

LEGISLATIVE BILL 1003

Approved by the Governor March 6, 2006

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 53-164.01, 53-165, 77-27,117, 77-27,191, and 77-5544, Reissue Revised Statutes of Nebraska, sections 13-203 and 66-489, Revised Statutes Cumulative Supplement, 2004, and sections 49-801.01, 77-2717, 77-27,187.01, 77-27,194, 77-5719, 77-5723, 77-5725, 77-5727, 77-5728, 77-5903, and 81-12,127, Revised Statutes Supplement, 2005; to change a provision relating to references to the Internal Revenue Code; to change provisions relating to alcohol tax reports; to change a tax exemption relating to motor fuels sold on Indian reservations; to change provisions relating to income tax provisions and tax incentive programs; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 13-203, Revised Statutes Cumulative Supplement, 2004, is amended to read:

13-203 For purposes of the Community Development Assistance Act, unless the context otherwise requires:

(1) Business firm shall mean any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a limited liability company, a corporation having an election in effect under Chapter 1, subchapter S of the Internal Revenue Code, as defined in section 49-801.01, subject to the state income tax imposed by section 77-2715 or 77-2734.02, an insurance company paying premium or related retaliatory taxes in this state pursuant to section 44-150 or 77-908, or a financial institution paying the tax imposed pursuant to sections 77-3801 to 77-3807;

(2) Community services shall mean any type of the following in a community development area: (a) Employment training; (b) human services; (c) medical services; (d) physical facility and neighborhood development services; (e) recreational services or activities; (f) educational services; or (g) crime prevention activities, including, but not limited to, (i) the instruction of any individual in the community development area that enables him or her to acquire vocational skills, (ii) counseling and advice, (iii) emergency services, (iv) community, youth, day care, and senior citizen centers, (v) in-home services, (vi) home improvement services and programs, and (vii) any legal enterprise which aids in the prevention or reduction of crime;

(3) Department shall mean the Department of Economic Development;

(4) Director shall mean the Director of Economic Development;

(5) Community development area shall mean any village, city, county, ~~or part thereof~~ unincorporated area of a county, or census tract which has been designated by the department as an area of chronic economic distress;

(6) Community assistance shall mean furnishing financial assistance, labor, material, or technical advice to aid in the physical improvement of any part or all of a community development area;

(7) Community betterment organization shall mean (a) any organization performing community services or offering community assistance in a community development area and to which contributions are tax deductible under the provisions of the Internal Revenue Service of the United States Department of the Treasury and (b) a county, city, or village performing community services or offering community assistance in a community development area; and

(8) Area of chronic economic distress shall mean an area of the state which meets a majority any of the following eateries conditions:

(a) An unemployment rate which exceeds the statewide average unemployment rate;

~~(b) Vacant and substandard housing stock which exceeds the statewide average percentage for vacant and substandard housing stock;~~

~~(c) Depressed housing valuations which exceed the statewide average rate for depressed housing valuations;~~

~~(d) A crime rate which exceeds the statewide average crime rate; or~~

~~(e) (b) A per capita income below the statewide average per capita income; or -~~

(c) A population loss between the two most recent federal decennial censuses.

Sec. 2. Section 49-801.01, Revised Statutes Supplement, 2005, is

amended to read:

49-801.01 Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on ~~March 10, 2005~~ the operative date of this section.

Sec. 3. Section 53-164.01, Reissue Revised Statutes of Nebraska, is amended to read:

53-164.01 Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1) (a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report ~~under oath or affirmation~~ to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report ~~under oath or affirmation~~ to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c) Farm winery producers shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged or bottled for sale, submit a report ~~under oath or affirmation~~ to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar month;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was produced for sale, submit a report ~~under oath or affirmation~~ to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month; and

(e) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under section 53-124, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or

decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

Sec. 4. Section 53-165, Reissue Revised Statutes of Nebraska, is amended to read:

53-165 (1) Every manufacturer and wholesaler shall, between the first and fifteenth day of each calendar month, make return ~~under oath~~ to the commission of all alcoholic liquor manufactured and sold by such manufacturer or wholesaler in the course of such business during the preceding calendar month. Such return shall be made upon forms prescribed and furnished by the commission and shall contain such other information as the commission may reasonably require.

