Committee on Revenue

Summary and Disposition of Bills

One Hundred Second Legislature

Second Session – 2012

May, 2012

Senator Abbie Cornett, Chair

COMMITTEE ON REVENUE

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COMMITTEE ON REVENUE

SUMMARY AND DISPOSITION OF BILLS

ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION - 2012

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DEPARTMENT OF REVENUE – STATE TAX ADMINISTRATION

LB 725, Laws 2012 (Cornett)—Update References to the Internal Revenue Code.

Introduced Version:

LB 725 is the annual bill designed to update references in all Nebraska statutes to the most recent version of the federal Internal Revenue Code as it exists on the effective date of the bill, except as provided by:

(1) Article VIII, section 1B, of the Nebraska Constitution, which states that "When an income tax is adopted by the Legislature, the Legislature may adopt an income tax law based upon the laws of the United States."

(2) The statute sections listed in section 1 of the bill that govern Nebraska's income tax.

(3) The statute sections listed in section 1 of the bill that govern Nebraska's business tax incentive programs.

Section 1: Updates Neb. Rev. Stat. sec. 49-801.01 to accomplish that purpose. LB 725 provides that any reference to the "Internal Revenue Code" refers to the "Internal Revenue Code of 1986" as it exists on "the effective date of this act", which is the effective date of the bill with the emergency clause, which means the Internal Revenue Code as it exists on that date, except as provided by:

(1) Article VIII, sec. 1B of the Nebraska Constitution; and

(2) Neb. Rev. Stat. sections:

> 77-2701.01 (The so-called "primary" income tax rate, which is "three and seventy-hundredths percent");
>
> 77-2714 to 77-27,123 (Income taxation, including process and procedure);
>
> 77-27,191 (Nebraska Advantage Rural Development Act—Investment increase; how determined);
>
> 77-4103 (Employment and Investment Growth Act—Terms, defined);
>
> 77-4104 (Employment and Investment Growth Act— Incentives; application; contents; fee; approval; agreements; contents);
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> 77-4108 (Employment and Investment Growth Act— Incentives; transfer; when; effect);
>
> 77-5509 (Invest Nebraska Act—Company, defined);

77-5515 (Invest Nebraska Act—Employee benefit program, defined) ;

77-5527 to 77-5529 (Invest Nebraska Act—Qualified property, defined; Related persons, defined; and Start date, defined);

77-5539 (Invest Nebraska Act—Transfer of project);

77-5717 to 77-5719 (Nebraska Advantage Act—Qualified property, defined; Related persons, defined; and Taxpayer, defined);

77-5728 (Nebraska Advantage Act—Incentives; transfer; when; effect);

77-5802 (Nebraska Advantage Research and Development Act—Business firm, defined);

77-5803 (Nebraska Advantage Research and Development Act—Research tax credit; amount);

77-5806 (Nebraska Advantage Research and Development Act—Applicability of act); and

77-5903 (Nebraska Advantage Microenterprise Tax Credit Act—Terms, defined).

Section 2: Repeals Neb. Rev. Stat. sec. 49-801.01 as it existed before being amended by LB 725.

Section 3: Contains the emergency clause.

Revenue Committee Amendment: None

Other Amendments: None

Enacted Version of LB 725:

LB 725 was enacted as introduced and without adoption of any amendments.

Therefore, except as otherwise provided in (1) Article VIII, section 1B, of the Nebraska Constitution, (2) the statute sections listed in section 1 of LB 725 that govern Nebraska's income tax, and (3) the statute sections listed in section 1 of LB 725 that govern Nebraska's business tax incentive programs, LB 725 amends Neb. Rev. Stat. sec. 49-801.01 to provide that any reference to the Internal Revenue Code in Nebraska's statutes refers to the Internal Revenue Code of 1986 as it exists on the effective date of LB 725. (The effective date of LB 725 is March 7, 2012.)

LB 725 passed with the emergency clause 47-0 and was approved by the Governor on March 7, 2012.

LB 727, Laws 2012 (Cornett)—Change Various Tax Provisions.

Introduced Version:

LB 727 was introduced on behalf of the Nebraska Department of Revenue and is the department's annual omnibus tax administration and enforcement bill.

As a cost saving measure, LB 727 eliminates statutory requirements that the Department of Revenue must use "certified mail" (and in some instances "registered mail") for mailing certain notices, including a notice of a proposed deficiency determination. [LB 727, secs. 1 through 15, amending Neb. Rev. Stat. secs. 9-226(4), 9-226.01 (1) and (3), 9-228, 9-322(4), 9-322.02 (1) and (3), 9-324, 9-418(4), 9-418.01 (1) and (3), 9-420, 9-620(4), 9-622 (1) and (3), 9-623, 9-820, 57-706; and LB 727, secs. 23, 27, 28, 30 through 33, 35 through 38, and 40 through 47, amending Neb. Rev. Stat. secs. 66-721, 76-908, 77-377.01, 77-612, 77-802, 77-1375 (2) and (4), 77-1780, 77-2705.03(1), 77-2776 (3) and (4), 77-2779, 77-27,130(3), 77-27,150(4), 77-27,152(1), 77-3311, 77-3906(5), 77-4015, 77-4016(2), 77-4020, and 77-4312(2), respectively.]

Additionally, LB 727 adds "first-class" mail to the list of authorized forms of mail (e.g., certified mail and registered mail) that the department can use whenever it is required to give any notice under the Nebraska Revenue Act of 1967. [LB 727, sec. 39, amending Neb. Rev. Stat. sec. 77-27,135.]

LB 727 eliminates certain motor fuels tax collection commissions if a notice of a deficiency assessment issued under Neb. Rev. Stat. sec. 66-722 has become a final assessment. More specifically:

LB 727 provides that a motor fuels producer, supplier, distributor, wholesaler, or importer will not be entitled to the commissions authorized by Neb. Rev. Stat. Sec. 66-486 (i.e., 5% of the first $5,000 and 2.5% of all amounts over $5,000 remitted each reporting period pursuant to Neb. Rev. Stat. Sec. 66-486(1) and 2% of the first $5,000 and 0.5% of the all amounts over $5,000 remitted each reporting period pursuant to Neb. Rev. Stat. sec. 66-486(2)) if such a deficiency assessment become a final assessment. [LB 727, sec. 16, amending Neb. Rev. Stat. sec. 66-486 by adding new subsection (6).]

LB 727 makes the same type of change for retailers of compressed fuel. [LB 727, sec. 21, adding new subsection (4) to Neb. Rev. Stat. sec. 66-6,113.]

LB 727 changes the due date for motor fuel producers, suppliers, distributors, wholesalers, importers, and exporters to file their motor fuel tax returns to the 20th day (25th day under current law) of the month following the reporting period to which it relates. [LB 727, sec. 17, amending Neb. Rev. Stat. sec. 66-488.] LB 727 also makes the same date change (20th day rather than the 25th day) for:

Certain transporters (e.g., railroad companies, motor truck transportation companies, and pipeline companies) of any motor vehicle fuel or diesel fuel for delivery within Nebraska or for export from Nebraska to file their ***information returns***, and for motor fuel tax returns of retailers of compressed fuel. [LB 727, secs. 19 and 20, amending Neb. Rev. Stat. secs. 66-525 and 66-6,110.]

The issuance of a notice of a proposed deficiency determination, which must be mailed within 3 years after the 20th day of the month following the end of the period for which the amount proposed is to be determined or within 3 years after the return is filed, whichever period expires later. [LB 727, sec. 24, amending Neb. Rev. Stat. sec. 66-722(6)(a).]

The due date for ***paying*** the petroleum release remedial action fee. [LB 727, sec. 26, amending Neb. Rev. Stat. sec. 66-1521(1).]

LB 727 changes the source of data required to be used to update the department's calculation of the wholesale price of gasoline. Specifically, it requires the average wholesale price of gasoline to be determined using data available from the Nebraska State Energy Office. (Under current law, the department is required to use data available from the Energy Information Administration of the U.S. Department of Energy.) [LB 727, sec. 18.]

LB 727 changes the due date for the department to update its biennial tax burden study to December 1, 2013, and every two years thereafter. [LB 727, sec. 29.]

LB 727 ***clarifies*** the sales tax exemption for sales of prepared food by parent or student organizations at elementary or secondary schools. Specifically, the bill ***adds*** new language stating that <u>This exemption does not apply to sales by an institution of higher education at any facility or function which is open to the public</u> and it ***strikes*** current statutory language stating that the "exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt. . . ." [LB 727, sec. 34, amending Neb. Rev. Stat. sec. 772704.10(1).]

LB 727 outright repeals Neb. Rev. Stat. sec. 66-737, which currently requires the Department of Revenue to appoint a committee to oversee the operation of the Motor Fuel Trust Fund created by Neb. Rev. Stat. sec. 66-733. [LB 727, sec. 53.] Neb. Rev. Stat. sec. 66-737 currently provides:

> (1) The department shall appoint a committee to oversee the operation of the trust fund created in section 66-733. The committee shall consist of seven members. Two members shall be diesel fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be motor vehicle fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be compressed fuel retailers, and one member shall be selected at large. Members shall be appointed for terms of four years.
>
> (2) The committee shall have access to information concerning any transfers occurring from the trust fund, the collection efforts of the department to collect from the person owing the tax, and the management of the trust fund.
>
> (3) Members of the committee shall be considered employees of the department solely for the purpose of the disclosure of confidential information and the imposition of penalties for the unauthorized disclosure of such information.
>
> (4) The committee may receive confidential information only for the purpose of determining the effectiveness of the department in collecting the amounts transferred from the cash bond collected pursuant to section 66-734.

Additionally, LB 727 changes internal statutory citations within a number of statute sections to reflect the outright repeal of Neb. Rev. Stat, 66-737 by LB 727, sec. 53. [LB 727, secs. 22 and 25.]

Changes proposed by LB 727 have different operative dates. Sections 17, 19, 20, 22, 24, 25, 26, 50, and 53 will be operative on July 1, 2012. Sections 34 and 51 will be operative October 1, 2012. Sections 29 and 52 will be operative three calendar months after adjournment of the 2012 regular legislative session. The other sections of the bill will be operative on their effective date. [LB 727, sec. 48.]

Sections 49 through 52 of LB 727 repeal the current version of the statutes amended by the bill. [LB 727, secs. 49 through 52.]

Finally, LB 727 has the emergency clause attached. [LB 727, sec. 54.]

Revenue Committee Amendment: AM 1902

The Revenue Committee amendment (AM 1902) to LB 727 adds the provisions of **LB 903** to the bill, with modifications to exempt from sales and use taxes gross receipts from amounts charged to participate in a youth competitive educational activity. (As introduced, LB 903 proposed exempting from sales and use taxes only amounts charged to participate in a youth sports event or youth sports league, not amounts charged to participate in a youth competitive educational activity.)

Thus, the committee amendment exempts from sales and use taxes gross receipts from the sale, use, or other consumption of amounts charged to participate in a youth sports event, youth sports league, or youth competitive educational activity by political subdivisions or qualified Internal Revenue Code (IRC) section 501(c)(3) organizations. (IRC section 501(c)(3) organizations include educational, charitable, and religious organizations.)

The committee amendment also defines a number of key terms and phrases, including the term “admission”. For purposes of the definition of “admission”, the committee amendment also defines the phrases “access to a place or location”, “entertainment”, and “recreation”.

The committee amendment also provides that “Admission does not include the lease or rental of a location, facility, or part of a location or facility if the lessor cedes the right to determine who is granted access to the location or facility to the lessee for the period of the lease or rental.” Thus, the committee amendment makes it clear that rental fees for facilities used or accessed by persons not under the control of the owner are not subject to sales and use taxes.

Additionally, the committee amendment's definition of admission continues to reflect a provision in current law that exempts from sales and use taxes membership fees paid to organizations in which such membership includes the right to hold office, vote, or change the policies of the organization. Therefore, a membership which includes such rights continues to be exempt from sales and use taxes.

Furthermore, for purposes of the committee amendment's sales and use tax exemption, the committee amendment defines the following terms:

Competitive educational activity: a tournament, or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a competitive educational activity;

Sports event: a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participant's engage in a sport;
Sports league: an organized series of sports competitions talking place over several weeks or months between teams or individuals that are members of the league; and

Youth sports event, youth sports league, or youth competitive educational activity: an event, league, or activity that is restricted to participants who are less than nineteen years of age".

The provisions of the committee amendment are operative July 1, 2012.

Other Adopted Amendments: AM 2132

AM 2132 amends Neb. Rev. Stat. sec. 77-2704.10 by adding new subsections (7) and (8) which exempt from sales and use taxes the following youth and adult sports activities:

> (7) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization conducts statewide sport events with multiple sports for both adults and youth; and
>
> (8) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization is affiliated with a national organization, primarily dedicated to youth development and healthy living, and offers sports instruction and sports leagues or sports events in multiple sports.

The provisions of AM 2132 are operative October 1, 2012.

Enacted Version:

As enacted, LB 727 contains the tax administration and enforcement provisions of the introduced version of LB 727; the Revenue Committee amendment (AM 1902), which added the provisions of **LB 903** exempting qualified youth sports activities and qualified competitive educational activities from sales and use taxation; and AM 2132, which exempts qualified youth and adult sports activities from sales and use taxation.

LB 727 passed with the emergency clause 49-0 and was approved by the Governor on April 11, 2012.

LB 962, Laws 2012 (Pahls)—Change provisions relating to tax expenditure reporting and name the Tax Rate Review Committee.

Introduced Version:

The bill as drafted has two main features. First, the bill describes new categories and terminology to be used in the annual tax expenditure report done by the Nebraska Department of Revenue. Second, beginning on page 6, the bill changes the composition of the Tax Rate Review Committee, a Legislative Committee which is to review state tax rates to determine whether they need to be changed. Currently the Committee is composed of four persons, the Speaker of the Legislature, the Chairpersons of the Appropriations and Revenue Committee, and the Chairperson of the Legislatures Executive Board. The Committee is directed by law to meet with the Tax Commissioner each year.

Under the bill, the Tax Commissioner would become a fifth member of the Committee and a voting member. The Committee has the power to vote on the question of whether to petition the Governor to call a special session of the Legislature to make whatever tax rate changes may be necessary. This change puts the Tax Commissioner in the position to vote on the question of calling a special session.

Revenue Committee Amendment: AM 2018

The committee amendment removes language in the introduced version of the bill that would have made the Tax Commissioner a member of the Tax Rate Review Committee.

Other Adopted Amendments: None

Enacted Version:

As enacted, LB 962 contains all of its original provisions ***except for*** the provision that would have made the Tax Commissioner a member of the Tax Rate Review Committee.

LB 962 passed 44-0 and was approved by the Governor on April 6, 2012.

LB 1114, Laws 2012 (Flood)—Change State Aid Distribution from the Municipal Equalization Fund.

Introduced Version:

As introduced, LB 1114 would have eliminated a sales tax collection fee paid by the cities to the State of Nebraska. Under current law, that fee is three percent of the local option sales tax receipts collected on behalf of a city by the State of Nebraska's network of retail sales tax permit holders and revenue derived from that fee revenue is deposited in the Municipal Equalization Fund. Eliminating that sales tax collection fee would have reduced the Municipal Equalization Fund by more than one-half in terms of its total revenue.

Under other provisions of LB 1114, cities of the first class would have no longer qualified for distributions from the Municipal Equalization Fund. The funds remaining in the Municipal Equalization Fund program—derived from insurance premium tax revenue—would have been distributed under the current Municipal Equalization Fund formula, except that the formula provisions would have been calculated using only information for cities of the second class and villages (not for cities of the first class).

Revenue Committee Amendment: AM 2118

The adopted Revenue Committee amendment (AM 2118) to LB 1114 struck all provisions of the introduced version of LB 1114 and amended Neb. Rev. Stat. sec. 77-27,139.03(3) by adding new language allowing a city to qualify for ***at least*** 20 percent of its Municipal Equalization Fund program aid ***even if*** the city's property tax levy for operational purposes is less than the average property tax levy in the immediately preceding fiscal year. ***In general***, Neb. Rev. Stat. sec. 77-27,139.03(3) requires a city's
Municipal Equalization Fund program aid to be reduced by 20 percent for each one-cent increment that the city's property tax levy for operational purposes is less than the average property tax levy in the immediately preceding fiscal year.

The Revenue Committee amendment also established an operative date of July 1, 2012, for LB 1114.

Other Adopted Amendments: None

Enacted Version:

The enacted version of LB 1114 is the same as the adopted Revenue Committee amendment, which is summarized above. The operative date of LB 1114 is July 1, 2014.

LB 1114 passed with the emergency clause 49-0 and was approved by the Governor on April 10, 2012.

ECONOMIC DEVELOPMENT INCENTIVES

LB 731 (Mello): Adopt the Remanufacturing Pilot Project Act and Provide an Income Tax Credit.

Introduced Version:

LB 731 would adopt the Remanufacturing Pilot Project Act and would authorize related refundable and transferable income tax credits for individuals, estates and trusts, and corporations.

Section 1: Sections 1 through 9 of LB 731 may be cited as the "Remanufacturing Pilot Project Act" (Act). [LB 731, sec. 1.]

Section 2: Defines "base year", "governmental unit", "recycle" and "statewide average tipping fee". [LB 731, sec. 2.]

Section 3: For tax years beginning on or after January 1, 2013, a taxpayer, nonprofit organization, or governmental unit can earn a "recovered resource income tax credit for each ton of material recycled or composted in Nebraska during the tax year . . . in excess of the amount of the same type of material (1) recycled or composted in Nebraska during the base year . . . or (2) disposed in a solid waste facility in Nebraska during the base year. . . ." The "per-ton credit" is equal to the "statewide average tipping fee". The income tax credit is a refundable and transferable tax credit, but it is an allowable tax credit only if the taxpayer, nonprofit organization, or governmental unit files an application for the recovered resource income tax credit with the Department of Environmental Quality (DEQ) and DEQ approves the application. [LB 731, sec. 3.]

Section 4: If DEQ determines that the application meets the requirements of the Act, it must approve the application, perform specified administrative duties, and certify to the applicant and the Department of Revenue the amount of the "tentative tax credit" reserved for the applicant. Applications will be considered in the order in which they are received, and an application can be filed at any time on or after the beginning of the tax year for which the tentative tax credit is to be claimed." [LB 731, sec. 4.]

Section 5: DEQ can approve applications for the Act's tax credit "for up to the amount available" in the "Recovered Resource Income Tax Credit Fund", which is created by section 8 of LB 731. [LB 731, sec. 5.]

Section 6: Authorizes distributions of the Act's income tax credit to owners of pass-through entities, including a partner in a partnership, a shareholder of an S corporation, a member of a limited liability company, and a beneficiary of an estate or trust. [LB 731, sec. 6.]

Section 7: Allows DEQ and the Department of Revenue to adopt rules and regulations for purposes of administering the Act. [LB 731, sec. 7.]

Section 8: Creates the "Recovered Resource Income Tax Credit Fund" (Fund). The Tax Commissioner must certify the amount of recovered resource income tax credits used each year to the State Treasurer, who must transfer that amount of money from the Fund to the State's General Fund. Any money reserved for tentative tax credits that are not claimed revert to the "original fund source"

(sections 13 to 16 of LB 731 identify the original sources of funding for the Act). DEQ can accept grants, contributions, or other funds from any private, federal, state, or public source to be used for purposes of the Act, which money must be credited to the Fund. Any money in the Fund available for investment must be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. [LB 731, sec. 8.]

Section 9: The Remanufacturing Pilot Project Act would terminate December 31, 2022. [LB 731, sec. 9.]

Sections 10 to 12: Coordinating changes that list the refundable income tax for the Remanufacturing Pilot Project Act for purposes of the statutes governing individual income tax credits, estate and trust income tax credits, and corporate income tax credits. [LB 731, secs. 10 to 12, amending Neb. Rev. Stat. secs. 77-2715.07(2)(d), 77-2717 (1) (a) and (b), (3), and (4), and 77-2734.03(5).]

Sections 13 to 16: ***Identifies the sources of funding for the Remanufacturing Pilot Project Act***, including funding from the following sources: the Nebraska Litter Reduction and Recycling Act (to help fund the Act's income tax credits); the "litter fee" (funding for "one-time expenses" incurred by the Department of Revenue for administering the Act and 10 percent of annual litter fee collections to help fund the Act's income tax credits); the Waste Reduction and Recycling Incentive Act (10 percent of the annual fees collected to help fund the Act's income tax credits and its administrative expenses); and a requirement that "one-time expenses" relating to the Act be funded from: (a) amounts withheld by the Department of Revenue for administering the Waste Reduction and Recycling Incentive Act and (b) legislative appropriations of money from the Waste Reduction and Recycling Incentive Act. [LB 731, secs. 13 to 16, amending Neb. Rev. Stat. secs. 81-1558, 81-1561 (1) and (2), 81-15,160(2) by adding new paragraph (j), and 81-15,165.]

Section 17: Would repeal the current version of the statute (Neb. Rev. Stat. sec. 77-2715.08) that LB 731seeks to amend. [LB 731, sec. 17.]

Revenue Committee Amendment: AM 2151

The adopted Revenue Committee amendment (AM 2151) is a "white copy" amendment of LB 731 that makes three substantive changes to the introduced version of the bill and also makes a number of technical coordinating changes throughout the bill.

The substantive changes made by AM 2151 include the following: (1) Ensuring that the "remanufacturing" income tax credits authorized by the bill are ***not transferable credits***; (2) Ensuring that nonprofit and governmental entities ***cannot*** earn the "remanufacturing" income tax credits authorized by the bill; and (3) Establishing a ***3-year sunset period*** for the "recovered resource income tax credit" (tax years 2013 to 2015) authorized by section 3 of AM 2151.

Other Adopted Amendments: None.

Motions: MO 91, by Senator Mello, requested and received unanimous consent to bracket LB 731 until April 12, 2012.

LB 731 died with the end of the legislative session on April 18, 2012.

LB 752 (Avery)—Provide an income tax credit relating to grape growing and wine producing.

Introduced Version:

LB 752 would have provided an income tax credit for grape growers and wine producers. The income tax credit would have been equal to 25 percent of the cost of eligible equipment and material, which terms are defined in the bill.

Eligible material includes grape plants and grape vines, but no other potential wine producing plants. Materials must be purchased ***new***—not used—to be eligible for the tax credit and a taxpayer would have to certify that the purchased materials are new materials (e.g., new grape vines).

The term equipment is also defined by the bill. The equipment must be ***new***—not used—when purchased to be eligible for the tax credit. Equipment includes, among other types of equipment listed in the bill, irrigation equipment.

However, the terms wine and wine producers are not defined by the bill. But existing statute section 53-103.42 defines "wine" to mean "any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits." So, a producer of wine made from products other than grapes (e.g., apples) might be eligible for the tax credit proposed by the bill.

LB 752 did not advance from committee and the bill died with the end of the legislative session on April 18, 2012.

LB 850 (Hadley, Brasch, Larson, and Sullivan)—Create the incentive area tax credit program and authorize tax credits.

Introduced Version:

As introduced, LB 850 would have created an income tax credit for certain persons residing in designated counties in Nebraska. The credit would be refundable, providing refunds to persons with no state income tax liability. The credit would be available to persons locating in a county which had experienced a loss of population of five percent or more between the U.S. Census of 2000 and the Census of 2010. The credit is capped at $1,500 per year. In order to qualify the person must prove they have resided outside Nebraska for a least five years and have received less than 10,000 dollars of income from a Nebraska source during that five year period.

LB 850 did not advance from committee died with the end of the legislative session on April 18, 2012.

LB 888 (Cornett and Mello)—Adopt the Historic Property Restoration and Reuse Act and Authorize a Related Income Tax Credit.

Introduced Version:

Section 1: LB 888, sections 1 to 7, would have adopted the "Historic Property Restoration and Reuse Act" (the Act). [LB 888, sec. 1.]

Section 2: Would have defined key terms for purposes of the Act, including: "eligible expenditure"; "eligible property"; "improvement"; and "placed in service". [LB 974, sec. 2.]

Section 3: Would have allowed "any person incurring an eligible expenditure" pursuant to the Act to receive a nonrefundable income tax credit "for the year the eligible property is placed in service". The amount of the credit would have been be equal to: (a) 25 percent of the eligible expenditure incurred; or (b) 30 percent of the eligible expenditure incurred if the eligible property is owned by an entity exempt from federal income tax pursuant to Internal Revenue Code sec. 501(c)(3). To claim the credit, a person incurring an eligible expenditure must apply to the Nebraska Department of Revenue (department) within 12 months after the date on which the eligible property was placed in service. The department must refer the application to the State Historic Preservation Officer, who must determine whether the person qualifies for the credit under the Act and must make such determination within 45 days after the referral. If such determination is not timely made, the application will be deemed approved. If the application is approved, the department must calculate the amount of the credit and issue a certificate to the person evidencing the credit. Upon reasonable request, the department must "divide the credit and issue multiple certificates" to a person who qualifies for the credit. [LB 888, sec. 3.]

Section 4: Would allow a taxpayer claiming the credit to carry forward the amount of unused credits—for the year in which the eligible property is placed in service—to subsequent tax years until fully utilized. All or a portion of the credit can be recaptured by the department "if at any time during the five years after the eligible property is placed in service the eligible expenditure for which the credit was granted ceases to qualify as an eligible expenditure." The rate of recapture is: 100 percent of the credit if the eligible expenditure ceases to qualify during the first year after the credit was granted; 80 percent if the eligible expenditure ceases to qualify during the second year after the credit was granted; 60 percent if the eligible expenditure ceases to qualify during the third year after the credit was granted; 40 percent if the eligible expenditure ceases to qualify during the fourth year after the credit was granted; and 20 percent if the eligible expenditure ceases to qualify during the fifth year after the credit was granted. [LB 888,
sec. 4.]

Section 5: Would allow persons eligible for credits under the Act to "transfer, sell, or assign the credits by transferring possession of the certificate received for such credits" under section 3 of the Act. "Any person acquiring credits pursuant to section 4 of the Act can use the credits to offset up to 100 percent of such person's income tax due under the Nebraska Revenue Act of 1967 "in the year the credits are acquired and n subsequent years until all credits have been utilized." The transferor, seller, or assignor of the credits must notify the department in writing within 15 calendar days after the effective date of the transfer, sale, or assignment and must also provide any information as may be required by the department or the State Historic Preservation Officer to administer and carry out the Act. However, any transfer, sale, or assignment of credits under section 5 of the Act "shall be void and of null effect" until the
requirements of section 5 of the Act are met.

Section 6: Would require the Nebraska Department of Revenue to adopt rules and regulations to carry out the Act and would require such rules and regulations to "include an application fee to offset the costs of processing applications submitted under the Act." [LB 888, sec. 6.]

