

CORRECTED COPY

## LEGISLATIVE BILL 1

Approved by the Governor November 12, 1992

Introduced by Warner, 25; Baack, 47; Hall, 7; Landis, 46, at the request of the Governor

AN ACT relating to revenue and taxation; to amend sections 21-330, 21-20,139, 45-104.01, 57-710, 57-717, 57-919, 70-1020, 74-1320, 76-711, 76-719.01, 77-918, 77-2618, 77-2709, 77-2769.01, and 77-4022, Reissue Revised Statutes of Nebraska, 1943, and sections 32-1607, 66-724, 77-1510, 77-1735, 77-1736.07, 77-1775.01, 77-2102, 77-2106.01, 77-2701, 77-2702.03, 77-2703, 77-2704.13, 77-2708, 77-2708.01, 77-2711, 77-2716.02, 77-2734.17, 77-2788, 77-2792, 77-2794, 77-4312, 77-4401, and 81-2404, Revised Statutes Supplement, 1992; to provide a corporate fee for 1993; to change interest rate provisions; to eliminate, change, and provide refund provisions; to exempt agricultural machinery and equipment from the sales and use tax; to change collection fees for sales and use taxes; to change an energy source and fuel tax exemption; to provide for a depreciation surcharge which is an excise tax and for a surcharge on corporations for tax year 1992; to provide for application of amounts paid in prior years to future liability; to change provisions relating to a fee on commercial fertilizers; to harmonize provisions; to provide severability; to repeal the original sections, and also section 77-1736.04, Revised Statutes Supplement, 1992; and to declare an emergency.

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

Section 1. That section 21-330, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-330. (1) For 1992 1993, in addition to the occupation tax imposed in sections 21-301 to 21-325, there is hereby levied on all corporations subject to the occupation tax and all corporations exempt from the occupation tax pursuant to section 21-321 an additional fee of one hundred fifty dollars per corporation to be levied and collected in the same manner as the occupation tax.

~~(2) For 1992, there shall be a special assessment of one hundred fifty dollars on all nonprofit corporations in Nebraska except corporations exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended. On January 1, 1992, the Secretary of State shall cause to be mailed by first class mail to the last named registered agent at~~

~~the last known address of each nonprofit corporation subject to Chapter 21, article 19, a notice stating that the fee of one hundred fifty dollars is to be paid on June 1, 1992, or that verification that the corporation is an exempt corporation pursuant to section 501(c)(3) of the Internal Revenue Code, as amended, should be provided by such date. If the fee is not paid or the verification is not provided by such date, a delinquent corporation shall be automatically dissolved for the failure to so pay or provide and the Secretary of State shall dissolve the corporation and make such entry and showing upon the records of his or her office. The fee shall be levied and collected in the same manner as provided in Chapter 21, article 19.~~

(2) The Secretary of State may credit the fee paid by a corporation pursuant to this section for 1992 against the fee imposed by this section for 1993. Any corporation not subject to the fee imposed by this section for 1993 and which paid the fee or assessment imposed for 1992 may file a claim for refund for the fee or assessment with the Secretary of State. Upon approval of the claim, the Secretary of State shall issue a refund of the fee or assessment paid for 1992.

Sec. 2. That section 21-20,139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-20,139. Any such corporation; seeking to renew or revive its corporate existence under the provisions of sections 21-20,135 to 21-20,142; shall, in lieu of and in full satisfaction of all annual fees due the State of Nebraska:

(1) Pay to the Secretary of State, a sum equal to all annual fees due at the time such corporation was dissolved by law for nonpayment of such annual fees and failure to file a properly executed and signed report or expired by limitation or otherwise, plus a sum equal to all annual fees per year which would otherwise have been due for the years such corporation was dissolved for nonpayment of annual fees and failure to file a properly executed and signed annual report or expired by limitation or otherwise; and

(2) ~~file~~ File with the Secretary of State a properly executed and signed report for the current year.

In addition to paying each year's delinquent annual fees and filing a properly executed and signed report for the current year, such corporation shall pay an additional penalty derived by multiplying the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~, times the amount of the annual fee required to be paid by it for each year that such corporation was dissolved for nonpayment of such annual fees and failure to file a properly executed and signed annual report or expired by limitation or otherwise.

Sec. 3. That section 32-1607, Revised Statutes Supplement, 1992, be amended to read as follows:

32-1607. (1) Any candidate who receives public funds pursuant to section 32-1606 and fails to comply with the spending limitation prescribed in section 32-1604 shall repay the amount expended in excess of the spending limitation to the state within six months after the receipt of the public funds by the candidate.

(2) Any candidate described in subsection (1) of this section who exceeds the spending limitation by five percent or more shall be deemed to be in willful and knowing violation of section 32-1604. Any person willfully and knowingly violating such section shall be guilty of a Class II misdemeanor and shall within six months after the violation repay the entire amount of public funds received with interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~; from the date of the violation.

(3) Any candidate who swears to the truth of an affidavit filed pursuant to section 32-1604 when the candidate knows or should have known that the affidavit contains any material element which is false shall be guilty of a Class IV felony.

(4) Any candidate who willfully, knowingly, or intentionally underestimates his or her maximum expenditures by five percent or more in an affidavit filed pursuant to section 32-1604 shall be guilty of a Class II misdemeanor.

(5) Any other violation of the Campaign Finance Limitation Act, not otherwise covered by subsections (1) through (4) of this section, shall be a Class IV misdemeanor.

(6) The expenditure of public funds received pursuant to section 32-1606 shall not be a violation of the spending limitation.

Sec. 4. That section 45-104.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-104.01. Unless otherwise specifically provided, the interest rate assessed on delinquent payments of any taxes or special assessments owing to ~~the State of Nebraska or any political subdivision thereof~~ of the State of Nebraska shall be assessed at a rate of fourteen percent per annum.

Sec. 5. (1) Unless otherwise specifically provided, the interest rate assessed on delinquent payments of any taxes or special assessments owing to the State of Nebraska shall be assessed at a rate of fourteen percent per annum through December 31, 1992, and at the per annum rate determined pursuant to subsection (2) of this section after such date.