(2) Every manufacturer or shipper of beer on filing notice of intention to commence or continue business pursuant to section 53-130.01 shall certify that such manufacturer or shipper will keep or cause to be kept books and records and make reports in the manner and for the purposes specified by rules and regulations of the commission, which books, records, and reports shall be open to inspection by the proper officers of the commission, and that such manufacturer or shipper will in all respects faithfully comply with all of the requirements of the laws of this state and the rules and regulations of the commission relating to the manufacture and shipping to licensed retail beer dealers in this state.

(3) Each manufacturer and wholesaler shall keep complete and accurate records of all sales of liquor, wine, or beer and complete and accurate records of all such alcoholic liquor produced, manufactured, compounded, or imported.

Sec. 5. Section 66-489, Revised Statutes Cumulative Supplement, 2004, is amended to read:

66-489 (1) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax of ten and one-half cents per gallon upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (a) the required taxes on the motor fuels have been paid, (b) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (c) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (d) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (e) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(2) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and two and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer at an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except that commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund.

(3) (a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146.

(5) ~~Motor~~ Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146.

(6) Motor fuels purchased for use by the United States Government or its agencies shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146.

(7) In the case of diesel fuel, there shall be no tax on the motor fuels reported if (a) the diesel fuel has been indelibly dyed and chemically marked in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 or (b) the diesel fuel contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545.

Sec. 6. Section 77-2717, Revised Statutes Supplement, 2005, is amended to read:

77-2717 (1) (a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, and section 77-27,222 shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act,

the Nebraska Advantage Research and Development Act, and section 77-27,222 shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

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

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, and section 77-27,222. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, and section 77-27,222 and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

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

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

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

Sec. 7. Section 77-27,117, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,117 Any prosecution under income tax provisions of the Nebraska Revenue Act of 1967 shall be instituted within three years after the commission of the offense, except that the period of limitation shall be four years for the offenses described in sections 77-27,113, 77-27,115, and 77-27,116. ~~+ PROVIDED, that if such offense is the failure to do an act~~

required by or under the income tax provisions of such act to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date. The failure to do any act required by or under the income tax provisions of such act shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution may be conducted in any county where the person or corporation to whose liability the proceeding relates resides, or has a place of business or in any county in which such crime is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of offenses.

Sec. 8. Section 77-27,187.01, Revised Statutes Supplement, 2005, is amended to read:

77-27,187.01 For purposes of the Nebraska Advantage Rural Development Act, unless the context otherwise requires:

(1) Any term has the same meaning as used in the Nebraska Revenue Act of 1967;

(2) Equivalent Nebraska employees means the number of Nebraska employees computed by dividing the total hours paid in a year to Nebraska employees by the product of forty times the number of weeks in a year;

(3) Nebraska employee means an individual who is either a resident or partial-year resident of Nebraska;

(4) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(5) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code of 1986, as amended;

(6) Taxpayer means a corporate taxpayer or other person subject to either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, or a partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture when all of the partners, shareholders, or members that is or would otherwise be a member of the same unitary group if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are, subject to or exempt from such taxes, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture when the partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are subject to or exempt from such taxes; and

(7) Year means the taxable year of the taxpayer.

Sec. 9. Section 77-27,191, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,191 (1) A taxpayer shall be deemed to have made an increased investment in this state to the extent the value of the property used or available for use exceeds the value of all property used or available for use on the last day of the taxable year previous to the date the application was filed.

(2) To determine the value of property owned by the taxpayer, the tax basis before allowance for depreciation shall be used. To determine the value of property rented by the taxpayer, the average net annual rent of the property shall be multiplied by eight the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

(3) Only investment in improvements to real property and tangible personal property that are depreciable under the Internal Revenue Code shall be considered.

(4) Vehicles, planes, or railroad rolling stock shall be excluded in determining the investment under this section.

