled to the same, or who shall violate any of the provisions of sections 66-428 to 66-431 shall be deemed guilty of a Class ~~III~~ misdemeanor IV felony for each offense. An offense

committed under such sections shall be deemed an act committed in part in the principal office of the Tax Commissioner. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of such offenses which may be conducted in any county in which the offender resides or has a place of business or in which the crime was committed. Failing to report or pay the taxes due pursuant to sections 66-428 to 66-431 shall constitute a separate offense for each reporting period.

Sec. 10. That section 66-432, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-432. Any person, firm, corporation, syndicate, or association, or the agent thereof, who shall purchase or receive any motor vehicle fuels, in any state other than the State of Nebraska, as purchaser, or receive any motor vehicle fuels from a refinery, barge terminal, or pipeline terminal within the State of Nebraska for use or sale in this state, and who shall transport into, dispose of, or deliver the same in, into, or within this state, with the intent to evade or without paying the tax on the sale or use of said such motor vehicle fuels, as provided by the laws of this state, or who shall purchase or receive the same through any scheme, artifice, or subterfuge of any kind, design, or intent to evade the payment of such tax, or without notice of the importation of said such motor vehicle fuels having been given to the Tax Commissioner on forms provided by the Tax Commissioner, shall be deemed guilty of a Class IV felony. An offense committed under this section shall be deemed an act committed in part in the principal office of the Tax Commissioner. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of such offenses which may be conducted in any county in which the offender resides or has a place of business or in which the crime was committed. Each act committed in violation of this section shall constitute a separate violation.

Sec. 11. That section 66-637, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-637. (1) Any person, firm, copartnership, association, or corporation that shall fail or refuse to pay the tax imposed by section 66-605 when due, who shall knowingly make any false statement in any statement or report required by section 66-618, or who shall collect, or cause to be repaid to him or her or to

any person, firm, or corporation, any tax without being entitled to the same, ~~or who shall violate any of the provisions of section 66-634~~ shall be deemed guilty of a ~~Class III misdemeanor~~ IV felony for each offense. An offense committed under such sections shall be deemed an act committed in part in the principal office of the Tax Commissioner. Failing to report or pay the tax, as prescribed in such sections, shall constitute a separate offense for each reporting period.

(2) Any person, firm, corporation, syndicate, or association, or the agent thereof, who shall purchase or receive any special fuels, in any state other than the State of Nebraska, as purchaser, or receive any special fuels within the State of Nebraska for use or sale in this state, and who shall transport into, dispose of, or deliver the same in, into, or within this state, with the intent to evade or without paying the tax on the sale or use of ~~said~~ such special fuels, as provided by sections 66-601 to 66-636, or who shall purchase or receive the same through any scheme, artifice, or subterfuge of any kind, design, or intent to evade the payment of such tax, or without notice of the importation of ~~said~~ such special fuels having been given to the Tax Commissioner on forms provided by the Tax Commissioner, shall be deemed guilty of a Class IV felony. An offense committed under such sections shall be deemed an act committed in part in the principal office of the Tax Commissioner. Each act violating such sections shall be considered a separate offense.

(3) The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of such offenses which may be conducted in any county in which the offender resides or has a place of business or in which the crime was committed.

Sec. 12. That section 77-2701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135, 77-27,185, and 77-27,186 and section 43 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967. After January 1, 1984, any reference to sections 77-2701 to 77-27,135 or the Nebraska Revenue Act of 1967 shall be construed to include sections 77-2734.01 to 77-2734.15, and any reference which would include sections 77-2734 to 77-2752 shall be construed to include sections 77-2734.01 to 77-2734.15.

Sec. 13. That section 77-2702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2702. For the purpose of sections 77-2702 to 77-2713, unless the context otherwise requires:

(1) Business shall mean any activity engaged in by any person or caused to be engaged in by him or her with the object of gain, benefit, or advantage, either direct or indirect;

(2) Tax Commissioner shall mean the Tax Commissioner of the State of Nebraska;

(3) Contractor or repairperson shall mean any person who performs any repair services or any improvement upon real estate, including leased property, and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him or her into the property being so repaired or improved. Contractor or repairperson shall be considered to be the consumer of such tangible personal property furnished by him or her and incorporated into the property being so repaired or improved for all the purposes of the Nebraska Revenue Act of 1967;

(4)(a) 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 the retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(i) The cost of tangible personal property sold. In accordance with such rules and regulations as the Tax Commissioner may prescribe, a deduction may be taken if the retailer has purchased tangible personal 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 tangible personal property, and has resold the property prior to making any use of the tangible personal 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 tangible personal property;

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

(iii) The cost of transportation of the tangible personal property prior to its sale to the purchaser;

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

or

(v) The amount charged for warranties, guarantees, or maintenance agreements;

(b) Gross receipts of every person engaged as a public utility specified in subdivision (4)(b) of this section or as a community antenna television service operator or any person involved in the connecting and installing of services defined in subdivision (4)(b)(i), (ii), or (iv) of this section shall mean:

(i) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service;

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

(iii) 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

(iv) 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.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of tangible personal property used in conjunction with the furnishing, installing, or connecting of any such public utility services specified in subdivision (4)(b)(i) or (ii) of this section or community antenna television service specified in subdivision (4)(b)(iv) of this section. Gross receipts shall not mean gross income received from telephone directory advertising;

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

(i) 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 include 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

(ii) In the furnishing of videotapes and movie film, the gross income received from the license, franchise, or other method establishing the charge, except the gross income received from videotape and film rentals when the admission tax is charged under the Nebraska Revenue Act of 1967; and

(d) Gross receipts does not include any of the following:

(i) Cash discounts allowed and taken on sales;

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

(iii) Except as provided in subdivision (4)(b) of this section, the amount charged for labor or services rendered in installing or applying the tangible personal property sold 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 tangible personal property;

(iv) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal 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 tangible personal property;

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

(vi) 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;

(vii) For purposes of the sales or use tax, if the retailer establishes to the satisfaction of the Tax Commissioner, and has been given prior approval by the Tax Commissioner, that the sales or use tax has been added to the total amount of the sale price and has not been absorbed by him or her, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed; or

(viii) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the tangible personal property prior to June 1, 1967, are not subject to the tax imposed by the

Nebraska Revenue Act of 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;