(2) Commencing January 1, 1993, the interest rate assessed pursuant to subsection (1) of this section shall be redetermined every other year. The rate shall be determined by the Tax Commissioner and shall be equal to the average short-term borrowing rate for the federal government during July of the previous year rounded to the nearest whole percentage point plus three percentage points. If the new rate does not increase or decrease the old rate by at least two percentage points, the old rate shall continue in effect.

(3)(a) The rate determined pursuant to subsection (2) of this section shall apply for the period from its effective date through the date of payment or up to the effective date of the succeeding new rate, whichever is earlier.

(b) Interest on taxes or special assessments shall be calculated using the different rates which are effective over the period of

delinquency.

(c) For any taxes or special assessments that were delinquent and unpaid on or before December 31, 1992, the interest rate shall be fourteen percent per annum through December 31, 1992.

(4) For any credits or refunds of taxes or special assessments on which interest is to be determined at the rate specified in this section, the calculation of interest shall use the same rates for the same periods that are used for interest on delinquent payments.

Sec. 6. That section 57-710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-710. The tax provided by ~~the provisions of~~ sections 57-701 to 57-714 shall become delinquent after the last day of each month as provided in section 57-704. Any such tax not paid within the time specified shall bear interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~; from the date of delinquency until paid, and such tax together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the delinquent taxes for each month, or part thereof, that the delinquency has continued, but in no event shall the penalty be more than twenty-five percent of the delinquent taxes. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest.

Sec. 7. That section 57-717, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-717. (1) The Tax Commissioner shall establish procedures to insure that all severance taxes which are due are paid in full and in a timely manner and shall undertake to insure that all oil and natural gas producing property classifications are current and correct.

(2) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof. In making a determination, the Tax Commissioner may offset overpayments for any period, together with interest on the overpayments, against underpayments for any period, against penalties, and against interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in this section.

(3) If any person fails to make a return; the Tax Commissioner shall make an estimate of the amount of severance tax due. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come

into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof. One or more determinations may be made for one or more than one period.

(4) The amount of the determination of any deficiency, exclusive of penalties, shall bear interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ from the last day of the month following the period for which the amount should have been returned until the date of payment.

(5) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade Chapter 57, article 7, or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination shall be added thereto.

(6) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

Sec. 8. That section 57-919, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

57-919. (1) All money collected by the Tax Commissioner or the commission or as civil penalties under sections 57-901 to 57-921 shall be remitted to the State Treasurer for ~~deposit in credit to a special fund to be known as the Oil and Gas Conservation Fund.~~ Expenses incident to the administration of such sections ~~57-901 to 57-921~~ shall be paid out of the ~~Oil and Gas Conservation Fund fund.~~ Any money in the ~~Oil and Gas Conservation Fund fund~~ available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

(2) There is hereby levied and assessed on the value at the well of all oil and gas produced, saved, and sold or transported from the premises in Nebraska where produced a charge not to exceed four mills on the dollar. The commission shall by order fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as in its judgment the expenses chargeable against the Oil and Gas Conservation Fund may require, except that the amounts fixed by the commission shall not exceed the limit prescribed in this section. It shall be the duty of the Tax Commissioner to make collection of such assessments. The persons owning an interest, a working interest, a royalty interest, payments out of production, or any other interest in the oil and gas, or in the proceeds thereof, subject to the charge provided for in this section shall be liable to the producer for such charge in proportion to their ownership at the time of production. The producer shall, on or before the last day of the month next succeeding the month in which the charge was assessed, file a report or return in such form as prescribed by the commission and Tax Commissioner together with all charges due. In the event of a sale of oil or gas within this state, the first purchaser shall file this report or return together with any charges then due. If the final

filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. Such reports or returns shall be considered filed on time if postmarked before midnight of the final filing date. Any such charge not paid within the time herein specified shall bear interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~; from the date of delinquency until paid, and such charge together with the interest shall be a lien as provided in section 57-702. The Tax Commissioner shall charge and collect a penalty for the delinquency in the amount of one percent of the charge for each month or part of the month that the charge has remained delinquent, but in no event shall the penalty be more than twenty-five percent of the charge. The Tax Commissioner may waive all or part of the penalty provided in this section but shall not waive the interest. The person remitting the charge as provided in this section is hereby authorized, empowered, and required to deduct from any amounts due the persons owning an interest in the oil and gas or in the proceeds thereof at the time of production the proportionate amount of such charge before making payment to such persons. This subsection shall apply to all lands in the State of Nebraska, anything in section 57-920 to the contrary notwithstanding, except that there shall be exempted from the charge levied and assessed in this section the following: (a) The interest of the United States of America and the interest of the State of Nebraska and the political subdivisions thereof in any oil or gas or in the proceeds thereof; (b) the interest of any Indian or Indian tribe in any oil or gas or in the proceeds thereof produced from land subject to the supervision of the United States; and (c) oil and gas used in producing operations or for repressuring or recycling purposes. All money so collected shall be remitted to the State Treasurer for credit to the Oil and Gas Conservation Fund and shall be used exclusively to pay the costs and expenses incurred in connection with the administration and enforcement of sections 57-901 to 57-921.

Sec. 9. That section 66-724, Revised Statutes Supplement, 1992, be amended to read as follows:

66-724. All deficiencies determined by the department and any tax paid after the time provided shall accrue interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~, on such deficiency or late payment from the date such tax was due to the date of payment.