Section 7: Would prohibit the filing of any applications under the Act on or after January 1, 2018, except that all applications and all tax credits pending or approved before that date will "continue in full force and effect." [LB 888, sec. 7.]

Section 8: Would exempt sections 2 and 3 of LB 888 from the date change made by the annual Internal Revenue Code Update bill. [LB 888, sec. 8, amending Neb. Rev. Stat. sec. 49-801.01.]

Section 9: Would allow a nonrefundable individual income tax credit "for eligible expenditures incurred as provided in the Historic Property Restoration and Reuse Act." [LB 888, sec. 9, amending Neb. Rev. Stat. sec. 77-2715.07 (3) (b) through (d).]

Section 10: Would allow a nonrefundable income tax credit for all resident and nonresident estates and trusts under the Act and would require the beneficiaries of such resident and nonresident estates and trusts to reduce their Nebraska income tax liability by their proportionate share of the credits as provided in the Historic Property Restoration and Reuse Act. [LB 888, sec. 10, amending Neb. Rev. Stat. sec. 77-2717 (1) (a) and (b), (3), and (4).]

Section 11: Would allow "corporate taxpayers a nonrefundable income tax credit for eligible expenditures incurred as provided in the Historic Property Restoration and Reuse Act." [LB 888, sec. 11, amending Neb. Rev. Stat. sec. 77-2734.03 by adding new subsection (7).]

Section 12: LB 888 would be operative for all income tax years beginning on or after January 1, 2012. [LB 888, sec. 12.]

Section 13: Would repeal the current version of existing statutes that it proposes to amend. [LB 888, sec. 13.]

Revenue Committee Amendment: None.

LB 888 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 983, Laws 2012 (Cornett and Mello)—Change provisions relating to a research tax credit.

Introduced Version:

As introduced, LB 983 would have stricken the limitation on the number of years that a taxpayer can carry forward Nebraska's research and development (R&D) tax credits authorized by Neb. Rev. Stat. sec. 77-5803, thereby recognizing and affirming Nebraska's commitment to providing R&D tax credits for projects that may take more than five years to successfully research and develop.

One of those tax credits applies to university-based R&D projects and the other applies to R&D projects that are not university-based projects. Current law limits a taxpayer's ability to claim the R&D tax credits to a total of five tax years.

Those R&D tax credits can be used to obtain a refund of Nebraska state sales and use taxes paid, may be used against the Nebraska income tax liability of the taxpayer, or may be used as a refundable credit claimed on a taxpayer's Nebraska income tax return, pursuant to Neb. Rev. Stat, sec. 77-5804.

Section 1: Would strike the following limitation as it applies to taxpayers who claim either of the two the R&D credits authorized by Neb. Rev. Stat, sec. 77-5803(1) (a) and (b), the first of which provides for a tax credit equal to 15 percent of the federal R&D tax credit allowed under Internal Revenue Code (IRC) sec. 41 for projects that do not involve university-based R&D projects and the second of which provides for a tax credit equal to 35 percent of the federal R&D tax credit allowed under IRC sec. 41 for projects that do involve university-based R&D projects: "The credit shall be allowed for the first tax year it is claimed and for the four tax years immediately following." [LB 983, sec. 1, amending Neb. Rev. Stat. sec. 77-5803(1) (a) and (b).]

Section 2: The changes proposed by LB 983 would be operative for all taxable years beginning or deemed to begin on or after January 1, 2012, under the 12 Internal Revenue Code of 1986, as amended. [LB 983, sec. 2.]

Section 3: Would repeal the current version of the statute that LB 983 seeks to amend.

Revenue Committee Amendment: AM 2096

AM 2096 to LB 983 is a "white-copy" amendment of LB 983 which, as amended by adopted AM 2096, allows Nebraska's research and development tax credits to be carried forward 20 years (rather than 4 years under current law). The proposed 20-year carry-forward is consistent with the 20-year carry-forward period allowed under federal law for the Internal Revenue Code (IRC) section 41 R&D income tax credit. (Since the IRC section 41 R&D credit is one of the many "General Business Credits" under IRC section 38, its carry-forward period is 20 years as provided for by IRC section 39.) The new carry-forward rule is operative for tax years beginning on or after January 1, 2012.

Other Adopted Amendments: None.

LB 983 passed 47-0 and was approved by the Governor on April 6, 2012.

LB 1033 (Cornett)—Provide tax incentives under the Nebraska Advantage Act for renewable energy projects

Introduced Version:

LB 1033 would have amended the Nebraska Advantage Act by adding a new tier (Tier 7) authorizing sales and use tax incentives for qualified renewable energy projects of a “qualified business”.

Section 1: Defines the term "entitlement period" (for purposes of a Tier 7 project) to mean "the year during which the required increase in investment was met or exceeded and each year thereafter until the end of the sixth year after the year the required increase was met or exceeded." [LB 1033, sec. 1, amending Neb. Rev. Stat. sec. 77-5708.]

Section 2: Defines the term "qualified business" (for purposes of a Tier 7 project) to mean "any business engaged in the production of electricity by using one or more sources of renewable energy to produce electricity for sale." For purposes of that definition, the phrase "sources of renewable energy resources" means "wind, solar, geothermal, hydroelectric, and biomass." [LB 1033, sec. 1, amending Neb. Rev. Stat. sec. 77-5708 by adding new subsection (4).]

Section 3: Requires a nonrefundable application fee of $2,500 for a Tier 7 project and makes a coordinating change by referring to a Tier 7 project with respect to the existing statutory procedure by which the Tax Commissioner approves an application for a Tier 7 project. [LB 1033, section 3, amending Neb. Rev. Stat. section 77-5723 (2)(d) and (4).]

Section 4: Sets forth the required level of investment and the related tax incentives for a Tier 7 project. ***LB 1033 allows two levels of required investment: investment in qualified property of less than $75 million; and investment in qualified property of $75 million or more.***

Investment in qualified property by a qualified business of ***less than $75 million*** can qualify for the following sales and use tax incentives:

(1) ***A refund of 50 percent of all state and local sales and use taxes paid*** under the Nebraska Revenue Act of 1967 and under Neb. Rev. Stat. secs. 13-319, 13-324, and 13-2813 for all purchases and rentals of qualified property used as part of the project (Neb. Rev. Stat. secs. 13-319, 13-324, and 13-2813 authorize imposition of "county" and "municipal county" sales and use taxes);

(2) ***A refund of an additional 25 percent of sales and use taxes paid*** on such purchases and rentals ***if*** the taxpayer expended 25 percent or more of its total expenditures for the Tier 7 project on specified items (e.g., easement payments, the amount of qualified contributions to an employee stock ownership plan multiplied by 4, and goods and services ***if*** "such goods or services are manufactured, assembled, or fabricated in Nebraska or performed primarily by Nebraska residents or by organizations that are organized under Nebraska law"), ***regardless*** whether incurred or purchased ***before*** the application date; and

(3) ***A refund of an additional 25 percent of sales and use taxes paid*** on such purchases and rentals ***if*** "the taxpayer is a Nebraska resident" **or** ***if*** "the taxpayer is a business entity" at least 25 percent of which is owned by Nebraska residents.

Investment in qualified property of ***$75 million or more*** by a qualified business can qualify for the following sales and use tax incentives:

(1) ***A refund of 75 percent of all state and local sales and use taxes paid*** under the Nebraska Revenue Act of 1967 and under Neb. Rev. Stat. secs. 13-319, 13-324, and 13-2813 for all purchases and rentals of qualified property used as part of the project (Neb. Rev. Stat. secs. 13-319, 13-324, and 13-2813 authorize imposition of "county" and "municipal county" sales and use taxes); and

(2) ***A refund of an additional 25 percent of sales and use taxes paid*** on such purchases and rentals ***if*** the taxpayer expended 25 percent or more of its total expenditures for the Tier 7 project on specified items (e.g., easement payments, the amount of qualified contributions to an employee stock

ownership plan multiplied by 4, and goods and services ***if*** "such goods or services are manufactured, assembled, or fabricated in Nebraska or performed primarily by Nebraska residents or by organizations that are organized under Nebraska law"), ***regardless*** whether incurred or purchased ***before*** the application date.

Section 4 of LB 1033 also adds a new subparagraph for Tier 7 projects which mandates that the required level of investment to be adjusted for inflation beginning October 1, 2012 (and each October 1 thereafter) using the average Producer Price Index for all commodities published by the United States Department of Labor's Bureau of Labor Statistics. The required level of investment must be adjusted for cumulative inflation since 2012.

Finally, Section 4 of LB 1033 also makes a number of related coordinating changes to Neb. Rev. Stat. sec. 77-5725.

[LB 1033, section 4, amending Neb. Rev. Stat. section 77-5725 (1), (1)(g), and adding new subsection (9) and (10)(d).]

Section 5: LB 1033 also utilizes the recapture provisions of current law and makes them applicable to a Tier 7 project. [LB 1033, section 5, amending Neb. Rev. Stat. section 77-5727(2).]

Section 6: Repeals the current version of the statutes that LB 1033 amends. [LB 1033, sec. 6.]

LB 1033 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1050 (Cornett)—Provide for identification requirements for importation of certain cattle.

Introduced Version:

As introduced, LB 1050 would have created a new statute section (as part of the Nebraska Revenue Act of 1967) authorizing the Tax Commissioner to enter into a contract with a "procurement processing company" (PPC) in which the PPC agrees to locate its business operations in Nebraska in exchange for a rebate of Nebraska ***state*** sales and use taxes (***not*** local option sales taxes) by "purchasing companies" that are managed by the PPC, ***if*** the governor determines that the contract is in the best interest of the State of Nebraska (the Governor must base that determination on the new taxable sales that would be generated as a result of the contract). LB 1050 also provides that such a contract with a PPC cannot exceed an initial term of 20 years. [LB 1050, sec. 1 and sec. 2 (3), (4), and (5).]

The stated legislative intent of LB 1050 is that the sales and use tax rebate incentive is to be "used solely to induce" PPCs to locate in Nebraska, "resulting in significant new sales tax revenue" generated for the State of Nebraska. [LB 1050, sec. 2 (1).]

LB 1050 defines four key terms and phrases, including: affiliated entity; new taxable sales ("sales of property and services" upon which Nebraska sales and use taxes are paid and which occur in Nebraska "as a result of the operation" in Nebraska of a PPC); procurement processing company ("a person engaged in managing the activities of unrelated purchasing companies"); and purchasing company ("a person engaged in the activity of selling property and services to affiliated entities"). [LB 1050, sec. 2 (2) (a) through (d).]

LB 1050 provides that contracts entered into pursuant the new statute section are not subject to Neb. Rev. Stat. secs. 73-501 to 73-509, which govern state contracts for services, and are not subject to Neb. Rev. Stat. secs. 73-201 to 73-204, which govern contracts—including contingency fee contracts—entered into on behalf of the state. [LB 1050, sec. 2 (6).] However, purchasing companies would be subject to the reporting, audit, enforcement, and confidentiality provisions of the Nebraska Revenue Act of 1967 that apply to other sellers in Nebraska (LB 1050 prohibits the State of Nebraska from contractually waiving that requirement). [LB 1050, sec. 2 (7).]

The Tax Commissioner must submit a report to the Legislature on or before July 1 each year regarding any contract entered into under the new statute section showing the total sales occurring in Nebraska as a result of LB 1050 and total sales tax revenue generated by those sales. [LB 1050, sec. 2 (8).]

Finally, LB 1050 repeals the current version of the existing statute amended by section 1 of the bill (Neb. Rev. Stat. sec. 77-2701). [LB 1050, sec. 3.]

Revenue Committee Amendment: None.

Motions: MO100, by Senator Cornett, prevailed, thereby suspending Rule 7, section 3(d), to permit consideration of AM 2746.

Other Adopted Amendments: AM 2746 (Select File Amendment to LB 1050)

Adopted AM 2746 strikes all of the provisions of LB 1050, as introduced, and replaces them with the provisions of Agriculture Committee amendment AM 2191 to LB 927, which proposed amending the Animal Importation Act to add a new section to that Act governing identification of cattle imported into Nebraska.

Subsection (1) of the new statute section would—except as otherwise provided Subsection (3) of the new statute section—prohibit requiring "individual identification" for "cattle identified by a registered brand, accompanied by a state-issued brand inspection certificate, and imported into Nebraska directly from a mandatory brand inspection area of any state or portion of a state."

Subsection (2) of the new statute section would require the Nebraska Department of Agriculture to "require cattle described in subsection (1) . . . to be identified by individual identification to enter" Nebraska ***if*** the Director of Agriculture determines that:

> "(a) The brand registration or the the brand inspection procedures and documentation of the state of origin are insufficient to enable tracing of animals to their herd of origin;
>
> (b) Identification by brand alone is in conflict with a standard of federal law or regulation regarding identification of cattle moved in interstate commerce; or
>
> (c) The cattle originate from a location that is not a tuberculous accredited-free state or zone pursuant to 9 C.F.R. 77.7 or is not designated a brucellosis Class Free or Class A state or area pursuant to 9 C.F.R. 78.41, as such regulation existed on January 1, 2012."

Subsection (3) would state that the new statute section "does not limit the authority of the State Veterinarian to issue import orders imposing additional requirements for animals imported into Nebraska from any state, country, zone, or other area, including requirements relating to identification."

LB 1050 advanced to Select File, but died with the end of the 2012 legislative session on April 18, 2012.

LB 1071 (Cornett)—Extend the deadline for acceptance of applications under the Convention Center Facility Financing Assistance Act.

Introduced Version:

Legislative Bill 1071 would extend the time for filing applications for "state assistance" under the Convention Center Facility Financing Assistance Act (CCFFA Act) by an additional two years, to December 31, 2014.

Section 1: Would extend the time period for filing applications for "state assistance" under the CCFFA Act by an additional two years, to December 31, 2014. Current law provides that applications for state assistance under the CCFFA Act cannot be accepted after December 31, 2012. [LB 1071, sec. 1, amending Neb. Rev. Stat. sec. 13-2612.]

> ***What is "state assistance"?*** The CCFFA Act provides that "The amount of state assistance shall be limited to a designated portion of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels." [Neb. Rev. Stat. sec. 13-2602(5).]

Section 2: Would repeal the statute that LB 1071 seeks to amend. [LB 1071, sec. 2.]

Revenue Committee Amendment: None.

Other Amendments: AM 2148

Besides the Revenue Committee's public hearing on LB 1071, the committee also held a separate public hearing on AM 2148 pursuant to direction of the Speaker of the Legislature due to the subject matter of AM 2148. However, LB 1071 did not advance from committee, so there was no floor debate on AM 2148 or LB 1071.

AM 2148 would have stricken the provisions of LB 1071 as introduced (i.e., extend the time for filing applications for "state assistance" under the Convention Center Facility Financing Assistance Act by an additional two years, to December 31, 2014) and it would have rewritten the bill to adopt the "Envision Nebraska Act", which would authorize use of what can be generally referred to as "sales tax increment financing" for qualified redevelopment "envision projects" in qualified redevelopment "envision districts" to authorize state assistance in helping to revitalize the local economy of dilapidated and blighted areas in all classes of cities in Nebraska, as prescribed in the Envision Nebraska Act.

Section 1: Sections 1 to 19 of AM 2148 to LB 1071 are the "Envision Nebraska Act". [AM 2148, sec. 1, to LB 1071.]

Section 2: Sets forth ***11 legislative findings and declarations***, including: (1) a finding that failure to redevelop outdated commercial and retail properties throughout Nebraska will result in further

deterioration of once vibrant areas, causing blight, sprawl, job loss, erosion of the ax base, reduction in tax revenue, and substandard infrastructure", and
(2) a declaration that the purpose of the Envision Nebraska Act is to" promote, stimulate, and develop the general and economic welfare of Nebraska and its communities; assist in the development and redevelopment of eligible areas within Nebraska and its cities and villages by authorizing then to establish "envision districts" to support "the issuance of sales tax revenue bonds for the financing of envision projects"; and "allow designated portions of newly created sales tax revenue in such districts to be reinvested in such districts to refund bonds, retire bonds, improve infrastructure, and further the purposes of the act". [AM 2148, sec. 2, to LB 1071.]

Section 3: ***Defines 23 terms*** for purposes of the Envision Nebraska Act, including:
(1) "Eligible city", which means a city that meets the requirements of section 4 of AM 2148; (2) "Envision district", which means a city that meets the requirements of section 4 of AM 2148; (3) "Base year", which means "the fiscal year ending during the calendar year in which the board approves the application for state assistance under section 10 of AM 2148; (4) "Board", which means a board consisting of the Governor, State Treasurer, chairperson of the Nebraska Investment Council, chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a postsecondary educational institution located in Nebraska; (5) "City sales tax", which means "the tax imposed pursuant to the Local Option Revenue Act"; (6) "City sales tax revenue", which means "the amount of revenue derived from the city sales tax; (7) "City increment", which means "the amount of an envision district's city sales tax receipts that is in excess of the amount of that district's city sales tax receipts for the same month in the base year. . ."; (8) "State sales tax", which means "a tax imposed by and collected under sections 77-2701 to 77-2713"; and (9) "State increment", which means "the amount of an envision district's state sales tax receipts that is in excess of the amount of that district's state sales tax receipts for the same month in the base year. . . ."
[AM 2148, sec. 3, to LB 1071.]

Section 4: A city is an "eligible city" if it satisfies the following two requirements: (1) "An area suitable for development exists wholly within the boundaries of the city"; and (2) "The city imposes a sales and use tax pursuant to the Local Option Revenue Act."

Section 4 also prescribes what constitutes an "area suitable for redevelopment", including: (a) an area consisting of at least a minimum number of "contiguous acres of land that are entirely within the boundaries of the city", including acres of land that "may be bisected by waterways, transportation infrastructure, or other natural or human made features"; (b) an area consisting of "parcels of real property that the governing body determines to be strategically located within the city and will be directly and substantially benefited by the establishment of an envision district and the implementation of an envision project"; and (c) an area consisting of "buildings, infrastructure, and improvements that are dilapidated, deteriorated, aged, or obsolete that will be directly and substantially benefited by the establishment of an envision district and the implementation of an envision project".

[AM 2148, sec. 4, to LB 1071.]

Section 5: Subsection (1) authorizes the governing body of an "eligible city" to establish—by ordinance—an "envision district" for purposes of financing envision projects within such district pursuant to the Envision Nebraska Act.

Subsections (2) and (3) set forth application requirements and procedures for creating an "envision district" and for approval of an "envision project."

With respect to an “envision district” application, subsection (2) requires the application to contain five items, including: (a) the exact name of the person or persons submitting the envision district application; (b) a legal description of the boundaries of the area proposed to be designated as an envision district; (c) a demonstration that the proposed envision district satisfies the the size requirements set forth in the Envision Nebraska Act; (d) the master plan for the envision district as determined by the city in consultation with the master developer; and (e) a request that the envision district be considered for approval and creation.

With respect to an “envision project” application, subsection (3) requires the application to contain 13 items, including, among other things: a ***minimum capital investment*** in the proposed envision project (e.g., for a city of the metropolitan class, $100 million); a ***minimum investment in next-generation technology infrastructure and facilities*** within the envision district (e.g., for a city of the metropolitan class, $20 million or 5 percent of the total project costs); a demonstration that the ***total development costs*** of the proposed envision project exceed a certain dollar amount (e.g., for a city of the metropolitan class, $200 million); a report demonstrating that the envision project “may directly or indirectly result in the creation in the city: of a certain number of ***new jobs*** (e.g., for a city of the metropolitan class, 1,000 new jobs); for an envision project “principally comprised of retail”, a report demonstrating that upon completion of the project ***at least a certain percentage of sales*** within the district “may be made to persons residing outside the city limits” (e.g., for a city of the metropolitan class, the minimum percentage is 35 percent); a demonstration that upon completion of the project, ***at least 50 percent of the end users of the project may be new to the state***, “calculated either by the number of end users or on gross usable area within the envision project”; a “binding commitment by the master developer” to ***actively promote the envision district by spending annually a fixed amount of money*** (e,.g., for a city of the metropolitan class, $1.5 million annually); a ***detailed narrative description*** of the proposed envision project; a ***demonstration that the the envision project is in accordance with the master plan*** for the envision district and that it reasonably meets the goals and intentions of the Envision Nebraska Act; and ***a request that the project be considered for approval.***

Subsection (4) governs situations in which an applicant has previously applied and been approved for an envision project within an envision district. In such situations, the applicant's subsequent project or projects within the envision district must be “considered adjunct to the initial project” and those projects must be “aggregated for purposes of determining whether the conditions of subsection (4) are satisfied.

Subsection (5) permits an envision project application to include “a draft of the applicant's proposed finance agreement with the city requesting the city to issue bonds” pursuant to the Envision Nebraska Act.

Subsection (6) permits an envision district application and an envision project application to be “submitted simultaneously or separately.”

Subsection (7) requires the governing body of an eligible city to hold a public hearing upon submission of an envision district application or envision project application and it sets forth procedural requirements for holding such a public hearing, including requirements governing publication of notice (i.e., the notice must be published “at least once each week for two consecutive weeks in a legal newspaper of general circulation in the city”) and contents of such notice. The public hearing must be held at least 10 days after the last required publication of notice. If a person simultaneously submits an application for the creation of an envision district and an application for approval of an envision project, that person can request that separate public hearings be held on each application and, if such a

request is made, the requirements of subsection (7)--such as the publication of notice requirement—will apply to each of the separate public hearings.

Subsection (8)(a) provides that after the public hearing or public hearings required by subsection (7), the governing body “may, as applicable, adopt a resolution finding that area suitable for development or redevelopment exists within the city, stating the governing body's intent to create an envision district, establish an envision district, approve an application for an envision project in an envision district, and authorize the city to enter into finance agreements.”

Subsection (8)(b) provides that if the governing body adopts a resolution creating an envision district, the resolution must provide “a legal description of the real property forming the boundaries of the envision district” and that legal description must include a map “depicting the boundaries of the district”.

Subsection (8)(c) provides that if the governing body adopts a resolution approving an envision project, the resolution must include “a description of the envision project.”

Subsection (9) requires the governing body of a city that has adopted a resolution creating an envision district to “adopt an ordinance creating the envision district” and it requires the governing of such city to notify the Tax Commissioner that an envision district has been created. The governing of such a city must also notify the Tax Commissioner that an application for an envision project has been approved by adoption of a resolution approving the application for an envision project.

Subsection (10) permits a city to amend the resolution and ordinance establishing the envision district “to add additional envision projects within the district.”

[AM 2148, sec. 5, to LB 1071.]

Section 6: Requires an “eligible city” to enter into a “finance agreement” with the applicant, after the adoption of a resolution approving an “envision project”, and sets forth what the finance agreement must contain, including the applicant's agreeing “to complete the envision project and to use commercially reasonable efforts to generate the designated economic gains upon an approved schedule” in exchange for the city's agreeing to the provisions relating to incurring indebtedness as provided for in the Envision Nebraska Act. Among other things, section 6 also requires the finance agreement to “contain provisions relating to the use of the amounts deposited in the city's Envision Fund, including state assistance, that may be pledged to pay principal, interest, and other costs of bonds issued to finance or partially finance the envision project.” Additionally, section 6 permits a city to require any applicant to entering into a finance agreement for an envision project to obtain a surety bond before beginning work.[AM 2148, sec. 6, to LB 1071.]

Section 7: Permits any city or governing body to apply to the board for state assistance if the city or governing body has: (1) approved a special obligation bond issue to finance or partially finance an envision project; (2) adopted a resolution authorizing it to pursue a special obligation bond issue to finance or partially finance the undertaking of any envision project; or (3) established an envision district and approved an envision project. The state assistance can be used to secure or fund the repayment of amounts expended or borrowed through one or more series of bonds issued or to be issued by the city to finance or refinance an envision project. [AM 2148, sec. 7, to LB 1071.]

Section 8: Sets forth: (1) application requirements; (2) the required contents of the application, including documentation of “local finance commitments to support the envision project, including all public and private resources pledged or committed to the envision project”; (3) a requirement that the

board must review the application; and (4) a requirement that any state assistance received under the Envision Nebraska Act must be used only for the purposes set forth in that Act. [AM 2148, sec. 8, to LB 1071.]

Section 9: Requires the board to hold a public hearing on an application submitted pursuant to the Envision Nebraska Act, after the board has reviewed the application and given "reasonable notice" to the applicant of the public hearing. Section 9 also sets forth procedures the board must follow with respect to giving notice of the public hearing (i.e., the notice of the public hearing published 3 times in a newspaper of statewide circulation and it must generally describe the envision project and envision district for which state assistance has been request). The cost of such notice must be paid by the applicant. A representative of the applicant and any other interested persons can appear and present evidence as a supporter, opponent, or neutral testifier at the hearing. The board can "seek expert testimony", it can "require testimony of persons whom the board desires to comment on the application", and it can "provide for the acceptance of additional evidence after the public hearing." [AM 2148, sec. 9, to LB 1071.]

Section 10: Requires the board to issue a "finding" as to whether the envision project described in the application qualifies for state assistance under the Envision Nebraska Act. If the board finds that the envision project qualifies and that "state assistance is beneficial" to the State of Nebraska, it must approve the application. When determining if state assistance is beneficial to the state, the board must consider the projected fiscal and economic impact of the envision project, "including whether the project will generate the designated economic gains required by the Envision Nebraska Act." Finally, section 10 states that a majority of the board members constitutes a quorum and that all actions of the board must be by a majority vote. [AM 2148, sec. 10, to LB 1071.]

Section 11: Subsection (1) requires the eligible city to establish a "special fund" created for purposes of carrying out the Envision Nebraska Act. Such fund must be "designated as the city's Envision Fund."

Subsection (2) states that when notified that an envision district has been established, the Tax Commissioner must identify all city sales tax revenue attributable to or derived from transactions subject to Nebraska state sales and use taxes and local option sales and use taxes within the envision district for the base year and then notify the eligible city of the amount of such city sales tax revenue.

Subsection (3) requires the Tax Commissioner to certify each month and the State Treasurer to transfer to the city—for deposit in the city's Envision Fund—the city increment and city sales tax revenue attributable to or derived from transactions subject to Nebraska state sales and use taxes and local option sales and use taxes within the envision district, ***if*** an eligible city has agreed in a finance agreement to issue bonds and to pledge the city increment, city sales tax revenue, or a combination thereof in connection with the issuance of bonds.