Sec. 10. Section 77-27,194, Revised Statutes Supplement, 2005, is amended to read:

77-27,194 The credit allowed under the Nebraska Advantage Rural Development Act shall not be transferable except in the following situations:

(1) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or an estate or trust may be distributed to the partners, limited liability company members, shareholders, patrons, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, estate, or trust shall be liable for any repayment under section 77-27,188.02;

(2) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986;

(3) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act;

(4) The acquiring taxpayer shall be liable for any repayment that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer; and

(5) If a taxpayer operating a qualifying business and allowed a credit under section 77-27,188 dies and there is credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of credit may be changed only after obtaining the permission of the Tax Commissioner.

Sec. 11. Section 77-5544, Reissue Revised Statutes of Nebraska, is amended to read:

77-5544 (1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period and there are sufficient companies qualified for benefits so as not to reveal confidential information that allows identification of any company, there shall be an audit to determine compliance with the Invest Nebraska Act. The Tax Commissioner shall contract with a qualified independent accounting firm to conduct the audit. The cost of the audit shall be paid from funds appropriated to the Department of Revenue by the Legislature. Such cost shall include, in addition to the fees and costs of such independent firm, the incremental costs to the department to comply with this section, as determined by the department. If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department. A qualified independent firm shall be a firm that meets all of the following requirements: (a) The firm must be an accounting firm employing or comprised of at least ten certified public accountants who are licensed under the Public Accountancy Act to practice accounting and auditing in Nebraska; (b) the firm, at the time of the beginning of such audit, and for the period of at least twenty-four months before such audit commences, has not performed any services for any of the companies that at such time have filed applications under the Invest Nebraska Act, and the firm must agree not to engage in and to withdraw from representing any companies that file applications after such audit commences and before the audit report is issued; (c) the firm must have executed such audit contract as required by the Tax Commissioner; and (d) the firm, and all such accountants and personnel of such firm who will be involved in the audit, must have executed such confidentiality and nondisclosure agreements as required by the Tax Commissioner. In hiring such firm, the Tax Commissioner shall comply with all Nebraska laws pertaining to the selection and hiring of outside private sector services.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created, by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

(3) After the audit is conducted, and on or before January 1, 2005, and each January 1 every five years thereafter, the auditor shall issue a report to the Legislature and Governor detailing the results of the audit. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of the company. The report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not reveal any confidential information that allows identification of the company. For purposes of this section, confidential information includes all information that is (a) referred to as confidential in section 77-5534, (b) restricted from disclosure or treated as confidential under any federal or state law, or (c) provided by the company to the department in connection with the company's project under the act. The report shall detail all assumptions, methods, or models that were used in performing the analysis and shall report information by industry group or expenditure category so that further analysis can be performed. The firm shall have access to all records of the department with regard to the credits granted under the act and the companies receiving such credits. Such records shall remain confidential in the hands of the firm conducting the audit and shall not be revealed to any person that is not employed by the department or the firm conducting the audit. No officer or employee of the firm conducting the audit shall disclose any information to any other person if such information is protected by federal or state confidentiality laws. Notwithstanding any other provision of this section to the contrary, neither the independent accounting firm nor any of its personnel shall be provided by the department with any confidential information except to the extent and under conditions when the department is permitted without penalty to do so under applicable federal or state laws.

(4) All information provided by the department to the independent accounting firm shall be examined only on the premises of the department and shall be stored in a secure place. The firm shall make no copies of such information. Any qualified independent accounting firm, or any personnel of the firm, which violates this section shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution.

(5) Nothing in this section shall be construed to require the company to provide, or require the department to obtain from the company, any information beyond that required as part of the application or beyond that required by the department to confirm the company is entitled to the benefits of the act or to obtain the information required in subsection (2) of this section. The independent accounting firm shall not request any information from the company or its personnel. The independent accounting firm shall be permitted and expected to obtain additional outside public information available from sources outside of the company and the department in order to comply with the requirements for the report if copies of all such data, information, and sources are made available to the public or included with the report.