Sec. 10. That section 70-1020, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1020. In order to defray the expenses of the Nebraska Power Review Board, there shall be imposed upon each public power district, public power and irrigation district, electric membership association, electric cooperative company, and municipality having an electric distribution system or generation and distribution system, and also upon all registered groups of municipalities, an assessment each fiscal year in such sum as shall be determined by the board and approved by the Governor. The total of such assessments shall not exceed the expenses of

the board which may reasonably be anticipated for the fiscal year for which assessment is made and shall be apportioned among the various agencies in proportion to their gross income in the preceding calendar year. The board shall determine and certify such assessment to each supplier after approval of the board's budget by the Legislature and Governor. The supplier shall remit the amount of its assessment to the board within forty-five days after the mailing of the assessment. Any assessment not paid when due shall draw interest at a rate equal to the ~~maximum~~ rate of interest allowed per annum under section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature.~~ The proceeds of such assessment shall be ~~transmitted as received~~ remitted to the State Treasurer for ~~deposit in the state treasury to the credit of~~ to the Nebraska Power Review Fund, which fund is hereby created and which, when appropriated by the Legislature, shall be used to administer the powers granted to the Nebraska Power Review Board. Any money in the ~~Nebraska Power Review Fund~~ fund available for investment shall be invested by the state investment officer pursuant to ~~the provisions of~~ sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 11. That section 74-1320, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

74-1320. (1) There is hereby levied an excise tax on each railroad transporting freight in the State of Nebraska. Such tax shall be levied at the rate of seven and one-half cents for each train mile operated by such railroad in the state and one hundred dollars for each public grade crossing on the line of such railroad in the state. Such tax shall be independent of any assessment of costs for benefits received by the railroad from projects for the construction, rehabilitation, relocation, or modification of railroad grade separation facilities. The Department of Revenue shall collect the tax due pursuant to this section from each railroad transporting freight within the state.

(2) ~~Commencing March 1, 1983, and~~ On each March 1, ~~thereafter~~ each such railroad shall submit to the Department of Revenue a report of its total train miles operated within the state during the previous January 1 through December 31 and the number of public grade crossings on its line in the state at the close of the previous year. ~~Commencing March 1, 1983, all~~ All taxes shall be due on the date of reporting and shall be delinquent if not paid on a quarterly basis ~~commencing on~~ on April 1, 1983, and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature.~~

(3) As used in this section, train mile shall mean each mile traveled by a train in this state regardless of the number of cars in such train.

Sec. 12. That section 76-711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-711. The condemner shall not acquire any interest in or right to possession of the property condemned until he or she has

deposited with the court for the use of the condemnee the amount of the condemnation award in effect at the time the deposit is made. The condemner shall have sixty days from the date of the award of the appraisers to deposit with the court the amount of the award or the proceeding will be considered as abandoned. When the amount of the award is deposited with the court by the condemner, the condemner shall be deemed to have accepted the award unless he or she gives notice of appeal from the award of the appraisers pursuant to section 76-715. If the proceeding is abandoned, proceedings may not again be instituted by the condemner to condemn the property within two years from the date of abandonment.

If an appeal is taken from the award of the appraisers by the condemnee and the condemnee obtains a greater amount than that allowed by the appraisers, the condemnee shall be entitled to interest from the date of the deposit at the rate provided in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as provided by section 76-719.01. If an appeal is taken from the award of the appraisers by the condemner, the condemnee shall be entitled to interest from the date of deposit at the rate provided in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as agreed to by the condemnee as provided by section 76-719.01.

Upon deposit of the condemnation award with the court, the condemner shall be entitled to a writ of assistance to place him or her in possession of the property condemned and the condemnee shall be liable for diminution in the value of the property caused by the condemnee's purposeful removal of real or personal property not previously agreed to in writing by the condemner and condemnee from the condemned property.

Sec. 13. That section 76-719.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-719.01. Upon stipulation of the parties in interest, the county judge shall order that the amount stipulated by the parties; of the money deposited by the condemner in the county court; be paid forthwith for or on account of the damages the condemnee has sustained or will sustain by the appropriation of the property to the use of the condemner. When the money remaining on deposit after stipulated payment to the condemnee is five thousand dollars or more, the county court shall place such amount in a savings account of a bank or other financial institution or in interest-bearing obligations of the federal government. The condemner may submit to the court any preferences or suggestions it may have as to the manner and place of such deposit. The amount so deposited shall be insured by the Federal Deposit Insurance



Corporation or other federally chartered or guaranteed form of deposit insurance. The risk of loss of any funds so deposited shall be on the condemner. Interest accruing from such deposited funds shall be paid to the condemner.

If all the parties in interest waive the right of appeal, the county judge shall distribute the money deposited by the condemner forthwith in accordance with the award of the appraisers and as soon as deposited by the condemner. If the compensation finally awarded in respect to the property is less than the amount of the money so received by the condemnee, the court shall enter judgment against the condemnee for the amount that the condemnee has been overpaid, together with interest at the rate provided in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ compounded annually from the date of withdrawal.

Sec. 14. That section 77-918, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~77-918. For all taxable years commencing on or after January 1, 1986, insurers~~ Insurers transacting insurance in this state whose annual tax for the preceding taxable year was four thousand dollars or more shall make prepayments of the annual taxes imposed pursuant to Chapter 77, article 9, and related retaliatory taxes imposed pursuant to Chapter 44, article 1.

Each insurer required to make prepayments shall remit such prepayments on or before April 15, June 15, and September 15 of the current taxable year. Remittance for such prepayments shall be accompanied by a prepayment form prescribed by the director.

The amount of each such prepayment shall be at least one-fourth of either (1) the total tax paid for the immediately preceding taxable year or (2) eighty percent of the actual tax due for the current taxable year.

The director, for good cause shown, may extend for not more than ten days the time for making a prepayment. The extension may be granted at any time if a request for such extension is filed with the director within or prior to the period for which the extension may be granted. Insurers who fail to pay any premium or retaliatory tax, including prepayments, when due shall pay interest at the rate prescribed by section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ until such tax is paid. Any insurer who fails to make the prepayments within the prescribed time period or to obtain an extension shall be subject to the penalties prescribed in section 77-911.

The director shall immediately deposit one-half of the prepayments received in the Premium and Retaliatory Tax Suspense Fund, which fund is hereby created, and one-half of the prepayments received in the General Fund. On May 1 of each year the director shall transfer all of the interest earned in the Premium and Retaliatory Tax Suspense Fund on the immediately preceding year's prepayments to the General Fund and transfer the balance of the preceding year's

prepayments deposited in the Premium and Retaliatory Tax Suspense Fund to the Insurance Tax Fund. Any money in the Premium and Retaliatory Tax Suspense Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 15. That section 77-1510, Revised Statutes Supplement, 1992, be amended to read as follows:

77-1510. Appeals may be taken from any action of the county board of equalization to the district court in the following manner:

(1) The appeal shall be filed within forty-five days after adjournment of the board which, for actions taken pursuant to sections 77-1502 and 77-1504, shall be deemed to be May 31 of the year in which the action is taken, except that for personal property appeals in 1992, the date of adjournment shall be deemed to be June 15;

(2) The appeal shall be deemed to be filed for purposes of granting jurisdiction with the filing of the petition and praecipe for summons in the district court and the filing of a request for a transcript with the county clerk. The county clerk shall prepare the transcript as soon as practicable after requested and shall deliver the same to the taxpayer for filing with the clerk of the district court upon receipt from the taxpayer of the appropriate fees for its preparation. No proceedings shall be held on the appeal of the taxpayer until the summons has been served and the transcript has been filed in district court; and

(3) A bond of no less than fifty dollars and no more than two hundred dollars, as determined by the district court, shall be filed with the petition in the form of a cash deposit or signature bond, property bond, or other bond approved by the county clerk.