Subsection (4) requires amounts deposited in the city's Envision Fund to be used in to two ways: (a) To fund and finance each envision project within the envision district in accordance with the applicable financing agreement; and (b) If, at any time during the period that is 25 years after the date the bonds were issued pursuant to a finance agreement for an envision project, the city increment or city sales tax revenue attributable to or derived from transactions subject to Nebraska state sales and use taxes and local option sales and use taxes within the envision district in which the envision project is located, as applicable, exceeds the amount required to satisfy the obligations of the parties to the finance agreement, such excess must be retained by the city's Envision Fund and must be used to finance economic development projects within the envision district in accordance with subsection (5) of

section 11 of the Envision Nebraska Act. The eligible city must keep full and accurate records of all money received and distributed by the the city's Envision Fund.

Subsection (5) requires each “eligible city” to establish an “Envision Fund Committee” and authorizes the mayor—in consultation with the master developer—and upon approval of the governing body to appoint 6 specified persons (plus the master developer if certain conditions exist) as members of the Envision Fund Committee, as specified in subsection (5)(a) through (e). The Committee must meet “as needed” and must review and approve the financing agreements for other envision projects within the applicable district if such projects meet the requirements of the Envision Nebraska Act and have been approved by the governing body in accordance with that Act.

Subsection (6) requires the State Treasurer to transfer to the city's “Envision Fund” 90 percent of “the state increment collected from within the envision district described in the application on sales in such envision district. The State Treasurer must do that upon the monthly certification under Section 15 of the Envision Nebraska Act. Moreover, subsection (6) prohibits the “state assistance” from being “used for an operating subsidy or other ancillary facility.” The amount of such appropriation allocated to an eligibility city must be used in accordance with Section 4 of the Envision Nebraska Act. Additionally, subsection (6) requires 5 percent of the state increment collected from the envision district to be transferred to the “Destination Nebraska Tourism Fund” and 5 percent of the state increment must be transferred to the State of Nebraska's General Fund.

Subsection (7) provides that state assistance to the city will no longer be available 25 years after the date of substantial completion of the initial envision project within the envision district.

Subsection (8) creates the “Destination Nebraska Tourism Fund” and requires the Legislature to appropriate money from that fund for the purpose of: (a) attracting regional, national, and international programs and events; (b) assisting in the development of facilities that will eliminate the need for Nebraska residents to travel outside Nebraska to visit similar facilities; and (c) attracting, regional, national, and international travelers to Nebraska.

[AM 2148, sec. 11, to LB 1071.]

Section 12: Subsection (1) permits an eligible city to issue bonds in one or more series to finance the undertaking and otherwise fund the construction and development of an approved envision project, as well as any costs and expenses arising from or attributable to such project in accordance with the finance agreement with the city. However, such bonds must have a maturity of more than 25 years after the date they are issued. Subsection (1) also allows an eligible city to issue refunding bonds for the purpose of paying, retiring, or otherwise refinancing or in exchange for any or all of the principal or interest upon bonds previously issued by such city. Such bonds or refunding bonds must be made payable both as to principal and interest: (a) from revenue deposited or to be deposited in the city's Envision Fund; (b) from an irrevocable pledge of an amount attributable to city sales tax revenue attributable to or derived from transactions subject to Nebraska state sales and use taxes and local option sales and use taxes within the envision district; (c) from any private sources, contributions, or other financial assistance from the state, city, county, or federal government; (d) from amounts received or to be received as state assistance; (e) from an irrevocable pledge of the state increment attributable to or derived from transactions subject to Nebraska state sales and use taxes within the envision district described in the application;l (f) from any other lawful source; or (g) from any combination of the foregoing.

Subsection (2) permits the city to pledge revenue and amounts referred to in subsection (1) (a) through (g) of Section 12 of the Envision Nebraska Act to the repayment of such bonds before, simultaneously with, or after the issuance of such bonds.

Subsection (3) provides that any pledge of revenue, income, receipts, proceeds, or other money made by an eligible city to pay bonds or notes is “valid and binding from the time such pledge is made.” A pledge of revenue deposited or to be deposited in the city's Envision Fund –including a pledge of the state increment—***is not binding unless*** the application is approved by the board pursuant to the Envision Nebraska Act. However, such funds so pledged and thereafter received by the eligible city must immediately be subject to the lien of such pledge without physical delivery or further action, and the lien of any such pledge will be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the eligible city regardless if such parties have actual notice. Furthermore, neither the resolution, ordinance, nor any other instrument by which a pledge is created will be required to be recorded.

Subsection (4) permits an eligible city to borrow money and issue its bonds in such principal amounts as the city determines necessary to provide sufficient funds to carry out the purposes of the Envision Nebraska Act, including, for instance, the payment of interest on bonds issued under that Act.

Subsection (5) provides that—unless specifically allowed in the finance agreement entered into under the Envision Nebraska Act—bonds issued pursuant to Section 12 of the Act will “not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and, except as otherwise provided in Section 12 of the Envision Nebraska Act, will “not be subject to the provisions of any other law, charter, or ordinance relating to the authorization, issuance, or sale of bonds.”

Subsection (6) provides that—unless specifically allowed in the finance agreement entered into under the Envision Nebraska Act—bonds issued under Section 12 of the Act will “not be general obligation bonds of the eligible city or state,” nor will they “give rise to a charge against the city's or state's general credit or taxing powers or be payable out of any funds or properties other than those set forth in the act” and such bonds must state such information on their face. However, nothing in the Act will prevent an eligible city from directing city sales tax revenue to an envision project or bonds issued under the act to the extent otherwise permitted by law.

Subsection (7) declares that bonds, including refunding bonds, issued pursuant to the Envision Nebraska Act are “to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.”

Subsection (8) requires bonds to be authorized by resolution of the governing body; permits such bonds to be issued in one or more series; and requires such bonds to comply with four conditions set forth in subsection (8), including a maximum interest rate limitation that such bonds can bear.

Subsection (9) permits an eligible city to issue “bond anticipation notes” and “renewal notes”, and it sets forth a number of related permissions and restrictions governing such notes and renewal notes, including one restriction which provides that such notes cannot mature later than 36 months “after the date of incurring the indebtedness represented in an amount not exceeding the aggregate at any time outstanding the amount of bonds then or before authorized.”

[AM 2148, sec. 12, to LB 1071.]

Section 13: Subsection (1) Permits an eligible city to establish “an Envision repository” if it issues bonds, including refunding bonds, for a purpose that includes funding an Envision repository.

Subsection (2) Requires amounts deposited or to be deposited in the Envision repository to be used to annually remit to an eligible city an amount equal to the amount of city sales tax revenue attributable to or derived from transactions subject to Nebraska state sales and use taxes and local option sales and use taxes within the envision district in the base year as determined by the Tax Commissioner pursuant to the Envision Nebraska Act. Subsection (2) also requires “reimbursements from the Envision repository” to be “in accordance with the terms of the finance agreement.”

Subsection (3) requires the “eligible city, a trustee, or any other person identified in the finance agreement” to “keep full and accurate records of all money received and distributed from the Envision repository.”

[AM 2148, sec. 13, to LB 1071.]

Section 14: Requires the Tax Commissioner to “calculate monthly the amount of increased city sales tax revenue attributable to or derived from transactions subject to” Nebraska state sales and use taxes and local option sales and use taxes, and it sets forth the manner in which such calculation must be performed. Section 14 also requires sellers and retailers who collect city sales tax revenue and who are doing business within the envision district to report such revenue on information returns developed by the Department of Revenue. [AM 2148, sec. 14 (1) and (2), to LB 1071.]

Section 15: Sets forth various duties that the Tax Commissioner's must perform if an application is approved by the board. [AM 2148, sec. 15, to LB 1071.]

Section 16: Authorizes an “eligible city” to “issue from time to time bonds to renew or pay bonds, including the interest thereon, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds. . . .” Section 16 permits refunding bonds to be “sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded or exchanged for the bonds to be refunded.” [AM 2148, sec. 16, to LB 1071.]

Section 17: Authorizes an “eligible city” to dissolve an envision district by ordinance, except that a city cannot “dissolve an envision district until the debt incurred through the issuance of bonds, including refunding bonds, to finance envision projects in such district pursuant to the Envision Nebraska Act have been retired.” Section 17 also sets forth certain notification and certification requirements, and it provides that “Upon the dissolution of an envision district, the state sales tax revenue collected thereafter within the area formerly comprising the district shall be administered and the tax revenue distributed in the same manner as if the district had not been established.” [AM 2148, sec. 17, to LB 1071.]

Section 18: Sets forth rules of statutory construction that apply to the Envision Nebraska Act, including: (1) a rule which states that the Envision Nebraska Act and all grants of power, authority, rights, or discretion therein shall be liberally construed, and all incidental powers necessary to carry into effect the act are hereby expressly granted and conferred”; and (2) a rule which states that “Insofar as the act is inconsistent with the provisions of any other law or of any law otherwise applicable to a city, the act shall be controlling.” [AM 2148, sec. 18 (1) and (2), to LB 1071.]

Section 19: For “the purpose of aiding and cooperating in the planning, undertaking, or carrying out of an envision project located within an envision district in which it is authorized to act,” section 19

permits any “eligible city” to “take any of the actions enumerated in section 58-526.” [AM 2148, sec. 19, to LB 1071.]

> ***Note:*** Neb. Rev. Stat. sec. 58-526 provides: “In addition to any other provisions governing any public body or taxing body set forth in the Nebraska Redevelopment Act, for the purpose of aiding and cooperating in the planning, undertaking, or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body or taxing body may, upon such terms, with or without consideration, as it may determine:
>
> (1) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to a contracting public body;
>
> (2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;
>
> (3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or re plan streets, roads, sidewalks, ways, or other places which it is otherwise empowered to undertake;
>
> (4) Plan, re plan, zone, or rezone any part of the public body or taxing body or make exceptions from building regulations and ordinances if such functions are of the character which the public body or taxing body is otherwise empowered to perform;
>
> (5) Cause administrative and other services to be furnished to the contracting public body of the character which the public body or taxing body is otherwise empowered to undertake or furnish for the same or other purposes;
>
> (6) Incur the entire expense of any public improvements made by such public body or taxing body in exercising the powers granted in this section;
>
> (7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment project;
>
> (8) Lend, grant, or contribute funds to a contracting public body;
>
> (9) Employ any funds belonging to or within the control of such public body or taxing body, including funds derived from the sale or furnishing of property, service, or facilities to a contracting public body, in the purchase of the bonds or other obligations of a contracting public body and, as the holder of such bonds or other obligations, exercise the rights connected with the bonds or obligations; and
>
> (10) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a contracting public body respecting action to be taken by such public body or taxing body pursuant to any of the powers granted by the provisions of the act.”

Section 20: Directs the Revisor of Statutes to assign sections 1 to 19 of AM 2148 to Chapter 13 of the Revised Statutes of Nebraska. [AM 2148, sec. 20, to LB 1071.]

Section 21: Sets forth the severability clause. [AM 2148, sec. 21, to LB 1071.]

LB 1071 did not advance from committee and died with the end of the 2012 legislative session on April 18, 2012.

LB 1080 (Cornett and Smith)—Provide a property tax exemption and a sales and use tax exemption relating to data centers.

Introduced Version:

LB 1080 proposes to provide a tangible personal property tax exemption and a sales and use tax exemption for tangible personal property of a person operating a data center in Nebraska ***if*** certain conditions are met.

Section 1: Would exempt from tangible personal property taxes any tangible personal property acquired by a person operating a data center that is located in Nebraska and that is assembled, engineered, processed,fabricated, manufactured into, attached to, or incorporated into other tangible personal property—both in component form or an assembled product—for the purpose of subsequent use solely outside Nebraska by the person operating a data center. The tangible personal property tax exemption applies to keeping, retaining, or exercising any right or power over such tangible personal property in Nebraska for the purpose of subsequently transporting it outside Nebraska for use thereafter solely outside Nebraska. [LB 1080, sec. 1, amending Neb. Rev. Stat. sec. 77-202 by adding new subsection (10).]

Section 2: Would make a coordinating change to existing statutory language and provides that sections 4 and 5 of LB 1080 are part of the Nebraska Revenue Act of 1967. [LB 1080, sec. 2, amending Neb. Rev. Stat. sec. 77-2701.]

Section 3: Would makes a coordinating change to existing statutory language governing definitions, for purposes of Neb. Rev. Stat. secs. 77-2701.04 to 77-2713 and for purposes of sections 4 and 5 of LB 1080. [LB 1080, sec. 3, amending Neb. Rev. Stat. sec. 77-2701.04.]

Section 4: Defines “data center” to mean “a group of computers, supporting equipment, and other organized assembly of hardware or software in one or more interrelated physical locations that is designed to centralize the storage, management, or dissemination of data and information.” [LB 1080, sec. 4.]

Section 5: Would provide a sales and use tax exemption for the sale, lease, or rental of and the storage, use, or other consumption of tangible personal property acquired by a person operating a data center located in Nebraska which property is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property for the purpose of subsequent use solely outside Nebraska. The exemption applies to keeping, retaining, or exercising any right or power over such tangible personal property in Nebraska for the purpose of subsequently transporting it outside Nebraska for use thereafter solely outside Nebraska. [LB 1080, sec. 5.]

Section 6: LB 1080 would be operative January 1, 2013. [LB 1080, sec. 6.]

Section 7: Would repeal the current version of the statutes that LB 1080 seeks to amend. [LB 1080, sec. 7.]

Revenue Committee Amendment: None.

Other Adopted Amendments: AM 1862 and AM 2634

AM 1862: Adopted AM 1862 rewrites the bill as follows:.

Section 1 of AM 1862: Provides a personal property tax exemption for "any tangible personal property that is acquired by a person operating a data center" located in Nebraska that is "assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside" Nebraska "by the person operating a data center. . . ." The "exemption extends to keeping, retaining, or exercising any right or power over tangible personal property" in Nebraska "for the purpose of subsequently transferring it outside" Nebraska "for use thereafter outside" Nebraska.

Also, for purposes of that personal property tax exemption, section 1 of AM 1862 redefines "data center" to mean:

> "computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing."

Section 2 of AM 1862: Makes sections 4 and 5 of AM 1862 part of the Nebraska Revenue Act of 1967.

Section 3 of AM 1862: Provides that, for purposes of sections 4 and 5 of AM 1862, the definitions set forth in Neb. Rev. Stat. secs. 77-2701.05 to 77-2701.53 and in section 4 of AM 1862 must be used unless the context otherwise requires.

Section 4 of AM 1862: For purposes of the sales and use tax exemption authorized by section 5 of AM 1862, section 4 redefines "data center" to have the same meaning as set forth in section 1 of AM 1862.

Section 5 of AM 1862: Authorizes a sales and use tax exemption for gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in Nebraska of "tangible personal property and services acquired by a person operating a data center" located in Nebraska "that are assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside" Nebraska.

Section 6 of AM 1862: July 1, 2012, is the operative date of sections 2 through 5 and section 7 of AM 1862. The other sections of AM 1862 are operative on their effective date (i.e., the date that the bill becomes effective pursuant to the emergency clause set forth in section 9 of AM 1862.

Sections 7 and 8 of AM 1862: Repeal the preexisting version of the statutes amended by AM 1862.

Section 9 of AM 1862: Sets forth the emergency clause.

AM 2634: Adopted AM 2634 to AM 1862 strikes sections 6 to 9 of AM 1862. Section 6 of AM 1862 set forth various operative dates for different sections of the bill. Also, AM 2634 makes all sections of AM 1862, as amended by AM 2634, operative January 1, 2013; makes coordinating changes; and eliminates the emergency clause.

Enacted Version:

Adopted AM 1862, as amended by adopted AM 2634, is the enacted version of LB 1080.

LB 1080 passed 44-2 and was approved by the Governor on April 10, 2012.

LB 1085 (Harr and Ashford)—Adopt the Tourism Development Act.

Introduced Version:

As introduced, LB 1085 would have allowed diversion of state sales tax revenue generated by retailers and hotels associated with a convention center. The funds would have been earmarked for tourism funding.

LB 1085 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1118, Laws 2012 (Cornett)—Nebraska Advantage Act Tax Incentives for Large Data Centers.

Introduced Version:

LB 1118 would amend the Nebraska Advantage Act to provide tax incentives for certain large data centers.

Section 1: Provides that section 3 of LB 1118 is part of the Nebraska Advantage Act. [LB 1118, sec. 1, amending Neb. Rev. Stat. sec. 77-5701.]

Section 2: Provides that the definition of "data center" set forth in section 3 of LB 1118 is part of the Nebraska Advantage Act. [LB 1118, sec. 1, amending Neb. Rev. Stat. sec. 77-5703.]

Section 3: Defines "data center" to mean "computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing. A data center also includes a facility described in this section for the co-location of computers." [LB 1118, sec. 3.]

Section 4: Would remove the definition of "data center" set forth in Neb. Rev. Stat. sec. 77-5715(1)(i) because section 3 of LB 1118 provides a new definition of "data center". [LB 1118, sec. 4, amending Neb. Rev. Stat. sec. 77-5715(1)(i).]

Section 5: Would bifurcate Tier 2 of the Nebraska Advantage Act so that it provides for two levels of investment and employment, the second of which is tailored for a large data center project:

At least $3 million in qualified investment and hire at least 30 new employees (the same as under current law for a Tier 2 project); and

For a large data center project, investment in qualified property for the data center of at least $300 million and hiring at least 30 new employees for the data center (the proposed new provision).

Section 5 of LB 1118 also allows a ***tangible personal property tax exemption***:

> (1) For a ***Tier 2 large data center project***, ***and*** for a ***Tier 4 and Tier 6*** project, for turbine-powered aircraft beginning with the first January 1 following the acquisition of the property;
>
> (2) For a ***Tier 2 large data center project or a Tier 5 project that was included as part of a Tier 2 large data center project for which the entitlement period has expired*** (the exemption would apply to all property listed in Neb. Rev. Stat. sec. 77-5725(8)(c)); and
>
> (3) For a ***Tier 2 large data center project*** for any other property located at the project.

Section 5 of LB 1118 also allows a ***tangible personal property tax exemption for certain computer systems*** for a taxpayer who has a project ***for an Internet web portal or a data center*** and who has met the required levels of investment and employment ***for a Tier 2 project or t***he required level of investment for ***a Tier 5 project***, "taking into account only the employment and investment at the web portal or data center project".

Section 5 sets forth rules governing the time when such tangible personal property tax exemptions begin (e.g., beginning with the first January 1 following the acquisition of the property) and the time length of the tangible personal property tax exemption (e.g., from the January 1 preceding the first claim for exemption approved under Neb. Rev. Stat. sec. 77-5725(8) through the ninth December 31 after the year the firs claim for exemption is approved).

Section 5 of LB 1118 also allows a ***tangible personal property tax exemption*** for a ***Tier 4 project***, for: certain computer systems; depreciable personal property used for a distribution facility, including, but not limited to storage racks; and 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.

Section 5 of LB 1118 also allows a ***tangible personal property tax exemption*** for a ***Tier 6 project***, for: certain computer systems; depreciable personal property used for a distribution facility; 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; and any other property located at the project.

Section 5 of LB 1118 also requires the Tax Commissioner to determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption. And the eligibility of each item listed for exemption and to certify such determinations to the taxpayer and the county assessor on or before August 1 each year. Section also strikes current language in Neb. Rev. Stat. sec. 77-5725(8)(d) which limits governs the Tax Commissioner's determination whether items of personal property are eligible for exemption under the Nebraska Advantage Act.

Finally, section 5 of LB 1118 sets forth a mathematical formula for indexing for inflation (using the average Producer Price Index for all commodities) the level of investment for a Tier 2 large data center project

[LB 1118, sec. 5, amending Neb. Rev. Stat. sec. 77-5725(1)(b) and (8).]

Section 6: Would allow wage withholding credits under the Nebraska Advantage Act to be used to ***obtain a refund of state and local sales and use taxes*** (including "county" and "municipal county" sales and use taxes) for a Tier 2 large data center project. Section 6 would also provide that when the required levels of investment and employment for a Tier 2 large data center project have been met, the credits earned for a Tier 2 large data center project may be used to ***obtain a payment from the State of Nebraska equal to the real property taxes due after the year of application and before the end of the carryover period***, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. [LB 1118, sec. 6, amending Neb. Rev. Stat. sec. 77-5726(1)(c) and (d).]

Section 7: Would provide that, for a Tier 2 large data center project, any personal property tax that would have been due except for the exemption under the Nebraska Advantage Act, together with interest at the rate of 14 percent from the original delinquency date of tax that would have been due until the date paid, to the extent it becomes due under Neb. Rev. Stat. sec. 77-5727, must be considered delinquent and must be immediately payable to the county or counties in which the property was located when exempted. [LB 1118, sec. 7, amending Neb. Rev. Stat. sec. 77-5727 by amending subsection (6).]

Section 8: Would add a new subsection (4) to Neb. Rev. Stat. sec. 77-5735 which provides that changes made to the Nebraska Advantage Act by LB 1118 "apply to all applications filed on or after the effective date of this act", which would be the date the bill becomes law pursuant to the emergency clause set forth in section 10 of LB 1118. [LB 1118, sec. 8, amending Neb. Rev. Stat. sec. 77-5735 by adding new subsection (4).]

Section 9: Would repeal the current version of the statutes that LB 1118 seeks to amend. [LB 1118, sec. 9.]

Section 10: Sets forth the emergency clause. [LB 1118, sec. 10.]

Revenue Committee Amendment: None.

Other Adopted Amendments: AM 2052 and AM 2092

AM 2052: Adopted AM2052 adds new sections 4 and 6 to the bill, as introduced, and makes grammatical and coordinating changes to sections 5 and 9 of the bill, as introduced.

New section 4 amends Neb. Rev. Stat. sec. 77-5705 (which is part of the Nebraska Advantage Act) to change the definition of "base year". New section 4 states that: "Except for a tier 5 project that is sequential to a tier 2 large data center project, base year means the year immediately the year of application. For a tier 5 project that is sequential to a tier 2 large data center project, the base year means the last year of the tier 2 large data center project entitlement period relating to direct sales tax refunds."

New section 6 amends Neb. Rev. Stat. sec. 77-5723(4) (which is part of the Nebraska Advantage Act) by adding a sentence stating that: "For a tier 5 project that is sequential to a tier 2 large data center project, the required level of investment shall be met prior to the end of the fourth year after the expiration of the tier 2 large data center project entitlement period relating to direct sales tax refunds."

AM 2092: Adopted AM 2092 lowered the required level of investment in qualified property to $200 million ($300 million in the introduced version of the bill) by amending section 7 of the Final Reading version of the bill which amends Neb. Rev. Stat. sec. 77-5725(1)(b)(ii).

Enacted Version: The enacted version of LB 1118 is the bill, as introduced, and as amended by AM 2052 and AM 2092. The following table shows the Nebraska Advantage Act's various project tiers, the required levels of investment and employment for each project tier, and the tax incentives for each project tier:

Nebraska Advantage Act: New Tier 2b for Large Data Center Projects—
Required Levels of Investment * and Employment and Related Tax Incentives

Tier	Investment Level	New Employees at the Project	State & Local Sales & Use Tax Refunds on Qualifying Project-Related Purchases	Wage Tax Credit	Investment Tax Credit	Property Tax Exemption For Qualified Personal Property	Real Property Tax Rebate from the State
1	$1 million	10	50% refund	3% to 6%	3%	None	No
2a	$3 million	30	100% refund	3% to 6%	10%	None	No
2b	**$200 million**	**30**	**100% refund**	**3% to 6%**	**10%**	**Yes**	**Yes**
3	$0	30	None	3% to 6%	None	None	No
4	$10 million	100	100% refund	3% to 6%	10%	Yes	No
5	$30 million	0	100% refund	None	None	None	No
6a	$10 million	75	100% refund	10%	15%	Yes	Yes
6b	$100 million	50	100% refund	10%	15%	Yes	Yes

* The required levels of investment shown in the above table have not been adjusted for inflation.

LB 1118 passed with the emergency clause 48-0 and was approved by the Governor on March 7, 2012.

LB 1128, Laws 2012 (Schumacher, Mello, Lautenbaugh, and Nordquist)—Adopt the "New Markets Job Growth Investment Act" and Authorize Related Tax Credits.

Introduced Version:

LB 1128 would adopt the "New Markets Job Growth Investment Act" and would provide related income tax credits for corporations, individuals, and estates and trusts, as well as a related insurance premium tax credit and a related bank franchise tax credit.

Section 1: Sections 1 to 22 of LB 1128 constitute the New Markets Job Growth Investment Act (NMJGIA).

Section 2: The definitions set forth in sections 3 to 13 of LB 1128 apply for purposes of the NMJGIA.

Sections 3 to 13: Define key terms and phrases for purposes of the NMJGIA, including credit allowance date; letter ruling; long-term debt security; purchase price; qualified active low-income community business; qualified community development entity; qualified equity investment; qualified low-income community investment; tax credit; and taxpayer.

Section 14: Would provide income tax credits for corporations, individuals, and estates and trusts, as well as an insurance premium tax credit and a bank franchise tax credit under the NMJGIA.

A taxpayer that "acquires" a qualified equity investment will earn tax credits under the NMJGIA as follows:

> On each "credit allowance date" of such qualified equity investment, the taxpayer (or subsequent holder of the qualified equity investment) is entitled to a portion of the tax credit during the tax year that includes the credit allowance date;
>
> The amount of the tax credit is equal to the product of: (a) the applicable percentage for such credit allowance date multiplied by (b) the purchase price paid to the issuer; and
>
> The tax credit claimed cannot exceed the amount of the taxpayer's tax liability for the year for which the credit is claimed.

Section 15: NMJGIA tax credits are not refundable or transferable, except that a partnership, limited liability company, S corporation, or other pass-through entity can allocate to its shareholders, partners, or members its NMJGIA tax credits "for their direct use in accordance with any agreement among such partners, members, or shareholders." Any amount of NMJGIA tax credit that the taxpayer cannot claim in a tax year can be carried over to any of the taxpayer's five subsequent tax years.

Section 16: The NMJGIA tax credit program limitation is $15 million per fiscal year (i.e., July 1 through June 30).

Section 17: Sets forth the application process and procedures which a qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified entity investment eligible for tax credits under the NMJGIA must follow. Section 17 also requires the Tax Commissioner to design an application form, which must solicit certain information from the applicant. The application fee would be $5,000. Section 17 also sets forth certain requirements that the Tax Commissioner must follow when determining whether to approve or disapprove an application for NMJGIA tax credits.

Section 18: Requires the issuer of the qualified equity investment to certify to the Tax Commissioner the anticipated dollar amount of those investments to be made in Nebraska during the first 12-month period after the initial credit allowance date. If the actual dollar amount of those investments on the second credit allowance date is different than the anticipated amount, the Tax Commissioner must adjust the credits arising on the second credit allowance date to account for that difference.