(5) In this state or within the state shall mean within the exterior limits of the State of Nebraska, and includes all the territory within these limits owned by or ceded to the United States of America;

(6) Occasional sale shall mean:

(a) A sale of tangible personal property which is the subject of any intercompany sale involving any parent, subsidiary, or brother-sister company relationship under subsection (5) of section 77-2704 and which was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon, including:

(i) From one corporation to another corporation pursuant to a reorganization. As used in this subdivision, reorganization shall mean a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

(ii) In connection with the winding up, dissolution, or liquidation of a corporation only when there is a distribution of the property of such corporation to the shareholders in kind if the portion of the property so distributed to the shareholder is substantially in proportion to the share of stock or securities held by the shareholder;

(iii) To a corporation for the purpose of organization of such corporation when the former owners of the property transferred are immediately after the transfer in control of the corporation and the stock or securities received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(iv) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnership and the interest in the partnership, received by each, is substantially in proportion to his or her interest in the property prior to the transfer; or

(v) From a partnership to the members thereof when made in kind in the dissolution of such partnership

if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members;

(b) A sale of tangible personal property consisting of household goods and personal effects if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(i) Such sales are by an individual at his or her residence or if more than one individual's property is involved such sales are by one of the individuals involved at the residence of one of the individuals;

(ii) Such sales do not occur at any residence for more than three days during a calendar year;

(iii) Such individual or individuals or any member of any of their households do not conduct or engage in a trade or business in which similar items are sold;

(iv) Such property sold was originally acquired for and used for personal use; and

(v) Such property is not otherwise excepted from the definition of occasional sale;

(c) Any sale of business or farm machinery and equipment if each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(i) Such machinery and equipment was transferred without the aid or supervision of any third party. For the purposes of this section, third party shall include anyone other than the owner and the buyer. The release of a lien held by a third party shall not constitute aid;

(ii) Such machinery or equipment was used by the seller as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(iii) Such property was originally acquired prior to June 1, 1967, or if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon; and

(iv) Such property is not otherwise excepted from the definition of occasional sale;

(d) A sale of tangible personal property by an organization created exclusively for religious purposes or an agent of the organization for such sale if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be

subject to the tax imposed by section 77-2703:

(i) All sales occur during an activity conducted by such organization or, if more than one organization is involved, by one of the organizations owning property being sold;

(ii) The organization only sells property it owns during one such activity in a calendar year; and

(iii) The activity does not last longer than three consecutive days; and

(e) Occasional sale shall not include any sale of tangible personal property directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer; and

(f) Except for a sale listed in subdivision (6)(a) of this section, an occasional sale shall not include any sale of motor vehicles, trailers, and semitrailers as defined in section 60-301;

(7) Person shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall also include the United States or any agency thereof, this state or any agency hereof, or any city, county, district, or other political subdivision of this state, or agency thereof;

(8) Purchase shall mean any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration, including, but not limited to, a transfer of the possession of tangible personal property in which the seller retains the title as security for the payment of the price and a transfer, for a consideration, of tangible personal property which has been produced, fabricated, or printed to the special order of the customer;

(9) Rental price or lease price shall mean the total amount for which tangible personal property is rented or leased, with rent or lease payments set at a fair market value, valued in money, whether paid in money or otherwise, without any deduction on account of (a) the cost of the tangible personal property rented or leased, (b) the cost of material used, labor or service cost, interest charged, losses, or any other expenses, or (c) the cost of transportation of tangible personal property at any time. The total amount for which tangible personal property is rented or leased includes

any services which are a part of the lease or rental and any amount for which credit is given to the lessee by the lessor or renter;

(10) 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 tangible personal property;

(b) A sale of tangible personal property to an advertising agency which purchases the tangible personal 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 tangible personal 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 tangible personal property in his or her gross receipts; and

(d) The sale of admissions which shall mean the right or privilege to have access to or 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 fees charged by (i) elementary or secondary schools, public or private, or (ii) 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;

(11) Retail sale or sale at retail shall not include the sale of:

(a) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, or

fabricated for ultimate sale at retail;

(b)(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall be defined in part, but not limited to, live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or by 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 \neq feed shall mean and include, but is not limited to, 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; or

(iv) Agricultural chemicals to be for use in agriculture and applied to land or crops. Agricultural chemicals shall not include chemicals applied to harvested grains stored in commercial elevators; the products of which are to be used as feed for human consumption or sold in the regular course of business.

(c) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; containers when sold with the 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 returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. The term returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) Tangible personal 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) Tangible personal 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 without this state, with title passing in this state, of materials and replacement parts, when used as or when 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 that their certificate will expire and be null and void as of October 31, 1986; or

(g) Railroad rolling stock whether purchased by a railroad or by any other person;

(12) Retailer shall mean:

(a)(i) Every seller engaged in the business of making sales of tangible personal property for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption. Retailer shall include, in the case of sales at auction of tangible personal property when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer, the person collecting the proceeds of the auction, other than the owner of the tangible personal property, together with his or her principal, if any, and retailer shall not include the auctioneer in such case;

(ii) Every person who leases or rents to another tangible personal property for storage, use, or other consumption, except film rentals when an admission tax is charged under the Nebraska Revenue Act of 1967

and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;

(iii) Every person engaged in the business of renting or furnishing for periods of less than thirty days any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days, shall be and constitute a retail merchant in respect thereto and the gross income received therefrom shall constitute gross income of a retail merchant received from transactions constituting selling at retail;

(iv) Every person engaged as a public utility in furnishing telephone, telegraph, gas, electricity, sewer, and water service, and every person engaged in furnishing community antenna television service as defined in subdivision (4)(b) of this section; and

(v) Every person renting or otherwise furnishing tangible personal property under an agreement requiring the periodic cleaning or laundering of such tangible personal property; and

(b) When the Tax Commissioner determines that it is necessary for the efficient administration of the Nebraska Revenue Act of 1967 to regard any salespersons, representatives, peddlers, canvassers, or auctioneers and persons conducting auction sales as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, auctioneers, or employers, the Tax Commissioner may, at his or her discretion, treat such agent as the vendor jointly responsible with his or her principal, distributor, supervisor, or employer for the purposes of the Nebraska Revenue Act of 1967;