After an appeal has been initiated, the board shall have no power or authority to compromise, settle, or otherwise change the action it has taken with respect to such assessment, and exclusive jurisdiction thereof shall be vested in the district court, except that the board may offer to confess judgment pursuant to section 77-1510.01. No appeal shall in any manner suspend the collection of any tax or the duties of officers relating thereto during the pendency of the appeal, and all taxes affected thereby, which may be collected, shall be distributed as though no appeal were pending.

If by final order of a court it is thereafter determined that the value of the property should be reduced, any tax collected on the value in excess of the taxable value found by the court shall be refunded in the manner provided in section 77-1736.06, and the taxpayer shall not have been required to pay the tax under protest or initiate a refund claim for the tax paid. A person shall not be entitled to a refund pursuant to this section unless the person has prevailed in an action against the county which was filed pursuant to this section. ~~A person shall not be entitled to a refund pursuant to this section if subsections (4) through (7) of section 77-1736.04 are applicable.~~

The county may cross appeal without giving bond for the reason that the taxable value of the owner's property is too low and

should be increased in value as of the assessment date from which the appeal was taken.

Any party may appeal the final order of the district court entered pursuant to this section to the Court of Appeals in the manner provided for appeals in equity cases, and the appellate court shall thereafter review the case de novo on the record.

Sec. 16. That section 77-1735, Revised Statutes Supplement, 1992, be amended to read as follows:

77-1735. (1) Except as provided in subsection (2) of this section, if a person makes a payment to any county or other political subdivision of any property tax or any payment in lieu of tax with respect to property and claims the tax or any part thereof is illegal for any reason other than the valuation or equalization of the property, he or she may, at any time within thirty days after such payment, make a written claim for refund of the payment from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is not refunded within ninety days thereafter, the claimant may sue the county board for the amount so claimed. Upon the trial, if it is determined that such tax or any part thereof was illegal, judgment shall be rendered therefor and such judgment shall be collected in the manner prescribed in section 77-1736.06. If the tax so claimed to be illegal was not collected for all political subdivisions in a consolidated tax district and if a suit is brought to recover the tax paid or a part thereof, the plaintiff in such action shall join as defendants in a single suit as many of the political subdivisions as he or she seeks recovery from by stating in the petition a claim against each such political subdivision as a separate cause of action. For purposes of this section, illegal shall mean a tax levied for an unauthorized purpose or as a result of fraudulent conduct on the part of the taxing officials. A person shall not be entitled to a refund pursuant to this section of any property tax paid or any payment in lieu of tax unless the person has filed a claim with the county treasurer or prevailed in an action against the county. If a county refuses to make a refund, a person shall not be entitled to a refund unless he or she prevails in an action against the county on such claim even if another person has successfully challenged a similar tax or payment.

(2) For property valued by the state, for purposes of a claim for refund pursuant to this section, the Tax Commissioner shall perform the functions of the county treasurer and county board. Upon approval of the claim by the Tax Commissioner or a court of competent jurisdiction, the Tax Commissioner shall certify the amount of the refund to the county treasurer to whom this tax was paid or distributed. The refund shall be made in the manner prescribed in section 77-1736.06.

~~(3) No refund shall be allowed if subsections (4) through (7) of section 77-1736.04 are applicable.~~

Sec. 17. That section 77-1736.07, Revised Statutes Supplement, 1992, be amended to read as follows:

77-1736.07. ~~Sections 77-1736.04 and 77-1736.06 are~~ Section 77-1736.06 is expressly intended to apply to all claims for refund

of any property taxes ~~currently~~ pending on June 11, 1991.

Sec. 18. That section 77-1775.01, Revised Statutes Supplement, 1992, be amended to read as follows:

77-1775.01. (1) When property is valued or equalized by the Tax Commissioner or the State Board of Equalization and Assessment and an appeal is taken from such valuation or equalization and the final result of such appeal establishes a lower value than that upon which taxes have been paid, the amount of taxes paid on the value in excess of that finally determined value shall be refunded to the prevailing party who has paid such tax. If an appeal results in a lower value, only the taxpayer who is a party to the appeal shall be entitled to a refund.

(2) Upon receipt of a final nonappealable order, the board shall meet or the Tax Commissioner shall act within thirty days thereof to order the recertification of valuation of the prevailing party.

(3) The Tax Commissioner upon receiving a certified copy of such recertification order shall recertify the amount of the valuation or tax to the county assessor of the county or counties to which the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Tax Commissioner shall recertify the value resulting from the final nonappealable order to the county assessor who received the original valuation which was changed by the final order. The refund shall be made in the manner prescribed in section 77-1736.06. Nothing in this section shall be construed to mean that any taxpayer shall have had to pay any tax under protest or claim a refund of the tax paid.

~~(4) No refund shall be allowed if subsections (4) through (7) of section 77-1736.04 are applicable.~~

Sec. 19. That section 77-2102, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2102. The transfer tax imposed under sections 77-2101 to 77-2115 shall become due and payable to the State Treasurer within twelve months from the date of the death of the decedent in the case of the estate tax and on the due date or dates, including extensions, for paying the related federal generation-skipping transfer tax and filing the related federal return in the case of the generation-skipping transfer tax. The limitation of time during which a tax return, for the purpose of the transfer tax, shall be open to inspection and examination shall be three years from the date of filing the return. Personal representatives, trustees, grantees, donees, beneficiaries, transferees, surviving joint owners, and other recipients of property subject to tax shall be and remain liable for the tax until it is paid. If the tax indicated by the return of the taxpayer is not paid when due, interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ shall be charged and collected from the date the same became payable. The transfer tax shall be a lien on the real property subject thereto until the first to occur of: (1) Payment; (2) ten years from the date of death of the decedent; or (3) the release or discharge of any lien pursuant to section 77-2039, except that no interest in any property passing from the decedent to the decedent's surviving spouse shall be

subject to the lien.