Section 19: For the purpose of calculating the amount of the credit allowed under the NMJGIA (when the proceeds of the qualified equity investment have been invested completely in qualified low-income community investments in Nebraska), the "purchase price" must equal 100 percent of the qualified equity investment, regardless of the location of the investments made with the proceeds of other qualified equity investments issued by the same qualified community development entity. If a portion of a qualified equity investment is ***not*** invested in Nebraska, then the "purchase price" must be reduced by the same ratio and the burden is on the qualified community development entity to show the extent to which the qualified equity investments are fully invested in Nebraska, either by showing that the qualified community development entity itself invests exclusively in Nebraska or otherwise showing—through direct tracing—the portion of a qualified equity investment that is invested solely in Nebraska.

Section 20: Sets forth rules governing the recapture of tax credits under the NMJGIA if either of two conditions are met—namely, (a) if any amount of the Internal Revenue Code section 45D "New Markets Tax Credit" is recaptured (in which case the recapture of the NMJGIA tax credit must be "proportionate to the federal recapture with respect to such qualified equity investment") and (b) if the issuer redeems or makes repayment with respect to a qualified equity investment before the 7th credit allowance date (in which case recapture of the NMJGIA tax credit must be "proportionate to the amount of the redemption or repayment with respect to such qualified equity investment").

Section 20 also includes an exception from recapture for "to an investment that has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment" within 12 months "of the receipt of such capital." *However*, an issuer will not be required to reinvest capital returned from qualified low-income community investments after the 6th credit allowance date, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment must be considered held by the issuer through the 7th credit allowance date.

Section 21: Sections 18 and 20 of LB 1128 would be subject to "a six-month cure period." Also, section 21 prohibits any adjustment under section 18 of LB 1128 or recapture under section 20 of LB 1128 "until the qualified community development entity has been given notice of non compliance and afforded six months from the date of such notice to cure the noncompliance.

Section 22: Would require the Tax Commissioner to issue letter rulings regarding the NMJGIA tax credit program and provides guidelines for doing that.

Section 23: Would amend the Internal Revenue Code (IRC) "update" statute to list sections 6, 8, 9, 20, and 22 of LB 1128 along with the other business tax incentive statutes that are ***excluded*** from the annual IRC update bill (e.g., Laws 2011, LB 134), that updates references to the IRC in Nebraska statutes to mean the IRC as it exists on a particular date (e.g., February 23, 2011). The business tax incentive statutes are excluded from the annual IRC update legislation because when a business tax incentive agreement is entered into between a taxpayer and the Tax Commissioner the parties to the agreement place their reliance on the provisions of the IRC that are in force for purposes of Nebraska

tax law when the parties enter into the tax incentive agreement. [LB 1128, sec. 23, amending Neb. Rev. Stat. § 49-801.01.]

Section 24: Coordinating change allowing insurance companies an insurance premium tax credit under the NMJGIA. [LB 1128, sec. 24, amending Neb. Rev. Stat. § 77-908.]

Section 25: Coordinating change allowing a nonrefundable individual income tax credit as provided in the NMJGIA. [LB 1128, sec. 25, amending Neb. Rev. Stat. § 77-2715.07 by adding new paragraph (d) to subsection (3).]

Section 26: Coordinating change allowing a nonrefundable income tax credit for all resident and nonresident estates as provided in the NMJGIA, including changes allowing the credit to be passed through to beneficiaries of such estates and trusts. [LB 1128, sec. 26, amending Neb. Rev. Stat. § 77-2717(1)(a), (1)(b), (3), and (4).]

Section 27: Coordinating change allowing a nonrefundable corporate income tax credit as provided in the NMJGIA. [LB 1128, sec. 27, amending Neb. Rev. Stat. § 77-2734.03 by adding new paragraph (7).]

Section 28: Coordinating change allowing a financial institution franchise tax credit under the NMJGIA. [LB 1128, sec. 28, amending Neb. Rev. Stat. § 77-3806(4).]

Section 29: LB 1128 would be operative for all taxable years beginning or deemed to begin on or after January 1, 2012. [LB 1128, sec. 29.]

Section 30: Repeals the current version of the existing statute sections that LB 1128 seeks to amend. [LB 1128, sec. 30.]

Revenue Committee Amendment: None.

Other Adopted Amendments: AM 2686

Adopted amendment AM 2686 struck sections 13, 18, and 19 of the introduced version of LB 1128 and made a number of grammatical and technical changes throughout the bill, including a change meant to ensure that investments must be made in Nebraska to obtain the bill's tax credit and a change clarifying the rules governing the recapture of the tax credit provided for by the bill.

Enacted Version:

The enacted version of LB 1128 is the same as the introduced version of LB 1128, as amended by AM 2686. As enacted, LB 1128 adopts the “New Markets Job Growth Investment Act” and provides related income tax credits for corporations, individuals, and estates and trusts, as well as a related insurance premium tax credit and a related bank franchise tax credit.

Section 1: Sections 1 to 19 of LB 1128 constitute the “New Markets Job Growth Investment Act” (NMJGIA).

Section 2: The definitions set forth in sections 3 to 12 of LB 1128 apply for purposes of the NMJGIA.

Sections 3 to 12: Define key terms and phrases for purposes of the NMJGIA, including credit allowance date; letter ruling; long-term debt security; purchase price; qualified active low-income

community business; qualified community development entity; qualified equity investment; qualified low-income community investment; and tax credit.

Section 13: The NMJGIA authorizes a “vested” credit against Nebraska income taxes imposed on corporations, individuals, and estates and trusts; a “vested” credit against Nebraska's insurance premium tax and Nebraska's so-called “retaliatory” insurance tax (which is imposed on insurance companies domiciled in certain other states and foreign countries pursuant to Neb. Rev. Stat. sec. 44-150); and a “vested” credit against Nebraska's financial institutions franchise tax (which is imposed by Neb. Rev. Stat. sec. 77-3802).

A taxpayer that “acquires” a qualified equity investment will earn the NMJGIA tax credit on each “credit allowance date” of such qualified equity investment and the taxpayer (or subsequent holder of the qualified equity investment) will be entitled to a portion of the tax credit during the tax year that includes the credit allowance date.

The amount of the NMJGIA tax credit is equal to the product of: (a) the applicable percentage for such credit allowance date multiplied by (b) the purchase price paid to the issuer. However, the NMJGIA tax credit claimed cannot exceed the amount of the taxpayer's tax liability for the year for which the credit is claimed. Furthermore, any taxpayer who is an insurance company that claims an NMJGIA tax credit will not be required to pay any additional “retaliatory” insurance company tax imposed under Neb. Rev. Stat. sec. 44-150 “as a result of claiming such credit.”

Section 14: NMJGIA tax credits are not refundable or transferable, except that a partnership, limited liability company, S corporation, or other pass-through entity can allocate to its shareholders, partners, or members its NMJGIA tax credits “for their direct use in accordance with any agreement among such partners, members, or shareholders.” Any amount of NMJGIA tax credit that the taxpayer cannot claim in a tax year can be carried over to any of the taxpayer's five subsequent tax years.

Section 15: The NMJGIA tax credit program dollar limitation per fiscal year (i.e., July 1 through June 30 each year) is $15 million of “new” tax credits. However, that tax credit program dollar limitation “on qualified equity investments” must be “based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.”

Section 16: Sets forth the application process and procedures which a qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified entity investment eligible for tax credits under the NMJGIA must follow. Section 16 also requires the Tax Commissioner to design an application form, which must solicit certain information from the applicant. The application fee is $5,000. Section 16 also sets forth certain requirements that the Tax Commissioner must follow when determining whether to approve or disapprove an application for NMJGIA tax credits.

Section 17: Sets forth rules governing the ***recapture of tax credits*** under the NMJGIA. Except as provided in section 18 (i.e., the 6-month “cure period” exception to recapture), section 17 requires NMJGIA tax credits to be recaptured by the Tax Commissioner:

(1) If any amount of the Internal Revenue Code (IRC) section 45D “New Markets Tax Credit” with respect to a qualified equity investment that is eligible for an NMJGIA tax credit is recaptured under IRC section 45D, in which case the state's recapture of the NMJGIA tax credit must be “proportionate to the federal recapture with respect to such qualified equity investment”;

(2) If the issuer redeems or makes principal repayment with respect to a qualified equity investment before the seventh credit allowance date, in which case the state's recapture of the NMJGIA tax credit must be "proportionate to the amount of the redemption or repayment with respect to such qualified equity investment"; or

(3) If the issuer fails to invest and satisfy the requirements of section 10(b)(1) (i.e., has at least 85 percent of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in Nebraska by the first anniversary of the initial credit allowance date) ***and*** maintain such level of investment in qualified low-income community investments in Nebraska until the last credit allowance date for the qualified equity investment.

- ***Note:*** For purposes of section 17, an investment must be considered held by an issuer even if the investment has been sold or repaid if the insurer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of receipt of such capital. ***However***, an "issuer will not be required to reinvest capital returned from qualified low-income community investments after the sixth credit allowance date, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh credit allowance date."

Section 18: Authorizes a "six-month cure period" for a taxpayer to fix a problem that would otherwise require recapture of NMJGIA tax credits pursuant to section 17 of LB 1128 if the problem was not fixed. Section 18 prohibits recapture of NMJGIA tax credits "until the qualified community development entity has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance."

Section 19: Requires the Tax Commissioner to issue letter rulings regarding the NMJGIA tax credit program and provides guidelines for issuing such letter rulings.

Section 20: Amends the Internal Revenue Code (IRC) "update" statute to list sections 6, 8, 9, 17, and 19 of LB 1128 along with the other business tax incentive statutes that are ***excluded*** from the annual IRC update bill (e.g., Laws 2012, LB 725), that updates references to the IRC in Nebraska statutes to mean the IRC as it exists on a particular date (i.e., March 7, 2012). The business tax incentive statutes are excluded from the annual IRC update legislation because when a business tax incentive agreement is entered into between a taxpayer and the Tax Commissioner the parties to the agreement may have relied on the provisions of the IRC that were in force for purposes of Nebraska tax law when the parties entered into the tax incentive agreement. [LB 1128, sec. 20, amending Neb. Rev. Stat. § 49-801.01.]

Section 21: Coordinating change allowing insurance companies an insurance premium tax credit under the NMJGIA. [LB 1128, sec. 21, amending Neb. Rev. Stat. § 77-908.]

Section 22: Coordinating change allowing a nonrefundable individual income tax credit as provided in the NMJGIA. [LB 1128, sec. 22, amending Neb. Rev. Stat. § 77-2715.07 by adding new paragraph (d) to subsection (3).]

Section 23: Coordinating change allowing a nonrefundable income tax credit for all resident and nonresident estates and trusts as provided in the NMJGIA, including changes allowing the credit to be

passed through to beneficiaries of such estates and trusts. [LB 1128, sec. 23, amending Neb. Rev. Stat. § 77-2717(1)(a), (1)(b), (3), and (4).]

Section 24: Coordinating change allowing a nonrefundable corporate income tax credit as provided in the NMJGIA. [LB 1128, sec. 24, amending Neb. Rev. Stat. § 77-2734.03 by adding new paragraph (7).]

Section 25: Coordinating change allowing a financial institution franchise tax credit under the NMJGIA. [LB 1128, sec. 25, amending Neb. Rev. Stat. § 77-3806(4).]

Section 26: LB 1128 is operative for all taxable years beginning or deemed to begin on or after January 1, 2012. [LB 1128, sec. 26.]

Section 27: Repeals the current version of the existing statute sections that LB 1128 amends. [LB 1128, sec. 27.]

LB 1128 passed 41-0 and was approved by the Governor on April 11, 2012.

LB 1138 (Mello)—Change community betterment organization and tax credit provisions under the Community Development Assistance Act

Introduced Version:

As introduced, LB 1138 would have added affordable housing investments to the list of community development activities which can be eligible to receive nonrefundable income tax credits under the Community Development Assistance Act.

> ***Observation:*** The most recent *Tax Expenditure Report* published by the Nebraska Department of Revenue shows that the amount of annual foregone revenue attributable to income tax credits available under the Community Development Assistance Act is equal to $175,000.

LB 1138 did not advance from committee and died with the end of the legislative session on April 18, 2012.

EXCISE TAX

LB 745 (Fischer, Lautenbaugh, Cornett, and Janssen)—Provide requirements for imposition of municipal occupation taxes.

Introduced Version

As introduced, LB 745 proposed requiring a local election for any city that wanted to impose a ***new*** occupation tax. The ballot question for authorizing imposition of such a new occupation tax would have had to identify a single specific purpose for which the new occupation tax revenue would be used. Additionally, LB 745 would have required every new occupation tax to have a termination date.

Section 1:

Subsection (1) states that after the effective date of LB 745 (i.e., 3 calendar months after adjournment *sine die* of the 2012 regular legislative session), a municipality can impose an occupation tax ***if*** the question whether to impose the tax is submitted at a primary or general election at which members of the governing body of the municipality are nominated or elected or at a special election held within the municipality and in which all registered voters are entitled to vote on the question.

Subsection (1) also sets forth procedures for conducting such an election and expressly states that the election must be conducted in accordance with the Election Act (i.e., Neb. Rev. Stat. sec. 32-101, et seq.). If a majority of the votes cast are in favor of the tax, then the municipality's governing body is empowered to impose the tax, subject to the limitations set forth in section 1 of LB 745. If a majority of the votes cast are opposed to the tax, then the municipality's governing body cannot impose the tax.

Subsection (2) states that after the effective date of LB 745, a municipality can change the rate of an occupation tax or the termination date of an occupation tax ***if*** the question of whether to change the rate or termination date has been submitted at a primary or general election at which members of the governing body of the municipality are nominated or elected or at a special election held within the municipality and in which all registered voters are entitled to vote on the question.

Subsection (2) also sets forth procedures for conducting such an election and expressly states that the election must be conducted in accordance with the Election Act. If a majority of the votes cast are in favor of the tax rate change, then the municipality's governing body is empowered to change the tax rate, subject to the limitations set forth in section 1 of LB 745. If a majority of the votes cast are opposed changing the tax rate, then the municipality's governing body cannot impose the tax.

The provisions of subsection (2) apply to occupation taxes imposed before, on, or after the effective date of LB 745.

Subsection (3) states that after the effective date of LB 745, an occupation tax authorized to be imposed by Nebraska municipalities must: (a) be imposed only for a specific project set forth in the ballot question; and (b) must have a “determinable termination date.”

Subsection (4) exempts a telecommunications company occupation tax subject to Neb. Rev. Stat. sec. 86-704 from the requirements of section 1 of LB 745.

Sections 2 through 6: Makes coordinating changes to the statutes governing the authority of cities and villages to impose occupation taxes. LB 745 adds new language to each such statute stating that an occupation tax must be imposed in the manner set forth in section 1 of LB 745 or Neb. Rev. Stat. sec. 86-704 (which governs municipal occupation taxes imposed on telecommunications companies).

Section 7: Repeals the original version of the statutes amended by LB 745.

Revenue Committee Amendment: AM 2073

The adopted Revenue Committee amendment (AM 2073) amends subsection (2) of section 1 of the bill by stating that a municipality can change the rate of an occupation tax "imposed for a specific project which provides for deposit of the tax proceeds in the municipality's general fund or extend the termination date" of an occupation tax ***if*** the question of whether to change the tax rate or extend the termination date has been submitted at a primary or general election at which members of the governing body of the municipality are nominated or elected or at a special election held within the municipality and in which all registered voters are entitled to vote on the question.

AM 2073 amends subsection (3) of section 1 of LB 745 by providing that—after the effective date of LB 745 (i.e., 3 calendar months after adjournment *sine die* of the 2012 regular legislative session)—changes can be made to an occupation tax ***without a vote of the people*** in the following instances:

> (1) Where a tax rate change is sought for "an occupation tax imposed for a specific project which does not provide for deposit of the tax proceeds in the municipality's general fund"; or
>
> (2) Where the termination date of an existing occupation tax is sought to be changed to a date that is earlier than the termination date approved in the original ballot question submitted to the registered voters.

AM 2073 also states that the provisions of subsection (3) of LB 745 will apply to any occupation tax imposed before, on or after the effective date of LB 745.

Other Adopted Amendments: AM 2639 and AM 2676

***AM 2639 to LB 745 as amended by the Revenue Committee amendment AM 2073*:**

Adopted amendment AM 2639—***as amended by AM 2676***—rewrote section 1 of LB 745, but it retained the provisions of adopted Revenue Committee amendment AM 2073. AM 2639—as amended by AM 2676—sets forth the enacted version of LB 745, secs. 1-6. (See "Enacted Version" of LB 745, secs. 1-6, below.)

AM 2676 to AM 2639:

Adopted amendment AM 2676 to amendment AM 2639 increased the "applicable amount of revenue" for each new occupation tax or annual revenue raised by the increased rate for an existing occupation tax. AM 2676 provides as follows:

> (a) For ***cities of the metropolitan class***, $6 million ($1 million in AM 2639);
>
> (b) For ***cities of the primary class***, $3 million ($700,000 in AM 2639);
>
> (c) For ***cities of the first class***, $750,000 ($500,000 in AM 2639); and

(d) For ***cities of the second class and villages***, $300,000 ($200,000 in AM 2639)

Enacted Version:

Section 1: Sets forth specified limitations on the power of municipalities to impose a new occupation tax or increase the rate of an existing occupation tax after the effective date of LB 745, which is July 19, 2012 (i.e., 3 calendar months after adjournment *sine die* of the 2012 regular legislative session).

Subsection (1) of LB 745 states that—except as otherwise provided in section 1 of LB 745—after the effective date of LB 745 (i.e., July 19, 2012) "a municipality may impose a new occupation tax or increase the rate of an existing occupation tax, which new occupation tax or increased rate of an existing occupation tax is projected to generate annual occupation tax revenue in excess of the applicable amount listed in subsection (2) . . . if the question of whether to impose the tax or increase the rate of an existing occupation tax has been submitted at an election at held within the municipality and in which all registered voters are entitled to vote on the question."

Subsection (1) also sets forth procedures for conducting such an election and expressly states that the election must be conducted in accordance with the Election Act (i.e., Neb. Rev. Stat. sec. 32-101, et seq.). If a majority of the votes cast are in favor of the new tax or increased rate of an existing occupation tax, then the municipality's governing body is empowered to impose the new tax or to impose the increased tax rate. If a majority of the votes cast are opposed to the new tax or increased rate, then the municipality's governing body cannot impose the new tax or increased rate "but shall maintain any existing occupation tax at its current rate."

Subsection (2) of section 1 of LB 745 states that the "applicable amount of annual revenue for each new occupation tax or annual revenue raised by the increased rate for an existing occupation tax for purposes of subsection (1)" is:

(a) For ***cities of the metropolitan class***, $6 million;

(b) For ***cities of the primary class***, $3 million;

(c) For ***cities of the first class***, $700,000; and

(d) For ***cities of the second class and villages***, $300,000.

Subsection (3) of section 1 of LB 745 states that—after the effective date of LB 745 (i.e., July 19, 2012)—changes can be made to an occupation tax ***without a vote of the people*** in the following instances:

(1) Where a tax rate change is sought for "an occupation tax imposed for a specific project which does not provide for deposit of eh tax proceeds in the municipality's general fund"; or

(2) Where the termination date of an existing occupation tax is sought to be changed to a date that is earlier than the termination date approved in the original ballot question submitted to the registered voters.

Subsection (3) also states that its provisions apply to occupation taxes imposed before, on, or after July 19, 2012 (i.e., the effective date of LB 745).

Subsection (4) exempts a telecommunications company occupation tax that is subject to Neb. Rev. Stat. sec. 86-704 from the requirements of section 1 of LB 745.

Sections 2 through 6: Make coordinating changes to the occupation tax statutes that govern cities of the metropolitan class, primary class, first class, and second class and villages to state that an occupation tax must be imposed in the manner set forth in section 1 of LB 745, ***except that*** section 1 of LB 745 does not apply to an occupation tax subject to Neb. Rev. Stat. 86-704 (which governs municipal occupation taxes imposed on telecommunications companies).

Section 7: Repeals the version of the existing statutes that were amended by LB 745.

LB 745 passed 46-0 and was approved by the Governor on April 11, 2012.

LB 818 (Harr, Council, Lautenbaugh, Nelson, and Pirsch)—Exempt certain deeds from the documentary stamp tax.

Introduced Version

As introduced, LB 818 sought to extend the documentary stamp tax exemption for a transfer of property by deed between married spouses to post-divorce transfers of property by deed between ex-spouses "for the purpose of conveying any rights to the property acquired during the marriage".

In Nebraska, documentary stamp tax revenue is used to help fund county government and a number of other programs:

> "The Documentary Stamp Tax rate is $2.25 per $1,000 of value. $0.95 is credited to the Affordable Housing Trust Fund; $0.50 is retained by the county; $0.30 is credited to the Behavioral Health Services Fund; $0.25 is credited to the Homeless Shelter Assistance Trust Fund; and $0.25 is credited to the Site and Building Fund." [Fiscal Note, LB 818 (Revision 01, January 19, 2012).]

Revenue Committee Amendment: AM 1846

The Revenue Committee amendment (AM 1846) added the phrase "or held" after the word "acquired" so that the documentary stamp tax exemption would have applied to a transfer by deed, between ex-spouses, of property "acquired or held" during the marriage.

Final Disposition:

LB 818 advanced from committee to General File, as amended by the Revenue Committee amendment, but the bill died with the end of the legislative session on April 18, 2012.

However, although LB 818 did not become law, its provisions—as introduced—were amended into **LB 536** by adopted AM 2042. **LB 536**, a bill referred to the Judiciary Committee, passed 40-0 and was approved by the Governor on April 5, 2012.

HOMESTEAD EXEMPTIONS

LB 977 (Mello)—Adopt the Property Tax Relief Act.

As introduced, LB 977 would have provided a general homestead exemption from real property taxes for home owners who reside in Nebraska and whose home meets the definition of a homestead as defined in Neb. Rev. Stat. sec. 77-3502, which is shown below.

The amount of the proposed annual homestead exemption would have been $8,0000.

The owner of a homestead would have been required to file an application for the homestead exemption in the first year (but not in subsequent years) of the proposed new homestead exemption program.

A new cash fund would have been created to fund the new homestead exemption program.

> **Neb. Rev. Stat. Sec. 77-3502: Homestead, defined.**
>
> Homestead shall mean either (1) a residence or mobile home, and the land surrounding it, not exceeding one acre, in this state actually occupied as such by a natural person who is the owner of record thereof from January 1 through August 15 in each year, (2) a residence or mobile home located on land leased by the owner of the residence or mobile home, which is located within this state, and is actually occupied by the person who is the owner of record from January 1 through August 15 in each year, or so occupied by the surviving spouse and minor children, if any, of such owner of record during the year of the owner's death, or so much thereof as shall be so occupied, or (3) a residential unit in a dwelling complex, the record title owner of which is a not-for-profit corporation, when the purchase for fair market value of a life tenancy in a taxable unit of the dwelling complex entitles the purchaser to exclusive occupancy of that unit for life, actually occupied by a natural person who has a life tenancy therein from January 1 through August 15 in each year. For purposes of this section, mobile home shall include every transportable or relocatable device of any description without motive power and designed for living quarters, whether or not permanently attached to real estate, but shall not include a cabin trailer registered for operation upon the highways of this state.

LB 1011 did not advance from committee and died with the end of the legislative session on April 18, 2012.

INCOME TAX

LB 872, Laws 2012 (Hadley, Cornett, Mello, Price, and Smith)—Change provisions relating to apportionment of income between states.

Introduced Version:

LB 872 changes the method of ***sourcing*** income of multi-state corporations from sales of services and intangible property for purposes of apportioning such income among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision of a foreign country. [LB 872, secs. 1 and 2.]

As introduced, LB 872 would have been operative for all taxable years beginning or deemed to begin on or after January 1, 2013, under the Internal Revenue Code of 1986, as amended, and it would have repealed the current version of the statutes that it proposed to amend. [LB 872, secs. 3 and 4.]

SOURCING RULES UNDER CURRENT LAW AND AS PROPOSED BY LB 872

Current Nebraska Law*:* Multi-state Corporate Income Sourcing Rules

Under current Nebraska law, income from sales, ***"other than sales of tangible personal property"*** (e.g., income from sales of services—such as legal, accounting, and brokerage services—and income derived from intangible property—such as royalties from the use of trademarks and copyrights), are sourced to Nebraska rather than another State if:

> (a) The income producing activity is performed in this state; or
> (b) The income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on cost of performance. [Neb. Rev. Stat. sec. 77-2734.04(3).]

LB 872 would change that method of sourcing such income of multi-state corporations for purposes of Nebraska's "sales-only" apportionment formula, and it would redefine "sale" and define 15 new terms and phrases.

LB 872 Proposal: Multi-state Corporate Income Sourcing Rules

LB 872 provides methods for sourcing 10 specific types of corporate income (e.g., income from services and income from derived from intangible property) and it provides a "catch-all" method for sourcing types of income that cannot be classified as one of the 10 specific types of income listed in section 2 of the bill:

Sales of Services: "Sales of services are in this state if the sales are derived from buyers within this state." LB 872, sec. 2, elaborates on that by listing six situations in which sales of services are derived from buyers within Nebraska (e.g., the service relates to real property located in Nebraska).

Sales of an Application Service: "Sales of an application service are within this state if the buyers use the application service in this state." LB 872, sec. 2, elaborates by listing two situations in which the application service is used in Nebraska. It also provides a rule for apportioning such

income “[i]f the buyer is a business entity and uses the application service within and without this state” and also provides a rule governing situations in which “the location of a sale cannot be determined”.

Sales of Intangible Property: “Sales of intangible property are sales in this state if the buyer uses the intangible property at a location in this state.” LB 872, sec. 2, also provides a rule for apportioning such income “[i]f the buyer uses the intangible property within and without this state and also provides a rule governing situations in which “the location of a sale cannot be determined”.

Investment Income and Other Amounts Received from Transactions in Intangible Assets Held in Connection with a Treasury Function: Such income is “in this state to the extent that it is included in taxable income and the investment, management, and record-keeping activities associated with the corporate investments occur in this state”.

Gross Interest, Fees, Points, Charges, Penalties from Loans, Net Gains from the Sale of Loans, and Loan Servicing Fees Derived from Loans Owned by the Taxpayer or Another Person Secured by Real Property or Tangible Personal Property: Such income is “in this state if the property securing the loan is located in this state.” “If the real or tangible personal property securing the loan is located within and without this state, the gross interest, fees, points, charges, penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person . . . re based upon the ratio of the annual average amortized loan balance of a loan secured by the real property or tangible personal property located without this state”.

Gross Interest, Fees, Points, Charges, Penalties from Loans, Net Gains from the Sale of Loans, and Loan Servicing Fees Derived from Loans Owned by the Taxpayer or Another Person Not Secured by Real Property or Tangible Personal Property: Such income is “in this state if the borrower is located in this state.”