(13) Sale shall mean and include any transfer of title or possession or segregation in contemplation of transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. Sale shall include:

(a) The producing, fabricating, processing, printing, or imprinting of tangible personal property

for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others;

(c) The furnishing, preparing, or serving for a consideration of food, meals, or drinks;

(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer; and

(f) The renting or furnishing for periods of less than thirty days of any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days;

(14) Sale for resale shall mean a sale of tangible personal property to any purchaser who is purchasing such tangible personal property for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased or as an attachment to or integral part of other tangible personal property. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing such tangible personal property to another person, with rent or lease payments set at a fair market value, or film rentals for use in a place where an admission is charged that is subject to taxation under the Nebraska Revenue Act of 1967, but not if incidental to the renting or leasing of real estate;

(15)(a) Sales price shall mean the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of:

(i) The cost of the tangible personal property sold;

(ii) The cost of material used, labor or service cost, interest paid, losses, or any other expenses;

(iii) The cost of transportation of the tangible personal property. The total amount for which tangible personal property is sold includes any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;

(iv) The cost of computer software contained on the tangible personal property; or

(v) The cost of any license, franchise, or lease for the use of computer software or entertainment properties such as videotapes or movie films; and

(b) Sales price does not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) The amount ~~charged~~ refunded for tangible personal property returned by customers when ~~the entire~~ all or part of the amount charged therefor is refunded either in cash or credit;

(iii) The amount charged for labor or services rendered in installing and applying the property sold 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 tangible personal property;

(iv) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal 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 tangible personal property;

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

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

(16) Seller shall include every person engaged in the business of selling, leasing, or renting tangible personal property of a kind the gross receipts from the retail sale, lease, or rental of which are required to be included in the measure of the sales tax;

(17) Storage shall include any retention in this state for any purposes except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a

retailer, other than tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, neither storage nor use as defined in this subdivision shall include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state and thereafter used solely outside the state;

(18) Tangible personal property shall mean personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses and includes tangible personal property which is used to convey computer software;

(19) Taxpayer shall mean any person subject to a tax imposed by sections 77-2702 to 77-2713;

(20) Use shall mean the exercise of any right or power over tangible personal property incident to the ownership or possession of that tangible personal property, except that it does not include the sale of that tangible personal property in the regular course of business or the exercise of any right or power over tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such; and

(21) Engaged in business in this state shall mean and include any of the following:

(a) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse, storage place, or other place of business in this state;

(b) Having any representative, agent, salesperson, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property; or

(c) Deriving rentals from a lease of tangible personal property in this state by any retailer.

Sec. 14. That section 77-2703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax of two per cent upon the gross receipts from all sales of tangible personal property sold at retail in this state, the gross receipts of every person engaged as a public utility, as a community antenna television service operator or any person involved in the connecting and installing of the services defined in subdivision (4)(b)(i), (ii), or (iv) of section 77-2702, or as a retailer of intellectual or entertainment properties referred to in subdivision (4)(c) of section 77-2702, the gross receipts from the sale of admissions in this state, and the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section until January 1, 1970, and on and after such date the rate shall be that which is set as provided in section 77-2715.01. When there is a sale, as defined in subdivision (13) of section 77-2702, after March 26, 1974, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by the provisions of this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the

marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax, and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to adopt and promulgate appropriate rules and regulations prescribing a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items, except that the Tax Commissioner may authorize computation and collection of the tax uniformly on a straight percentage basis in lieu of brackets in situations involving machine or computer billing.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it or takes, in good faith, an exemption certificate pursuant to subsection (7) of section 77-2705. Receipt of a resale certificate or exemption certificate, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt.

(g) Whenever any retailer shall make delivery of any tangible personal property in this state on or after June 1, 1967, it shall be conclusively presumed that such property was sold at retail on or after June 1, 1967, unless the delivery thereof is made pursuant to a contract executed in writing for a fixed price before June 1, 1967, with at least twenty-five per cent of the total price paid prior to June 1, 1967, and such delivery is made prior to August 31, 1967.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, for periods of thirty days or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) 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 conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) 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 lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of thirty days or more. If the lessor rents or leases other vehicles for periods of less than thirty days, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner shall prescribe; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) If a sales or use tax has been paid on the purchase, storage, use, or other consumption of tangible personal property used in the performance of a construction contract, which contract is with the project owner, is for a fixed price, and has been executed prior to June 1, 1967, and which tangible personal property is incorporated into the project and transferred to the owner of the structure constructed upon the completion of the contract, the person having paid such sales or use tax shall be entitled to a refund of the amount of taxes so paid. The Tax Commissioner shall by rule and regulation provide the manner and means of applying for such refund and shall require the furnishing of such proof as may reasonably be required to establish the fact that such property was used in the completion of a contract as defined in this subdivision

and that any sales or use tax has in fact been paid on such tangible personal property.

(j) The tax imposed by the provisions of this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and the tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed hereunder and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner shall prescribe, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement or who willfully falsifies any such statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer, or semitrailer in this state and does not register it for operation on the highways of this state within twenty days of the purchase thereof, the tax imposed by the provisions of this section shall immediately thereafter be paid by the purchaser to the county treasurer. The county treasurer shall report and remit the tax so collected to the Tax Commissioner at such times as the Tax Commissioner may require by rule and regulation. The county treasurer shall deduct and withhold for the use of the county general fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by

the provisions of this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by the provisions of this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability is not extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to subdivision (b) of this subsection is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting tangible personal property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all

persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. Such collectors of the use tax shall deduct and withhold from the amount of taxes collected three per cent of the first five thousand dollars remitted each month and one per cent of all amounts in excess of five thousand dollars remitted each month as reimbursement for the cost of collecting the tax, but such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that tangible personal property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) It shall be further presumed, in the absence of evidence to the contrary, that tangible personal property shipped or brought to this state by the purchaser after June 1, 1967, was purchased from a retailer on or after that date for storage, use, or other consumption in this state.

(g)(i) Except as provided in subdivisions (g)(ii) and (g)(iii) of this subsection, when a person purchases tangible personal property in another state, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country with the intent of using such property in such other state, commonwealth, territory, possession, or country and such property is actually used in the other state, commonwealth, territory, possession, or country for its intended purpose, the tangible personal property shall

not be subject to tax in this state.