Sec. 20. That section 77-2106.01, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2106.01. When any amount of transfer tax in excess of that legally due has been paid to the State Treasurer, the party making such overpayment or his or her successors or assigns shall be entitled to refund of such overpayment plus interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~. All claims for refund on account of the overpayment of transfer taxes shall be filed with the Tax Commissioner within four years after the date of such overpayment or within one year of a change in the amount of federal tax due, whichever is later. If the Tax Commissioner rejects or disallows any such claim in whole or in part, action in the district courts shall be permitted in accordance with sections 25-21,201 to 25-21,218.

Sec. 21. That section 77-2618, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2618. If the tax provided for in section 77-2616 is not paid within such time as may be prescribed for payment thereof by rules and regulations prescribed by the Tax Commissioner, the same shall become delinquent and a penalty of twenty-five percent shall be added thereto, together with interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~, until paid. If attorneys are employed to collect such delinquent tax, ten percent of the tax, penalty, and interest shall be added thereto as a part of the costs of collection.

Sec. 22. That section 77-2701, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135 and sections 24, 25, and 34 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 23. That section 77-2702.03, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2702.03. For purposes of sections 77-2703 to 77-2713 and sections 24 and 25 of this act, unless the context otherwise requires, the definitions found in sections 77-2702.04 to 77-2702.23 shall be used.

Sec. 24. Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture.

Sec. 25. The exemption granted in section 24 of this act shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to (1) ensuring that the property purchased qualifies for the exemption and (2) ensuring that relevant information on the property purchased is available to local governmental officials for personal property tax collection purposes. Any information received pursuant to the requirements of this section may be disclosed to

any tax official in this state. Any taxpayer who provides false information on the forms required by the Tax Commissioner for purposes of this section shall be subject to the penalties provided in subsection (8) of section 77-2705.

Sec. 26. That section 77-2703, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 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 (2)(a), (b), or (d) of section 77-2702.07, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2702.07, 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. When there is a sale, 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 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, 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 makes 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 percent 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 except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. 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 prescribes; 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 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, with the exception of motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09, 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. The tax imposed by this section on motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09 shall be collected by the Department of Motor Vehicles 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 under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, 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 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 thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be



paid by the purchaser to the county treasurer or the Department of Motor Vehicles. The county treasurer or Department of Motor Vehicles 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 Department of Motor Vehicles shall deduct, withhold, and deposit in the Interstate Registration Operations Cash 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 or Department of Motor Vehicles 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 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 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 shall be 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 shall not be 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, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be 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 two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax, except that for each month from October 1, 1991, to September 30, 1992, such collectors shall deduct and withhold from the amount of taxes collected ~~one and one-half~~ three percent of the first ~~one~~ five thousand dollars remitted each month and ~~one-half~~ one percent of all amounts in excess of ~~one~~ five thousand dollars remitted each month as reimbursement for the cost of collecting the tax and for each month from April 1, 1993, to March 31, 1994, such collectors shall deduct and withhold from the amount of taxes collected three-quarters of one percent of the first two thousand dollars remitted each month and one-quarter of one percent of all amounts in excess of two thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any 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 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. 27. That section 77-2704.13, Revised Statutes Supplement, 1992, be amended to read as follows:

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

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

(2) Sales and purchases of such energy sources or fuels made before ~~October 1, 1991, or after September 30, 1992~~ April 1, 1993, or after March 31, 1994, when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining tangible personal property, in the generation of electricity, or by any hospital. The state tax paid to the state on purchases of such energy sources or fuels during the period beginning April 1, 1993, and ending March 31, 1994, shall not exceed one hundred thousand dollars for any one location when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining of tangible personal property or by any hospital. All purchases of such energy sources or fuels for use in the generation of electricity during the period beginning April 1, 1993, and ending March 31, 1994, shall be taxable. Any taxpayer who has paid more than one hundred thousand dollars the limit of state tax on such energy sources or fuels at one location shall be exempt on all other qualifying purchases at such location. Such taxpayer shall be entitled to a refund of any amount paid in excess of one hundred thousand dollars of state or local option tax paid on an energy source or fuel exempt under this subdivision. A refund shall be made pursuant to section 77-2708.

Sec. 28. That section 77-2708, Revised Statutes Supplement, 1992, 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 shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers 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 tax 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 percent of the amount paid, a penalty of fifty percent 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 percent 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 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, two and one-half percent of the first three thousand dollars remitted each month and one-half ~~of one~~ percent of all amounts in excess of three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax, except that for each month from October 1, 1991, to September 30, 1992, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, ~~one and~~

~~one-half~~ three percent of the first ~~one~~ five thousand dollars remitted each month and ~~one-half~~ one percent of all amounts in excess of ~~one~~ five thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax and for each month from April 1, 1993, to March 31, 1994, the taxpayer shall deduct and withhold from the amount of taxes collected three-quarters of one percent of the first two thousand dollars remitted each month and one-quarter of one percent of all amounts in excess of two thousand dollars remitted each month as reimbursement 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, was paid on a purchase made before May 29, 1987, which purchase qualified for a refund under section 77-27,186 at the time of purchase, or was paid on agricultural machinery or equipment which qualifies for a refund under section 77-2708.01, 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~~ 5 of this act, 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 77-2708.01 or 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, proof, 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. 29. That section 77-2708.01, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2708.01. (1) Any purchaser of depreciable agricultural machinery or equipment purchased on or after January 1, 1992, and

before January 1, 1993, for use in commercial agriculture may apply for a refund of all of the Nebraska sales or use taxes and all of the local option sales or use taxes paid on the machinery or equipment.

(2) The purchaser shall file a claim within three years after the date of purchase with the Tax Commissioner pursuant to section 77-2708. The information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state.

Sec. 30. That section 77-2709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

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

(3) The amount of the determination of any deficiency exclusive of penalties shall bear interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ from the last day of the month following the period for which the amount should have been returned until the date of payment.