Gross Interest, Fees, Points, Charges, and Penalties from Credit Card Receivables and gross Receipts from Annual Fees and Other Fees Charged to Credit Card Holders: Such income is “in this state if the billing address of the credit card holder is in this state”.

Net Gains, But Not Less Than Zero, from the Sale of Credit Card Receivables: Such income is “in this state if the billing address of the credit card holder is in this state”.

The Taxpayer's Credit Card Issuer's Reimbursement Fees: Such income is “in this state if the billing address of the credit card holder is in this state”.

Gross Receipts from Merchant Discount: Such income is “in this state if the merchant's trade or business is located in this state.” LB 872, sec. 2, also provides a rule for apportioning such income “[i]f the merchant's trade or business is located within and without this state” (i.e., “only receipts from merchant discounts on sales made” in Nebraska “are included in this state”) and also provides a rule governing situations in which “the location of a sale cannot be determined” (i.e., “the merchant discount on the sale is in this state if the merchant's billing address is in this state”). LB 872, sec. 2, also states that such gross receipts “are computed net of any credit card holder charge backs, but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its credit card holders”.

Sales Other Than Sale of Tangible Personal Property Not Specifically Listed Above: Such income “must be sourced so as to fairly represent the extent of the taxpayer's business activity in this state. If the buyer is an individual, the sale or use is deemed to have occurred in this state if the buyer's billing address is in this state. If the buyer is a business entity, the sale or use is deemed to have occurred in this state from which the order was placed in the regular course of the customer's business. If that place cannot be determined, the sale is considered received at the customer's billing address.”

[LB 872, sec. 2, amending Neb. Rev. Stat. sec. 77-2734.14(3), by striking current subsection (3) [the “place of performance of services” income sourcing rule] and replacing it with new subsection (3) [the proposed “market-based” income sourcing rules.]

DEFINITIONS OF KEY TERMS AND PHRASES CONCERNING SOURCING RULES

Current Nebraska Law*:* Definitions of Key Terms Concerning the Sourcing Rules

Neb. Rev. Stat. sec. 77-2734.04 defines 13 key terms or phrases related to sourcing multi-state corporate income for purposes of Nebraska's "sales-only" apportionment formula, including:

- **"Commercial domicile"** (i.e., "the principal place from which the trade or business of the taxpayer is directed or managed").
- **"Corporation"** (i.e., "all corporations and all other entities that are taxed as corporations under the Internal Revenue Code").
- ***Observation:*** An S Corporation is not taxed as a corporation under the Internal Revenue Code. *However*, Neb. Rev. Stat. sec. 77-2734.01(b) makes an S Corporation subject to Nebraska's multi-state income sourcing rules.
- **"Subject to the Internal Revenue Code"** (i.e., "a corporation that meets the requirements of section 243 of the Internal Revenue Code in order for its distributions to qualify for the dividends-received deduction").
- **"Corporate taxpayer"** (i.e., "any corporation [*other than* an S corporation or a financial institution as defined in Neb. Rev. Stat. sec. 77-3801] that is not part of a unitary business or the part of a unitary business, whether it is one or more corporations, that is doing business in this state").
- ***Caveat:*** Neb. Rev. Stat. sec. 77-2734.01(b) makes an S Corporation subject to Nebraska's multi-state income sourcing rules. Neb. Rev. Stat. sec. 77-2734.01(b) states that "If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 and 77-2734.15." That includes section 77-2734.14(3), which would be amended by LB 872, sec. 2, to switch to the "market-based" sourcing rules. Neb. Rev. Stat. sec. 77-2734.01(c) also states that "If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources."
- **"Unitary business"** (i.e., "a business that is conducted as a single economic unit by one or more corporations with common ownership and . . . [includes] all activities in different lines of business that contribute to the single economic unit").
- **"Sale"** (i.e., "all gross receipts of the taxpayer").
- **"Single economic unit"** (i.e., "a business in which there is a sharing or exchange of value between the parts of the unit").
- **"Unitary group"** (i.e., "the group of corporations that are conducting a unitary business").
- **"Doing business in this state"** (i.e., "the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax"). (15 U.S.C. 381 is commonly referred to as P.L. 86-272.).

LB 872 Proposal: Would Define 15 *New* Terms Defined and Redefine the Word "Sale" for Purposes of the Proposed "Market-based" Sourcing Rules

LB 872, sec. 1, would amend Neb. Rev. Stat. sec. 77-2734.04 by ***redefining*** the term "sale" and by ***adding*** definitions for 15 new terms or phrases:

1. **"Annual average amortized loan balance"** means "the total of the ending monthly values in the tax year divided by the number of 7 months in the tax year".
2. **"Application service"** means "computer-based services provided to customers over a network for a fee without selling, renting, leasing, licensing, or otherwise transferring computer

software, including, but not limited to, software as a service, platform as a service, or infrastructure as a service".

3. **"Billing address"** means "the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed".
4. **"Borrower located in this state"** means "(a) A borrower who is engaged in a trade or business in this state; or (b) A borrower whose billing address is in this state, but is not engaged in a trade or business in this state".
5. **"Buyer"** "includes a buyer, licensee, user, or person providing consideration for the use of an item or service".
6. **"Credit card"** means "a credit card, debit card, 15 purchase card, charge card, and travel or entertainment card".
7. **"Credit card issuer's reimbursement fee"** means "Credit card issuer's reimbursement fee means the fee that a taxpayer receives in exchange for funding and incurring the risk associated with a credit or debit card transaction".
8. **"Intangible property"** "includes, but is not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, royalties, processes, techniques, formulas, and technical know-how".
9. **"Loan"** means "any extension of credit resulting from direct negotiations between the taxpayer and its customer or the purchase, in whole or in part, of an extension of credit from another person. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include properties treated as loans under section 595 of the Internal Revenue Code prior to its repeal by Public Law l04-188, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, noninterest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security, and other similar items".
10. **"Loan secured by real property"** means "a loan or other obligation which, at the time the original loan or obligation was incurred or during the current taxable year, was secured by real property. A loan secured by real property includes an installment sales contract for real property".
11. **"Loan secured by tangible personal property"** means "a loan or other obligation which, at the time the original loan or obligation was incurred or during the current taxable year, was secured by tangible personal property. A loan secured by tangible personal property includes an installment sales contract for tangible personal property".
12. **"Loan servicing fee"** includes "fees or charges (a) for originating and processing loan applications, including, but not limited to, prepaid interest and loan discounts, (b) for collecting, tracking, and accounting for loan payments received, and (c) gross receipts from the sale of loan servicing rights".
13. **"Merchant discount"** means "the fee or negotiated discount that is charged to a merchant for accepting a credit card as payment for merchandise or services that are sold to the credit card holder".
14. **"Participation"** means "an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral".
15. **"Treasury function"** "is the pooling, management, and investment of intangible assets to satisfy the cash-flow needs of the trade or business, including, but not limited to, providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, or business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as

a registered broker-dealer, is not performing a treasury function with respect to income so produced".

- **"Sale"** is ***redefined*** to mean "all gross receipts of the taxpayer, except: (a) Income from discharge of indebtedness; or (b) Amounts received from hedging transactions involving intangible assets".

[LB 872, sec. 1, amending Neb. Rev. Stat. sec. 77-2734.04.]

Revenue Committee Amendment: AM 2317

The adopted Revenue Committee amendment (AM 2317) is a "white copy" amendment of LB 872 that retains substantially all of the provisions of the LB 872, as introduced, except as explain below.

First, AM 2317 delays the operative date of LB 872 by one year, making it operative January 1, 2014, rather than January 1, 2013. This change is meant to affect the fiscal impact of the bill. [AM2317, sec. 3, to LB 872.]

Second, AM 2317 defines a new term—***communications company***—by adding new subsection (7) to section 77-2734.04 and it also adds new subsection (4) to section 77-2734.14 which provides that:

> sales, other sales of tangible personal property, of a ***communications company*** are in this state if: (a) The income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

New subsection (4) also indicates that the ***rational basis*** for providing a different sourcing rule for a communications company is to continue the tax policy of Nebraska that "enhances the deployment of broadband in rural and underserved areas" of Nebraska.

[AM2317, secs. 1 and 2, to LB 872, amending Neb. Rev. Stat. secs. 77-2734.04 (definitions) and 77-2734.14 by adding new subsection (4) (emphasis added).]

Third, AM 2317 redefines "intangible property" to mean:

> all personal property which is not tangible personal property and includes, but is not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, royalties, processes, techniques, formulas, and technical know-how but excludes money.

[AM 2317, sec. 1, to LB 872, amending Neb. Rev. Stat. secs. 77-2734.04(14) (definitions)

Fourth, AM 2317 eliminates the definition of "merchant discount" set forth in subsection (19) of LB 872, as introduced. [AM 2317, sec. 1, to LB 872.]

Fifth, AM 2317 redefines "sales" by adding new subparagraph (c), so that sales means all gross receipts of the taxpayer except: (a) income from discharge of indebtedness; (b) amounts received from hedging transactions involving intangible assets; or "(c) Net gains from marketable securities held for investment".

Sixth, AM 2317 rewrites the market-based sourcing rules for sales of services and intangible personal property set forth in new subsection (3) of section 77-2734.14 by:

(a) Stating that the market-based sourcing rules do not apply to a communications company;

(b) Eliminating language in the introduced version of LB 872 which provides that sales of a service are derived from a buyer within Nebraska if: “(iii) The service relates to tangible personal property delivered directly or indirectly to customers in this state” or “(vi) The service is provided to a location within this state”; and

(c) Adding language stating that, for services described in new subsection (3), if the buyer uses the service within and without this state, calculated using any reasonable method, the sales are apportioned between the use in Nebraska in proportion to the use of the service in Nebraska and the other states.

Seventh, for purposes of clarification, AM 2317 rewrites new subparagraph (d) of section 77-2734.14(3) as follows:

(d) Interest, dividends, investment income, and other net gains from transactions in intangible assets held in connection with a treasury function, other than net gains from the sale or redemption of marketable securities, are in this state to the extent that it is included in taxable income and to the extent the investment, management, and record-keeping activities associated with corporate investments occur in this state. . . .

Eighth, AM 2317 adds language to new subparagraph (f) which states that the location of a borrower in Nebraska is “presumed to be the borrower's billing address.”

Ninth, AM 2317 rewrites subparagraphs (i) and (j) of section 77-2734.14(3) as follows:

(i) Gross receipts from the lease, rental, or licensing of tangible personal property are in this state to the extent the property is located in this state;

(j) Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state. . . .

Tenth, AM 2317 adds a rule of construction for purposes of subparagraph (k). Subparagraph (k) is the (i.e., the catch-all provision which requires sales—other than sales of tangible personal property not specifically addressed in subsection (3)—to be sourced so as to fairly represent the extent of the taxpayer's business activity in Nebraska--which states:

This requirement will be considered met in the following situations: (i) If the buyer is an individual, a sale is deemed to have occurred at the buyer's billing address; and (ii) if the buyer is not an individual and the sale is from an order placed in the regular course of the customer's business, the sale is deemed to have occurred in the state from which the order was placed and, if that place cannot be readily determined, the sale is deemed to have occurred at the customer's billing address.

Finally, AM 2317 makes a number of grammatical changes or corrections throughout the introduced version of LB 872, including, for example, redefining “application service” by using two sentences instead of one.

Enacted Version: LB 872, as introduced, and as amended by the Revenue Committee amendment (AM 2713), is the enacted version of LB 872.

LB 872, as amended by the Revenue Committee amendment (AM 2713), passed 46-1 and was approved by the Governor on April 10, 2012.

LB 883 (Cook)—Provide for contributions to the Nebraska educational savings plan trust from income tax refunds.

Legislative Bill 883 would have authorized contributions to the Nebraska educational savings plan trust from income tax refunds and it would have added various duties for the Tax Commissioner and the State Treasurer.

Section 1: Provides that section 2 of LB 883 would be part of the Nebraska Revenue Act of 1967. [LB 883, sec. 1, amending Neb. Rev. Stat. sec. 77-2701.]

Section 2: For individual income tax return filing season 2013 (i.e., individual income tax returns filed for tax year 2012), the Tax Commissioner must "include on the individual income tax return form space" for the taxpayer to designate a specific amount of the refund (if any) owed to the taxpayer "as a contribution to his or her Nebraska educational savings plan trust account.

Section 2 of LB 883 also requires the Tax Commissioner to determine the total amount of contributions designated pursuant to section 2 of LB 883 each year and it also requires the State Treasurer to transfer such amount from the State General Fund to the Nebraska educational savings plan trust. Section 2 of LB 883 also requires the Tax Commissioner to provide the State Treasurer with information on the amount contributed by each individual so that the State Treasurer can properly credit each individual's account within the Nebraska educational savings plan trust.

[LB 883, sec. 2.]

Section 3: Would amend Neb. Rev. Stat. sec. 85-1806(1) to allow a "participation agreement", entered into with the Nebraska educational savings plan trust, to allow a participant to invest money in the trust by contributing a specific amount of of his or her income tax refund as provided in section 2 of LB 883. [LB 883, sec. 3, amending Neb. Rev. Stat. sec. 85-1806(1).]

Section 4: Would repeal the original version of the statutes that LB 883 seeks to amend. [LB 883, sec. 4.]

LB 883 did not advance from committee and died with the end of the legislative session on April 18, 2012.

INCOME TAX - REDUCTIONS

LB 970, Laws 2012 (Cornett, McCoy, Brasch, Janssen, Lambert, Larson, Price, Schilz, and Pirsch, at the request of the Governor)—Lower Individual Income Taxes by Changing Tax Brackets and Rates.

Introduced Version:

As introduced, the purpose of LB 970 is three-fold: (1) eliminate the inheritance tax for beneficiaries of decedents who die on or after January 1, 2013; (2) lower individual income taxes by changing income tax rates and taxable income brackets for all classes of income tax return filers (e.g., married filing joint return); and (3) lower the highest corporate income tax rate for corporate taxable income over $100,000 from 7.81 percent so that it is equal to the highest individual income tax rate set forth in section 6 of LB 970 (i.e., 6.70 percent).

Section 1: Would amend Neb. Rev. Stat. sec. 77-2001—which is the first section of the inheritance tax statutes--to essentially provide that the inheritance tax will not apply to any property passing by will or the intestate laws of Nebraska from any person dying on or after January 1, 2013, to any beneficiary of the decedent's ***probate*** estate. [LB 970, sec. 1, amending Neb. Rev. Stat. sec. 77-2001.]

Section 2: Would provide that LB 970, sec. 6, is part of the Nebraska Revenue Act of 1967. [LB 970, sec. 1, amending Neb. Rev. Stat. sec. 77-2701.]

Section 3: Would amend Neb. Rev. Stat. sec. 77-2701.01, which sets forth the "primary rate" that is currently used to determine individual and corporate income tax rates, by providing that individual income tax rates "shall be as provided in" section 6 of LB 970 for all tax years beginning or deemed to begin on or after January 1, 2013. [LB 970, sec. 3, amending Neb. Rev. Stat. sec. 77-2701.01.]

Section 4: Would amend Neb. Rev. Stat. sec. 77-2715.01(1)(a) to provide that, for all tax years beginning or deemed to begin on or after January 1, 2013, the rate of the income tax set by the Legislature will be considered the "primary rate" for purposes of establishing the tax rate schedule used to compute the income tax. [LB 970, sec. 4, amending Neb. Rev. Stat. sec. 77-2715.01(1)(a).]

Section 5: Would amend Neb. Rev. Stat. sec. 77-2715.02 by striking current subsection (1), which states that the Tax Commissioner must update and publish the income tax rate schedules whenever the Legislature changes the "primary rate". The bill would also amend subsection (2) to account for the change in the way income tax rate brackets and rates will be determined for tax years beginning or deemed to begin on or after January 1, 2013; that is, it preserves the approach used under current law for tax years beginning or deemed to begin through December 31, 2012. [LB 970, sec. 5, amending Neb. Rev. Stat. sec. 77-2715.02.]

Section 6: Would add a new statute section that sets forth individual income tax brackets and rates for all classes of individual income tax return filers, including "single" filers, "married filing jointly" filers, "head of household" filers, "married filing separate" filers, and filers that are "estates and trusts".

For tax years beginning or deemed to begin on or after January 1, 2013, there would be ***four graduated individual income tax rates: 2.42%, 3.40%, 4.90%, and 6.70%.***

The ***2.42% tax rate*** would apply to: "single" filers with taxable income of $0 to $2,999; "married filing joint" filers with taxable income of $0 to $5,999; "head of household" filers with taxable income of $0 to $5,5999; "married filing separate" filers with taxable income of $0 to $2,999; and for "estates or trusts" with taxable income of $0 to $499.

The ***3.40% tax rate*** would apply to: "single" filers with taxable income of $3,000 to $18,249; "married filing joint" filers with taxable income of $6,000 to $36,499; "head of household" filers with taxable income of $5,6000 to $29,199; "married filing separate" filers with taxable income of $3,000 to $18,249; and for "estates or trusts" with taxable income of $500 to $4,699.

The ***4.90% tax rate*** would apply to: "single" filers with taxable income of $18,250 to $29,999; "married filing joint" filers with taxable income of $36,500 to $59,999; "head of household" filers with taxable income of $29,200 to $44,499; "married filing separate" filers with taxable income of $18,250 to $29,999; and for "estates or trusts" with taxable income of $4,700 to $15,149.

The ***6.70% tax rate*** would apply to: "single" filers with taxable income of $30,000 and over; "married filing joint" filers with taxable income of $60,000 and over; "head of household" filers with taxable income of $44,500 and over; "married filing separate" filers with taxable income of $30,000 and over; and for "estates or trusts" with taxable income of $15,150 and over.

LB 970 requires the Tax Commissioner to update the tax rate schedules to reflect new tax brackets or tax rates whenever the Legislature changes the tax brackets or tax rates, and it requires the Tax Commissioner to prepare corresponding tax rate tables "which can be used by a majority of the taxpayers to determine their Nebraska tax liability" and it gives Tax Commissioner discretion to design the tax tables. LB 970 permits the size of the tax table brackets to change as the level of income rises, and it provides that the difference in tax between two tax table brackets cannot exceed $15. The bill also allows the Tax Commissioner to "build the personal exemption credit and standard deduction into the tax tables. The bill also authorizes the Tax Commissioner to require by rule and regulation that all taxpayers must use the tax tables if their income is less than the maximum income included in the tax tables. [LB 970, sec. 6, adding a new unnumbered statute section with five subsections.]

Section 7: Would make a coordinating change by amending Neb. Rev. Stat. sec. 77-2717(5) to require an estate or trust that has a nonresident beneficiary—who has ***not*** timely executed and delivered to the estate or trust his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on all income derived from or connected with sources in" Nebraska (as required by section 77-2717(4))—to remit with its Nebraska estate or trust income tax return an amount equal to the highest individual income tax rate" determined under section 6 of LB 970 (i.e., 6.70%) "multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within" Nebraska. [LB 970, sec. 7, amending Neb. Rev. Stat. sec. 77-2717(5).]

Section 8: Would make a coordinating change by amending Neb. Rev. Stat. sec. 77-2727(4)(a) to require a partnership that has a nonresident partner—who has ***not*** timely executed and delivered to the partnership his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on all income derived from or attributable to sources in" Nebraska (as required by section 77-2727(3))—to remit with its Nebraska partnership income tax return an amount equal to the highest individual income tax rate determined under section 6 of LB 970 (i.e., 6.70%) multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within" Nebraska. [LB 970, sec. 8, amending Neb. Rev. Stat. sec. 77-2727(4)(a).]

Section 9: Would make a coordinating change by amending Neb. Rev. Stat. sec. 77-2734.01(5) to require a corporation and a limited liability company (LLC) that has a nonresident shareholder or member—who has ***not*** timely executed and delivered to the corporation or LLC his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in" Nebraska (as required by section 77-2734.01(4))—to "remit" with its Nebraska corporate or LLC income tax return "an amount equal to the highest individual income tax rate determined under section 6 of LB 970 (i.e., 6.70%) multiplied by the nonresident shareholder's or member's share" of the corporation's or LLC's "income which was derived from or attributable to sources within" Nebraska. [LB 970, sec. 9, amending Neb. Rev. Stat. sec. 77-2734.01(5).]

Section 10: Would amend Neb. Rev. Stat. sec. 77-2734.02(1) to lower the top corporate income tax rate to 6.7 percent (currently 7.81 percent)—which would apply to all corporate taxable income over $100,000—for tax years beginning or deemed to begin on or after January 1, 2013. [LB 970, sec. 10, amending Neb. Rev. Stat. sec. 77-2734.02(1).]

Section 11: Would repeal the existing statutes proposed to be amended by LB 970.

Revenue Committee Amendment: The adopted Revenue Committee amendment (AM 2391) to LB 970 rewrites the bill. ***First***, AM 2391 ***eliminates*** the provisions of LB 970, sec. 1, as introduced, which sought to repeal the inheritance tax on any property passing by will or the intestate laws of Nebraska from any person dying on or after January 1, 2013, to any beneficiary of the decedent's *probate* estate. ***Second***, AM 2391 ***eliminates*** the provisions of LB 970, sec. 10, which sought to lower the top corporate income tax rate to 6.7 percent for all corporate taxable income over $100,000. ***Third***, AM 2391 rewrites the the provisions of LB 970, as introduced, which changes individual income tax brackets and rates. The following material is a section-by-section summary of the changes made by AM 2391 with respect to individual income taxation:

Section 1: Provides that AM 2391, sec. 5, to LB 970 is part of the Nebraska Revenue Act of 1967. [AM 2391, sec. 1, to LB 970, amending Neb. Rev. Stat. sec. 77-2701.]

Section 2: Amends Neb. Rev. Stat. sec. 77-2701.01, which sets forth the "primary rate" that is currently used to determine individual and corporate income tax rates, by providing that individual income tax rates "shall be as provided in" section 5 of AM 2391 to LB 970 for all tax years beginning or deemed to begin on or after January 1, 2013. [AM 2391, sec. 2, to LB 970, amending Neb. Rev. Stat. sec. 77-2701.01.]

Section 3: Amends Neb. Rev. Stat. sec. 77-2715.01(1)(a) to provide that, for all tax years beginning or deemed to begin before January 1, 2013, the rate of the income tax set by the Legislature will be considered the "primary rate" for purposes of establishing the tax rate schedule used to compute the income tax. [AM 2391, sec. 3, to LB 970, amending Neb. Rev. Stat. sec. 77-2715.01(1)(a).]

Section 4: Amends Neb. Rev. Stat. sec. 77-2715.02 by striking current subsection (1), which states that the Tax Commissioner must update and publish the income tax rate schedules whenever the Legislature changes the "primary rate". Section 4 of AM 2391 also amends that statute to make coordinating changes that preserve the individual income tax brackets and rates provided for under current law for tax years 2008 to 2012. Section 4 of AM 2391 eliminates current subsection (5) of that statute which requires the Tax Commissioner to prepare "tax tables" that can be used by a majority of individual income taxpayers. Section 4 of AM 2391 eliminates current subsection (6) of that statute which authorizes the Tax Commissioner to require by rule and regulation that all taxpayers must use the tax tables if their income is less than the maximum income included in the tax tables.[AM 2391, sec. 4, to LB 970, amending Neb. Rev. Stat. sec. 77-2715.02.]

Section 5: Sets forth individual income tax brackets and rates for tax years 2013 to 2015 for each filing status (e.g., single, head-of-household, married filing joint) and for each tax year thereafter.

For tax year 2013, individual income tax brackets are the same as under current law, but all individual income tax rates for tax year 2013 are lower than those provided for under current law.

For tax year 2014 and each tax year thereafter, all individual income tax brackets are broader than those provided for under current law for each filing status (e.g., single, head-of-household, married filing joint). For tax year 2014, the tax rates for the first, second, and third taxable income brackets are the same as those for tax year 2013 but the highest tax rate for tax year 2014 (6.80 percent) is lower than the highest tax rate for tax year 2013 (6.84 percent).

For tax year 2015, individual income tax rates for all taxable income brackets are lower than those for tax year 2014. Specifically:

> ***For tax year 2013 the individual income tax rates are:*** 2.45 percent, 3.50 percent, 5.00 percent, and 6.84 percent, respectively for taxable income brackets one through four.
>
> ***For tax year 2014 the individual income tax rates are:*** 2.45 percent, 3.5 percent, 5.0 percent, and 6.80 percent, respectively for taxable income brackets one through four.
>
> ***For tax year 2015 the individual income tax rates are:*** 2.42 percent, 3.4 percent, 4.9 percent, and 6.70 percent, respectively for taxable income brackets one through four.

AM 2391 to LB 970 requires the Tax Commissioner to update the tax rate schedules to reflect new tax brackets or tax rates whenever the Legislature changes the tax brackets or tax rates.

AM 2391 to LB 970 requires the Tax Commissioner to prepare corresponding tax rate tables which can be used by a majority of the taxpayers to determine their Nebraska individual income tax liability and it gives Tax Commissioner discretion to design the tax tables.

AM 2391 to LB 970 permits the size of the tax table brackets to change as the level of income rises, and it provides that the difference in tax between two tax table brackets cannot exceed $15. It also allows the Tax Commissioner to build the personal exemption credit and standard deduction into the tax tables.

AM 2391 to LB 970 provides that for tax year 2013 and each tax year thereafter, the tax rate applied to other federal taxes (such as the alternative minimum tax for individual income taxpayers) is 29.6 percent.

AM 2391 to LB 970 authorizes the Tax Commissioner to require by rule and regulation that all taxpayers must use the tax tables if their income is less than the maximum income included in the tax tables.

[AM 2391, sec. 5, to LB 970, adding a new unnumbered statute section with seven subsections.]

Section 6: Would make a coordinating change by amending Neb. Rev. Stat. sec. 77-2717(5) to require an estate or trust that has a nonresident beneficiary—who has ***not*** timely executed and delivered to the estate or trust his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on all income derived from or connected with sources in" Nebraska (as

required by section 77-2717(4))—to remit with its Nebraska estate or trust income tax return an amount equal to the highest individual income tax rate" determined under section 5 of AM 2391 to LB 970 "multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within" Nebraska. [AM 2391, sec. 6, LB 970, amending Neb. Rev. Stat. sec. 77-2717(5).]

Section 7: Would make a coordinating change by amending Neb. Rev. Stat. sec. 77-2727(4)(a) to require a partnership that has a nonresident partner—who has ***not*** timely executed and delivered to the partnership his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on all income derived from or attributable to sources in" Nebraska (as required by section 77-2727(3))—to remit with its Nebraska partnership income tax return an amount equal to the highest individual income tax rate" determined under section 5 of AM 2391 to LB 970 "multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within" Nebraska. [AM 2391, sec. 7, to LB 970, amending Neb. Rev. Stat. sec. 77-2727(4)(a).]