(ii) Subdivision (g)(i) of this subsection shall only apply to a motor vehicle, trailer, or semitrailer as defined in section 60-301 when it is licensed for operation on the highways of the other state, commonwealth, territory, possession, or country prior to being brought into this state.

(iii) Subdivision (g)(i) of this subsection shall not apply to an aircraft which is brought into this state within one year of purchase and (A) is regularly based within this state or (B) more than one half of the aircraft's operating hours are within this state.

For purposes of subdivision (g)(iii) of this subsection, operation of the aircraft, except that if a person purchased tangible personal property, other than airplanes, in another state with the intent of using the property in the other state and such property is used in the other state for the purpose for which it was purchased, which use shall not include storage or the preparation of the property for use, the presumption shall be that the tangible personal property was not purchased for use in the State of Nebraska as long as the property brought into this state is stored, used, or otherwise consumed by the person previously using it in the other state.

If a person purchases an airplane and such airplane is ultimately stored or used by such person in this state for the greater portion of a year, the presumption shall be that the airplane was intended for use in the State of Nebraska. Use tax shall be due the State of Nebraska if (i) the person did not pay sales tax at the time of purchase of the airplane and (ii) the airplane was purchased by the person within three hundred sixty-five days prior to the first date after which the airplane was stored or used in this state for the greater portion of a year. Such storage or use shall not include storage or use in the State of Nebraska for the purpose of maintenance, repair, or fabrication with subsequent removal from this state upon completion of such maintenance, repair, or fabrication shall not be considered operating hours.

Sec. 15. That section 77-2704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use,

or other consumption in this state of the following:

(a) Tangible personal property, the gross receipts from the sale, lease, or rental of which or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state;

(b)(i) Aircraft fuel as defined under Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed, or exempted under Chapter 66, article 4, special fuels as defined, taxed, or exempted for use on the highways under Chapter 66, article 6, and special fuels used to provide motive power for railroad rolling stock;

(c) Tangible personal property used for the performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1)(g) of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, except that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin, prosthetic devices, and oxygen and any equipment which concentrates oxygen for a patient's use sold under a doctor's prescription for aid in human respiration;

(g)(i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private,

shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is shipped to a point outside this state, pursuant to when the contract of sale, by is expressly or impliedly contingent upon delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. Such exemption shall include the amount charged for fabrication of tangible personal property furnished by the customer which is fabricated in this state and then shipped by the retailer performing the fabrication to a point outside of this state. This shall also include the gross receipts from sales of tangible personal property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i)(i) 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, or intermediate care 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.

(ii) Any organization listed in subdivision (i)(i) of this subsection 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.

(iii) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents must be in writing and occur prior to purchasing having any tangible personal property incorporated into 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 incorporated into the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(iv)(A) Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any institution enumerated in this subdivision (i)(i) of this subsection which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon.

(B) 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 tangible personal property physically incorporated into the construction, improvement, or repair;

(j) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than fifty per cent of the amount purchased is for use directly in processing, manufacturing, or refining of tangible personal property, in irrigation, farming, or

the generation of electricity, or by any hospital;

(k) The use of coin-operated machines used for laundering and cleaning;

(l)(i) 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, for use in a governmental capacity 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.

(ii) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into 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 incorporated into the construction, improvement, or repair of a project for the state or a governmental unit;

(m) The entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the Veterans' Administration of the United States or the Department of Social Services for a disabled person. If the amount contributed is less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed;

(n) The sale and purchase, by subscription, of any magazine or journal that is issued at average intervals not exceeding once each month;

(o) Sales and purchases of semen for use in ranching, farming, commercial, or industrial uses;

(p) Any organization listed in subdivision (i) of this subsection or any governmental unit listed in subdivision (l) of this subsection, except the state, which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to purchasing tangible personal property to be incorporated into 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 tangible personal property physically incorporated into the construction, improvement, or repair;

(q) Food or food products for human consumption which are eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to regulations in effect on October 1, 1983, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. As used in this subdivision, food does not include meals prepared for immediate consumption on or off the premises of the retailer and does not include foods sold through vending machines; and

(r) Tangible personal property, except meals for human consumption, sold by parent-booster clubs, parent-teacher associations, parent-teacher student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(a) 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

(b) The storage, use, or consumption of tangible personal 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.

(4) If any person who causes tangible personal property to be brought into this state has already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only

between the rate imposed by section 77-2703 and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by the Nebraska Revenue Act of 1967. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

(6) There is exempted from the computation of the amount of sales and use taxes imposed by the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

(7) When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on tangible personal property actually incorporated into the project outside of the United States or its territories or possessions.

(8) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed price contract, the contractor may apply to the Department of Revenue for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the materials incorporated into the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed price contract, the contractor shall pay to

the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars.

Sec. 16. That section 77-2708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner may shall by rule and regulation permit or require quarterly or annual reports and tax payments from sellers, retailers, or purchasers as the case may be who have small tax liabilities, but no such reports or payments may be permitted or required when the tax liability exceeds three hundred dollars in any quarter or nine hundred dollars in any year depending on their yearly tax liability. Annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than twelve hundred dollars, and monthly returns shall be required if their yearly liability is twelve hundred dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer. Such rules and regulations

may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten per cent of the amount paid, a penalty of fifty per cent of the unpaid amount shall be imposed.

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

(iii) Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer

shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) The taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty of forfeiture of the collection fee allowed pursuant to subdivision (d) of this subsection or five dollars, whichever is greater.

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

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or is subject to section 77-27,186, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim

therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, assignee, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

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

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. If the Tax Commissioner has neither allowed nor disallowed a claim within such one hundred eighty days, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

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

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and

unrequested payment in excess of actual tax liability or a refund under section 77-27,186, no interest shall be allowed when such excess is refunded or credited.

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

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought within one year from the date of refund or credit in the name of the state in a court of competent jurisdiction in the county in which the taxpayer involved is located.

(j) The action shall be tried in the county in which the taxpayer involved is a resident unless the court orders a change of place of trial.