(4) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade the Nebraska Revenue Act of 1967 or authorized rules and regulations, a



penalty of twenty-five percent of the amount of the determination or fifty dollars, whichever is greater, shall be added thereto.

(5)(a) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

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

(c) Every notice of a deficiency determination shall be personally served or mailed within three years after the last day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within five years after the last day of the calendar month following the period for which the amount is proposed to be determined.

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

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

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

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

(9) The Tax Commissioner may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commissioner at or before the hearing, upon which assertion the

petitioner shall be entitled to a thirty-day continuance of the hearing to allow him or her to obtain and produce further evidence applicable to the items upon which the increase is based.

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

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

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

Sec. 31. That section 77-2711, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2711. (1)(a) The Tax Commissioner shall enforce sections 77-2702.03 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 77-2702.03 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~~ Tax 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~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~, except interest on use taxes voluntarily reported by an individual.

Sec. 32. That section 77-2716.02, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2716.02. (1) For ~~tax year 1991~~ all tax years beginning or deemed to begin on or after January 1, 1992, and before January 1, 1993, there is hereby imposed on all taxpayers, in addition to the tax imposed by sections 77-2714 to 77-27,123, a surcharge of two percent of all depreciation deducted by a person subject to the Nebraska Revenue Act of 1967. The surcharge imposed by this section shall be an excise tax. The surcharge imposed by this section shall be reported on a form prescribed by the Department of Revenue and shall be due and payable at the time the income tax return required by sections 77-2714 to 77-27,123 is due. No credits against the payment of any tax shall be allowed as a credit against the surcharge imposed by this section.

(2) For purposes of this section, depreciation shall mean any deduction for cost recovery allowable under section 167, 168, 169, or 179 of the Internal Revenue Code of 1986, as amended, on tangible property used in a trade or business or tangible property held for the production of income, other than motor vehicles, semitrailers, trailers, and truck-tractors required to be registered under sections 60-301 to 60-347, except that for a financial institution subject to the tax imposed by section 77-3802, depreciation shall mean any reduction in net financial income for cost recovery on tangible property used in a trade or business or tangible property held for the production of income, other than motor vehicles, semitrailers, trailers, and truck-tractors required to be registered under sections 60-301 to 60-347, that is comparable to amounts allowable under section 167, 168, 169, or 179 of the Internal Revenue Code of 1986, as amended.

(3) The following special rules shall be used in calculating the surcharge on depreciation:

(a) Each beneficiary shall include in his or her depreciation for purposes of computing the surcharge his or her proportionate share of the estate's or trust's depreciation;

(b) Each partner shall include in his or her depreciation for purposes of computing the surcharge his or her proportionate share of the partnership's depreciation;

(c) Each shareholder in a small-business subchapter S corporation shall include in his or her depreciation for purposes of computing the surcharge his or her proportionate share of the corporation's depreciation from the conduct of a business, trade, profession, or occupation within this state determined under subsection (2) of section 77-2734.01;

(d) For purposes of subdivisions (3)(a), (b), and (c) of this section, the proportionate share of depreciation for a beneficiary, partner, or shareholder shall be the depreciation used in determining the income or loss reported by the beneficiary, partner, or shareholder on a return subject to the surcharge, whether or not the return for the estate, trust, partnership, or subchapter S corporation is for the identical period;

(e) For a resident individual, the depreciation subject to the surcharge shall be the total depreciation used in calculating federal adjusted gross income, reduced proportionally to the extent income from the trade or business is actually taxed in another state. A resident individual shall make a separate calculation for each trade or business;

(f) For a nonresident individual, the portion of the nonresident's total depreciation subject to the surcharge shall be the same as the proportionate share of his or her income subject to the tax in this state under subsection (3) of section 77-2715;

(g) For a corporate taxpayer that is subject to tax in another state, the surcharge shall be based on the depreciation connected with the taxpayer's operations in this state as determined through the use of the property factor contained in section 77-2734.12 sales factor contained in section 77-2734.14; and

(e) (h) For a financial institution subject to the tax imposed by section 77-3802, the surcharge shall be based on the depreciation connected with the financial institution's operation in this state as determined through the use of the property factor contained in section 77-2734.12 in the same manner as income is apportioned under subdivision (2) of section 77-3805.

(4) For purposes of administering the surcharge imposed pursuant to this section, statutory provisions relating to the income tax shall apply, including provisions relating to interest, and penalties, and estimated payments, except that the department shall not assess any penalty for underpayment of estimated income tax on individual taxpayers, estates, or trusts based upon the surcharge imposed by this section.

(5) In addition to the surcharge imposed by subsection (1) of this section, there is hereby imposed a surcharge of two percent of all depreciation of railroad operating property as described in section 77-602, the property of public service entities as defined in section 77-801.01, and the property of air carriers as defined in section 77-1244. The surcharge imposed by this subsection shall be levied and collected in the same manner as the surcharge imposed by subsection (1) of this section.

(6) (5) The department shall adopt and promulgate rules and regulations to carry out this section.

Sec. 33. That section 77-2734.17, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2734.17. For all tax years beginning or deemed to begin on or after January 1, ~~1994~~ 1992, and before January 1, ~~1992~~ 1993, under the Internal Revenue Code of 1986, as amended, there is hereby imposed on every corporate taxpayer, in addition to the tax imposed by section 77-2734.02, a surcharge equal to fifteen percent of the maximum corporate income tax rate as determined under such section on taxable income in excess of two hundred thousand dollars. The surcharge shall be reported on a form prescribed by the Department of Revenue and shall be due and payable at the same time as the tax returns required by sections 77-2714 to 77-27,123.

Sec. 34. (1) Any amounts paid pursuant to section 77-2716.02 or 77-2734.17 for tax year 1991 shall be considered an estimated income tax payment for tax year 1992 as of the first required installment date for all taxpayers.

(2) The department shall not assess any penalty for underpayment of estimated income tax for tax year 1992 based upon the surcharges in section 77-2716.02 or 77-2734.17.

(3) The surcharges in sections 77-2716.02 and 77-2734.17 shall not be considered a part of the tax year 1992 income tax liability for the purpose of determining any underpayment of estimated income tax for tax year 1993.