Section 8: Would make a coordinating change by amending Neb. Rev. Stat. sec. 77-2734.01(5) to require a corporation and a limited liability company (LLC) that has a nonresident shareholder or member—who has ***not*** timely executed and delivered to the corporation or LLC his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in" Nebraska (as required by section 77-2734.01(4))—to "remit" with its Nebraska corporate or LLC income tax return "an amount equal to the highest individual income tax rate" pursuant to section 5 of AM 2391 to LB 970 "multiplied by the nonresident shareholder's or member's share" of the corporation's or LLC's "income which was derived from or attributable to sources within" Nebraska. [AM 2391, sec. 8, to LB 970, amending Neb. Rev. Stat. sec. 77-2734.01(5).]

Section 9: Makes a coordinating change which expressly states that the rate of the corporate income tax is 5.58 percent for the first $100,000 of taxable income and 7.81 percent for taxable income over $100,000. Therefore, for tax years 2013 and beyond, AM 2391 to LB 970 retains the same corporate income tax brackets and rates as provided for by current law for tax year 2012. [AM 2391, sec. 9, to LB 970, amending Neb. Rev. Stat. sec. 77-2734.02(1).]

Section 10: Would repeal the existing statutes proposed to be amended by AM 2391 to LB 970. [AM 2391, sec. 10, to LB 970.]

Other Adopted Amendments: AM 2572 to Committee amendment AM 2391

Adopted AM 2572 primarily did two things.

First, AM 2572 increased the individual income tax rates for the first three income brackets for all classes of return filers (e.g., single, married filing joint, and head-of-household) for tax year 2013 by one-one hundredth of one percent, compared to the income tax rates set forth in the Revenue Committee amendment for tax year 2013. ***Thus, for tax year 2013, AM 2572 established the following income tax rates: 2.46 percent for the first income bracket; 3.51 percent for the second income bracket; 5.01 percent for the third income bracket; and 6.84 percent for the fourth income bracket.***

Second, AM 2572 eliminated all of the income brackets and corresponding income tax rates that would have otherwise applied for tax year 2015 and beyond—pursuant to the Revenue Committee

amendment—and replaced them with a new set of income brackets and income tax rates for all classes of return filers ***for tax year 2014 and beyond***.

Both of those changes made by AM 2572 to the Revenue Committee amendment became law and are shown below in the summary of the enacted version of LB 970.

Enacted Version:

LB 970, as amended by adopted Revenue Committee amendment (AM 2391) and by adopted amendment AM 2572 to AM 2391, became the enacted version of the bill, the purpose of which is to lower Nebraska individual income taxes by changing income tax rates and taxable income brackets for all classes of income tax return filers (i.e., single, married filing joint, head-of-household, married separate, and estates and trusts) beginning with tax year 2013. The following material is a section-by-section summary of the enacted version of LB 970.

Section 1: Provides that LB 970, sec. 6, is part of the Nebraska Revenue Act of 1967. [LB 970, sec. 1, amending Neb. Rev. Stat. sec. 77-2701.]

Section 2: Amends Neb. Rev. Stat. sec. 77-2701.01, which sets forth the "primary rate" that is currently used to determine individual and corporate income tax rates, by providing that individual income tax rates "shall be as provided in" section 5 of LB 970 for all tax years beginning or deemed to begin on or after January 1, 2013. [LB 970, sec. 2, amending Neb. Rev. Stat. sec. 77-2701.01.]

Section 3: Amends Neb. Rev. Stat. sec. 77-2715.01(1)(a) to provide that, for all tax years beginning or deemed to begin before January 1, 2013, the rate of the income tax set by the Legislature will be considered the "primary rate" for purposes of establishing the tax rate schedule used to compute the income tax. [LB 970, sec. 3, amending Neb. Rev. Stat. sec. 77-2715.01(1)(a).]

Section 4: Amends Neb. Rev. Stat. sec. 77-2715.02 by striking current subsection (1), which states that the Tax Commissioner must update and publish the income tax rate schedules whenever the Legislature changes the "primary rate".

Section 4 also amends that statute to make coordinating changes that preserve the individual income tax brackets and rates provided for under current law for tax years 2008 to 2012.

Section 4 eliminates current subsection (5) of that statute which requires the Tax Commissioner to prepare "tax tables" that can be used by a majority of individual income taxpayers.

Section 4 also eliminates current subsection (6) of that statute which authorizes the Tax Commissioner to require by rule and regulation that all taxpayers must use the tax tables if their income is less than the maximum income included in the tax tables.

[LB 970, sec. 4, amending Neb. Rev. Stat. sec. 77-2715.02.]

Section 5: Subsections (1) and (2) set forth the following individual income tax brackets and rates for tax year 2013 and for tax years beginning on or after January 1, 2014:

Nebraska Individual Income Tax Brackets and Rates for Tax Year 2013

Nebraska Taxable Income Bracket Number	Single Individuals	Married Filing Jointly	Head of Household	Married Filing Separate	Estates and Trusts	Tax Rate
1	$ 0 - $2,399	$ 0 - $4,799	$ 0 - $4,499	$ 0 - $2,399	$ 0 - $499	2.46%
2	$ 2,400 - $17,499	$ 4,800 - $34,999	$ 4,500 - $27,999	$ 2,400 - $17,499	$ 500 - $4,699	3.51%
3	$17,500 - $26,999	$35,000 - $53,999	$28,000 - $39,999	$17,500 - $26,999	$ 4,700 - $15,149	5.01%
4	$27,000 and Over	$54,000 and Over	$40,000 and Over	$27,000 and Over	$15,150 and Over	6.84%

Nebraska Individual Income Tax Brackets and Rates for Tax Year 2014 and Beyond

Nebraska Taxable Income Bracket Number	Single Individuals	Married Filing Jointly	Head of Household	Married Filing Separate	Estates and Trusts	Tax Rate
1	$ 0 - $2,999	$ 0 - $5,999	$ 0 - $5,599	$ 0 - $2,999	$ 0 - $499	2.46%
2	$ 3,000 - $17,999	$ 6,000 - $35,999	$ 5,600 - $28,799	$ 3,000 - $17,999	$ 500 - $4,699	3.51%
3	$18,000 - $28,999	$36,000 - $57,999	$28,800 - $42,999	$18,000 - $28,999	$4,700 - $15,149	5.01%
4	$29,000 and Over	$58,000 and Over	$43,000 and Over	$29,000 and Over	$15,150 and Over	6.84%

Subsection (3) requires the Tax Commissioner to update the tax rate schedules to reflect new tax brackets or tax rates whenever the Legislature changes the tax brackets or tax rates.

Subsection (4) requires the Tax Commissioner to prepare corresponding tax rate tables which can be used by a majority of the taxpayers to determine their Nebraska individual income tax liability and it gives Tax Commissioner discretion to design the tax tables. Subsection (4) permits the size of the tax table brackets to change as the level of income rises, and it provides that the difference in tax between two tax table brackets cannot exceed $15. Also, subsection (4) allows the Tax Commissioner to build the personal exemption credit and standard deduction into the tax tables.

Subsection (5) provides that for tax year 2013 and each tax year thereafter, the tax rate applied to other federal taxes (such as the alternative minimum tax for individual income taxpayers) is 29.6 percent.

Subsection (6) authorizes the Tax Commissioner to require by rule and regulation that all taxpayers must use the tax tables if their income is less than the maximum income included in the tax tables.
Section 6: Makes a coordinating change by amending Neb. Rev. Stat. sec. 77-2717(5) to require an estate or trust that has a nonresident beneficiary—who has ***not*** timely executed and delivered to the estate or trust his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on all income derived from or connected with sources in" Nebraska (as required by section 77-2717(4))—to remit with its Nebraska estate or trust income tax return an amount equal to the highest individual income tax rate" determined under section 5 of LB 970 "multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within" Nebraska. [LB 970, sec. 6, amending Neb. Rev. Stat. sec. 77-2717(5).]

Section 7: Makes a coordinating change by amending Neb. Rev. Stat. sec. 77-2727(4)(a) to require a partnership that has a nonresident partner—who has ***not*** timely executed and delivered to the partnership his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on all income derived from or attributable to sources in" Nebraska (as required by section 77-2727(3))—to remit with its Nebraska partnership income tax return an amount equal to the highest individual income tax rate" determined under section 5 of LB 970 "multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within" Nebraska. [LB 970, sec. 7, amending Neb. Rev. Stat. sec. 77-2727(4)(a).]

Section 8: Makes a coordinating change by amending Neb. Rev. Stat. sec. 77-2734.01(5) to require a corporation and a limited liability company (LLC) that has a nonresident shareholder or member—who has ***not*** timely executed and delivered to the corporation or LLC his or her agreement stating that he or she "will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in" Nebraska (as required by section 77-2734.01(4))—to "remit" with its Nebraska corporate or LLC income tax return "an amount equal to the highest individual income tax rate" pursuant to section 5 of AM 2391 to LB 970 "multiplied by the nonresident shareholder's or member's share" of the corporation's or LLC's "income which was derived from or attributable to sources within" Nebraska. [LB 970, sec. 8, amending Neb. Rev. Stat. sec. 77-2734.01(5).]

Section 9: Makes a coordinating change which expressly states that the rate of the ***corporate income tax*** is 5.58 percent for the first $100,000 of taxable income and 7.81 percent for taxable income over $100,000. Therefore, for tax years 2013 and beyond, LB 970 retains the same corporate income tax brackets and rates as provided for by current law for tax year 2012. [AM 2391, sec. 9, to LB 970, amending Neb. Rev. Stat. sec. 77-2734.02(1).]

Section 10: Repeals the current version of the statutes amended by LB 970.

LB 970 passed 39-9 and was approved by the Governor on April 10, 2012.

LB 974 (Pirsch)—Change the "Primary Rate" to Lower Individual and Corporate Income Taxes.

Introduced Version:

Section 1: LB 974 would have lowered the primary rate—which is used to calculate individual and corporate income tax rates for all income brackets—to 3.6 percent (3.7 percent under current law). The change would have been operative for tax years beginning on or after January 1, 2012. [LB 974, sec. 1, amending Neb. Rev. Stat. sec. 77-2701.01.]

Section 2: Would have repealed the current version of the statute that LB 974 sought to amend. [LB 974, sec. 2.]

LB 974 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 976 (Nordquist)—Exempt Social Security Benefits from Individual Income Taxes.

Introduced Version:

LB 976 would have exempted federal Social Security "benefits" from Nebraska individual income taxation for tax years beginning on or after January 1, 2012.

Section 1: For tax years beginning on or after January 1, 2012, LB 976 would have ***required*** individual income taxpayers to reduce their federal adjusted gross income—for purposes of Nebraska individual income taxation—"by the amount received as ***benefits*** under the federal Social Security Act which are included in the federal adjusted gross income." [LB 976, sec. 1, amending Neb. Rev. Stat. sec. 77-2716 by adding new subsection (13) (emphasis added).]

Observation: Since LB 976 uses the word "benefits" when referring to federal Social Security income that must be subtracted from federal adjusted gross income when computing an individual income taxpayer's Nebraska income tax liability, LB 976 would arguably exempt from Nebraska individual income taxation: (1) federal Social Security ***retirement income***; and (2) federal Social Security ***disability income***.

Section 2: Would have repealed the statute that LB 976 sought to amend. [LB 976, sec. 2.]

LB 976 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 980 (Ashford)—Define Shareholder for Purposes of Nebraska's Special Capital Gains Deduction and Its Extraordinary Dividend Deduction to Include Participants in a Qualified Employee Stock Ownership Trust Qualified under Internal Revenue Code Section 401(a).

Introduced Version:

LB 980 would have redefined the term "shareholder" to include participants in an Employee Stock Ownership Trust (also known as an Employee Stock Ownership Plan or ESOP) for purposes of Nebraska's special capital gains deduction and its extraordinary dividend deduction, both of which are authorized by Neb. Rev. Stat. sec. 77-2715.09.

Section 1: Would have specifically provides that, for purposes of Nebraska's special capital gains deduction and its extraordinary dividend deduction authorized by Neb. Rev. Stat. sec. 77-2715.09, the term “shareholder” includes “each participant in an employee stock ownership trust qualified under section 401(a) of the Internal Revenue Code of 1986.” [LB 980, sec. 2, amending Neb. Rev. Stat. sec. 77-2715.08(2) by adding new unnumbered paragraph one.]

Section 2: Changes proposed to be made by LB 980 would have been operative for all taxable years beginning or deemed to begin on or after January 1, 2012, under the Internal Revenue Code of 1986, as amended. [LB 980, sec. 2.]

Section 3: Would have repealed the current version of the statute (Neb. Rev. Stat. sec. 77-2715.08) that LB 980 sought to amend. [LB 980, sec. 3.]

LB 980 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1011 (Dubas)—Adopt the Property Tax Relief Act.

As introduced, LB 1011 would have provided a ***refundable individual income tax credit*** for real property taxes paid. The annual income tax credit would have been limited to $4,000 for all classes of income tax return filers. To qualify for the income tax credit, the property taxpayer would have been required to file an application with the Department of Revenue, which would have been given responsibility for administering the proposed income tax credit program.

LB 1011 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1117 (Cornett)—Repeal the Nebraska Alternative Minimum Tax and the Related Nebraska “Prior Year” Alternative Minimum Tax Credit for Individual Income Taxpayers and Estates and Trusts.

Introduced Version:

LB 1117 would have repealed Nebraska's alternative minimum tax (AMT), which can be imposed on individual income taxpayers and estates and trusts that must pay Nebraska income taxes. The bill would have also repealed Nebraska's related “prior year” AMT credit for individual income taxpayers and estates and trusts that must pay Nebraska income taxes.

Nebraska's AMT and its “prior year” AMT credit would have been repealed operative for tax years beginning or deemed to begin on or after January 1, 2013.

Section 1: Would have repealed Nebraska's AMT imposed on individual income taxpayers and the related “prior year” AMT credit.

Under current law, Nebraska's AMT is imposed on resident, partial-year resident, and nonresident individual income taxpayers at a rate of 29.6 percent of the taxpayer's federal AMT liability.

Sources: Neb. Rev. Stat. sec. 77-2715.02(4)("the rate applied to other federal taxes [e.g., the federal AMT] included in the computation of Nebraska individual income tax shall be eight times the primary rate", which is 3.7 percent under current law; so, 8 times 3.7 percent equals 29.6 percent); and *2011 Nebraska Individual Income Tax Booklet*, pp. 7-8 (Instructions for completing Line 16 of Form 1040N for tax year 2011) (http://www.revenue.ne.gov/tax/current/f_1040n_booklet.pdf).

The bill would not repeal Nebraska's excise tax imposed on premature or lump-sum distributions from qualified retirement plans, which would continue to be imposed at a rate of 29.6 percent of the taxpayer's federal excise tax liability for premature or lump-sum distributions from qualified retirement plans.

[LB 1117, sec. 1, amending Neb. Rev. Stat. sec. 77-2715 by amending subsection (2) and by adding new subsection (2)(b).]

Section 2: Would have repealed Nebraska's AMT imposed on resident and nonresident estates and trusts and Nebraska's related "prior year" AMT credit.

- Under current law, Nebraska's AMT is imposed on resident and nonresident estates and trusts at a rate of 29.6 percent of the taxpayer's federal AMT liability.

- Section 2 of the bill would not repeal Nebraska's excise tax imposed on premature or lump-sum distributions from qualified retirement plans, which would continue to be imposed at a rate of 29.6 percent of the taxpayer's federal excise tax liability for premature or lump-sum distributions from qualified retirement plans.

- Section 2 of the bill would not repeal the authority given under current law to estates and trusts to: (a) use the "credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Research and Development Act . . . as a reduction in the income tax due"; and (b) claim a "refundable income tax credit . . . under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Tax Credit Act."

[LB 1117, sec. 2, amending Neb. Rev. Stat. sec. 77-2717 by amending subsection (1) and by adding new subsection (1)(b).]

Section 3: Would have amended Neb. Rev. Stat. sec. 77-2724(2) by making a coordinating change to an internal statutory citation to what would have become Neb. Rev. Stat. sec. 77-2717(1)(c) by virtue of the changes proposed to be made by section 2 of LB 1117. [LB 1117, sec. 3, amending Neb. Rev. Stat. sec. 77-2724(2).]

Section 4: Would have repealed the current version of the statutes that LB 1117 sought to amend. [LB 1117, sec. 4.]

LB 1117 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1135 (Haar)—Provide an income tax credit relating to purchases of energy star certified materials and equipment.

LB 1135 would have allowed a nonrefundable, nontransferable, income tax credit up to $250 per tax year (that cannot be carried forward or carried back) for all Nebraska individual income taxpayers, resident and nonresident estates and trusts, and corporations that make a qualified purchase of specified "energy star certified" materials and equipment for tax years beginning or deemed to begin on or after January 1, 2012. The amount of the credit would have been equal to 5 percent multiplied by the purchase price of specified energy star certified materials and equipment, including, among other things, windows and furnaces. The tax credit program cap is $2.5 million per calendar year.

Section 1: Provides that section 2 of LB 1135 is part of the Nebraska Revenue Act of 1967. [LB 1135, sec. 1.]

Section 2: Would have authorizes a nonrefundable, nontransferable, income tax credit (that cannot be carried forward or carried back) equal to 5 percent of the purchase price of specified "energy star certified" materials and equipment (i.e., windows, central air conditioners, furnaces, heat pumps, and water heaters) purchased during the tax year—for tax years beginning or deemed to begin on or after January 1, 2012—except that the maximum amount of the credit that can be received by a taxpayer in any one tax year cannot exceed $250.

"Energy star certified" would have been defined to mean "approved as to energy usage by the United States Environmental Protection Agency and the United States Department of Energy." The approval of those two United States government agencies can be "signified by the display of the energy star label."

To claim the credit, the taxpayer would have had to file an application with the Nebraska Department of Revenue specifying the amount of the credit requested. The taxpayer also would have had to provide documentation required by the department to verify that the taxpayer qualifies for the credit. If the department approved the application it would have had to calculate the amount of the credit and issue a certificate to the taxpayer as evidence of the approved credit. The department would have had to consider applications in the order in which they are received and it can approve applications for the credit up to a maximum amount of credits equal to $2.5 million for each calendar year. When that tax credit program dollar limitation has been reached, the department would have been prohibited from considering any additional applications.

The department would have been allowed to accept applications for the credit through December 31, 2014. No new applications could have been filed after that date, but all applications pending or approved on or before that date would have continues in full force and effect.

[LB 1135, sec. 2.]

Section 3: Coordinating change allowing a nonrefundable individual income tax credit to all Nebraska individual income taxpayers as provided in section 2 of LB 1135. [LB 1135, sec. 3, amending Neb. Rev. Stat. § 77-2715.07 by adding new paragraph (d) to subsection (3).]

Section 4: Coordinating change allowing a nonrefundable income tax credit for all resident and nonresident estates as provided in section 2 of LB 1135, including coordinating changes allowing the

credit to be passed through to beneficiaries of such estates and trusts. [LB 1135, sec. 4, amending Neb. Rev. Stat. § 77-2717(1)(a), (1)(b), (3), and (4).]

Section 5: Coordinating change allowing a nonrefundable corporate income tax credit as provided in section 2 of LB 1135. [LB 1135, sec. 5, amending Neb. Rev. Stat. § 77-2734.03 by adding new paragraph (7).]

Section 6: Would have repealed the current version of the statutes that LB 1135 sought to amend. [LB 1135, sec. 6.]

LB 1135 did not advance from committee and died with the end of the legislative session on April 18, 2012.

INHERITANCE TAX

LB 1102 (Wightman)--Change inheritance tax rates and exemption amounts.

Introduced Version:

LB 1102 would have gradually increased the inheritance tax exempt amount over a period of years for all classes of beneficiaries of a decedent's estate. Additionally, LB 1102 would have gradually lowered the inheritance tax rate over a period of years for Class 2 beneficiaries and for all other beneficiaries except Class 1 beneficiaries.

Section 1: For ***Class 1 beneficiaries***, the inheritance tax exempt amount would have been gradually increased over a period of years as follows:

1 percent of the clear market value of the beneficial interest over $50,000 received by each such person for any decedent dying before January 1, 2013.

- ***Note:*** The 1 percent inheritance tax rate is equal to the current tax rate for Class 1 beneficiaries and LB 1102 would not change that inheritance tax rate for Class 1 beneficiaries.

- 1 percent of the clear market value of the beneficial interest over $60,000 received by each such person for any decedent dying on or after January 1, 2013, and before January 1, 2014.

- 1 percent of the clear market value of the beneficial interest over $80,000 received by each such person for any decedent dying on or after January 1, 2014, and before January 1, 2015.

- 1 percent of the clear market value of the beneficial interest over $100,000 received by each such person for any decedent dying on or after January 1, 2015.

LB 1102 would have also provided that inheritance tax will not be imposed on Class 1 beneficiaries if the clear market value of the beneficial interest is less than or equal to the applicable exempt amounts shown above in section 1 of the bill; i.e., (a) $50,000 received by each such person for any decedent dying before January 1, 2013; (b) $60,000 received by each such person for any decedent dying on or after January 1, 2013, and before January 1, 2014; (c) $80,000 received by each such person for any decedent dying on or after January 1, 2014, and before January 1, 2015; and (d) $100,000 received by each such person for any decedent dying on or after January 1, 2015.

16. ***Note: Class 1 beneficiaries include:*** a father, mother, grandfather, grandmother, brother, sister, son, daughter, child or children legally adopted in conformity with the laws of Nebraska, any lineal descendant, any lineal descendant legally adopted in conformity with the laws of Nebraska, any person to whom the decedent stood in the acknowledged relation of a parent for 10 years or more before the decedent's death, and the spouse or surviving spouse of any such individuals.

[LB 1102, sec. 1, amending Neb. Rev. Stat. sec. 77-2004.]

Section 2: For ***Class 2 beneficiaries***, the rate of the inheritance tax would have been gradually reduced and the exempt amount gradually increased over a period of years as follows:

13 percent of the clear market value of the beneficial interest over $15,000 received by each such person for any decedent dying before January 1, 2013.

- ***Note:*** The 13 percent inheritance tax rate is equal to the current inheritance tax rate for Class 2 beneficiaries.

- 10 percent of the clear market value of the beneficial interest over $25,000 received by each such person for any decedent dying on or after January 1, 2013, and before January 1, 2015.

- 9 percent of the clear market value of the beneficial interest over $30,000 received by each such person for any decedent dying on or after January 1, 2015.

LB 1102 also would have provided that inheritance tax will not be imposed if the clear market value of the beneficial interest is less than or equal to the applicable exempt amounts shown above in section 2 of the bill; i.e., (a) $15,000 received by each such person for any decedent dying before January 1, 2013; (b) $25,000 received by each such person for any decedent dying on or after January 1, 2013, and before January 1, 2015; and (c) $30,000 received by each such person for any decedent dying on or after January 1, 2015.

- ***Note: Class 2 beneficiaries include:*** an uncle, aunt, niece, or nephew related to the decedent by blood or legal adoption, or other lineal descendant of such individuals, and the spouse or surviving spouse of any such individual.

[LB 1102, sec. 2, amending Neb. Rev. Stat. sec. 77-2005.]

Section 3: For ***all other beneficiaries***, the rate of the inheritance tax would have been gradually reduced and the exempt amount gradually increased over a period of years as follows:

18 percent of the clear market value of the beneficial interest over $10,000 received by each such person for any decedent dying before January 1, 2013.

- ***Note:*** The 18 percent inheritance tax rate is equal to the current tax rate for this class of beneficiaries, as is the $10,000 exempt amount.

- 15 percent of the clear market value of the beneficial interest over $15,000 received by each such person for any decedent dying on or after January 1, 2013, and before January 1, 2015.

- 13 percent of the clear market value of the beneficial interest over $20,000 received by each such person for any decedent dying on or after January 1, 2015.

LB 1102 also provides that inheritance tax will not be imposed if the clear market value of the beneficial interest is less than or equal to the applicable exempt amounts shown above in section 3 of the bill; i.e., (a) $10,000 received by each such person for any decedent dying before January 1, 2013; (b) $15,000 received by each such person for any decedent dying on or after January 1, 2013, and before January 1, 2015; and (c) $20,000 received by each such person for any decedent dying on or after January 1, 2015.

[LB 1102, sec. 3, amending Neb. Rev. Stat. sec. 77-2006.]

Section 4: Would have repealed the current version of the statutes that LB 1108 sought to amend. [LB 1102, sec. 4.]

LB 1102 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LOCAL BUDGET AND LEVY LIMITATIONS

LB 989 (Haar and Conrad)—Allow exceptions to property tax levy limitations and school district budget authority for 21st Century Community Learning Centers.

As introduced, LB 989 would have created an exception to the K-12 school property tax levy limit and budget limit for "21st Century Community Learning Centers".

LB 989 defined such a learning center to mean a public elementary or secondary school that:

Participates in a community-based effort to coordinate and integrate educational, developmental, family, health, and other comprehensive services through community-based organizations and public and private partnerships; and

Provides access to such services to students, families, and the community year round, including access before- and after-school hours.

LB 989 did not advance from committee and died with the end of the legislative session on April 18, 2012.

PROPERTY TAX ADMINISTRATION

LB 750 (Cornett, Lambert, Pirsch, and Price—Change provisions relating to farm home site valuation and comparable sales used for tax assessment.

Introduced Version:

LB 750 is intended to fix a particular problem identified during the Revenue Committee's November 18, 2011, public hearing on interim study LR 350, the focus of which is an examination of issues pertaining to the process and procedures used to value and equalize real property, including examining the comparable sales guidelines set forth in Neb. Rev. Stat. sec. 77-1371.

> "Most of the hearing was devoted to the issue of using the comparable sales method for determining the actual value (i.e., fair market value) of a "farm home site" (as defined in Neb. Rev. Stat. § 77-1359) for purposes of so-called "greenbelt valuation" pursuant to Neb. Rev. Stat. §§ 77-1359 to 77-1363. Testimony on that issue focused primarily on the Sarpy County assessor's determination that residential land located in a platted and zoned subdivision that included a lake was comparable land for purposes of determining the value of land beneath a farm home site. One of the taxpayers—Jarel Vinduska—who was adversely affected by that assessor's determination appealed the 2009 valuation of his farm home site to Nebraska's Tax Equalization and Review Commission (TERC) which increased the value of the taxpayer's farm home site above the value assigned to it by the Sarpy County assessor and the Sarpy County Board of Equalization because, in TERC's view, the best evidence of the value of the taxpayer's farm home site was presented by an appraiser hired by the Sarpy County assessor." [*LR 350 (2011): Revenue Committee Report*, pp. 16-17, Revenue Committee, Nebraska Legislature (Dec. 20, 2011)(footnote omitted). That report is available in the Legislative Reference Library.]