(k) The Attorney General shall prosecute the action provided for in subdivision (i) of this subsection, and the provisions of state law and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(l) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on: (i) Sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes. If such accounts are thereafter collected by the retailer, contractor, or repairperson, a tax shall be paid upon the amount so collected; or (ii) the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

Sec. 17. That section 77-2711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2711. (1)(a) The Tax Commissioner shall enforce sections 77-2702 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

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

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority

to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

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

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

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

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

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

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular

thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General or other legal representative of the state of the reports or returns of any taxpayer when information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency, (d) the furnishing of any information to the United States government or to states allowing similar privileges to the Tax Commissioner, or (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04.

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

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) In all proceedings under the Nebraska

Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act, but may not waive the minimum interest on delinquent taxes specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

Sec. 18. That section 77-2714, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2714. Any term used in sections 77-2714 to 77-27,124 shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States shall mean the provisions of the Internal Revenue Code of ~~1954~~ 1986, and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, as the same may be or become effective, at any time or from time to time, for the taxable year. Any reference to either the Internal Revenue Code of 1954, the Internal Revenue Code of 1986, or the Internal Revenue Code shall mean and include a reference to the other. All other references contained within sections 77-2714 to 77-27,124 refer to income tax unless the contrary appears. Any organization to the extent that it is exempt from income taxes under the laws of the United States shall be exempt under the provisions of the Nebraska Revenue Act of 1967.

Sec. 19. That section 77-2715, Reissue Revised Statutes of Nebraska, 1943, as amended by section 5, Legislative Bill 773, Ninetieth Legislature, First Session, 1987, 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 no income tax liability under the Internal Revenue Code of 1986 and who has additions to adjusted gross income under section 77-2716 of less than five thousand dollars shall not have an individual income tax liability under the Nebraska Revenue Act of 1967.

(2) The tax for each resident individual shall be a percentage of such individual's federal adjusted

gross income as modified in section 77-2716 and section 10, Legislative Bill 773, Ninetieth Legislature, First Session, 1987, plus a percentage of the federal alternative minimum tax, the federal tax on premature individual retirement account distributions, and the federal tax on lump-sum distributions of pensions. The additional taxes shall be recomputed to take into account any adjustments required by the Nebraska Revenue Act of 1967. The federal credit for prior year minimum tax, after recomputing the adjustments 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 multiplying the liability to this state for a resident individual with the same total income 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 section 17 of this act 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) A refund shall be allowed to the extent that the income tax paid by the individual for the taxable year exceeds the income tax payable, except that no refund shall be made in any amount less than two dollars.

Sec. 20. That section 77-2716, Reissue Revised Statutes of Nebraska, 1943, as amended by section 9, Legislative Bill 773, Ninetieth Legislature, First Session, 1987, be amended to read as follows:

77-2716. (1) The following adjustments to federal adjusted gross income or, for corporations, 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 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;

(c) There shall be added the total dividends and other income received from a regulated investment company to the extent excluded for federal income tax purposes, except that when a regulated investment company has reported to the recipient that as of the end of each quarter of the tax year of the company at least eighty per cent of its total assets were (i) obligations described in subdivision (a) of this subsection, the total dividends and other income may be excluded or (ii) obligations described in subdivision (b) of this subsection and obligations issued under the laws of Nebraska that are exempt for federal income tax purposes, the dividends and other income may be excluded to the extent they are attributable to obligations issued under the laws of Nebraska that are exempt for federal income tax purposes; and

(d)(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, 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 or 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, 1988, the amount of any state income tax refund to the extent such refund is included in federal adjusted gross income.

(4) Federal adjusted gross income shall be modified to exclude 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 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, 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.

Sec. 21. That section 77-2717, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2717. (1) The tax imposed on, 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 and all of the trust's income is derived from sources in this state. 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 ten per cent of 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. 22. That section 77-2733, Reissue Revised Statutes of Nebraska, 1943, as amended by section 16, Legislative Bill 773, Ninetieth Legislature, First Session, 1987, be amended to read as follows:

77-2733. (1) The income of a nonresident individual derived from sources within this state shall be the sum of the following:

(a) The net amount of items of income, gain, loss, and deduction entering into his or her federal taxable income which are derived from or connected with sources in this state including (i) his or her distributive share of partnership income and deductions determined under section 77-2729, (ii) his or her share of small business corporation income determined under the provisions of section 77-2734.01, and (iii) his or her share of estate or trust income and deductions determined under section 77-2725; and

(b) The portion of the modifications described in section 77-2716 ~~and section 10 of this act~~ which relates to income derived from sources in this state, including any modifications attributable to him or her as a partner.

(2) Items of income, gain, loss, and deduction derived from or connected with sources within this state

are those items attributable to:

(a) The ownership or disposition of any interest in real or tangible personal property in this state; and

(b) A business, trade, profession, or occupation carried on in this state.

(3) Income from intangible personal property including annuities, dividends, interest, and gains from the disposition of intangible personal property shall constitute income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(4) Deductions with respect to capital losses, net long-term capital gains, and net operating losses shall be based solely on income, gains, losses, and deductions derived from or connected with sources in this state, under rules and regulations to be prescribed by the Tax Commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment under rules and regulations to be prescribed by the Tax Commissioner.

(6) Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident individual shall not constitute income derived from sources within this state.

(7) Compensation paid by a resident estate or trust for services by a nonresident fiduciary shall constitute income derived from sources within this state.

(8) Compensation paid by a business, trade, or profession shall constitute income derived from sources within this state if:

(a) The individual's service is performed entirely within this state;

(b) The individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state;

(c) The individual's service is performed without this state, but the service performed without this state is related to the transactions and activity of the business, trade, or profession carried on within

this state; or

(d) Some of the service is performed in this state and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Sec. 23. That section 77-2734.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2734.01. (1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code shall include in their income, to the extent includable in federal gross income, their proportionate share of such corporation's income.

(2) Nonresidents of Nebraska who are shareholders of such corporations shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's Nebraska income, as determined under the provisions of sections 77-2734.05 to 77-2734.15.

(3) The shareholder shall execute and forward to the corporation before the filing of the corporation's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's Nebraska return for such taxable year.

(4) In the absence of the nonresident shareholder's executed agreement being attached to the Nebraska small business corporate return, the corporation shall remit with the return an amount equal to ten per cent of the nonresident shareholder's share of the corporation's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder.