Sec. 35. That section 77-2769.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2769.01. (1) A corporation may, after the close of the taxable year and on or before the fifteenth day of the third month thereafter and before the day on which it files a return for such taxable year, file an application for an adjustment of an overpayment by it of estimated income tax for such taxable year. An application under this section shall not constitute a claim for credit or refund. The application shall be filed in such manner and form as the Tax Commissioner may prescribe by rules, regulations, and instructions. The application shall set forth: (a) The estimated income tax paid by the corporation during the taxable year; (b) the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year; (c) the amount of the requested adjustment; and (d) such other information for purposes of carrying out this section as may be required by rules and regulations.

(2) Within forty-five days from the date on which an application for adjustment is filed, the Tax Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to discover omissions and errors. The Tax Commissioner shall determine the amount of the adjustment upon the basis of the application and the examination. The Tax Commissioner may disallow, without further action, any application which he or she finds to contain material omissions or errors which he or she deems cannot be corrected within such forty-five days. The decision made by the Tax

Commissioner shall be final and not subject to further review.

(3) Upon approval of the application, the Tax Commissioner, within the forty-five-day period, may credit the amount of the adjustment against any existing tax liability on the part of the corporation and shall refund the remainder to the corporation. No application under this section shall be allowed unless the amount of the adjustment equals or exceeds (a) ten percent of the amount estimated by the corporation on its application as its income tax liability for the taxable year and (b) five hundred dollars.

(4) Any adjustment under this section shall be treated as a reduction in the estimated income tax paid, computed on the day the credit is allowed or the refund is paid. Any credit or refund of an adjustment shall be treated as if not made when determining (a) whether there has been any underpayment of estimated income tax under section 77-2790 and (b) if there is an underpayment, the period during which the underpayment existed.

(5) For purposes of this section, income tax liability shall mean the excess of the income tax imposed by sections 77-2714 to 77-27,135 reduced by the credits against the tax provided by state law. The amount of an adjustment authorized under this section shall be equal to the excess of the estimated income tax paid by the corporation during the taxable year reduced by the amount which, at the time of filing the application, the corporation estimates as its income tax liability for the taxable year. A corporation seeking an adjustment under this section, which paid its estimated income tax on a consolidated basis or expects to make a consolidated return for the taxable year, shall be subject to such conditions, limitations, and exceptions as the Tax Commissioner may prescribe by rules, regulations, and instructions.

(6) An excessive adjustment shall be equal to the smaller of the amount of the adjustment or the amount by which the income tax liability for the taxable year as shown on the return for the taxable year exceeds the estimated income tax paid during the taxable year, reduced by the amount of the adjustment. The amount of any excessive adjustment made before the fifteenth day of the third month following the close of the taxable year shall bear interest from the date on which the adjustment was allowed to such fifteenth day at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature.~~

Sec. 36. That section 77-2788, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2788. (1) If any amount of income tax imposed by the Nebraska Revenue Act of 1967 including tax withheld by an employer or payor is not paid on or before the last date prescribed for payment, interest on such amount at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ shall be paid for the period from such last date to the date paid.

(2) For purposes of this section, the last date prescribed for

the payment of tax shall be determined without regard to any extension of time.

(3) If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the Tax Commissioner for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(4) Interest prescribed under this section on any income tax including tax withheld by an employer or payor shall be paid on notice and demand and shall be assessed, collected, and paid in the same manner as income taxes. Any reference to the income tax imposed by the Nebraska Revenue Act of 1967 shall be deemed also to refer to interest imposed by this section on such tax.

(5) Interest shall be imposed under this section with respect to any penalty or addition to tax only if such penalty or addition to tax is not paid within ten days of the notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(6) If notice and demand is made for the payment of any amount of tax and if such amount is paid within ten days after the date of such notice and demand, interest under the provisions of this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(7) If any portion of income tax is satisfied by credit of an overpayment, then no interest shall be imposed under the provisions of this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(8) Interest prescribed under this section may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

Sec. 37. That section 77-2792, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2792. (1) The Tax Commissioner may abate the unpaid portion of the assessment of any income tax or any liability in respect thereto which (a) is excessive in amount, (b) is assessed after the expiration of the period of limitations properly applicable thereto, (c) is erroneously or illegally assessed, or (d) is the result of an inconsistent position under section 1311 of the Internal Revenue Code of 1986.

(2) No claim for abatement shall be filed by a taxpayer in respect to an assessment of any income tax imposed under the Nebraska Revenue Act of 1967.

(3) The Tax Commissioner may abate the unpaid portion of the assessment of any tax or any liability in respect thereto if he or she determines under uniform rules prescribed by him or her that the administration and collection costs involved would not warrant collection



of the amount due.

(4) 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 Tax Commissioner in his or her discretion may waive all or part of any penalties provided by such act but may not waive the minimum interest on delinquent taxes at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~, except as provided in this section.

(5) The Tax Commissioner may abate interest when:

(a) The interest is attributable to error or unreasonable delay in performing a ministerial duty by the Department of Revenue or to erroneous written advice given to the taxpayer by the Tax Commissioner or an employee of the department acting in his or her official capacity when the written advice was a direct response to a request from the taxpayer and the taxpayer reasonably relied upon the advice;

(b) The interest is attributable to an amount previously refunded by the Tax Commissioner for the period interest on such amount was not allowed under section 77-2794;

(c) The interest is attributable to the recovery of an amount erroneously refunded by the Tax Commissioner for the period the amount was actually held by the state, and the first ninety days after such amount was refunded, when such refund was not requested or caused by information provided by the taxpayer; or

(d) The interest on the related federal amount was abated by the Internal Revenue Service.

Sec. 38. That section 77-2794, Revised Statutes Supplement, 1992, be amended to read as follows:

77-2794. (1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~, upon any overpayment in respect to the income tax imposed by the Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) Any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer; and

(b) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer.

(3) If any overpayment of income tax imposed by the Nebraska Revenue Act of 1967 is refunded within ninety days after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ninety days after any return, including any amended return, was filed, whichever is later, no interest shall be allowed under this

section on overpayment.

Sec. 39. That section 77-4022, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-4022. (1) Any tax imposed by section 77-4008 which is not paid on the due date shall bear interest at the rate prescribed by section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ from the due date until paid.