(6) Information obtained in connection with the audit from either the department or the company is confidential and is not discoverable or admissible in evidence in any civil action, and no department or company personnel shall be compelled to testify in regard thereto. Such information may be discovered and be admissible, and testimony compelled in regard thereto, by the department or by the company in an action relating to the determination of whether the company is entitled to the benefits of the act.

Sec. 12. Section 77-5719, Revised Statutes Supplement, 2005, is amended to read:

77-5719 Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any entity partnership, limited liability company, cooperative, including a

cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the code hold an ownership interest of ten percent or more.

Sec. 13. Section 77-5723, Revised Statutes Supplement, 2005, is amended to read:

77-5723 (1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, and five thousand dollars for a tier 4 project. The fee shall be credited to the Nebraska Advantage Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1 or tier 3 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(6) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by ~~section 77-27,188 for any project.~~ In computing credits under ~~section 77-27,188,~~ any investment or employment which is eligible for benefits under the Nebraska Advantage Act shall be

subtracted from the increases computed for determining the credits under section 77-27,188 the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(7) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

~~(8) New investment or employment at a project location that results in the earning of credits or refunds of taxes under the Employment and Investment Growth Act or the Nebraska Advantage Rural Development Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits or property tax exemptions under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act.~~

Sec. 14. Section 77-5725, Revised Statutes Supplement, 2005, is amended to read:

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

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

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

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

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

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits, and maintaining at least the same number of equivalent employees as were employed in the base year for the year the taxpayer attains the required level of investment and the following nine years.

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

(a) A refund of all sales and use taxes for a tier 2, tier 4, or

tier 5 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

- (i) Qualified property used as a part of the project;
- (ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;
- (iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and
- (iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, or tier 5 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application; and

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

(4) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project.

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

(6) The credit prescribed in subsection (4) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(7) (a) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the incentive provided in this subsection. Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(b) The following property used in connection with such project or

projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

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

(ii) Mainframe business computers used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user plus peripheral components which require environmental controls of temperature and power connected to such computers. Computer peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, and communication controllers;

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

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

(c) Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (7)(b)(i) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (7)(b)(ii), (iii), and (iv) of this section, through the ninth December 31 after the first year the property qualifies for the exemption. In order to receive the property tax exemptions allowed by subdivisions (7)(b)(i), (ii), (iii), and (iv) of this section, the taxpayer shall annually file a claim for exemption with the Property Tax Administrator on or before May 1. The form and supporting schedules shall be prescribed by the Property Tax Administrator and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Property Tax Administrator shall determine the eligibility of each item listed for exemption and, on or before August 10, certify such to the taxpayer and to the affected county assessor. In determining the eligibility of items of personal property for exemption, the Property Tax Administrator is limited to the question of whether the property claimed as exempt by the taxpayer falls within the classes of property described in subdivision (7)(b) of this section. The determination of whether a taxpayer is eligible to obtain exemption for personal property based on meeting the required levels of investment and employment is the responsibility of the Tax Commissioner. Notwithstanding any other provision of law, the Property Tax Administrator shall be allowed access to the applications and such other records of the Department of Revenue as necessary in order to determine the eligibility for exemption.

(8) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection. Beginning ~~January 1, 2007~~ October 1, 2006, and each ~~January~~ October 1 thereafter, the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent available period shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006. If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars. The investment thresholds established by this subsection ~~for~~ the year of application apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Sec. 15. Section 77-5727, Revised Statutes Supplement, 2005, is amended to read:

77-5727 (1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1 or tier 3 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement

period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under ~~subdivision (2)(a)~~ subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under subsection (7) of section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds, one-seventh of the reduction in personal property tax, and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers and the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) ~~In the case of a taxpayer qualified under tier 5 who has failed to maintain the number of equivalent employees at the project for the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subdivision (2)(a) of section 77-5725 shall be disallowed. In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project for any at the end of the nine six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subdivision (2)(a) of section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture for each year the taxpayer failed to maintain the number of equivalent employees shall be the total amount of refunds allowed for all years times the reduction in the average number of equivalent employees employed in the year at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. The amount of recapture shall not exceed the total amount of refunds received for all years in the entitlement period. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.~~