(5) The Tax Commissioner may allow a nonresident individual shareholder to not file a Nebraska income tax return if the nonresident individual shareholder's only source of Nebraska income was his or her share of the small business corporation'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 small business corporation has remitted the amount required by

subsection (4) of this section on behalf of such nonresident individual shareholder. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder.

(6) A small business corporation return shall be filed only if one or more of the shareholders of the corporation are not residents of the State of Nebraska or if such corporation has income derived from sources outside this state.

Sec. 24. That section 77-2753, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 284, Ninetieth Legislature, First Session, 1987, be amended to read as follows:

77-2753. (1) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (4) of this section which are taxable under ~~the provisions of~~ the Nebraska Revenue Act of 1967 to a resident or nonresident any individual shall deduct and withhold from such wages for each payroll period and from such payments paid on or after March 1, 1987, an amount equal to twenty-one per cent of the amount of federal withholding until such withholding rate is changed by rule and regulation adopted and promulgated by the Tax Commissioner. In determining the withholding rate, the Tax Commissioner shall compute the rate in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under ~~the provisions of~~ such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner.

(2)(a) Every payor making payment for personal services performed or to be performed within this state to a nonresident individual who is not subject to withholding on such payment under the Internal Revenue Code, or a corporation described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection.

(b) For any payment or payments for the same

service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments pursuant to this subsection shall be three and fifteen-hundredths per cent, and for all other payments, the percentage shall be five per cent.

(c) For any corporation that receives compensation for personal services in this state and of which all or substantially all of the shareholders are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967. For purposes of this section, an employee or payee shall be entitled to the same number of withholding exemptions as the number of withholding exemptions to which he or she is entitled for federal income tax withholding purposes. An employer or payor may rely upon the number of federal withholding exemptions claimed by the employee.

(3) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations prescribed by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(4) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 1954, as amended, and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. section 3405 or 3406, (b) payments of gambling winnings, or (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments.

Sec. 25. That section 77-2761, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2761. An income tax return with respect to the income tax imposed by the provisions of the Nebraska Revenue Act of 1967 shall be made by the following:

(1) Every resident individual who is required to file a federal income tax return for the taxable year;

(2) Every nonresident individual who has income from sources in this state;

(3) Every resident estate or trust which is required to file a federal income tax return except a simple trust not required to file under subsection (2) of section 77-2717;

(4) Every nonresident estate or trust which has taxable income from sources within this state; and

(5) Every corporation or any other entity taxed as a corporation under the Internal Revenue Code which is required to file a federal income tax return, except the small business corporations not required to file under subsection (6) of section 77-2734.01; and

(6) Every partnership having one or more nonresident partners or with taxable income derived from sources outside the state.

Sec. 26. That section 77-2768, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2768. The income tax return required by the provisions of the Nebraska Revenue Act of 1967 shall be filed on or before the dates prescribed by the laws of the United States for filing federal income tax returns. A person required to make and file an income tax return shall, without assessment, notice, or demand, pay any tax due thereon to the Tax Commissioner on or before the date fixed for filing such return, except that a tax amount due which is two dollars or less need not be remitted. The Tax Commissioner shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant hereto and for the payment of any tax.

Sec. 27. That section 77-2772, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2772. The Tax Commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income returns, or portions thereof as filed with the Internal Revenue Service, and determinations, except that such requirements may be waived if such information can be received from another state or federal agency. The Tax Commissioner may

require by regulation or notice the making of such returns, rendering of such statements, or keeping of such records as the Tax Commissioner may deem sufficient to show whether or not there is liability for tax or for the collection of tax.

Sec. 28. That section 77-2773, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2773. Every partnership having a resident nonresident partner or having any part of its income derived from sources in this state outside the State of Nebraska, determined in accordance with the applicable rules of section 77-2733 as in the case of a nonresident individual, shall make a return for the taxable year setting forth such pertinent information as the Tax Commissioner may prescribe. Such information may include, but shall not be limited to, all items of income, gain, loss, and deduction, and the names and addresses of the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual, and such other pertinent information as the Tax Commissioner may prescribe by regulations and instructions. Such return shall be filed on or before the date prescribed for filing a federal partnership return. For purposes of this section, taxable year shall mean a year or period which would be a taxable year of the partnership if it were subject to tax under the provisions of the Nebraska Revenue Act of 1967.

Sec. 29. That section 77-27,175, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,175. As used in the Tax Refund Setoff Act, unless the context otherwise requires, agency shall mean the Department of Revenue, any other body in the executive branch of state government, any political subdivision of this state, or the federal Internal Revenue Service.

Sec. 30. That section 77-27,180, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,180. Within thirty days of a transfer pursuant to section 77-27,179, the Department of Revenue shall notify the person, and his or her spouse in the case of a joint return, of the transfer. If an agency, other than the Department of Revenue, or the Commissioner of Internal Revenue is involved with the transfer, a copy of the notice and of any correspondence

shall be sent to the ~~commissioner~~ each involved party. The notice shall state:

- (1) The basis for the claim to the refund;
- (2) The ~~intention to apply~~ application of the refund or a portion thereof against the delinquent tax liability;
- (3) That the person has the opportunity to contest the validity and amount of the delinquent tax liability by applying to the agency requesting the setoff ~~Commissioner of Internal Revenue~~ in writing for a hearing and the time period after the date of the mailing of the notice within which the appeal must be filed;
- (4) The name and mailing address of the agency to which the application for a hearing must be sent;
- (5) The effect of a failure to apply in writing for a hearing within the prescribed period; and
- (6) In the case of a joint return (a) the presumption provided in section 77-27,178, (b) that the presumption may be rebutted, (c) whether both or just one of the spouses has a delinquent tax liability, and (d) the percentage of the refund which the agency attributes to the spouse or spouses with the delinquent tax liability.

Sec. 31. That section 77-3902, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3902. For purposes of the Uniform State Tax Lien Registration and Enforcement Act:

(1) Appropriate filing officer shall mean the clerk of any county in which personal property belonging to the taxpayer is situated resides, in which the principal office of the corporation is located, or in which the registered agent is located or the register of deeds of any county in which real property belonging to the taxpayer is situated; and

(2) Any reference to tax, taxes, fee, or tax program shall be construed to include any tax or fee which is imposed by the laws of this state and administered or collected and enforced by the Tax Commissioner, unless a tax lien is otherwise provided for by law.