Neb. Rev. Stat. sec. 77-1359 defines "farm home site" to mean "not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road. . . ."
In light of all that, there is a sense that those two home sites could not reasonably be considered to be comparable properties for purposes of real property taxation.

Section 1: Would have amended Neb. Rev. Stat. sec. 77-1371 to clarify that "residential land located within a platted and zoned residential subdivision is not land comparable to land that is part of a farm home site as defined in section 77-1359."

Section 2: Would have repealed the current version of the statute (Neb. Rev. Stat. sec. 77-1371) that LB 750 proposed to amend.

Revenue Committee Amendment: AM 2183

The adopted Revenue Committee amendment (AM 2183) rewrote LB 750 to do two things.

First, AM 2183 rewrites the rule in the introduced version of LB 750 concerning comparable sales and the treatment of "farm home sites" for purposes of "greenbelt valuation" authorized by Neb. Rev. Stat.

secs. 77-1359 to 77-1363. Specifically, AM 2183 amends Neb. Rev. Stat. sec. 77-1371 by adding the following sentence to address the issue concerning comparable sales and farm home sites:

> "Sales of land which do not include a farm home site as defined in section 77-1359 shall not constitute a comparable sale when determining the actual value for farm home sites pursuant to sections 77-1359 to 77-1363."

Second, AM 2183 amends Neb. Rev. Stat. sec. 77-1371 by adding the following new "guideline" for consideration when using comparable sales to determine the actual value of an individual property under the sales comparison approach provided in Neb. Rev. Stat. sec. 77-112:

> "(13) For agricultural and horticultural land as defined in section 77-1359, whether a premium was paid because the sale was in conjunction with a like-kind exchange of property under section 1031 of the Internal Revenue Code. The Department of Revenue shall each year conduct an analysis of sales of agricultural land and horticultural land to determine whether sales of agricultural land and horticultural land involving section 1031 like-kind exchanges reflect a market premium relative to sales of agricultural land and horticultural land not involving section 1031 like-kind exchanges."

Other Adopted Amendments: AM 2573 to AM 2183; and AM 2628 to AM 2573.

AM 2573 to AM 2183:

Adopted AM 2573 rewrote the Revenue Committee amendment (AM 2183) to address the "farm home site" issue and the issue involving the statute's comparable sales guidelines with respect to "nearby property" and "like-kind exchanges" of agricultural land and horticultural land under Internal Revenue Code section 1031.

AM 2573 addresses ***the "farm home site" issue*** by doing two things:

First, it redefines "farm home site" and makes clarifying and coordinating changes to the definitions of "farm site" and "agricultural land and horticultural land" in section 77-1359. Specifically, it defines the phrase "**farm home site or rural residential site**" to mean "land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside platted and zoned subdivisions".

Second, AM 2573 addresses the "farm home site" issue by adding ***a new comparable sale guideline***, which calls for consideration of "whether sales or transfers of property are in a ***similar market area*** and have ***similar characteristics*** to the property being assessed."

AM 2573 addresses ***the "like-kind exchange" and "nearby property" issues*** by amending the comparable sales guidelines so that references to "nearby property" are eliminated, putting the focus on whether a premium was paid to acquire the agricultural land or horticultural land.

In that regard, AM 2573 provides that "A premium may be paid when ***proximity or tax consequences*** cause the buyer to pay more than actual value for agricultural land or horticultural land."

The term "***proximity***" is less restrictive than the term "nearby property" because it is not limited to "land within one mile of the currently owned property".

Likewise, the term "***tax consequences***" is less restrictive than referring to a "like-kind exchange" of property under Internal Revenue Code section 1031 because other types of tax consequences could be the motivating force for paying a premium to acquire the property.

Significantly, AM 2573 reflects collaboration between the Nebraska Association of County Officials (NACO), the Nebraska Farm Bureau, and Nebraska's Property Tax Administrator.

AM 2628 to AM 2573:

Adopted AM 2628 is a technical change that fixes an unintended internal contradiction in amendment AM 2573 relating to the mention of "rural residential site" in the definitions of "farm home site" and "farm site".

AM 2628 ***strikes*** the phrase "or rural residential site" in the definition of "farm home site".

AM 2628 also ***strikes*** the new language that was added to the definition of "farm site" by AM 2573 which defined "farm site" to include an "uninhabitable or unimproved rural residential site". With adoption of AM 2628, the definition of "farm site" under current law will remain unchanged.

Those two changes eliminate the internal contradiction present in AM 2573.

Significantly, AM 2628 reflects collaboration between NACO, the Nebraska Farm Bureau, and Nebraska's Property Tax Administrator.

Enacted Version:

As enacted, LB 750 addresses ***the "farm home site" issue*** by doing two things:

First, LB 750 redefines "farm home site" to mean "land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside platted and zoned subdivisions".

Second, LB 750 addresses the "farm home site" issue by adding ***a new comparable sale guideline***, which calls for consideration of "whether sales or transfers of property are in a ***similar market area*** and have ***similar characteristics*** to the property being assessed."

LB 750 addresses ***the "like-kind exchange" and "nearby property" issues*** by amending the comparable sales guidelines so that references to "nearby property" are eliminated, putting the focus on whether a premium was paid to acquire the agricultural land or horticultural land.

In that regard, LB 750 provides that "A premium may be paid when ***proximity or tax consequences*** cause the buyer to pay more than actual value for agricultural land or horticultural land."

- The term "***proximity***" is less restrictive than the term "nearby property" because it is not limited to "land within one mile of the currently owned property".

- Likewise, the term "***tax consequences***" is less restrictive than referring to a "like-kind exchange" of property under Internal Revenue Code section 1031 because other types of tax consequences could be the motivating force for paying a premium to acquire the property.

Significantly, the enacted version of LB 750 reflects collaboration between NACO, the Nebraska Farm Bureau, and Nebraska's Property Tax Administrator.

LB 750 passed 48-0 and was approved by the Governor on April 10, 2012.

LB 762 (Louden and Lambert)--Change provisions relating to comparable sales used for tax assessment.

Introduced Version:

As introduced, LB 762 expressed a two-fold purpose.

Its ***first purpose*** is to fix a problem identified during the Revenue Committee's November 18, 2011, public hearing on interim study LR 350, the focus of which is an examination of issues pertaining to the process and procedures used to value and equalize real property, including examining the comparable sales guidelines set forth in Neb. Rev. Stat. sec. 77-1371.

> "Most of the hearing was devoted to the issue of using the comparable sales method for determining the actual value (i.e., fair market value) of a "farm home site" (as defined in Neb. Rev. Stat. § 77-1359) for purposes of so-called "greenbelt" valuation pursuant to Neb. Rev. Stat. §§ 77-1359 to 77-1363. Testimony on that issue focused primarily on the Sarpy County assessor's determination that residential land located in a platted and zoned subdivision that included a lake was comparable land for purposes of determining the value of land beneath a farm home site. One of the taxpayers—Gerald Vinduska—who was adversely affected by that assessor's determination appealed the 2009 valuation of his farm home site to Nebraska's Tax Equalization and Review Commission (TERC) which increased the value of the taxpayer's farm home site above the value assigned to it by the Sarpy County assessor and the Sarpy County Board of Equalization because, in TERC's view, the best evidence of the value of the taxpayer's farm home site was presented by an appraiser hired by the Sarpy County assessor." [*LR 350 (2011): Revenue Committee Report*, pp. 16-17, Revenue Committee, Nebraska Legislature (Dec. 20, 2011)(footnote omitted). That report is in the Legislative Reference Library.]

Neb. Rev. Stat. sec. 77-1359 defines "farm home site" to mean "not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road. . . ."
In light of all that, there is a sense that those two home sites could not reasonably be considered to be comparable properties for purposes of real property taxation.

The ***second purpose*** of LB 362 is to change the comparable sales guidelines set forth in Neb. Rev. Stat. sec. 77-1371.

Section 1: Would have amended Neb. Rev. Stat. sec. 77-1371 to accomplish both of the bill's purposes.

First, it amends Neb. Rev. Stat. sec. 77-1371 by adding new subsection (5) which relates to the problem identified during the LR 350 public hearing concerning the valuation of farm home sites by

stating that “A sale of residential land located within a platted and zoned residential subdivision is not land comparable to land that is part of a farm home site as defined in section 77-1359.”

Second, it amends Neb. Rev. Stat. sec. 77-1371 by: (a) amending that statute's comparable sale guidelines to clarify that those guidelines help to determine what constitutes a “qualified” sale for purposes of determining whether it is a “comparable” sale and does so by drawing a distinction between the attributes of the property sold and the attributes of the sale transaction; and (b) adding new subsections (3) and (4) which elaborate on that distinction.

New subsection (3) provides that “If a sale is a qualified sale it shall be used to determine whether the sale is a comparable sale.”

New subsection (4)(a) defines “arms-length transaction” to mean “a sale between two or more parties, each seeking to maximize their positions from the transaction”.

New subsection (4)(b) defines “qualified sale” to mean “an arms-length transaction that accurately reflects the attributes of of the sale transaction rather than the attributes of the property sold.”

New subsection (4)(b) also provides that “Qualified sale” does not include:

A sale of nearby agricultural land or horticultural land when such land was acquired for the purpose of expanding a preexisting, operational agricultural or horticultural business. Land within one mile of a preexisting, operational agricultural or horticultural business shall be considered nearby property; and

A sale of agricultural land or horticultural land when the sale transaction is a like-kind exchange under section 1031 of the Internal Revenue Code if the closing date of the transaction to acquire the like-kind property is within sixty days prior to the final date for timely completion of the acquisition of like-kind property pursuant to the requirements of section 1031.”

Section 2: Would have repealed the current version of the statute (Neb. Rev. Stat. sec. 77-1371) that LB 762 proposed to amend.

Revenue Committee Amendment: None.

Other Amendments: None.

Final Disposition:

LB 762 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 822 (Adams)—Change notice provisions relating to changes in real property valuations.

Introduced Version:

As introduced, LB 822 would have required the notice sent by a county assessor informing a real property owner that his or her property has been assessed at a value different than in the immediately preceding year to "contain a statement that all classes of real property have been reviewed and fall within an acceptable range of values." (Such notice must be sent on or before June 1, as applicable, as provided for by current law.)

As introduced, LB 822 also proposed eliminating certain statutory language which may have confused some real property taxpayers who, as a result of such confusion, appealed the valuation of their real property. The language at issue required the notice sent by the county assessor to state "the average level of value of all classes and subclasses of real property in the county as determined by the Tax Equalization and Review Commission." (During the Revenue Committee hearing on LB 822, testimony revealed that some taxpayers whose property had an assessed value ***higher than*** "the average level of value" for their class of property in the county believed that their property's assessed valuation was excessive simply because it exceeded "the average level of value" for their class of property in the county.)

[LB 822, sec. 1, amending Neb. Rev. Stat. sec. 77-1315(2).]

Revenue Committee Amendment: AM 2313

The adopted Revenue Committee amendment (AM 2313) is a "white copy" amendment to LB 822 which rewrote the bill to fix the problem mention above by doing two things:

(1) It ***eliminates*** the proposed new language that would have been added by the introduced version of LB 822 (i.e., "The notice shall contain a statement that all classes of real property have been reviewed and fall within an acceptable range of values."); and

(2) It ***strikes*** the language in current law which may have caused confusion for some real property taxpayers (i.e., "~~and the average level of value of all classes and subclasses of real property in the county as determined by the Tax Equalization and Review Commission~~.")

Consequently, AM 2313 rewrites the relevant sentence regarding the notice as follows:

> "It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, and the dates for filing a protest. "

[AM 2313 to LB 822, amending Neb. Rev. Stat. sec. 77-1315(2).]

Other Adopted Amendments: None.

Enacted Version:

The enacted version of LB 822 is the adopted Revenue Committee amendment (AM 2313) to LB 822 which rewrote the bill. (See the summary of the Revenue Committee amendment above to read a summary of the enacted version of LB 822.)

LB 822 passed 49-0 and was approved by the Governor on April 10, 2012.

LB 851 (Fischer)—Change provisions relating to tax receipts.

Introduced Version:

LB 851 requires a county treasurer to provide a receipt showing the payment of property taxes **if** the payer requests such a receipt. [LB 851, sec. 1, amending Neb. Rev. Stat. sec. 77-1704.]

Section 2 of LB 851 makes a coordinating change requiring the county treasurer to include with each tax receipt the information specified in Neb. Rev. Stat. sec. 77-1704.01(1)(a)-(c), such as the total amount of aid from state sources appropriated to the county and each city, village, and school district in the county. Section 2 also eliminates obsolete language in Neb. Rev. Stat. sec. 77-1704.01(1)(c). [LB 851, sec. 2, amending Neb. Rev. Stat. sec. 77-1704.01.]

Other sections of the bill make related coordinating changes to other statute sections by eliminating a requirement that a “duplicate” tax receipt must be retained by the county treasurer. [LB 851, secs. 3 to 5, amending Neb. Rev. Stat. secs. 77-1706, 77-1707, and 77-1821.]

Section 6 repeals the original version of the statutes amended by LB 851. [LB 851, sec. 6.]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Enacted Version:

The enacted version of LB 851 is the same as the introduced version of LB 851. (See the summary of the introduced version of LB 851 above to see a summary of the enacted version of LB 851.)

LB 897 (Pahls)—Change provisions relating to completion of tax lists.

Introduced Version:

LB 897 amends Neb. Rev. Stat. sec. 77-1615 to eliminate an exception to the requirement that the county assessor must complete the tax list. That exception requires the county clerk in all counties having a population of more than 200,000 inhabitants to complete the tax list.

Also, LB 897 outright repeals Neb. Rev. Stat. sec. 33-113, which provides that: "In counties having over two hundred thousand population, where the county clerk makes the county and city tax lists, he shall be allowed a budget of twenty thousand dollars for clerks' salaries for making said tax lists."

Revenue Committee Amendment: None.

Other Amendments: None.

Final Disposition:

The enacted version of LB 897 is the same as the introduced version of LB 879. (See the summary of the introduced version of LB 897 above.)

LB 897 passed 44-0 and was approved by the Governor on April 10, 2012.

LB 967 (Schumacher, Cornett, and Fischer)—Change an interest rate relating to delinquent taxes and special assessments.

Introduced Version:

LB 967 would have changed the interest rate relating to delinquent taxes and special assessments owing to any political subdivision of the State of Nebraska (e.g., real and personal property taxes).

Section 1: Would have lowered from 14 percent per year to 10 percent per year the interest rate assessed on delinquent payments of any taxes or special assessments owing to any ***political subdivision*** of the State of Nebraska (e.g., real and personal property taxes). [LB 967, sec. 1, amending Neb. Rev. Stat. sec. 45-104.01.]

Section 2: Would repeal the current version of the statute that LB 967 seeks to amend. [LB 967, sec. 2.]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 967 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1069 (Wightman)—Change provisions relating to tax sales to collect delinquent property taxes.

Introduced Version:

Legislative Bill 1069 would have changed provisions relating to tax sales primarily by: (1) allowing the county treasurer to group properties offered for sale at a tax sale; and (2) allowing bidders at a tax sale to offer to pay a "premium" (in addition to paying the delinquent real property taxes, delinquent interest, and fees) in their effort to become the winning bidder at the tax sale (the person offering to pay "the largest premium in excess of the amounts due" would be the winning bidder).

Section 1: Would have required the notice of tax sale published by the county treasurer to state that the parcels offered for sale can be "grouped for sale" if the county treasurer groups real property for sale pursuant to the provisions of LB 1069, sec. 2. [LB 1069, sec. 1, amending Neb. Rev. Stat. sec. 77-1804.]

Section 2: Would have allowed the county treasurer to sell properties offered for sale at a tax sale to be sold individually or as a group of properties and it would have required that a separate tax sale certificate be issued for each item of real property sold if parcels of real property are sold as a group. [LB 1069, sec. 2, amending Neb. Rev. Stat. sec. 77-1806.]

Section 3: Would have provided that the winning bidder at a tax sale ("the purchaser") would be the person who offers to pay the delinquent real property taxes, delinquent interest, and fees, plus "the largest premium in excess of amounts due". The premium paid would have been required to be credited to the county general fund.

Additionally, Section 3 of LB 1069 would have required the county treasurer to "announce bidding rules at the beginning of the public auction" and such rules would have applied "to all bidders throughout the public auction. If "the public auction or private sale is conducted using an Internet auction system", the county treasurer must post the Internet bidding rules on the county's web site for 2 weeks before the date of sale and those rules will apply to all bidders throughout the the public auction or private sale. Such rules would have had to include, but would not have been limited to, "(a) Determining the order in which tax liens are sold, without regard to the order in which they appear in the published notice of sale; (b) Setting the minimum bid increases; and (c) Setting a minimum total of taxes, delinquent interest, and costs per parcel of not more than five hundred dollars, below which premium bids will not be accepted."

Finally, section 3 of LB 1069 would have permitted the tax sale to be "conducted in a round-robin format, by drawing lots, or any other impartial manner deemed by the county treasurer to provide an equal opportunity for all participants to purchase tax liens."

[LB 1069, sec. 3, amending Neb. Rev. Stat. sec. 77-1807, by amending subsection (1) and by adding new subsections (2) and (3).]

Section 4: Would have made a coordinating change regarding the bill's concept of allowing bidders at a tax sale to include a "premium" in their bid. [LB 1069, sec. 4, amending Neb. Rev. Stat. sec. 77-1808.]

Section 5: Would have made a coordinating change regarding the bill's concept of allowing bidders at a tax sale to include a “premium” in their bid. [LB 1069, sec. 5, amending Neb. Rev. Stat. sec. 77-1812.]

Section 6: Would have required each tax lien to be shown on a single certificate.[LB 1069, sec. 6, amending Neb. Rev. Stat. sec. 77-1818.]

Section 7: Would have made a coordinating change regarding the bill's concept of allowing bidders at a tax sale to include a “premium” in their bid. [LB 1069, sec. 7, amending Neb. Rev. Stat. sec. 77-1819.]

Section 8: Would have made a coordinating change regarding the bill's concept of allowing parcels offered for sale at a tax sale to be grouped for sale. [LB 1069, sec. 8, amending Neb. Rev. Stat. sec. 77-1823.]

Section 9: Would have required the “premium collected” to be retained by the county and would prohibit returning the premium paid to the tax lien purchaser. Section 9 of LB 1069 also would have provided that the premium “is not collected from the owner or occupant of the real property” being sold at the tax sale. [LB 1069, sec. 8, amending Neb. Rev. Stat. sec. 77-1824.]

Section 10: The operative date of LB 1069 would have been January 1, 2014. [LB 1069, sec. 10.]

Section 11: Would have repealed the current version of the statutes that LB 1069 sought to amend. [LB 1069, sec. 11.]

Section 12: Would have made a coordinating change regarding the bill's concept of allowing parcels offered for sale at a tax sale to be grouped for sale by *outright repealing* Neb. Rev. Stat. sec. 771820, which provides: “If any person becomes the purchaser of more than one item of real property, he or she may have the whole included in one certificate, but each item shall be separately described,and the amount paid may be entered in gross in the certificate.” [LB 1069, sec. 12.]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 1069 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB1075 (Cornett)—Provide for assessment of rent-restricted housing projects by the Nebraska Property Tax Administrator.

Introduced Version:

As introduced, LB 1075 would have transferred the duty of valuing rent restricted housing to the Property Tax Division of the Nebraska Department of Revenue. Such work is currently being performed by local assessing officials. Also, LB 1075 would have proscribed a method for valuing such property.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 1075 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB1093 (Hadley)—Change provisions relating to foreclosure proceedings for delinquent real estate taxes.

Introduced Version:

LB 1093 would have changed provisions governing proceedings to sell real property (for which delinquent real property taxes have not been paid) at one or more sheriff's foreclosure sales where the real property has not been sold due to a lack of bidders.

Section 1: Would have amended the statute (Neb. Rev. Stat. sec. 77-1912) governing a sheriff's foreclosure sale of real property for which real property taxes are delinquent. LB 1093 would have added new subsection (3) to Neb. Rev. Stat. sec. 77-1912, which would have provides that if the real property is not sold due to a lack of bidders, the sheriff must postpone the sale or re-advertise and subsequently offer the real property for sale.

If, after two attempts have been made to sell the real property but it has not been sold due to a lack of bidders and if a land re-utilization authority has not been established within the county, then title to the real property "may vest in the name of the county." If the county refuses to accept title to the real property, the sheriff must offer the real property for sale annually.

LB 1093 would have allowed the sheriff to consolidate or group "such parcels with other parcels" that were not sold due to a lack of bidders "or other parcels subject to sale" under Neb. Rev. Stat. sec. 77-1912.

[LB 1093, sec. 1, amending Neb. Rev. Stat. sec. 77-1912 by adding new subsection (3).]

Section 2: Would have repealed the statute that LB 1093 sought to amend. [LB 1093, sec. 2.]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 1093 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1106 (Schilz)—Change provisions relating to assessment of improvements on leased public land.

Introduced Version:

LB 1106 changes provisions relating to the assessment of improvements on ***leased public lands***.

Section 1: Neb. Rev. Stat. sec. 77-1374 currently requires the owner of improvements on leased public land to file "an assessment application form prescribed by the Tax Commissioner" listing "any construction . . . or change in the improvements made on or after January 1" each year. That form must be filed with the county assessor on or before March 1 each year.

Section 1 of LB 1106 would require that assessment application form to "also be filed with the county assessor at the time a change in ownership occurs". Section 1 of LB 1106 would also require that assessment application form to "be signed by the owner of the improvements or the owner of the land."

[LB 1106, sec. 1, amending Neb. Rev. Stat. sec. 77-1374.]

Section 2: Would repeal the statute that LB 1106 seeks to amend. [LB 1106, sec. 2.]

Revenue Committee Amendment: AM 2239

The Revenue Committee amendment (AM 2239) to LB 1106 is a "white copy" amendment to the bill which retains the provisions of the bill as introduced, ***except that*** the committee amendment strikes the phrase "or the owner of the land" as provided for by the introduced version of LB 1106. As so amended, LB 1106 requires the assessment application form to "be signed by the owner of the improvements", and not by the owner of the land. [LB 1106, sec. 1, amending Neb. Rev. Stat. sec. 77-1374.]

Enacted Version:

As enacted, LB 1106 is the introduced version of the bill as amended by the Revenue Committee amendment. Thus, the legislation requires the assessment application form to "be filed with the county assessor at the time a change of ownership occurs" and it requires "the assessment application form to be signed by the owner of the improvements" (and not by the owner of the land). [LB 1106, sec. 1, amending Neb. Rev. Stat. sec. 77-1374.]

PROPERTY TAX - OTHER

LB 798 (Urban Affairs Committee)—Provide that certain assessments are levied and collected as special assessments.

Introduced Version:

LB 798 was introduced by the Urban Affairs Committee. Numerous sections of the 63 page bill change multiple references to "taxes" or "special taxes" to "special assessments" in various Nebraska statutes.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition:

LB 798 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1061 (Heidemann)—Change provisions relating to valuation of agricultural land and horticultural land.

Introduced Version:

As introduced, LB 1061 would have—over a period of years beginning with tax year 2013—incrementally reduced the taxable valuation of agricultural land and horticultural land for purposes of school tax calculations, and for purposes of determining state aid to schools. The reduction of taxable value would have been achieved by reducing the percentage of actual value (i.e., fair market value) used to determine the taxable value of such land (i.e., 73 percent for 2013, 71 percent for 2014, 69 percent for 2015, 67 percent for 2016, and 65 percent for 2017 and beyond). The reduction would have been greater for school aid purposes than for property tax purposes.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition:

LB 1061 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1109 (Brasch)—Provide for classification of flooded agricultural land as inundated land.

Introduced Version:

As introduced, LB 1109 would have allowed valuation of "inundated land" to be determined based on different criteria than other agricultural land. Landowners would be required to apply for inundated land valuation treatment. Inundated land is defined by the bill as agricultural land and horticultural land that has been made "unsuitable for growing crops or grazing farm animals" for two consecutive growing seasons.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition:

LB 1109 did not advance from committee and died with the end of the legislative session on April 18, 2012.

SALES TAX EXEMPTIONS

LB 40 (Hadley)—Change a sales tax exemption for health clinics.

Introduced Version:

As introduced, LB 40 would create a new sales tax exemption for certain nonprofit health clinics.

LB 40 strikes the word "two" in Neb. Rev. Stat. section 77-2704.12(1)(e)(ii) and replaces it with the word "one", so that a sales tax exemption would be created for "any nonprofit" "health clinic when one or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved." (Emphasis added.)

As introduced, the operative date of LB 40 would be October 1, 2011.

Revenue Committee Amendment:

The adopted Revenue Committee amendment (AM 1519) changed the operative date of LB 40 to July 1, 2012 (October 1, 2011, as introduced).

Other Adopted Amendments: AM 1760

Adopted amendment AM 1760 added the emergency clause to the bill. [LB 40, sec. 4.]

Enacted Version:

The enacted version of LB 40 is the same as the introduced version of the bill, except that the enacted version of LB 40 has the emergency clause and an operative date of July 1, 2012.

LB 40 passed with the emergency clause 49-0 and was approved by the Governor on April 11, 2012.

LB 749 (Cornett)—Exempt indoor tanning services from sales and use taxes.

Introduced Version:

For purposes of sales and use taxation, a Nebraska statute defines "gross receipts" to include certain admissions. LB 749 would have amended that statute by adding a new sentence which would have provided that "An admission does not include indoor tanning services." [LB 749, section 1, amending Neb. Rev. Stat. Section 77-2701.16(5).]

The operative date of LB 749 would have been October 1, 2012. [LB 749, section 2.]

LB 749 would have repealed the current version of the statute that it sought to amend. [LB 749, section 3.]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 749 advanced to General File as introduced, but the bill ultimately died with the end of the legislative session on April 18, 2012.

LB 830 (Hadley, Avery, Cornett, Haar, and Hansen)—Provide a sales and use tax exemption for biochips.

Introduced Version:

As introduced, LB 830 would provide a sales and use tax exemption for a very specific type of business input used in scientific research (i.e., "biochips").

Revenue Committee Amendment: AM 1971

The adopted Revenue Committee amendment (AM 1971) clarifies that the bill's sales and use tax exemption for biochips used for purposes of conducting genotyping or related analysis of, among other things, "nonhuman laboratory research model organisms" is limited to "nonhuman protein or lipid laboratory research model organisms."