(2) If the Tax Commissioner finds that a licensee has made a false and fraudulent return with intent to evade the Tobacco Products Tax Act, the Tax Commissioner shall assess a penalty of twenty-five percent of the entire tax due for which the false and fraudulent return was made, excluding interest.

Sec. 40. That section 77-4312, Revised Statutes Supplement, 1992, be amended to read as follows:

77-4312. (1) Any person who receives a notice of jeopardy determination of the tax imposed by section 77-4303 may petition the Tax Commissioner for a redetermination of the amount of the assessed deficiency.

(2) The petition for redetermination shall be filed within ten days of the receipt of the notice of jeopardy determination whenever service is in person or within ten days of the mailing of such notice by certified or registered mail to the last-known address of the person.

(3) The petition for redetermination shall be in writing and shall state the specific grounds upon which the claim is founded.

(4) The petition for redetermination shall be accompanied by the payment of the tax or suitable security for the payment of the tax.

(5) The consideration of the petition for redetermination shall be made pursuant to the Administrative Procedure Act to the extent the act is not in conflict with sections 77-4301 to 77-4316.

(6) The determination of the amount of the deficiency shall become final and the amount shall be deemed to be assessed on the date provided in subsection (2) of this section if the person fails to file the petition for the redetermination and the appropriate security within the ten-day time period.

(7) When a petition for redetermination and the appropriate security is filed within the ten-day period, the amount of the deficiency shall be deemed to be assessed upon the date the determination of the Tax Commissioner becomes final.

(8) If the amount of the deficiency determined under such sections is not paid upon the receipt of the notice, the deficiency shall accrue interest at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature,~~ for the period from the date the tax was due until the date such deficiency is paid.

(9)(a) When a jeopardy determination or any other final determination has been made by the Tax Commissioner, the property seized for collection of the taxes and any penalty shall not be sold until the time has expired for filing an appeal. If an appeal has been filed, no sale shall be made unless the taxes and any penalty remain unpaid for a period

of more than thirty days after final determination of the appeal by the district court.

(b) Notwithstanding subdivision (a) of this subsection, seized property may be sold if the taxpayer consents in writing to the sale or the Tax Commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping or that such property cannot be kept without great expense.

(c) The property seized shall be returned by the Tax Commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the Tax Commissioner, or deposits with the Tax Commissioner security in such form and amount as the Tax Commissioner deems necessary to insure payment of the liability but not more than twice the liability.

(d) Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(e) Any action taken by the Tax Commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

(f) After the Tax Commissioner has seized the property of any person, that person may, upon giving forty-eight hours notice to the Tax Commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court deems equitable.

(10) If the taxpayer is not within this state or has departed from the state and ignores all demands for payment, the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Sec. 41. That section 77-4401, Revised Statutes Supplement, 1992, be amended to read as follows:

77-4401. (1) Except as otherwise provided in this section, commencing April 1, 1992, through April 30, 1993, there shall be imposed a fee of ~~four~~ three dollars per ton upon the gross tonnage of all sales, use, or other consumption in this state of commercial fertilizers, and commencing May 1, 1993, there shall be imposed a fee of four dollars per ton upon the gross tonnage of all sales, use, or other consumption in this state of commercial fertilizers. The fee shall be paid by the purchaser of the commercial fertilizer. Any commercial fertilizer subject to the sales and use tax pursuant to the Nebraska Revenue Act of 1967 shall be exempt from the fee imposed by this section. For purposes of this section, the definitions found in section 81-2,162.02 shall apply.

(2) The fee imposed by this section shall be collected by the seller and remitted to the Department of Revenue for credit to the General Fund, based on the gross tonnage of commercial fertilizers sold during the preceding period. Payment of the fee shall be accompanied by a report setting forth the gross tonnage of commercial fertilizers sold by the seller.

The report shall be on a form prescribed by the Department of Revenue and shall include such other information as the Tax Commissioner deems necessary. The provisions of the Nebraska Revenue Act of 1967 applicable to sales and use taxes shall apply to imposition of the fee.

(3) For purposes of this section, gross tonnage shall not include water and other carriers added by the retail seller of the fertilizer and shall not include sales of packages of fertilizers containing ten pounds or less.

(4) Any person who purchased commercial fertilizer prior to May 1, 1993, and paid a fee greater than three dollars per ton shall be entitled to a refund of the amount paid in excess of three dollars per ton.

(5) The Tax Commissioner shall adopt and promulgate rules and regulations to carry out this section.

Sec. 42. That section 81-2404, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2404. Any creditor of an agency not receiving payment in full for goods delivered or services rendered within the forty-five-day or sixty-day time period, whichever is applicable, may charge the agency interest on the unpaid principal balance at the rate specified in section ~~45-104.01~~ 5 of this act, as such rate may from time to time be adjusted, ~~by the Legislature~~. Interest charges shall begin to accrue on the thirty-first calendar day after (1) the date of receipt by the agency of the goods or services or (2) the date of receipt by the agency of the bill for the goods or services, whichever is later, and shall terminate on the date on which payment in full of the amount due is made. Each agency shall pay the interest charge upon request unless the bill is the subject of a good faith dispute between the agency and the creditor. No claim by a creditor for interest charges shall be allowed unless the agency is requested to pay the interest charges within ninety calendar days from the date on which payment in full is due.

Sec. 43. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 44. That original sections 21-330, 21-20,139, 45-104.01, 57-710, 57-717, 57-919, 70-1020, 74-1320, 76-711, 76-719.01, 77-918, 77-2618, 77-2709, 77-2769.01, and 77-4022, Reissue Revised Statutes of Nebraska, 1943, and sections 32-1607, 66-724, 77-1510, 77-1735, 77-1736.07, 77-1775.01, 77-2102, 77-2106.01, 77-2701, 77-2702.03, 77-2703, 77-2704.13, 77-2708, 77-2708.01, 77-2711, 77-2716.02, 77-2734.17, 77-2788, 77-2792, 77-2794, 77-4312, 77-4401, and 81-2404, Revised Statutes Supplement, 1992, and also section 77-1736.04, Revised Statutes Supplement, 1992, are repealed.

Sec. 45. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.