Sec. 32. That section 77-3903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3903. (1) When a notice of a lien provided for in the Uniform State Tax Lien Registration and Enforcement Act is filed, the appropriate filing officer shall enter the notice in the alphabetical state tax

lien index, showing on one line the name and residence of the person liable named in such notice, the social security number or the federal tax identification number of such person, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount due. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained. The appropriate filing officer, upon the day of receipt of a lien filed pursuant to the Uniform State Tax Lien Registration and Enforcement Act, shall transmit to the Secretary of State the information required by subsection (2) of section 9-414 of the Uniform Commercial Code.

(2) The fee for filing, releasing, continuing, subordinating, or terminating such liens shall be as prescribed in section 9-403 of the Uniform Commercial Code. The retention and distribution of such fees shall be as provided in subsection (9) of section 9-403 of the Uniform Commercial Code.

(3) The appropriate filing officer shall bill the Tax Commissioner on a monthly basis for fees for documents filed with such officer. No payment of any fee shall be required at the time of filing any such lien document.

Sec. 33. That section 77-3904, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3904. (1) If any person liable to pay any tax or fee under any tax program administered by the Tax Commissioner neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax and such additional costs that may accrue, shall be a lien in favor of the State of Nebraska upon all property and rights to property, whether real or personal, belonging to then owned by such person or acquired by him or her thereafter and prior to the expiration of the lien. Unless another date is specifically provided by law, such lien shall arise at the time of the assessment and shall remain in effect (a) for three years from the time of the assessment if the notice of lien is not filed for record with the appropriate filing officer, (b) for five years from the time of filing for record with the appropriate filing officer, or (b) (c) until such amounts have been paid or a judgment against such person arising out of such liability has been satisfied or has become unenforceable by reason of lapse of time, unless

a continuation statement is filed prior to the lapse.

(2) If any tax, including any interest, penalty, or addition to such tax, imposed under any tax program administered by the Tax Commissioner is not paid when due, the The Tax Commissioner may, within three years after the tax is due time of assessment, file for record with the appropriate filing officer a notice of lien specifying the year the tax was due, the tax program, and the amount of the tax and any interest, penalty, or addition to such tax that are due. Such notice shall contain the name and last-known address of the taxpayer, the taxpayer's social security number or federal identification number, the Tax Commissioner's serial number, and a statement to the effect that the Tax Commissioner has complied with all provisions of the law for the particular tax program which he or she administers in the determination of the amount of the tax and any interest, penalty, and addition to such tax required to be paid. From the time of filing for record, the amount set forth in such notice shall constitute a lien upon all real or personal property and the rights to real or personal property then owned by the taxpayer and upon all real or personal property and the rights to real or personal property acquired by him or her thereafter and before the lien expires.

(3) A lien imposed pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been filed by the Tax Commissioner with the appropriate filing officer. In the case of any prior mortgage on real property or secured transaction covering personal property so written as to secure a present debt and future advances, the lien provided in the act, when notice thereof has been filed with the appropriate filing officer, shall be subject to such prior lien unless the Tax Commissioner has notified the lienholder in writing of the recording of such tax lien, in which case the lien of any indebtedness thereafter created under such mortgage or secured transaction shall be junior to the lien provided for in the act.

(4) The lien may, within five years from the date of filing for record of the notice of lien with the appropriate filing officer, be extended by filing for record a continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original notice shall be continued for five years after the last date to which the filing was effective. After such period the notice shall lapse in the manner

prescribed in subsection (1) of this section unless another continuation statement is filed prior to such lapse.

(5) When a termination statement of any tax lien issued by the Tax Commissioner is filed in the office where the notice of lien is filed, the appropriate filing officer shall enter such statement with the date of filing in the state tax lien index where notice of the lien so terminated is entered and shall file the termination statement with the notice of the lien.

(6) The Tax Commissioner may at any time, upon request of any party involved, release from a lien all or any portion of the property subject to any lien provided for in the Uniform State Tax Lien Registration and Enforcement Act or subordinate a lien to other liens and encumbrances if he or she determines that (a) the tax amount and any interest, penalties, and additions to such tax have been paid or secured sufficiently by a lien on other property, (b) the lien has become legally unenforceable, (c) a surety bond or other satisfactory security has been posted, deposited, or pledged with the Tax Commissioner in an amount sufficient to secure the payment of such taxes and any interest, penalties, and additions to such taxes, or (d) the release, partial release, or subordination of the lien will not jeopardize the collection of such taxes and any interest, penalties, and additions to such tax.

(7) A certificate by the Tax Commissioner stating that any property has been released from the lien or the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has in fact been released or the lien has been subordinated pursuant to the certificate.

Sec. 34. That section 77-3905, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-3905. (1) At any time within three years after any amount of tax to be collected under any tax program administered by the Tax Commissioner ~~becomes due and payable is assessed~~ or within five years after the last filing for record as set forth in the Uniform State Tax Lien Registration and Enforcement Act, the Tax Commissioner may bring an action in the courts of this state, any other state, or the United States in the name of the people of the State of Nebraska to collect the delinquent amount together with penalties, any additions to such tax, costs, and interest.

(2) The Attorney General shall prosecute the

action, and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(3) In the action, a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

(4) In the action, a certificate by the Tax Commissioner showing the delinquency shall be prima facie evidence of the determination of such tax or the amount of such tax, the delinquency of the amounts set forth, and of the compliance by the Tax Commissioner with all provisions of the applicable tax program which he or she administers in relation to the computation and determination of the amounts set forth.

(5) The tax amounts required to be paid by any person under any tax program administered by the Tax Commissioner together with any interest, penalties, and additions to such tax shall be satisfied first in any of the following cases: When the person is insolvent; when the person makes a voluntary assignment of his or her assets; when the estate of the person in the hands of executors, personal representatives, administrators, or heirs is insufficient to pay all the debts due from the deceased; or when the estate and effects of an absconding, concealed, or absent person required to pay any amount under any tax program administered by the Tax Commissioner are levied upon by process of law.

(6) Any tax which by law must be deducted and withheld by an employer or payor or is collected by a retailer or any other designated person as agent for the State of Nebraska on any transaction governed by a tax program administered by the Tax Commissioner shall constitute a trust fund in the hands of the employer, payor, or retailer or such other designated person and shall be owned by the state as of the time the tax is deducted and withheld or is owing to the employer, payor, or retailer or such other designated person.