Other Adopted Amendments: AM 2209

Adopted amendment AM 2209 made technical changes to language of the sales and use tax exemption provisions of both the introduced version of the bill and as amended by the Revenue Committee amendment (AM 1971). AM 2209 struck the phrase "protein or lipid" which was added by the Revenue Committee amendment and it struck the phrase in the introduced version of the bill which referred to protein profiling of "plants produced for commercial purposes", "animals produced for commercial purposes", and "companion animals". Thus, AM 2209 rewrote the last clause of the sales and use tax exemption language in the bill to provide that the exemption applies to biochips used for purposes of conducting genotyping or related analysis of, among other things, "protein profiling of plants, animals, or nonhuman laboratory research model organisms."

Enacted Version:

As enacted, LB 830 provides a sales and use tax exemption for "gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of biochips used for the purposes of conducting genotyping or the analysis of gene expression, protein expression, genomic sequencing, or protein profiling of plants, animals, or nonhuman laboratory research model organisms."

Also, the enacted version of LB 830 retains the language of the introduced version of the bill which—for purposes of its sales and use tax exemption—defines "biochip" to mean:

"a solid substrate upon or into which is incorporated specific genetic or protein information or chemicals that are queried through one or more chemical interactions allowing (a) an isolation of one or more single nucleotide polymorphisms which constitute an animal or plant genotype, (b) an expression profile which measures activity of genes or the presence of proteins, or (c) a detailed genomic sequence or protein profile. The specific genetic or protein information or chemicals incorporated upon or into the biochip are consumed in the process of conducting the analysis."

The operative date of LB 830 is July 1, 2012.

LB 830 passed with the emergency clause 49-0 and was approved by the Governor on April 10, 2012.

LB 902 (Harr, Flood, Nordquist, Lambert)--Redefine a term relating to property tax exemptions and change provisions relating to a sales tax exemption for purchases by the state or a governmental unit.

Introduced Version:

As introduced LB 902 would have changed Nebraska property tax exemption and sales tax exemption statutes. The bill would have added exemptions for properties owned by non profit corporations acting on behalf of a governmental body which would currently be tax exempt. While the governmental body property would normally be both property tax exempt, and sales tax exempt on purchases of sales taxable items, a 2011 Revenue Department ruling suggested that the language of the statute did not specifically provide for exemption of properties owned by a non profit entity acting on behalf of the exempt government.

Revenue Committee Amendment: AM 2281 was adopted by the Revenue Committee and affirmed by floor vote. The amendment clarified the language of the original bill based on advice received from the Revenue Department.

Other Adopted Amendments: Several floor amendments were adopted. The net effect of these amendments was to clarify the effective date (AM 2563) and add the voter approval language (AM 2638) described below.

Final Disposition:

The bill as passed will allow for property and sales tax exemptions for non profit entities formed by governments under certain circumstances. These circumstances exist when there is a lease purchase agreement or other financial instrument which transfers title to a governmental unit upon completion of all payments due under the agreement.

Such properties or projects, to qualify for the exemption, must seek local voter approval when over a threshold dollar amount. The threshold amount is the greater of 50,000 dollars or six tenths of one percent of the taxable valuation base of the local government in the prior fiscal year.

LB 903 (Cornett, Adams, Campbell, Council, Dubas, Fulton, Hadley, Harr, Lambert, Nelson, Price, Sullivan, and Coash)--Exempt youth sports from sales and use tax.

Introduced Version:

As introduced, LB 903 would have exempted admission fees for youth sports activities from the sales and use taxes. LB 903 would have clarified that rental fees charged for use of a sports facility or access to a sports facility by persons not under the control of the owner of the sports facility would not have been subject to the sales and use taxes. Another provision in LB 903 retained the provision in current law that a federally tax-exempt organization that changes membership fees for memberships that include voting rights within the organization are exempt from sales and use taxes.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: Although LB 903 did not advance from committee, its provisions were amended into **LB 727** which became law. Consequently, LB 903 died with the end of the legislative session on April 18, 2012.

LB 986 (Dubas, Heidemann, Louden, Schilz, Bloomfield, Sullivan, and Brasch)—Exempt repair or replacement parts for commercial agricultural machinery and equipment from sales and use tax.

Introduced Version:

As introduced, LB 986 would have exempted from sales and use taxes repair or replacement parts for agricultural machinery and equipment used in commercial agriculture.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 986 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1097 (Pirsch)—Exempt purchases of nonprofit mental health centers from sales and use tax.

Introduced Version:

LB 1097 provides a sales and use tax exemption for ***purchases*** made by any nonprofit mental health center that is licensed under the Health Care Facility Licensure Act.

The sales and use tax exemption is operative July 1, 2012.

[LB 1097, sec. 1, amending Neb. Rev. Stat. sec. 77-2704.12(1), and sec. 2 (operative date).]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Enacted Version:

The enacted version of LB 1097 is the same as the introduced version of the bill.

LB 1097 passed 43-0 and was approved by the Governor on April 11, 2012.

LB 1108 (Pirsch)—Change provisions relating to a sales and use tax exemption for manufacturing machinery and equipment.

Introduced Version:

LB 1108 would have changes the statute authorizing a sales and use tax exemption for manufacturing machinery and equipment to nullify a regulation that can result in the denial of that exemption ***if*** a manufacturer's "total annual revenues" derived from sales of products manufactured and sold as "tangible personal property" or from "production labor . . . performed on products sold as tangible personal property by another manufacturer" ***are less*** "than from any other commercial activity." [REG-1-107.02.] The plain language of the current statute gives no indication that the sales and use tax exemption for manufacturing machinery and equipment depends on any income test.

Section 1: To achieve its aim, LB 1108 would have added the following clause at the end of subsections (1) and (2) of Neb. Rev. Stat. 77-2704.22: "without regard to the percentage of income a company derives from the use of such machinery and equipment." As so amended, Neb. Rev. Stat. sec. 77-2704 would have stated:

> "(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental and on the storage, use, or other consumption in this state of manufacturing machinery and equipment without regard to the percentage of income a company derives from the use of such machinery and equipment.
>
> (2) Sales and use taxes shall not be imposed on the gross receipts from the sale of installation, repair, and maintenance services perform on or with respect to manufacturing machinery and

equipment without regard to the percentage of income a company derives from the use of such machinery and equipment."

Section 2: LB 1108 would have become operative October 1, 2012.

Section 3: Would have repealed the current version of the statute that LB 1108 sought to amend.

> ***Observation:*** Nebraska Department of Revenue regulation REG-1-107.01 states that the "sale, lease or rental of manufacturing machinery and equipment to a manufacturer for use in manufacturing is exempt from tax", ***but*** REG-1-107.02 defines "manufacturer" to mean "a person who is ***primarily*** engaged in the business of manufacturing" and then it states that "Persons are ***primarily*** engaged in the business of manufacturing ***if more of*** their ***total annual revenues*** are derived from the sales of products they manufacturer and sell as tangible personal property, or from production labor as defined in Reg-1-082.02A performed on products sold as tangible personal property by other manufacturers ***than from*** any other commercial activity." (Emphasis added to help identify the regulation's income test.)

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 1108 did not advance from committee and died with the end of the legislative session on April 18, 2012.

SALES TAX - OTHER

LB 209 (Schilz, Larson, and Janssen)—Provide for delayed deductions for refunds from municipal sales and use tax receipts and access to tax returns by certified municipal employees.

Introduced Version:

As introduced, LB 209 proposed a mechanism for the Nebraska Department of Revenue to delay distribution of local option sales tax revenue to cities that owe local sales and use tax refunds due to local sales and use tax refund claims filed by business taxpayers pursuant to various business tax incentive programs that allow refunds of such local option sales and use taxes. Such a city would be given a one-year notice of refunds to be paid under the bill. The purpose of the proposed change is to help cities with cash flow problems attributable to such tax refund claims. [LB 209, sec. 2, adding new subparagraph (2) to Neb. Rev. Stat. sec. 77-27,144.]

Revenue Committee Amendment: AM 1949

The adopted Revenue Committee amendment (AM 1949) allows the Nebraska Department of Revenue to delay unusually large city sales tax refund claims that are attributable to a business tax incentive program (e.g., the Employment and Investment Growth Act and the Nebraska Advantage Act) and allows the department to utilize a 12-month installment payment plan for paying city sales tax refunds withheld by the state from sales tax revenue remitted to cities.

Other Adopted Amendments: AM 2193, AM 2277, and AM 2713

AM 2193: Adopted amendment AM 2193 adds provisions of **LB 489** (i.e., authorize municipalities to receive sales tax information) to LB 209.

AM 2193 makes changes to the bill that will allow—under specified circumstances—a specially designated “municipal employee” to periodically review confidential sales tax returns and sales tax return information, solely on the premises of the Department of Revenue, so that the city can better anticipate: (1) when refunds of city sales and use taxes will be due pursuant to tax incentive agreements; and (2) the amount of those refunds which will be withheld by the Department of Revenue rather than being paid over to the city.

The withholding of such refunds can have an adverse impact on a city's cash-flow from its local option sales and use taxes. Specifically, AM 2193 adds new subsection (14) of section 77-2711 to achieve that end.

Additionally, AM 2193 protects the Department of Revenue so that it cannot be held liable for an impermissible disclosure by a municipality—or any agent or employee of the municipality—of any information obtained pursuant to a review of confidential sales and use tax information by the municipal employee authorized to conduct such a review on the premises of the Department of Revenue.

AM 2277: The only difference between adopted amendment AM 2277 and the adopted Revenue Committee amendment (AM 1949) is that AM 2277 makes certain grammatical corrections by

changes the plural form of certain words to the singular form of those words (e.g., eliminating the word "refunds" and replacing it with the word "refund"). Additionally, AM 2277 adds the qualifying language, "net of any refunds or sales tax collection fees" to new subparagraph (2) of Neb. Rev. Stat, sec. 77-27,144.

AM 2713: Adopted amendment AM 2713 states that January 1, 2014, is the operative date of new subparagraph (2) of Neb. Rev. Stat. sec. 77-27,144.

Enacted Version:

Section 1: Adds provisions of **LB 489** (i.e., authorize municipalities to receive sales tax information) to LB 209. Specifically, section 1 of LB 209 adds new subsection (14) to Neb. Rev. Stat. sec. 77-2711 which provides:

> "(14)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request, provide a municipal employee certified under subdivision (b) of this subsection representing a municipality which has adopted the local option sales tax under the Local Option Revenue Act with confidential sales tax returns and sales tax return information regarding taxpayers that possess a sales tax permit and the amounts remitted by such permit holders at locations within the boundaries of the requesting municipality. Any written request pursuant to this subsection shall provide the Department of Revenue with no less than ten business days to prepare the sales tax returns and sales tax return information requested. Such returns and return information shall be viewed only upon the premises of the department.
>
> (b) Each municipality that seeks to request information under subdivision (a) of this subsection shall certify to the Department of Revenue one municipal employee who is authorized by such municipality to make such request and review the documents described in subdivision (a) of this subsection.
>
> (c) No municipal employee certified by a municipality pursuant to subdivision (b) of this subsection shall disclose to any person any information obtained pursuant to a review by that municipal employee pursuant to this subsection. A municipal employee certified by a municipality pursuant to subdivision (b) of this subsection shall remain subject to this subsection after he or she (i) is no longer certified or (ii) is no longer in the employment of the certifying municipality.
>
> (d) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor.
>
> (e) The Department of Revenue shall not be held liable by any person for an impermissible disclosure by a municipality or any agent or employee thereof of any information obtained pursuant to a review under this subsection."

Section 2: Makes a coordinating change to Neb. Rev. Stat. sec. 77-27,144(3) pertaining to the changes made by section 1 of LB 209 and adds new subsection (2) to Neb. Rev. Stat. sec. 77-27,144 which provides:

> "(2) Deductions for a refund made pursuant to section 77-4105 or 77-5725 shall be delayed for one year after the refund has been made to the taxpayer. The Department of Revenue shall notify the municipality liable for the refund of the pending refund, the amount of the refund, and the month in which the deduction will be made or begin, except that if the amount of a refund

claimed under section 77-4105 or 77-5725 exceeds twenty-five percent of the municipality's total sales and use tax receipts, net of any refunds or sales tax collection fees, for the municipality's prior fiscal year, the department shall deduct the refund over the period of one year in equal monthly amounts beginning after the one-year notification period required by this subsection. This subsection applies to refunds owed by cities of the first class, cities of the second class, and villages. This subsection applies beginning January 1, 2014."

Section 3: Repeals the versions of Neb. Rev. Stat. secs. 77-27,144 and 77-2711 as they existed before being amended by LB 209.

LB 209 passed, as amended, 49-0 and was approved by the Governor on April 11, 2012.

LB 357 (Ashford, Cornett, Schumacher, Lathrop, and McGill)—Change and eliminate provisions relating to increases in local option sales tax.

Introduced Version:

As introduced, LB 357 would allow cities—with voter approval—to impose a local option sales and use tax with a tax rate of one-half percent, one percent, one and one-half percent, ***or two percent***. Under current law, cities can impose a local option sales and use tax with a tax rate of one-half percent, one percent, or one and one-half percent.

Additionally, LB 357 would require a city that puts forth a ballot question for voter approval of a proposed local option sales and use tax rate increase to include a description of the proposed use of the additional local option sales and use tax revenue in the ballot question presented to voters.

Revenue Committee Amendment: None.

Other Adopted Amendments: AM 2712

Adopted amendment AM 2712 rewrote LB 357 and became the bill as enacted.

Enacted Version:

Section 1 of LB 357: Amends Neb. Rev. Stat. sec. 77-27,142(1) to authorize any incorporated municipality by ordinance of its governing body to impose a voter-approved local option sales and use tax with a rate of one-half-percent; one percent; one and one-half percent; one and three-quarters percent; or two percent. Thus, LB 357 goes beyond the maximum allowable rate of one and one-half percent under current law by allowing voter approved local option sales and use tax rates of one and three-quarters percent and a maximum of two percent.

Additionally, section 1 of LB 357 adds new subsections (2), (3), (4), and (5) to Neb. Rev. Stat. sec. 77-27,142. *New subsection (4) states that new subsections (2) and (3) do not apply to the first one and one-half percent of a local option sales and use tax imposed by a municipality.*

New Subsection (2) of Neb. Rev. Stat. sec. 77-27,142:

New subsection (2)(a) requires voter approval to increase a local option sales tax rate greater than one and one-half percent. The ballot question must be presented at a primary or general election within the incorporated municipality, but, before such a ballot question can be presented to voters, the incorporated municipality's governing body must approve doing so by an affirmative vote of at least 70 percent of all of its members.

New subsection (2)(b) requires revenue derived from a local option sales and use tax rate greater than one and one-half percent to be used as specified in new subsection (2)(b)(i) (cities of the metropolitan class), (2)(b)(ii) (cities of the primary class), and (2)(b)(iii) (all other incorporated municipalities).

17. ***Cities of the metropolitan class:*** The revenue derived from the first one-quarter percent of the local option sales and use tax rate over one and one-half-percent "shall be used to reduce other taxes." The revenue derived from the next one-eighth percent of the local option sales and use tax rate over one and one-half-percent "shall be used" for public infrastructure projects. The revenue derived from the next one-eighth percent of the local option sales and use tax rate over one and one-half-percent "shall be used" for purposes of the interlocal agreement or joint public agency agreement described in new subsection (3) of Neb. Rev. State. Sec. 77-27,142.

18. ***Cities of the primary class:*** Up to 15 percent of the revenue derived from a local option sales and use tax rate over one and one-half-percent "may be used" for "non-public infrastructure project of an interlocal agreement or joint public agency agreement with another political subdivision within the municipality or the county in which the municipality is located. The remaining 85 percent of the revenue derived from a local option sales and use tax rate over one and one-half-percent "shall be used" for public infrastructure projects related to an economic development program as defined in Neb. Rev. Stat. sec. 18-2705, which defines "economic development program" to mean:

    "any project or program utilizing funds derived from local sources of revenue for the purpose of providing direct or indirect financial assistance to a qualifying business or the payment of related costs and expenses or both, without regard to whether that business is identified at the time the project or program is initiated or is to be determined by specified means at some time in the future. An economic development program may include, but shall not be limited to, the following activities: Direct loans or grants to qualifying businesses for fixed assets or working capital or both; loan guarantees for qualifying business; grants for public works improvements which are essential to the location or expansion of, or the provision of new services by, a qualifying business; grants or loans for job training; the purchase of real estate, options for such purchases, and the renewal or extension of such options; the issuance of bonds as provided for in the Local Option Municipal Economic Development Act; and payments for salaries and support of city staff to implement the economic development program or the contracting of such to an outside entity. For cities of the first and second class and villages, an economic development program may also include grants or loans for the construction or rehabilitation for sale or lease of housing for persons of low or moderate income. An economic development program may be conducted jointly by two or more cities after the approval of the program by the voters of each participating city."

19. ***All other incorporated municipalities:*** Any revenue derived from a local option sales tax rate over one and one-half percent "shall be used" for public infrastructure projects or voter

approved infrastructure related to an economic development program as defined in Neb. Rev. Stat. sec. 18-2705.

For purposes of new subsection (2)(b), the bill defines “public infrastructure project”.

New subsection (2)(c) ***requires a termination date*** for any local option sales and use tax rate greater than one and one-half percent, except as provided in new subsection (2)(d). The termination date for any local option sales and use tax rate greater than one and one-half-percent can be no more than 10 years after its effective date or, if bonds are issued and the local option sales and use tax revenue is pledged for the payment of such bonds, then the termination date is the later of 10 years after its effective date or upon payment of the bonds and any refunding bonds.

New subsection (2)(d) ***prohibits a termination date*** under certain circumstances. It provides that if “a portion” of the local option sales and use tax rate *greater than* one and one-half-percent is stated in the ballot question as being imposed for the purpose of the interlocal agreement or joint public agency agreement described in new subsection (2)(b)(ii) or new subsection (3), and “such portion is at least one-eighth percent,” then no termination date is allowed for “the rate representing such portion rounded to the next higher one-quarter or one-half percent.”

New subsection (2)(e) provides that the Nebraska Budget Act's budget limitations (Neb. Rev. Stat. secs. 13-518 to 13-522) apply to revenue derived from any such local option sales and use tax or tax rate increase.

New Subsection (3) of Neb. Rev. Stat. sec. 77-27,142:

New subsection (3)(a) prohibits the imposition of any local option sales and use tax at a rate greater than one and one-half percent or an increase in a local option sales and use tax at a rate greater than one and one-half percent ***unless*** “the municipality is a party to an interlocal agreement . . . or a joint public agency agreement . . . with a political subdivision within the municipality or the county in which the municipality is located creating a separate legal or administrative entity relating to a public infrastructure project.”

New subsection (3)(b) provides that—except as provided in new subdivision (2)(b)(ii)—such an interlocal agreement or joint public agency agreement must contain “provisions, including benchmarks, relating to long-term development of unified governance of public infrastructure projects with respect to the parties.” The Legislature can provide additional requirements for such agreements, but they cannot apply to any debt outstanding when the Legislature enacts such additional requirements. Furthermore, the separate legal or administrative entity created cannot be one that was in existence for one calendar year before submitting to voters—at a general election held within the incorporated municipality—the ballot question as to whether such a local option sales and use tax should be imposed or the rate of an existing local option sales and use tax should be increased.

New subsection (3)(c) provides that “Any other public agency as defined in Neb. Rev. Stat. sec. 13-803” (i.e., “any county, city, village, school district, or agency of the state government or of the United States, any drainage district, sanitary and improvement district, or other municipal corporation or political subdivision of this state, and any political subdivision of another state”) can be a party to such interlocal cooperation agreement or joint public agency agreement.

New subsection (3)(d) provides that a municipality is not required to use all of the additional revenue generated by a local option sales and use tax imposed at a rate greater than one and one-half-percent

or increased to a rate greater than one and one-half percent under new subsection (3) for purposes of the interlocal cooperation agreement or joint public agency agreement set forth in new subsection (3).

New Subsection (4) of Neb. Rev. Stat. sec. 77-27,142: New subsections (2) and (3) do not apply to the first one and one-half percent of a local option sales and use tax imposed by a municipality.

New Subsection (5) of Neb. Rev. Stat. sec. 77-27,142: Preempts any provision of any municipal charter and expressly allows any incorporated municipality or interlocal agency or joint public agency—pursuant to an agreement as provided in new subsection (3)--to "issue bonds in one or more series for any municipal purpose and pay the principal of and interest on any such bonds by pledging receipts from the increase in the municipal sales and use taxes authorized by such municipality." Furthermore, new subsection (5) allows any municipality that has or may issue bonds under Neb. Rev. Stat. sec. 77-27,142 to "dedicate a portion of its property tax levy authority . . . to meet debt service obligations under the bonds." For purposes of new subsection (5), the bill defines the word "bond".

Section 2 of LB 357: Amends Neb. Rev. Stat, sec. 77-27,142.01 by adding new subsection (2) which sets forth rules governing the content of ballot questions proposing to either impose or increase a local option sales and use tax rate that ***exceeds*** one and one-half percent. (The rules set forth in new subsection (2) do not apply to "the first one and one-half percent of a sales and use tax imposed by a municipality.) The ballot question must include, but is not limited to including, the following information:

- The percentage increase of one-quarter percent or one-half percent in the local option sales and use tax rate.
- A list of reductions or elimination of other taxes or fees, if any.
- A description of the projects to be partly or wholly funded from the additional local option sales and use tax revenue, along with any savings or efficiencies resulting from the projects.
- The year or years within which the local option sales and use tax revenue will be collected and, if bonds will be issued and backed by some or all of the local option sales and use tax revenue, a statement that the revenue will be collected until such bonds and any refunding bonds are paid in full.
- The percentage of local option sales and use tax revenue collected that is to be used for the purposes of the interlocal agreement or joint public agency agreement as provided in Neb. Rev. Stat. sec. 77-27,142 (2)(b)(ii) or (3); a statement of the overall purpose of the agreement which is the long-term development of unified governance of public infrastructure projects, if applicable; and the name of any other political subdivision which is a party to the agreement.

Section 3 of LB 357: Makes coordinating changes to Neb. Rev. Stat. sec. 77-27,142.02 and strikes obsolete language in that statute.

Section 4 of LB 357: Repeals the version of Neb. Rev. Stat. secs. 77-27,142, 77-27,142.01, and 77-27,142.02

LB 357 passed 30-15, but the Governor vetoed the bill on April 11. 2012; ***however***, the Legislature overrode the veto by a vote of 30-17 on April 18, 2012, and LB 357 became law. LB 357 becomes operative July 19, 2012 (i.e., three calendar months after adjournment *sine die* of the 2012 regular legislative session).

LB 753 (Avery)—Create funds and provide funding for childhood obesity prevention measures through sales taxation of soft drinks.

Introduced Version:

LB 753 would have made soft drinks taxable under the Nebraska sales and use tax. Under current law, soft drinks are subject to sales tax because they are defined as food and food—other than prepared food and food sold through vending machines—is exempt from sales and use taxation.

LB 753 would have added soft drinks to the list of items which do not constitute food or food ingredients. Also, LB 753 would have defined the term "soft drinks".

Other provisions of the bill would have required the Department of Revenue to transfer sales and use tax revenue from taxing soft drinks to one of two new newly created funds. The two new funds are: (1) the Department of Health and Human Services Obesity Prevention Fund; and (2) the Department of Education Obesity Prevention Fund. The bulk of the revenue derived from sales and use taxation would have gone to the Department of Education fund. The funds distributed to the Department of Education would have had to be allocated to each school, with 20% of the total divided equally among all school districts and 80% distributed based each schools proportional share of the average daily membership of all schools.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 753 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 855 (Fulton)—Authorize an increase in city sales tax rates.

Introduced Version:

LB 855 would have changed the one-tier retailers' sales and use tax collection fee formula used under current law (i.e., 2.5 percent of the first $3,000 collected and remitted each month by a retailer to the Nebraska Department of Revenue) and would have replaced it with the two-tier formula that was used immediately before enactment of Laws 2002, Second Special Session, LB 32, sec. 3 (i.e., 2.5 percent of the first $3,000 in sales and use taxes collected and remitted each month by the retailer to the department ***plus*** 0.5 percent of all amounts over $3,000 in sales and use taxes collected and remitted each month by the retailer to the department).

Section 1: Would have amended Neb. Rev. Stat. sec. 77-2703(2)(d) to make two coordinating changes to that statute which would be compatible with the July 1, 2013, operative date of the changes to the retailers' sales and use tax collection fee proposed by section 2 of LB 855. [LB 855, sec. 1, amending Neb. Rev. Stat. sec. 2703(2)(d).]

Section 2: Would have created a two-tier formula for determining the amount of a retailer's sales and use tax monthly collection fee. Beginning July 1, 2013, a retailer's sales and use tax collection fee would have been:

2.5 percent of the first $3,000 (i.e., $75) in sales and use taxes collected and remitted to the Nebraska Department of Revenue each month by the retailer; ***plus***
0.5 percent of "all amounts" in excess of $3,000 in sales and use taxes collected and remitted to the Nebraska Department of Revenue each month by the retailer.

[LB 855, sec. 2, amending Neb. Rev. Stat. sec. 77-2708(1)(d).]

Section 3: Would have repealed the current version of the statutes that LB 855 seeks to amend. [LB 855, sec. 3.]

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 855 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 956 (Ashford, Cornett, and Schumacher)--Authorize an increase in city sales tax rates.

Introduced Version:

As introduced, LB 956 would have allowed a city to hold an election to implement a higher local sales tax rate of up to 2%. The additional rate proposed could only be implemented by the municipality only if an interlocal agreement is in place with a school located within the city, or the county in which the city is located. The city is not required to share all or a fixed share of the proceeds from this additional rate with the other parties to the interlocal agreement. The interlocal agreement is subject to benchmarks for various public purposes, and the Legislature is authorized to alter the interlocal agreement at its discretion. The Legislature's discretion is limited by the bill when the sales tax is pledged to pay bonded debt. The authority to collect an additional sales tax revenue over a rate of 1.5% is limited to ten years, or longer if bonded indebtedness is issued pledging the local sale tax revenue.

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 956 did not advance from committee and died with the end of the legislative session on April 18, 2012.

LB 1098 (Council)—Repeal the "Build Nebraska Act" (Laws 2011, LB 84) and change distribution of sales and use tax revenue.

Introduced Version:

As introduced, LB 1098 would have repealed provisions of current state law which provide for diverting a portion of state sales and use tax revenue for funding roads (i.e., Laws 2011, LB 84, the "Build Nebraska Act").

Revenue Committee Amendment: None.

Other Adopted Amendments: None.

Final Disposition: LB 1098 did not advance from committee and died with the end of the legislative session on April 18, 2012.