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

~~(4)~~ (5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

~~(5)~~ (6) Any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

~~(6)~~ (7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

~~(7)~~ (8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

~~(8)~~ (9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Sec. 16. Section 77-5728, Revised Statutes Supplement, 2005, is

amended to read:

77-5728 (1) The incentives allowed under the Nebraska Advantage Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-5727. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, estate, or trust shall be liable for any repayment required by section 77-5727; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Sec. 17. Section 77-5903, Revised Statutes Supplement, 2005, is amended to read:

77-5903 For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Distressed area means a municipality, county, unincorporated area within a county, or census tract in Nebraska that has (a) an unemployment rate which exceeds the statewide average unemployment rate, (b) a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses; ~~an unincorporated area within a county in Nebraska that has had a population decrease between the two most recent federal decennial censuses, a designated federal enterprise zone in Nebraska, or a census tract in Nebraska that based on the most recent federal decennial census data available has less than eighty percent of the statewide per capita income;~~

(3) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

~~(4) Microbusiness means any business employing five or fewer equivalent employees;~~

~~(5) New employment means the amount by which the total compensation paid during the tax year to employees who are Nebraska residents exceeds the total compensation paid to employees who are Nebraska residents in the tax year prior to application;~~

~~(6) New investment means the increase in the applicant's purchases of buildings and depreciable personal property located in Nebraska and expenditures on repairs and maintenance on property located in Nebraska, not including vehicles required to be registered for operation on the roads and highways of this state, during the tax year. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;~~

~~(7) Related persons means (a) any corporation, partnership, limited liability corporation, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, or any person who is considered to be a related person under~~

either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended, and (b) any individual who is a spouse, parent if the taxpayer is a minor, or minor son, or daughter, brother, or sister of the taxpayer; and

~~(7)~~ (8) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

Sec. 18. Section 81-12,127, Revised Statutes Supplement, 2005, is amended to read:

81-12,127 (1) The Department of Economic Development, with assistance provided by the Rural Development Commission, shall establish and administer a grant process to provide grants to two or more municipalities, ~~or counties,~~ unincorporated areas within a county, or census tracts that are collaborating on a project related to the purpose of the Building Entrepreneurial Communities Act with priority given to projects that best alleviate chronic economic distress. At least one of the collaborating municipalities, ~~or counties,~~ unincorporated areas within a county, or census tracts shall have chronic economic distress as indicated by:

(a) An unemployment rate which exceeds the statewide average unemployment rate;

(b) A per capita income below the statewide average per capita income; or

(c) ~~Severe historical population loss, which means a A population loss of ten percent or more over a twenty-year period of time between the two most recent federal decennial censuses.~~

(2) Grants shall not exceed seventy-five thousand dollars per collaborative project. Grant recipients shall have two years to expend the grant funds. No municipality or county shall receive funding for more than one project. Grant recipients shall provide a dollar-for-dollar match in money for grant funds. Grants shall be awarded directly to one of the municipalities or counties representing the collaborative project. The department shall act as the fiduciary agent for the grants.

Sec. 19. Sections 1, 8, 9, and 20 of this act become operative for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended. Sections 3, 4, and 21 of this act become operative on July 1, 2006. The other sections of this act become operative on their effective date.

Sec. 20. Original section 77-27,191, Reissue Revised Statutes of Nebraska, section 13-203, Revised Statutes Cumulative Supplement, 2004, and section 77-27,187.01, Revised Statutes Supplement, 2005, are repealed.

Sec. 21. Original sections 53-164.01 and 53-165, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 22. Original sections 77-27,117 and 77-5544, Reissue Revised Statutes of Nebraska, section 66-489, Revised Statutes Cumulative Supplement, 2004, and sections 49-801.01, 77-2717, 77-27,194, 77-5719, 77-5723, 77-5725, 77-5727, 77-5728, 77-5903, and 81-12,127, Revised Statutes Supplement, 2005, are repealed.

Sec. 23. Since an emergency exists, this act takes effect when passed and approved according to law.