Sec. 35. (1) Any corporate officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such

taxes, any corporate officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes shall:

(a) Pay the full amount of the taxes or the specified minimum amount and post a bond for the remainder; and

(b) File a claim for refund for the amount so paid.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 77-27.135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the revenue laws of this state which are administered by the Tax Commissioner; and

(b) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Sec. 36. Sections 37 to 41 of this act shall apply to any tax collected by the Tax Commissioner to the extent that specific refund provisions have not been previously enacted. If there is any conflict between any previously enacted refund statutes and the provisions of sections 37 to 41 of this act, the previously enacted statutes shall control.

Sec. 37. When any person believes that he or she has made payment of a tax or any penalty or interest that is in excess of his or her tax liability for any reason, he or she may file a claim with the Tax Commissioner for a refund of such overpayment.

Sec. 38. (1) A claim for a refund shall be in writing and filed with the Tax Commissioner within three years of the date (a) on which the overpayment was made or (b) on which the tax was required to be paid, whichever is later.

(2) The claim shall state the reason for the overpayment and the amount of refund or credit requested.

(3) The Tax Commissioner may prescribe the necessary forms for the filing of a claim for refund.

(4) An amended return reducing the amount of the liability and containing an explanation of the reduction shall constitute a refund claim.

Sec. 39. (1) Pursuant to this section, the Tax Commissioner may approve the claim for refund, in whole or in part.

(2) The Tax Commissioner shall grant a hearing prior to taking any action on a claim for a refund if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim.

(3) The Tax Commissioner shall notify the taxpayer in writing of the denial of his or her claim for a refund. The notification shall be made by either certified or registered mail.

(4) Upon approval, the Tax Commissioner shall cause:

(a) A refund to be paid from the fund to which the tax was originally deposited;

(b) A credit to be established against the subsequent tax liability of the taxpayer if the amount of the credit does not exceed twelve times the average monthly tax liability of the taxpayer; or

(c) A credit to be applied to any other existing liability for any other tax collected by the Tax Commissioner.

(5) The payment of the claim for a refund, the allowance of a credit, or the application of the refund to an existing balance, in whole or in part, shall be considered a final decision of the Tax Commissioner for the purposes of the Administrative Procedure Act.

(6) Interest shall be paid from the date of overpayment or the date the tax was required to be paid, whichever is later, until the date the overpayment is refunded, credited, or applied.

(7) Interest shall be paid at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

Sec. 40. The denial, in whole or in part, of a claim for refund shall be considered a final action of the Tax Commissioner and shall be subject to judicial review as provided in the Administrative Procedure Act.

Sec. 41. (1) Any refund that is erroneously paid shall be considered an underpayment of the tax liability and may be assessed and collected in the same

manner as any other underpayment of the tax required to be paid.

(2) It shall be an underpayment as of the date of the payment of the refund, the date the refund was applied to another liability, or the date the credit was used by the taxpayer to satisfy a subsequent tax liability.

Sec. 42. The Tax Commissioner may use electronic filing of returns and electronic fund transfers to collect the taxes imposed by Chapter 77 or to pay any refunds allowed under Chapter 77. The use of electronic filing of returns and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of payment were used. The document produced during the electronic filing of a taxpayer's information to the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in electronic transmission.

Sec. 43. Any taxpayer who is required to pay the estimated tax for the taxable year under section 77-2769 may elect to file his or her return electronically and to make payments or receive refunds using electronic fund transfers. The Tax Commissioner by rule and regulation shall prescribe the dates upon which the estimated individual income tax payments are to be filed. The due date of the taxpayer's first payment of estimated tax shall fall on or after the fifteenth day of the fourth month and on or before the fifteenth day of the fifth month of the taxpayer's taxable year.

Sec. 44. There is hereby created a fund to be known as the Miscellaneous Services Revolving Fund to which shall be credited all money received by the Department of Revenue for services performed and billed to other agencies or persons. All reimbursements to the department for such services shall be credited to the fund and expenditures therefrom shall be made only when such funds are available. The Department of Revenue shall only bill for the actual amount expended in performing such services.

Any money in the Miscellaneous Services Revolving Fund shall be administered by the Department of Revenue and any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 45. Notwithstanding the provisions of sections 77-1209, 77-1209.02 and 77-1209.03, (1) all improvements which would be assessed as real property

except for the fact that they are put on leased lands or leased public lands and (2) the leasehold interest of each lessee of leased lands or leased public lands shall be assessed to the owner thereof as real property if a portion of the ad valorem tax thereon has been allocated and pledged pursuant to subdivision (2) of section 18-2147 and section 18-2150.

Sec. 46. Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person or taxpayer any tax credit or exemption for the construction of a facility or the employment of people for the disposal in Nebraska of low-level radioactive waste for which a license is required pursuant to the Low-Level Radioactive Waste Disposal Act.

Sec. 47. Sections 15, 17 to 23, 25 to 30, 35, and 48 of this act shall become operative for all taxable years beginning or deemed to begin on or after January 1, 1987. Sections 12 to 14, 16, 31 to 34, 36 to 44, and 49 of this act shall become operative on October 1, 1987. Sections 24 and 51 of this act shall become operative on the first day of the month which is at least ten days after the effective date of this act. The remaining sections of this act shall become operative on their effective date.

Sec. 48. That original sections 77-2704, 77-2711, 77-2714, 77-2717, 77-2734.01, 77-2761, 77-2768, 77-2772, 77-2773, 77-27,175, and 77-27,180, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2715, 77-2716, and 77-2733, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 5, 9, and 16, respectively, Legislative Bill 773, Ninetieth Legislature, First Session, 1987, are repealed.

Sec. 49. That original sections 77-2701, 77-2702, 77-2703, 77-2708, and 77-3902 to 77-3905, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 50. That original sections 28-1107, 66-401, 66-418.03, 66-419, 66-420, 66-431, 66-432, and 66-637, Reissue Revised Statutes of Nebraska, 1943, and sections 9-262, 9-352, and 9-434, Revised Statutes Supplement, 1986, are repealed.

Sec. 51. That original section 77-2753, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 284, Ninetieth Legislature, First Session, 1987, is repealed.

Sec. 52. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.